



Agenda Date: June 23, 1998

June 16, 1998

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Quail Hollow Quarry Stipulated Agreement and West Ridge Conservation Easement

Members of the Board:

In 1990, the Board of Supervisors determined that Graniterock Company did not have vested rights to mine at Quail Hollow Quarry outside of specific, limited area. Following this determination, Graniterock and Santa Cruz Aggregates filed suit against the County, claiming that they had vested rights and that no further approvals were required for mining operations in the areas known as the South Ridge and the Future Mining Area of the quarry property. Three organizations, the California Native Plant Society, the South Ridge Watershed Association, and the Sierra Club, intervened in the lawsuit to address several concerns, including the loss of extremely rare biotic resources known to exist on the site and the effects of mining operations on groundwater resources in the area. In June 1994, a settlement was reached in which all parties (Petitioners, County, and Intervenor) entered into a Stipulation for Entry of Final Judgement in Superior Court of the State of California for the County of Santa Cruz; (Case No. 113495) (Stipulation). On June 14, 1994, the Chairperson of the Board of Supervisors executed the Stipulation on behalf of the County.

The Stipulation requires several actions by Graniterock, including that:

Graniterock be permitted to conduct mining operations in the Future Mining Area, after obtaining permits and satisfying preconditions to mining.

Graniterock sell the 32.6 acre South Ridge to the County at an agreed upon fair market value of \$3.2 million prior to initiation of mining in the Future Mining Area.

Graniterock grant to the County conservation easements in perpetuity for the 11.1 acre North Ridge and 21.1 acre West Ridge areas prior to initiation of mining in the Future Mining Area. It should be noted that the North Ridge Conservation easement was granted to the County on July 30, 1997.

Graniterock obtain permits from the U.S. Fish and Wildlife Service and California Department of Fish and Game for mining-related impacts on endangered species.

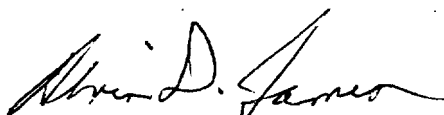
The Stipulation specifies that the agreement shall be of no force or effect if, by July 1, 1998, all agency permits have not been obtained and if the required conservation easements have not been deposited into escrow. On June 10, 1998, the Planning Commission approved the permit for expansion of mining operations into the Future Mining Area. Because it is not anticipated that the State and federal permits for this project will not be issued by July 1, the parties have agreed to extend the deadline for the deposit of all required documents into escrow to September 1, 1998. Counsel for all parties confirmed this agreement on the record at the Planning Commission meeting referenced above. This "letter agreement" has been prepared for signature and is included for your review as Attachment 1. You have previously authorized County Counsel to sign these "letter agreements" to amend the Stipulation and we are requesting such authority to execute this document.

In addition, Graniterock Company has provided to the County a Grant Deed of Perpetual Conservation Easement (Conservation Easement) for the West Ridge at Quail Hollow Quarry, as required by the Stipulation. The Conservation Easement, with accompanying maps and legal description, is included for your review as Attachment 2. The State and federal permits may be issued during July, resulting in the need to deposit various documents, including the West Ridge Conservation Easement, into escrow. If this need arises, a County representative will need to execute the Conservation Easement, and we are requesting that your Board authorize the County Administrative Officer to sign this document.

It is therefore RECOMMENDED that your Board take the following actions:

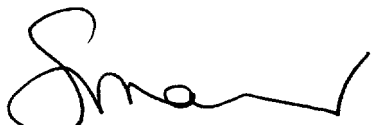
1. Authorize County Counsel to sign a letter agreement extending the term of the Quail Hollow Quarry Stipulation to September 1, 1998; and
2. Authorize the County Administrative Officer to **execute a** Grant Deed of Perpetual Conservation Easement for the West Ridge habitat set aside at Quail Hollow Quarry.

Sincerely,



ALVIN D. JAMES
Planning Director

RECOMMENDED:.



SUSAN A. MAURIELLO
County Administrative Officer

Attachments: 1. Agreement to Extend Stipulation Term
2. West Ridge Conservation Easement



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 MARK I. WEINBERGER
 MARC B. MIHALY, P.C.
 FRAN M. LAYTON
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 OF COUNSEL

June 16, 1998

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Re: Amendment of Stipulation in Granite Rock Co., et al. v. County of Santa Cruz, Santa Cruz County Superior Court Case No. 113495 and of Agreement of Purchase and Sale for South Ridge of Quail Hollow Quarry

Dear Dwight, Celia and Brian:

This letter, when executed by counsel for all parties, will constitute an agreement to amend Paragraphs 4 and 30 of the above-entitled Stipulation and Paragraph 1. I of the above-entitled Agreement of Purchase and Sale by extending the July 1, 1998 deadline for transfer of title to the South Ridge and for the final issuance of the Future Mining Approval as well as any approvals that other regulatory agencies must issue prior to commencement of mining in the Future Mining Area. The Stipulation provides that it shall be of no force or effect if by July 1, 1998 the required documents evidencing the issuance of the required agency approvals, the grant deed for conveyance of the South Ridge in fee simple, and the conservation easements for the North and West Ridges have not been deposited into escrow. The Purchase and Sale Agreement (Paragraph 1.1) similarly identifies July 1, 1998 as the "Outside Fulfillment Date" and thirty days thereafter, or no later than August 1, 1998, as the "Closing Date."



Because it is anticipated that **all** approvals by **the** relevant regulatory agencies, specifically United States Fish and Wildlife **Service** and **California** Department of Fish and Game, **will** not be **final** by July 1, 1998, **the parties** have **agreed** to **extend** the deadline for the deposit of all **required** documents into escrow to September 1, 1998. Counsel for all parties; **confirmed this agreement on the record** at the June 10, 1998 Planning Commission hearing on **Granite Rock's** application for a **mining approval** for **the Future** Mining Area. **Other** than **the** amendments identified in the preceding paragraph and in t&e October 29, 1997 letter agreement increasing the **cost** of **the Future** Mining Area **EIR** to \$60,000, **all** other provisions of the Stipulation and **Purchase** and Sale Agreement **remain in full force and effect**.

Please sign the enclosed signature page and return it to me to effect **an agreement** to **amend Paragraphs 4 and 30** of the Stipulation and **Paragraph 1.1** of the Purchase and Sale Agreement to provide for a **deadline** of September 1, 1998 for **all** required documents to be deposited **into** escrow and a deadline **of no later** than October 1, 1998 for the Closing Date pursuant to the Purchase and Sale Agreement. **I** will send a copy of all executed signature pages to **each** of you following **receipt** of same. This amendment as well as **all** previous letter agreements to amend the Stipulation will be incorporated into a single Stipulation, **in accordance** with Paragraph 22 **of the** Stipulation, and filed with the Court.

Very truly yours,

SHUTE, MIHALY & WEINBERGER



FRAN M. LAYTON

FML:jt

Dated: _____

Dwight Herr
County Counsel, County of Santa Cruz

P:\SANC\RISK\FML010.COR

RECORDING REQUESTED BY:

COUNTY OF SANTA CRUZ

When recorded, mail to:

COUNTY OF SANTA CRUZ
Planning Department
701 Ocean Street, Room 4 10
Santa Cruz, CA 95060

**GRANT DEED OF
PERPETUAL CONSERVATION EASEMENT**

THIS GRANT DEED OF PERPETUAL CONSERVATION EASEMENT
(“EASEMENT”) is made this day of _____ 1998, by and between GRANTTEROCK
COMPANY, a California Corporation (**“GRANTOK”**) in favor of the COUNTY OF SANTA
CRUZ, a political subdivision of the State of California (**“GRANTEE”**).

RECITALS

A. GRANTOR is a California corporation and is the sole owner in fee simple of certain real property located in the County of Santa Cruz, State of California, which is more particularly depicted on the map attached hereto as Exhibit A and incorporated by this reference, and described in Exhibit B, attached hereto and incorporated by this reference (the **“Protected Property”**);

B. GRANTEE is a public entity formed under the laws of the State of California and is authorized to hold conservation easements for the conservation purposes identified in California Civil Code § 8 15 et seq.; and

C. On June 14, 1994, GRANTOR and GRANTEE and other parties entered into a Stipulation for Entry of Final Judgment in Granite Rock Company, et al. v. County of Santa Cruz, et al., County of Santa Cruz Superior Court No. 113495 (“Stipulation for Entry of Final Judgment”), which provided, inter alia, that as part of the mitigation for its continued mining operations at GRANTOR’s Quail Hollow Quarry, GRANTOR would grant to GRANTEE a conservation easement in perpetuity for the 2 1.1 acre West Ridge area, the Protected Property.

D. The Protected Property possesses significant biotic, ecological, aesthetic, educational, historical, scientific and habitat values (collectively, **“Conservation Values”**). These Conservation Values include areas on the Protected Property of Sand Parkland habitat, a globally significant and unique plant community of which less than 50 acres remain in the world, and Northern

Maritime Chaparral, a habitat that is very limited in distribution and threatened in its range. In addition, numerous rare and endangered species occur on or in the immediate vicinity of the Protected Property, including four (4) federally listed endangered species: the Mount Hermon June beetle (*Polyphylla barbata*); the Zayante Band-winged grasshopper (*Trimerotropis infantilis*); the Ben Lomond wallflower (*Erysimum teretifolium*); and the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*). The Ben Lomond wallflower is also listed as endangered under the California Endangered Species Act. These habitats and plant and animal species are of great importance to the Nation and its people, including GRANTOR and GRANTEE; and

E. Significant portions of the Protected Property, consisting of approximately 21.1 acres, have been presently identified as being occupied by species of native plants and wildlife which GRANTOR and GRANTEE desire to conserve and protect, restore and enhance pursuant to a Habitat Conservation Plan titled Habitat Conservation Plan for the quail Hollow Quarry ("**HABITAT CONSERVATION PLAN**"), attached to this EASEMENT as Exhibit C and incorporated herein by this reference.

F. GRANTOR intends to convey to GRANTEE the right to conserve and protect, restore and enhance the Conservation Values of the Protected Property; and

G. GRANTEE agrees by accepting this grant to honor the intentions of GRANTOR stated herein and to conserve and protect, restore and enhance in perpetuity the Conservation Values of the Protected Property in accordance with the terms of this EASEMENT and the HABITAT CONSERVATION PLAN; and

H. This EASEMENT provides mitigation for certain impacts' located in the County of Santa Cruz, State of California, described in the May, 1998 Federal Endangered Species Act HABITAT CONSERVATION PLAN for Quail Hollow Quarry.

Covenants, Terms, Conditions, and Restrictions

In consideration of the above recitals (which the parties agree are true and correct) and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and California Civil Code section 815 et seq., GRANTOR hereby voluntarily grants and conveys to GRANTEE a perpetual conservation EASEMENT over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this EASEMENT to assure that the Protected Property will be retained, protected and preserved forever in an open space condition for natural resource conservation uses and free from all mining, agricultural, infrastructure, residential and commercial uses of any kind, and to prevent any use of the Protected Property that will impair or interfere with the Conservation Values of the Protected Property. GRANTOR intends that this EASEMENT (i) will assure that the Protected Property will be used only for such activities as are consistent with the purpose of this EASEMENT, and (ii) shall be implemented consistently with the HABITAT CONSERVATION PLAN.

2. RIGHTS AND OBLIGATIONS OF GRANTEE

To accomplish the purposes of this EASEMENT, the following rights and obligations are conveyed to GRANTEE by this EASEMENT:

(a) To conserve, protect, restore, and enhance the Protected Property in a manner

consistent with the HABITAT CONSERVATION PLAN;

(b) To enter upon and have access to the Protected Property to monitor GRANTOR's compliance with and otherwise enforce the terms of this EASEMENT and to fulfill duties identified in the HABITAT CONSERVATION PLAN; provided that such entry shall not unreasonably impair or interfere with GRANTOR's use and quiet enjoyment of its property or unreasonably disturb natural resources on the Protected Property; and

(c) To prevent any activity on or use of the Protected Property that is inconsistent with either the purposes of this EASEMENT or with the HABITAT CONSERVATION PLAN and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use,

3. PROHIBITED USES

Subject to the provisions of Paragraph 4 herein, any activity on or use of the Protected Property inconsistent with the purposes of this EASEMENT or with the HABITAT CONSERVATION PLAN is prohibited. Without limiting the generality of the foregoing, GRANTOR, its personal representative, heirs, assigns, agents, and potential future lessees are expressly prohibited from disturbing in any way the Protected Property, including, but not limited to, doing any of the following on the Protected Property:

(a) Erecting of any building, billboard, or sign, other than the posting of signs to control use of the Protected Property as provided for in the HABITAT CONSERVATION PLAN;

(b) Unseasonal watering, use of herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the purposes of this EASEMENT and/or which are inconsistent with the provisions of the HABITAT CONSERVATION PLAN;

(c) Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material;

(d) Excavating, dredging or removing of loam, gravel, soil, rock, sand or other material, except as permitted by the HABITAT CONSERVATION PLAN;

(e) Otherwise altering the general topography of the Protected Property, including building roads or pathways;

(h) Removing, destroying, or cutting of trees, shrubs, or other vegetation, except as permitted by the HABITAT CONSERVATION PLAN and required for (1) fire breaks, (2) maintenance of existing trails, (3) maintenance of open Sand Parkland habitat and prevention of encroachment of exotic plants onto the Protected Property, or (4) prevention or treatment of disease;

(i) Pumping water, diverting water, mining activities; and

(j) Undertaking any activity that will disturb federally and/or state-listed endangered or threatened species and/or County defined rare, endangered or threatened species and/or sensitive habitats on the Protected Property.

4. GRANTOR'S DUTIES

GRANTOR shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Protected Property. In addition, GRANTOR shall undertake all necessary actions to perfect GRANTEE's rights under section 2 of this EASEMENT.

5. RESERVED RIGHTS

GRANTOR reserves to itself, and to its personal representative, heirs, successors, assigns, agents and present and potential future lessees, including, but not limited to, all rights **accruing** from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all **uses** of the Protected Property that **are** not expressly prohibited herein and are not inconsistent with the purpose of this EASEMENT.

GRANTOR agrees to notify GRANTEE, United States Fish and Wildlife Service ("Service") and California Department of Fish and Game ("Fish & Game") and obtain the approval of GRANTEE, the Service, and Fish & Game prior to undertaking any activity which may have a materially adverse impact on the Conservation Values of the Protected Property. The purpose of this notice is to afford GRANTEE, the Service, and Fish & Game an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purposes of this EASEMENT and the HABITAT CONSERVATION PLAN. Whenever notice is required GRANTOR shall notify GRANTEE, the Service, and Fish & Game in writing not less than 30 days prior to the date GRANTOR intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit GRANTEE, the Service, and Fish & Game to make an informed judgment as to its consistency with the purposes of both this EASEMENT and the HABITAT CONSERVATION PLAN. Where such approval is required, GRANTEE, the Service, and Fish & Game shall grant or withhold such approval in writing within 15 days of receipt of GRANTOR's written request therefor. The granting or withholding of approval shall be in the sole discretion of GRANTEE, the Service, and Fish & Game; although GRANTEE, the Service and Fish & Game shall not unreasonably or arbitrarily withhold **such** approval.

6. REMEDIES

If a party hereto determines that the other party is in violation of the terms of this EASEMENT or that a violation is threatened, such party shall give written notice to the other party, the **Service**, and Fish & Game of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this EASEMENT, to restore, in accordance with the HABITAT CONSERVATION PLAN, the portion of the Protected Property so injured. The Service and/or Fish & Game and other interested parties may also provide such notice to the parties. In furtherance of the mutual commitments made in the Implementation Agreement for the HABITAT CONSERVATION PLAN, the Service and Fish & Game shall have the right to enforce the terms of this EASEMENT as provided herein. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party, the Service, Fish & Game, or other interested parties (or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to continue diligently to cure such violation until finally cured), the aggrieved party, the Service and/or Fish & Game, or other interested parties may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this EASEMENT, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this EASEMENT or injury to any Conservation Values protected by this EASEMENT, including

damages for the loss of biotic, aesthetic, ecological, educational, historical, habitat or scientific values, and to require the restoration pursuant to the HABITAT CONSERVATION PLAN of the Protected Property to the condition that existed prior to any such injury. If a party, the Service and/or Fish & Game, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, such party, the Service and/or Fish & Game may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights, and those of the Service and Fish & Game, under this paragraph apply equally in the event of either actual or threatened violations of the terms of this EASEMENT, and each party agrees that the other party's remedies, and those of the Service and Fish & Game, at law for any violation of the terms of this EASEMENT are inadequate and that such party, the Service and/or Fish & Game shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party, the Service and/or Fish & Game may be entitled, including specific performance of the terms of this EASEMENT, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies, and those of the Service and Fish & Game, described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code section 8 15 et seq., are incorporated herein by this reference and this EASEMENT is made subject to all of the rights and remedies set forth therein. If at any time in the future GRANTOR or GRANTEE or any subsequent transferee or assignee uses or threatens to use such lands for purposes not in conformance with the provisions of this EASEMENT, or releases or abandons this EASEMENT in whole or in part, notwithstanding California Civil Code § 815 et seq., the California Attorney General, the County, the Service, Fish & Game, or any entities organized for conservation purposes shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this EASEMENT.

(a) Costs of Enforcement. Reasonable costs incurred by any party enforcing the terms of this EASEMENT, including without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by a violation of the terms of this EASEMENT shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this EASEMENT, such party's costs of suit including, without limitation, attorneys fees, shall be borne by the other party; provided, however, that costs and attorneys' fees recoverable against the United States shall be governed by applicable federal law.

(b) GRANTEE's Discretion. As between GRANTEE and GRANTOR, enforcement of the terms of this EASEMENT shall be at the discretion of GRANTEE, and any forbearance by GRANTEE to exercise its rights under this EASEMENT shall not be deemed or construed to be a waiver by GRANTEE of such term or of any subsequent breach of the same or any other term of this EASEMENT or of any of GRANTEE's rights under this EASEMENT. No delay or omission by GRANTEE in the exercise of any right or remedy upon any breach by GRANTOR shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond GRANTOR's Control. Nothing contained in this EASEMENT shall be construed to entitle GRANTEE to bring any action against GRANTOR for any injury to or change in the Protected Property resulting from causes beyond GRANTOR's

control, including, without limitation, fire, drought, flood, storm, and earth movement.

(d) Waiver of Certain Defenses. GRANTOR hereby waives any defense of laches, estoppel, or prescription in view of GRANTEE's limited and infrequent presence on the Protected Property.

7. ACCESS

GRANTEE, its successors, assigns, agents, designated representatives, invitees and licensees, the Service, and Fish & Game shall have the right to access the Protected Property at all times. Except as set forth in this paragraph, no right of access by the general public to any portion of the Protected Property is conveyed by this EASEMENT.

8. COSTS AND LIABILITIES

Except as set forth in this EASEMENT, in the HABITAT CONSERVATION PLAN, or as otherwise agreed in writing between the parties hereto, GRANTOR retains all responsibilities related to the ownership, operation, upkeep, and maintenance of the Protected Property. GRANTOR remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this EASEMENT, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. GRANTOR shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by GRANTOR.

(a) Taxes: GRANTOR shall pay before delinquency all taxes, assessments, fees, and charges of whatever description (collectively "taxes") levied on or assessed against the Protected Property by competent authority, including any taxes imposed upon, or incurred as a result of, this EASEMENT, and shall furnish GRANTEE with satisfactory evidence of payment upon request.

(b) Representations and Warranties: GRANTOR represents and warrants that, after reasonable investigation and to the best of its knowledge:

(i) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property;

(ii) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(iii) GRANTOR and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

(iv) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and

(v) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received,

arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that GRANTOR might reasonably expect to form the basis for any such proceedings, investigations, notices, **claims**, demands, or orders.

(c) **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, GRANTOR agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by GRANTEE, in which case GRANTEE shall be responsible therefor.

(d) **Control:** Nothing in this EASEMENT shall be construed as giving rise in the absence of a judicial decree, to any right or ability in GRANTEE to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of GRANTOR's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S.C. A. section 9601, et seq. ("CERCLA"), and in the Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health and Safety Code section 25300, et seq. ("CA Superfund Act").

(e) **Hold Harmless:** GRANTOR or its successor shall hold harmless, indemnify, and defend GRANTEE and its members, directors, **officers**, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property, unless caused by the acts or omissions of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and CA Superfund Act., by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property; (3) the presence or release in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the existence or administration of this EASEMENT.

9. **ASSIGNMENT**

This EASEMENT is transferable, but GRANTEE shall give GRANTOR, Fish & Game, and the Service at least thirty (30) days prior written notice of the transfer. GRANTEE may assign its rights and obligations under this EASEMENT only to an organization that is 1) approved in writing by the Service and Fish & Game; and, 2) a public agency or a qualified

organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and, 3) authorized to acquire and hold conservation EASEMENTS under California Civil Code section 8 15 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the Conservation Purposes that this grant is intended to advance shall continue to be fulfilled and that Assignee or Transferee will comply with all provisions of the HABITAT CONSERVATION PLAN. GRANTEE shall not release, modify, relinquish or abandon its rights and obligations under this EASEMENT without the prior written consent of the Service and Fish & Game.

10. SUBSEQUENT TRANSFERS

GRANTOR agrees to incorporate the terms of this EASEMENT in any deed or other legal instrument by which GRANTOR divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. GRANTOR further agrees to give written notice to GRANTEE, Fish & Game, and the Service at least fifteen (15) days prior to the date of any property transfer. The failure of GRANTOR to perform any act required by this paragraph shall not impair the validity of this EASEMENT or limit its enforceability in any way.

11. ESTOPPEL CERTIFICATES

Upon request by GRANTOR, GRANTEE shall within thirty (30) days execute and deliver to GRANTOR any document, including an estoppel certificate, which certifies, to the best of GRANTEE's knowledge, GRANTOR's compliance with any obligation of GRANTOR contained in this EASEMENT and otherwise evidences the status of this EASEMENT as may be requested by GRANTOR. Such certification shall be limited to the condition of the Protected Property as of GRANTEE's most recent inspection. If GRANTOR requests more current documentation, GRANTEE shall conduct an inspection, at GRANTOR's expense, within thirty (30) days of GRANTOR's written request therefor.

12. NOTICES

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the others shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To GRANTOR: Steve Woolpert, President
Graniterock Company
P.O. Box 50001
Watsonville, CA 95077-500 1

To GRANTEE: Planning Director
County of Santa Cruz Planning Department
701 Ocean Avenue
Santa Cruz, CA 95061

To the United States Fish and Wildlife Service:

Assistant Regional Director
United States Fish and Wildlife Service
Region 1, Eastside Federal Complex
9 11 Northeast Eleventh Avenue
Portland, OR 97232-418 1

To California Department of Fish & Game:

Director
California Department of Fish & Game
14 16 9th Street, 12th Floor
Sacramento, CA 958 14

or to such other address or the attention of such other officer as from time to time a party may designate by written notice to the other.

13. RECORDATION

GRANTEE shall promptly record this instrument in the **official** records of the County of Santa Cruz, California and may re-record it at any time as may be required to preserve its rights in this EASEMENT.

14: GENERAL PROVISIONS

(a) Controlling Law. The interpretation and performance of this EASEMENT shall be governed by the laws of the State of California, the Federal Endangered Species Act, and other applicable Federal laws.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this EASEMENT shall be construed in favor of the grant to effect the Conservation Purposes of this EASEMENT and the policy and purpose of California Civil Code section 815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of both this EASEMENT and the HABITAT CONSERVATION PLAN that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this EASEMENT, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this EASEMENT, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument, together with the June 14, 1994 Stipulation for Entry of Final Judgment and the June 29, 1994 Agreement of Purchase and Sale for South Ridge of Quail Hollow Quarry by and between GRANTOR and GRANTEE, set forth the entire agreement of the parties with respect to the EASEMENT and supersede all prior discussions, negotiations, understandings, or agreements relating to the EASEMENT.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or

reversion of GRANTOR's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this EASEMENT shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property. The Service and Fish & Game are third-party beneficiaries of this grant of EASEMENT and shall have the same rights as the parties, including all of the GRANTEE rights enumerated in Section 2, to enforce the terms of this EASEMENT.

(g) Termination of Rights and Obligations. A party's rights and obligations under this EASEMENT terminate upon transfer of the party's interest in the EASEMENT or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have entered into this EASEMENT the day and year first above written.

GRANTOR:

GRANITEROCK COMPANY

By: _____
Steve Woolpert
President

Grantee:

COUNTY OF SANTA CRUZ

By: _____
Susan A. Mauriello
County Administrative Officer

APPROVED AS TO FORM:

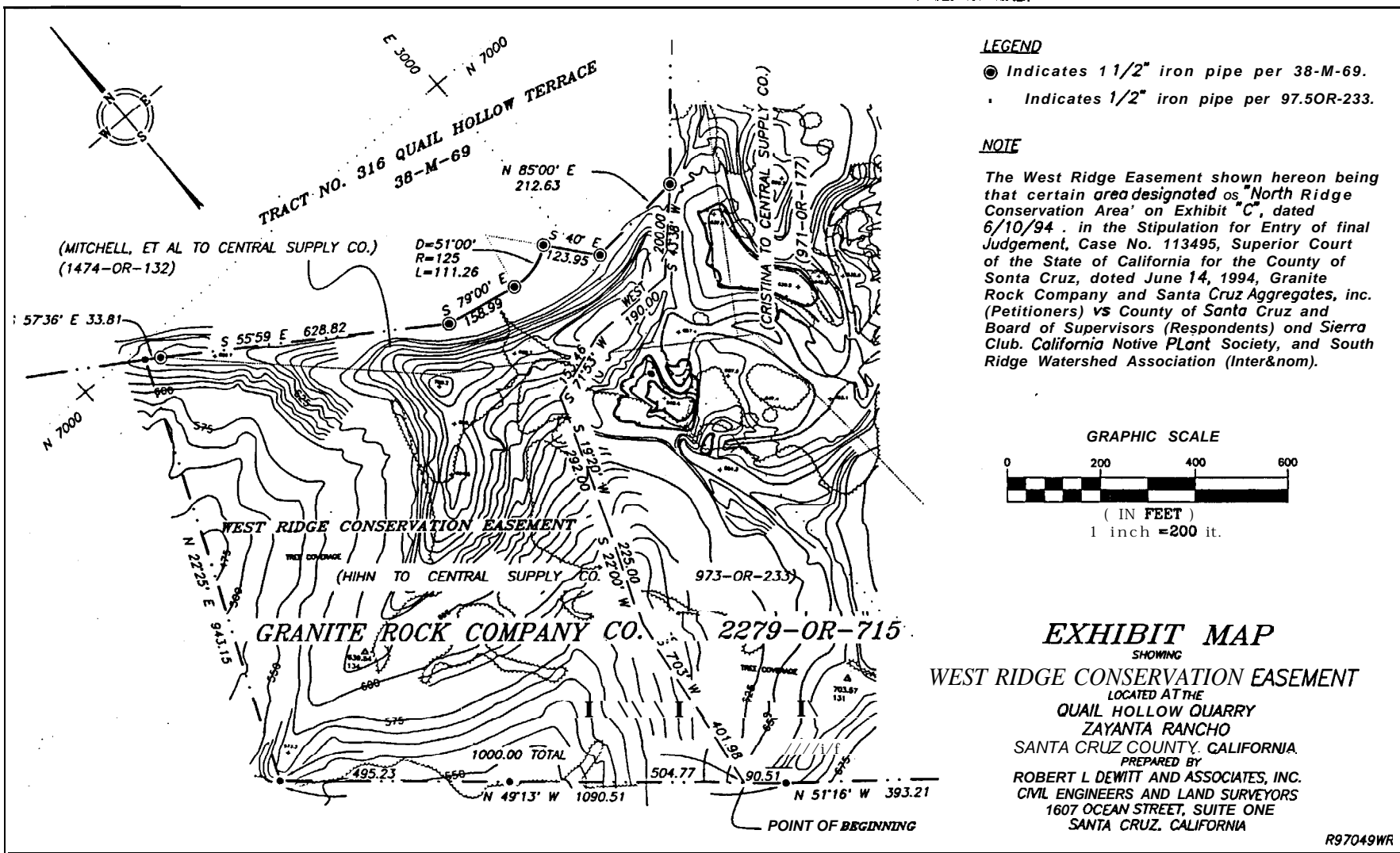
Cheryl Dobson
Assistant Regional Solicitor
United States Department of the Interior
for U.S. Fish and Wildlife Service

Exhibit A
Map of Conservation EASEMENT Area

Exhibit B'
Legal Description of Conservation EASEMENT Area

Exhibit C
HABITAT CONSERVATION PLAN

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WEST RIDGE CONSERVATION EASEMENT

EXHIBIT A

SITUATE in the County of Santa **Cruz**, State of California, and

BEING a portion of the lands conveyed to Central Supply Company by deeds recorded in Volume 973, at Page 233 and Volume 1474, at Page 132, both of Official Records of Santa Cruz County, said lands being merged into Granite Rock Company by Agreement of Merger as referred to in document recorded in Volume 2279, at Page 715 of Official Records of Santa Cruz County, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron pipe on the southwestern boundary of the first above referred lands conveyed to Central Supply Company (973-OR-233) from which the northwestern terminus of the course noted as "thence continuing North 5 1° 16' West 393.21 feet" in said deed bears South 49° 13' East 90.51 feet distant; thence from said point of beginning along said southwesterly boundary North 49° 13' West 504.77 feet to a 1/2 inch iron pipe; thence continuing along said boundary North 49° 13' West 495.23 feet to a 1/2 inch iron pipe at the most western corner of said lands; thence along the northwestern boundary ~~thereof~~ North 22° 25' East 943.15 feet to a 1/2 inch iron pipe at the most northern corner ~~thereof~~; said point being on the southwestern boundary of Tract No. 3 16, Quail Hollow Terrace as said tract is shown on that certain map recorded in Map Book 38, at Page 69; Santa Cruz County **Records**; ~~thence~~ along the boundary line common to said Tract No. 3 16 and said first above referred lands conveyed to Central Supply Company (973-OR-233) South 57° 36' East 33.81 feet to a 1 1/2 inch iron pipe at an angle point in said common boundary, said point also being the most western corner of the second above referred lands conveyed to Central Supply Company (1474-OR-132); thence leave the first above referred lands conveyed to Central Supply Company (973-OR-233) along the boundary ~~line~~ common to the second above referred lands conveyed to Central Supply Company (1474-OR-132) and the aforementioned Tract No. 3 16 the following courses:

1. South 55° 59' East 628.82 feet to a 1 1/2 inch iron pipe; thence
2. South 79° 00' East 158.99 feet to a 1 1/2 inch iron pipe at point of curve; thence
3. along a tangent curve to the **left**, having a radius of 125 feet through a central angle of 51° 00' for an arc length of 111.26 feet to 1 1/2 inch iron pipe; thence
4. South 40° 00' East 123.95 feet to a 1 1/2 inch iron pipe; thence
5. North 85° 00' East 212.63 feet to a 1 1/2 inch iron pipe; thence leave said common boundary crossing both of the above referred lands conveyed to Central Supply Company the following courses:
6. South 43° 38' West 200.00 feet; thence
7. West 190.00 feet; thence
8. South 71° 53' West 153.46 feet; thence
9. South 19° 20' West 292.00 feet; thence
10. South 22° 00' West 225.00 feet; thence
11. South 07° 03' West 401.98 feet to the point of beginning.

The above-described easement being that certain area designated as "West Ridge Conservation Easement Area" on Exhibit "C", dated **6/10/94**, in the Stipulation for Entry of Final Judgment, Case No. 113495, Superior Court of the County of Santa **Cruz**, dated June 14, 1994, Granite Rock Company and Santa Cruz Aggregates, Inc. (Petitioners) vs. County of Santa Cruz and Board of Supervisors (Respondents) and Sierra Club, California Native Plant Society, and South Ridge Watershed Association (Inventors).

Compiled in April 1997 by Robert L. **DeWitt &** Associates, Inc., Civil Engineers and Land Surveyors.

97049may.29

HABITAT CONSERVATION PLAN

FOR THE QUAIL HOLLOW QUARRY

Santa Cruz County, California

Prepared by:

Thomas Reid Associates

Palo Alto, California

and

Graniterock Company

Watsonville, California

May 1998

EXECUTIVE ABSTRACT

Graniterock Company has applied for an amendment to its existing permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. § 1531-1544, 87 Stat. 884), as amended (Act), from the U.S. Fish and Wildlife Service (Service) for the incidental take of the following "Plan Species", which are federally listed as endangered: Mount Hermon June beetle and Zayante band-winged grasshopper. The proposed incidental taking would occur within a 102 acre area of the 220 acre Quail Hollow Quarry project site located in Santa Cruz County, California (see Map 1, Regional Location). The project site also supports state listed and federally listed endangered plant species: the Ben Lomond wallflower (State and Federal) and Ben Lomond spineflower (Federal), also considered Plan Species. To meet the requirements of law for a section 10(a)(1)(B) permit, Graniterock proposes to implement this habitat conservation plan (HCP) to provide measures for minimizing and mitigating adverse effects on the Plan Species covered in the HCP. Graniterock is requesting that the amendment provide that its section 10(a)(1)(B) permit is issued for a period of 100 years to correspond with the potential life of mining activities within the remainder of the current mining area and the entirety of the future mining area.

Graniterock has an existing mining permit from the County of Santa Cruz to mine in areas A, B, and C of the Current Mining Area. Graniterock is currently mining in areas B and C where Plan Species occur. Because mining in areas B and C would result in take of Plan Species, an incidental take permit was issued for mining in those areas. Graniterock has submitted an application to the County for approval of expanded mining into a new mining area, referred to as the future mining area. Mining in the future mining area would also result in take of Plan Species, therefore, an HCP and attached Implementing Agreement (IA) covering mining in both the current and future mining areas was prepared. An initial incidental take permit issued in August 1997 authorized the take of Plan Species only in the current mining area and has an initial term of three years. The current HCP and attached IA have been prepared to amend the incidental take permit. An amended permit is required prior to any mining in the future mining area, and includes an amended Environmental Assessment (EA) and public review of the application for the permit amendment.

This HCP and attached IA delineate the responsibilities of Graniterock, the County of Santa Cruz (County), the Service, and the California Department of Fish and Game (CDFG). These documents describe measures that will be implemented by Graniterock to minimize and mitigate the impacts of mining activities in both the current and future mining areas (the project) to the Plan Species covered in the HCP and their habitats and to further the conservation of these species. Thus, the project consists of two phases which correspond to mining permit approvals and to separate approvals from the Service for the incidental take of the Plan Species.

Under the HCP, at the time that Graniterock satisfied the conditions specified in the current mining approval as prerequisites to commencing mining in areas B or C of the current mining area and prior to habitat disturbance it:

granted a conservation easement in perpetuity to the County of Santa Cruz for the 11.1-acre North Ridge Habitat Set Aside;

provided for protection and long-term management of the North Ridge Habitat Set Aside, including patrolling the North Ridge, ensuring that illegal access is not occurring on the North Ridge, erecting and replacing fences or other barriers and signs as necessary to prevent illegal trespass; and

implemented pertinent provisions of the HCP in order to avoid disturbing Plan Species in all areas of the quarry property, except for areas within the current mining area, overburden and stockpile areas, and existing access road as shown in Map 2.

After receiving authorization from the County to commence mining in areas B or C of the current mining area, Graniterock also was required to:

enhance 2 acres of disturbed sand parkland on the project site, protecting and providing long term management of the area in a location satisfactory to the County, the Service and CDFG; and

revegetate slopes within the current mining area with the goal of reestablishing habitat for the Plan Species.

At the time that Graniterock receives authorization to commence mining in the future mining area, and prior to habitat disturbance within the future mining area, Graniterock will:

grant a conservation easement in perpetuity to the County for the 2 1.1 -acre West Ridge Habitat Set Aside;

provide for protection and long-term management of the West Ridge Habitat Set Aside,, including patrolling the West Ridge to ensure that illegal access is not occurring on the West Ridge, erecting and replacing fences or other barriers and signs as necessary to prevent illegal trespass;

provide **funding** for and carry-out long-term management of the 32.6 acre South Ridge Habitat Set Aside which the County of Santa Cruz is legally entitled and committed to purchase at the agreed upon fair market value. The County has raised the **funds** necessary to purchase the South Ridge at its agreed upon fair market value;

implement all provisions of the HCP in order to avoid disturbing Plan Species in all areas of the quarry property except for areas within the current **and future** mining areas, overburden and stockpile areas, and existing access road, as shown in Map 2; and

provide written agreement in the form of Conditions, Covenants and Restrictions Mitigation Agreement to protect in perpetuity from any and all disturbance all areas of the project site (except for areas within the current and **future** mining areas, overburden and stockpile areas, and existing access road as shown in Map 2) containing the Plan Species, State listed species, and County defined rare, endangered, or threatened species and sensitive habitats (the Protected Area). The Service will have enforcement authority over the Mitigation Agreement and be able to suspend the Permit if Graniterock does not comply.

After receiving authorization to commence mining in the future mining area, Graniterock shall also:

enhance 3 acres of disturbed sand parkland and 5.2 acres of disturbed maritime chaparral on the project site in a location satisfactory to the County of Santa Cruz, the Service and CDFG protecting and providing long term management of these areas along with the 32.2-acre North and West Ridge habitat set asides and the Protected Area; and

revegetate slopes within the future mining area with the goal of reestablishing habitat for the Plan Species.

The HCP and IA define measures to ensure that the elements of the HCP are implemented in a timely manner. Funding sources for implementation of the HCP, actions to be taken for unforeseen events, alternatives to the proposed project, and other measures required by the Service are also discussed. Reports documenting the presence of the two listed insect species at the Quail Hollow Quarry are included in Appendix A.

CHAPTER 1

ATTACHMENT. 2

PROJECT DESCRIPTION

A. Site Description

The 220 acre Quail Hollow Quarry is located in unincorporated Santa Cruz County near the communities of Ben Lomond and Felton (see Map 1, Regional Location). It is contained within Section 10 of Township 10S, Range 2W, Mount Diablo Baseline, and is included in the Felton Quadrangle, USGS 7.5 Minute Series, California -- Santa Cruz County. The Quarry is comprised of unmined areas containing natural vegetation, barren areas that are currently being mined, former hydraulically mined areas that are presently being invaded by native and non-native plants, and the operations area containing quarry offices, sedimentation ponds, processing facilities, product stockpiles and equipment storage (see Map 2, Site Topography).

The quarry property encompasses eight natural vegetation types: northern maritime chaparral, successional scrub, central coastal scrub, maritime coast range ponderosa pine forest, hardwood-conifer woodland, sand parkland, central coast live oak riparian forest, and central coastal arroyo willow riparian forest (see Map 3, Vegetation Communities). The vegetation types are arrayed in a mosaic over near-level bottomlands, steep slopes and ridgelines, all underlain by ancient marine sandstone and mudstone formations, most of which are collectively referred-to as the Zayante series, derived from Santa Margarita Sandstone. The unique array of soil conditions and coastally-influenced summer climate creates distinct habitat characteristics, and numerous sensitive plant and wildlife species are identified as occurring on or near the site.

Sensitive species that occur on the site and which will be covered in the HCP are:

Listed and Candidate Species Covered by the Section 10(a) Permit

Federal Endangered (FE), or Threatened (FT)

State Endangered (SE), or Threatened (ST)

Animals

Polyphylla barbata -- Mount Hermon June beetle (FE)

Trimerotropis infantilis -- Zayante Band-winged Grasshopper (FE)

Plants

Erysimum teretifolium -- Ben Lomond wallflower (FE, SE)

Chorizanthe pungens var. *hartwegiana* -- Ben Lomond spineflower (FE)

Most sensitive elements are confined to specific natural habitat areas, but more mobile species have the potential to occur within active or proposed future mining areas.

Land uses surrounding the quarry include rural residential and recreational uses including a County Park. The County Park includes equestrian boarding facilities and an additional private boarding facility is located nearby. Portions of the project site, including the South Ridge, are used by the local equestrian community. The North Ridge habitat set aside area is in close

proximity to the Quail Hollow County Park. The South Ridge and West Ridges are adjacent to rural residences. Another sand quarry and the communities of Felton and Ben Lomond are located nearby (see Map 1).

353

B. History of Conservation Planning Process

In the early 1990's, Graniterock Company filed a law suit against the County of Santa Cruz claiming vested rights to mine Quail Hollow Quarry. In an effort to settle the litigation out of court, a Judgment pursuant to a Stipulation for Entry of Final Judgement (Stipulation) was entered by the Superior Court on June 24, 1994. The pending litigation involved Graniterock Company, the County of Santa Cruz, and Intervenors Sierra Club, California Native Plant Society and the 'South Ridge Watershed Association. The Stipulation requires that:

Graniterock sell the 32.6 acre South Ridge to the County at the agreed upon fair market value prior to or at the time that Graniterock receives its future mining approval.

Graniterock be permitted to conduct mining operations in current and future mining areas, after obtaining permits and satisfying preconditions to mining, and to stockpile overburden in designated areas. This area comprises 102 acres.

Graniterock provide a written agreement to not disturb all protected species, including species of concern, in perpetuity in all areas of the quarry that are not subject to mining (this excludes current and future mining areas; stockpile area, overburden area, and existing access road). This area comprises 54 acres.

Graniterock grant to the County a conservation easement in perpetuity for the 2 1.1 acre West Ridge and 11. 1 acre North Ridge areas.

Graniterock fund preparation of a biotic study that includes a "Revegetation Plan, Habitat Conservation Plan, Habitat Management Plan, and Mitigation Agreement."

This HCP is being prepared to satisfy conditions of the Stipulation and to satisfy the statutory requirements for the take of Plan Species at the Quail Hollow Quarry. The Land Status under the HCP is shown in Map 4.

C. Project Description

The HCP covers the continued operation of existing sand mining operations in the current mining area as well as future expanded sand mining operations in the future mining area of the Quail Hollow Quarry. The current operations are permitted by the County of Santa Cruz and the Service's Permit for the incidental take of the Plan Species in this current mining area. Future mining operations will be subject to an amendment to the incidental take permit by the Service and to new permits as approved by the County, and subject to an Environmental Impact Report and Supplemental Environmental Assessment, or other appropriate environmental documentation, in compliance with the California Environmental Quality Act (CEQA) and National Environmental Policy Act, respectively.

1: Current Mining Area (Mining Areas A, B, and C)**ATTACHMENT &**

The current mining area is located in the south central portion of the site on roughly 19 acres. A map of the mining areas is presented in Map 2. The Quail Hollow Quarry produces industrial sand. It is estimated that the mining reserves in the Current Mining Area would **suffice** for one to two years upon approval of the HCP and issuance of an incidental take permit.

Mining is presently occurring on the floor of the current mining area which is being lowered in elevation down to its final contour of 530 MSL (mean sea level). This area does not contain listed species. An older section of the current mining area has been reclaimed.

Current mining operations consist of the removal, processing, and sale of industrial sands. The finest sands are used in glass making, with poorer sands sold for construction purposes. The quarrying process consists of removing overburden and stockpiling it along the margins of the sand pit, then excavating the sand using a caterpillar tractor. The excavated sand is stockpiled at the processing plant until it is processed into a specific product. The finished product is loaded into hauling trucks and taken to various markets in the San Francisco Bay Area and Central Valley.

Two overlapping systems of sediment ponds, culverts, and pumps are in place which handle wash water and storm run off. Sediments are removed several times a year as necessary to restore holding capacity.

2. • Future Mining Area

The future mining area covers 83 acres which include the existing processing area and overburden stockpile area (see Map 2). The site would be mined creating a bowl shape with the side slopes benched down to a relatively flat quarry floor (2% slope). The rim elevation would vary from 725 feet at the southern (current) mining area to 600 feet at the northern mining boundary. The quarry floor elevation ranges from 550 to 520 feet from west to east. No change is proposed in the quarry's current slope configuration (10 feet wide benches at 30 feet vertical intervals).

The working face of the current mining area would be advanced into the expansion area in a west to north direction. Generally, the sand will be extracted along the perimeter of the mining boundary, working from the top of the slope down to the quarry floor. Based on the phasing map, roughly 5 to 10 acres will be actively mined at any given time. The extent of the surface area disturbed will largely depend on the depth of the sand deposit in that particular phase area.

The Stipulation specifies the maximum production level that may occur from future operations at the Quail Hollow Quarry. The actual production level would be based on market opportunities and would vary with customer orders. Maximum yearly production levels set by the Stipulation are:

150,000 tons/year up to July 1997 or until project approval, whichever is later
300,000 tons/year up to year 2000
325,000 tons/year up to year 2005
350,000 tons/year after 2005*

- * after year 2005 applicant can amend its mining permit to increase production to 450,000 tons/year provided that 45% of the production amount is shipped by rail rather than transport trucks.

Approximately 13 ½ million tons of sand reserves are contained within the future-mining area. At the current production level of 150,000 tons per year, mining reserves in the future mining area could last approximately 90 years. Likely production rates in the future will range between 150,000 and 350,000 tons per year. Production at the maximum level of 450,000 tons per year would shorten the quarry life to 30 years, however, this level of production requires the use of rail for shipment of any sand over 350,000 tons per year. It is unlikely that Graniterock will obtain the necessary permits to use rail for shipment because such use would require costly and substantial rail transfer improvements, public support, and processing of permit amendments. Market conditions for both the industrial and construction sand will dictate production levels and the quarry life.

‘Mining operations within the **future** mining area will **be** similar to those described for the existing mining operation because the Stipulation provides for specific conditions to be imposed on the future mining approval. These conditions are very similar to those imposed in 1993 on the mining approval for the current mining area.

CHAPTER 2

ATTACHMENT 2
356

BIOLOGICAL DATA AND SPECIES OF SPECIAL CONCERN

A. Species Descriptions and Overall Status

The two insect species described below: Mount Hermon (Santa Cruz) June beetle (*Polyphylla barbata*), and Zayante band-winged grasshopper (*Trimerotropis infantilis*) are listed as endangered under the Endangered Species Act. The listings, effective February 24, 1997, are based upon evidence indicating that they have experienced general declines in overall distribution, have suffered direct population losses in specific areas, or are considered vulnerable to population extirpation or extinction due to perceived threats to known habitat. The Final Rules for the two insects are included in Appendix A.

The two insects are associated ecologically with sandy substrates, although perhaps not restricted to them, and all have limited distributions within the Santa Cruz mountain range. The grasshopper appears to have the most specialized habitat requisites, thus far being known only from open sandy substrates within a few vegetation community types, most notably the sand parkland association.

The most apparent threat to the continued existence of any of the two insects are habitat loss and degradation which combine to restrict, fragment and isolate existing populations. Development within the range of these insects has already affected much of their known population range, and they are particularly threatened by large-scale surface resource changes, such as multiple-unit residential and commercial projects, sand and gravel quarries, highways, and flood control projects, and reservoirs. Fire reduction clearance, equestrian facilities, intensive grazing of any hoofed stock, off-road vehicle use, and other actions which alter substrates, destroy native vegetation or change surface cover values would undoubtedly lead to the decline or extirpation of populations within the affected area.

The listing protects the species from take under Section 9 of the ESA. This HCP is being prepared to support an application for an incidental take permit that would allow quarrying in the current and future mining areas at the Quail Hollow Quarry in conjunction with the implementation of the mitigation measures set forth in the HCP.

The following information for the two listed insects was taken from summaries of reports prepared by Frank Hovore in 1996: Information is also included for the Santa Cruz rain beetle in Appendix A. However, this species was withdrawn from listing based on new information that its population is more widespread than previously known (Federal Register, January 24, 1997). The reports describe the results of insect surveys conducted at Quail Hollow Quarry. The full text of the Hovore reports are included in Appendix A of this HCP.

1. Mount Hermon June Beetle

The Mount Hermon June beetle (*Polyphylla barbata*), also known as the Santa Cruz June beetle, was originally described from a series of specimens taken at Mt. Hermon, with no notation given of habitat type or immature stages. The striped June beetles of the genus *Polyphylla* are distributed over most of North America, with their generalized pattern of occurrence having the

most widespread species not confined to particular soil types, and usually having winged, flying females. Narrowly-distributed species, like the Mount Hermon June beetle, by contrast are limited by specific soil types (usually sand formations) and often have flightless females. Species found on sand sheet or dune formations often are active only late in the day or at dusk (a behavior pattern called “crepuscular”), less often at dawn. The flightless condition of the females may be an evolutionary response to the problem of being blown off suitable habitat substrates by the incessant winds which so often are present over open, sandy formations.

The adult male Mount Hermon June beetle is a cryptic small scarab beetle with a black head, dark blackish-brown elytra (thick leathery forewings) clothed with scattered long brown hair, and a striped body. The adult female is larger, with a black head, chestnut-colored elytra and golden hairs on the head, thorax, and legs (Young, 1988). The adult beetles are just under an inch long and a half inch wide.

Male Mount Hermon June beetles are readily attracted to lights for a brief period shortly after dark, but their specific flight capabilities and travel distances are not fully known. Collection of males at light source does not by itself serve to locate a beetle colony, nor provide data regarding population vigor or extent. However, low-wattage lights, placed low to the substrate, and situated to limit the line-of-sight can give relative indication of flight timing, intensity and local population densities, by habitat type.

Populations of the Mount Hermon June beetle occur within each of the three habitat set aside areas within Quail Hollow Quarry. Based upon recent surveys and a thorough review of all other pertinent data, it appears that the proposed retention of the three habitat set aside areas in an undisturbed, natural condition will serve to maintain and protect most of the viable population of this species within the Quail Hollow Quarry property. See Appendix A for more information on this insect.

2. Zayante Band-winged Grasshopper

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) is one of the smallest grasshoppers in the genus *Trimerotropis*, with an average body length of the male one half inch, and the female about three-quarters of an inch. The body and forewings are pale gray to light brown with dark crossbands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The lower legs are blue-gray and the eye is banded.

The Zayante band-winged grasshopper is found in open, sandy clearings and on thinly-vegetated sandy soils throughout the conservation easement areas in Quail Hollow Quarry. It also occurs within the future mining area and along lightly-used dirt roads and trails throughout the quarry perimeter. Its food plants have not been determined, but it appears to prefer sites with thin ground cover and a variety of native herbaceous and woody under story plants. It is rarely found in clearings within areas of chaparral habitat, was not encountered on scraped or barren sites, and was not found in either riparian or woodland habitat types.

Trimerotropis infantilis is commonly found within the South Ridge, West Ridge and North Ridge habitat set aside areas, and does not appear to be jeopardized by any existing non-mining activities on the property. While possessing only limited dispersal abilities, it appears to utilize, at least on a transient basis, recovered spoils and other lightly-disturbed habitat areas, and individuals may be

capable of moving from one easement to another during any given season of activity. Retention of unused trails and roads, manipulation of spoils deposits, and leveling of cuts and margins around the quarry might provide additional habitat or enhanced movement values for the species. See Appendix A for more information on this insect.

3. Ben Lomond Wallflower and Ben Lomond Spineflower

The Ben Lomond wallflower (*Erysimum teretifolium*) is listed by both the State and federal government as endangered. The Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) is listed as endangered by the Service.

Chorizanthe pungens var. *hartwegiana* and *Erysimum teretifolium* are endemic to sandstone and mudstone deposits in the Santa Cruz Mountains. In particular they are found within the “Ben Lomond sandhills”. This specialized soil type supports two unique plant communities: sand parkland and northern maritime chaparral. The sand parkland community is made up of scattered ponderosa pine trees (*Pinus ponderosa*) intermixed with knobcone pine (*Pinus attenuata*), coast live oak (*Quercus agrifolia*), and occasionally the Santa Cruz cypress (*Cupressus abramsii*). The northern maritime chaparral is dominated by the silver-leaf manzanita (*Arctostaphylos silvicola*), which gives way to its local name the silver-leaf manzanita mixed chaparral.

The spineflower genus (*Chorizanthe*), in the buckwheat family (*Polygonaceae*), comprises species of wiry annual herbs that inhabit dry sandy soils along the coast and inland. Many species of *Chorizanthe* are highly localized in their distribution due to the patchiness and limiting factors of soils that can support the species.

Chorizanthe pungens var. *hartwegiana* was distinguished from *C. pungens* var. *pungens* by James Reveal and Clare Hardham in 1989 after they noticed a difference between the coastal form and the inland form found “in the Ben Lomond sandhills area.” The coastal species retained the name *C. pungens* var. *pungens*. The final rule on *C. pungens* has the variety *pungens* listed as threatened while the-variety *hartwegiana* is listed as endangered.

The Ben Lomond spineflower has dark pinkish to purple scarious margins on the involucre lobes and a slightly ascending to erect habit. The heads are medium in size (1 to 1.5 centimeters (0.4 to 0.6 inches) in diameter) and distinctly aggregate. The plant is found on sandy soils that are the basis for the Ben Lomond sandhills communities in the Santa Cruz Mountains. The Ben Lomond spineflower is confined to outcrops of sandstone soils in the Santa Cruz Mountains from Big Basin State Park to the Felton area in the Santa Cruz Mountains. The majority of occurrences of *Chorizanthe pungens* var. *hartwegiana* are found on privately owned lands within the area generally bounded by the communities of Ben Lomond, Glenwood, Scotts Valley, and Felton. The Quail Hollow Quarry is within this area.

Erysimum teretifolium is a biennial, or occasionally an annual, plant in the mustard family (*Brassicaceae*). Seedlings form a basal rosette of leaves, which then wither as the main stem develops flowers clustered in a terminal raceme. The flowers are a deep yellow with petals. 1.3 to 2.5 centimeters (0.5 to 1.0 inches) long; the slender capsule reaches 10 centimeters (4 inches) in length and is covered with three-parted hairs. The leaves are simple and narrowly linear, a characteristic that separates this plant from other wallflowers.

The Ben Lomond wallflower is endemic to pockets of sandstone deposits in the Santa Cruz Mountains and is presently known from only a dozen scattered occurrences. These sandstone deposits support the unique ponderosa pine **sandhill** community, and *E. teretifolium* seems to prefer sites with loose, uncompacted sand in openings between scattered chaparral shrubs. A dozen populations of the Ben Lomond wallflower occur within the area generally bounded by the communities of Ben Lomond, Glenwood, **Scotts Valley**, and **Felton**, with one outlying population occurring in the Bonny **Doon** area, 5 miles west of **Felton**. One population occurs at Quail Hollow Ranch, which is jointly owned by Santa Cruz County, the Nature Conservancy, and the California Dept. of Fish and Game. All other populations are on private property, including the one at Quail Hollow Quarry.

Both the Ben Lomond spineflower and the Ben Lomond wallflower were listed as endangered due to the following factors affecting the species: expansion of sand quarrying activities, off-road vehicles, recreational activities, and acts of vandalism.

Another plant found at the Quail Hollow Quarry is the naked-stemmed buckwheat (*Eriogonum nudum decurrens*). This plant, although widespread throughout the sand parkland and scrub communities, is considered rare by the California Native Plant Society.

4. Sand Parkland Habitat

The following description is modified slightly from the Revised Draft Environmental Impact Report for the Quail Hollow Quarry, dated April 1993. Sand Parkland habitat is generally characterized by open, exposed, sandstone-dominated ridge lines, saddles, and upper flanks that support a diverse array of annual herbs, a scattered cover of annual grasses, perennial herbs, low growing shrubs, and widely scattered ponderosa pine trees. The California Natural Diversity Data Base includes Sand Parkland habitat in its Maritime Coast Range Ponderosa Pine Forest vegetation community and identifies it as priority Al. 1, an "extremely rare, endangered and unprotected" natural community. The extent of Sand Parkland Habitat found at the Quail Hollow Quarry is shown in Map 3.

Specifically, Sand Parkland is **derived from** inland marine sands, known geologically as Santa Margarita sandstone (Zayante sands), which were deposited nearly 10 million years ago. These sands provide geologic substrate and soil conditions distinctive from those found predominately in the region. The vegetation on this substrate has adapted to growing on coarse, well-drained soil with lower moisture holding capacity and low content of nutrients and organic matter. These conditions have prompted the evolution of a unique flora and associated wildlife habitat.

The vegetation complexes that occur on these sands are distinct from the more common mixed evergreen, redwood forest, and chaparral communities that surround them. The species and vegetation that are found growing on these substrates are adapted to a **xeric** (dry), hot, often exposed environment, resulting in a distinct biological island surrounded by a sea of forested habitat. The result of this is a flora disproportionately high in **endemics** (only known from this region), coastal relics (plants normally found only along the coast line), disjunct populations (populations found nowhere else in the region but possibly more common in other regions of the

state) and/or locally restricted species (known from only a few locations in Santa Cruz County or the Santa Cruz Mountains). 360

The Sand Parkland community is recognized as significant because it is of very restricted distribution, occurring only on Santa Margarita sandstone in central Santa Cruz County. This community is also significant because it supports several rare and endangered species, a number of disjunct species, locally rare species, and variant populations which appear to be morphologically distinct from previously described species and may qualify for designation as rare, threatened, or endangered status (Harvey and Stanley, 1983; R. Morgan, 1979).

The remaining distribution of Sand Parkland is limited, even within the Zayante Hills area. It appears to be restricted to ridge lines with elevations ranging from 600 to 800 feet. The South Ridge at Quail Hollow Quarry is recognized as the best remaining example of Sand Parkland habitat containing the greatest concentration and diversity of sand specialty species.

B. Effects of the Proposed Action on the Plan Species

1. Mount Hermon June Beetle and Zayante Band-winged Grasshopper

Expanded sand quarrying at the Quail Hollow Quarry will result in the loss of habitat and individuals of the June beetle and band-winged grasshopper in the current and future mining areas as the natural vegetation communities in which they are found are removed. Table I below provides a summary of impacts of mining activities on vegetation communities.

Take of the June beetles during their non-active stage could occur through grading of substrate which contains beetles, or placement of topsoil or overburden on substrate that contains beetles. Take of June beetles during their active flight season could occur through drowning in sediment ponds, and being crushed by traffic or machinery.

Take of the Zayante band-winged grasshopper could occur through grading of substrate which contains grasshopper eggs and larvae, or placement of topsoil or overburden on substrate that contains grasshopper eggs and larvae. Take of grasshopper during their active season could occur through being crushed by traffic or machinery.

a. Specific Impacts of Mining in Current Mining Area

A site specific survey for the Zayante band-winged grasshopper in Area C of the current mining area was conducted by Frank Hovore and David Weissman in August 1996. The survey was conducted during a more extended survey of the entire quarry property. The following is the summary of their report:

The Zayante band-winged grasshopper, *Trimerotropis infantilis*, is found in open, sandy clearings and on thinly-vegetated sandy soils throughout the three conservation easement areas in Quail Hollow Quarry. It also occurs within the future mining area and along lightly-used dirt roads and trails through the quarry perimeter. Its food plants have not been determined, but it appears to prefer sites with thin ground cover and a variety of native herbaceous and woody understory plants. It is rarely found in clearings within

areas of chaparral habitat, was not encountered on scraped or barren sites, and was not found in either riparian or woodland habitat types.

Trimerotropis infantilis presently has substantial populations within the South Ridge, West Ridge and North Ridge conservation easements, and would not appear to be jeopardized by any existing non-mining activities on the property. While possessing only limited dispersal abilities, it appears to utilize, at least on a transient basis, recovered spoils and other lightly-disturbed habitat areas, and individuals may be capable of moving between easements during any given season of activity. Retention of unused trails and roads, manipulation of spoils deposits, and leveling of cuts and margins around the quarry' might provide additional habitat or enhanced movement values for the species.

In June 1996 Frank Hovore conducted a survey of the Mount Hermon June beetle at the Quail Hollow Quarry. The survey was directed at determining presence of the June beetle in the three habitat set asides and did not include a detailed survey of the current mining area. During his survey, Mr. Hovore found the June beetle associated with the following vegetation communities: northern maritime chaparral, central coastal scrub, sand parkland, and to a lesser degree, successional scrub. According to Hovore's report "males were observed flying low over the open sandy substrates in grassy clearings, amidst low scrub vegetation, around the margins of brush, and at the interface between open areas and oak-dominated woodlands. A few males were found outside the habitat areas, attracted to lights at the quarry operation facilities, but the majority of specimens encountered (175 of 177) were within the conservation areas,"

The results of Hovore's study suggests that, although the Mount Hermon June beetle was not specifically observed in the current mining area, there is suitable habitat for the beetle within the 3.5 acres of sand parkland, scrub, and maritime chaparral communities that exist there. In this case, the impact of the beetle from mining in the current mining area is loss of 3.5 acres of suitable habitat.

TABLE 1
IMPACT OF MINING OPERATIONS ON VEGETATION (IN ACRES)*

VEGETATION	CURRENT MINING AREA (acres lost)	FUTURE MINING AREA (acres lost)	HABITAT SET ASIDES (acres protected)	OTHER PROTECTED AREAS** (in acres)	TOTAL ACRES IN HCP AREA
Conifer Woodland	0	5	5	13	23

352

Maritime Chaparral	1	8	25	14	48
Sand Parkland	>0.50	6	27	1	34.5
Woodland	0	6	5	3	14
Scrub	2	13	0	5	20
Wallflower	0.5	5	15.5	Present But Not Mapped in detail	21
Spineflower	0.5	5.5	40		46
Manzanita	1	7	37.5		45.5
Buckwheat	2	6	13		21

* The acreages used in this table are based upon a comparison of the locations of mapped vegetation communities used in Figure 13 of the April 1993 EIR on the Current Mining Area with small scale air photos of the site taken in October 1995. No ground truthing of vegetation communities was done so the acreages should be considered rough estimates.

** - Other protected lands are lands that contained listed species but are outside the mining areas and the habitat set asides.

b. Specific Impacts of Mining in Future Mining Area

Hovore and Weissman found the band-winged grasshopper generally associated with the sand parkland and successional scrub habitat at Quail Hollow Quarry. It was not found within dense brush or overgrown ruderal habitats, or on scraped or hard-packed substrates. According to their report, none were seen on regularly-used roadways with compacted surfaces, or around leveled quarry areas, but they were often very common on little-used or abandoned road and trails. They found the highest density of individuals within natural habitat areas within open sand parkland, beneath ponderosa pine on the open, level top of the South Ridge habitat set aside.

Based upon habitat associations, the future mining area contains approximately 27 acres of habitat suitable for the Mount Hermon June beetle and Zayante band-winged grasshopper. This habitat would be lost over a period of several years as mining activities move into these areas. For this analysis suitable habitat consists of the sand parkland, maritime chaparral, and scrub vegetation communities.

The three habitat set asides and the other areas to be permanently protected support roughly 72 acres of suitable habitat for the two insects. Observations of the two insects made by Frank Hovore in 1996 at the Quarry indicate that the best subsra of each of the insects are found within the habitat set asides. Mr. Hovore believes that the population segments of each of the three insects which will be protected outside the future mining area are of sufficient size and density to insure that each persists within the overall property. Whatever incidental loss of individuals which occurs within the future mining area should not jeopardize any of the plan species locally or regionally. However there is a possibility of direct and marginal impacts to protected species from actions peripheral to mining, and from other human activities such as lighting, recreational use, and runoff controls. Mitigation measures intended to reduce the impacts of these peripheral actions are discussed in Chapter 3.

2. Ben Lomond Spineflower and Ben Lomond Wallflower

a. Specific Impacts of Mining in Current Mining Area

The EIR prepared for the current mining area in April, 1993 stated that mining in the current mining area would remove approximately 0.30 acres of sensitive sand parkland habitat and 0.90 acres of silver-leaved manzanita chaparral habitat. There are small populations of both the Ben Lomond wallflower and Ben Lomond spineflower in these areas as shown in Maps 5 and 6, Covered Plant Species. These populations are small compared to populations found **within** the habitat set asides and other protected **areas** of the quarry (see discussion under 2.b. below).

b. Specific Impacts of Mining in Future Mining Area

The distribution of the two plant species was mapped at the Quail Hollow Quarry in spring 1996 by Suzanne Schettler of Greening Associates. Note that on the maps a large portion of the area designated as "not mapped" consists of the existing mining area and areas that support quarry facilities. These areas do not contain significant populations of the plants of concern. The northwest arm of the **property**, which was also not mapped, has not been previously disturbed and may contain significant populations of the plant species of concern. However, plants within this area will be protected in **perpetuity** from mining disturbance pursuant to a written agreement that Graniterock will provide to the County.

Of the population of *Erysimum teretifolium* that was mapped in the spring of 1996, approximately **three-quarters** (15.5 acres) is within the habitat set asides. The other **one-quarter** (5.7 acres) is within the current and **future mining** areas and would be lost from mining **activities**. Map 5 shows few occurrences of the wallflower in the **undisturbed** portion of the current mining area: these **comprise** about 0.5 acres.

The wallflower will be replaced within portions of the future mining area that are revegetated in accordance with the future mining **area** reclamation plan. According to Suzanne **Schettler**, revegetation consultant, *Erysimum* is an opportunistic invader. In natural situations where **disturbance** has occurred in an area adjacent to an existing population of *Erysimum*, the plant has invaded into the disturbed areas on its own. Seeds are easy to collect and should be amenable to **re-establishment** in appropriate areas **after** mining is completed.

Of the population of *Chorizanthe pungens* var. *hartwegiana* that was mapped in 1996, over three-quarters (34 acres) is within the habitat set asides, while less than one-quarter (6 acres) is within the current and future mining areas (see Map 6). The undisturbed portion of the **current** mining area has a small population of spineflower, comprising less than 0.5 acres. Plants within **the** mining areas would be lost. Reestablishment of this species in reclaimed areas should be easy since it is also an opportunistic invader, and, according to S. Schettler, would probably recolonize itself in the **disturbed areas** without human assistance.

Two other plant species of concern were mapped on the site in the spring of 1996: silver-leaf manzanita (*Arctostaphylos silvicola*) and naked-stemmed buckwheat (*Eriogonum nudum decurrens*). The majority of both the manzanita (37.5 of 45.5 acres) and the buckwheat (13 of 21 acres) were found in the habitat set aside areas (see Maps 7 and 8). Both of these species will be **included** in the revegetation program and thus will be reestablished in appropriate locations in the current and future mining areas.

CHAPTER 3

ATTACHMENT 2

MEASURES INTENDED TO MINIMIZE
AND MITIGATE THE TAKE OF PLAN SPECIES

Prior to the Stipulation **being** reached several biological studies were conducted on the Quail Hollow Quarry property. The three habitat set asides identified in the Stipulation were considered to contain the best sand parkland and maritime chaparral habitat on the site. The 1996 surveys conducted on the site for the two listed insect species and the two listed plant species show that the habitat set asides do contain the highest concentrations of the species, with lesser concentrations and habitat values within the mining area boundaries.

The primary measures proposed to minimize and mitigate impacts to the Plan Species are the establishment of three habitat set asides comprising a total of 64.8 acres, and the protection in perpetuity of about 54 acres of lands (Protected Area) surrounding the mining area and connecting the three set asides (see Map 4). One of the set asides, the 11.1 acre North Ridge, was established to mitigate impacts of mining in the current mining area. The other two set asides comprising 53.7 acres (West Ridge and South Ridge) and the Protected Area shall be established to mitigate impacts in the **future** mining area.

Mitigation of impacts will take place through: 1) the identification and implementation of management activities for the three habitat set asides and the Protected Area. 2) **enhancement** of 10.2 acres of disturbed sand parkland and maritime chaparral habitat, 3) permanent protection of the Plan Species from all disturbance in the Protected Area which is defined as all areas of the project **site**, except for areas within **the** current and future mining **areas**, the stockpile and overburden areas, and existing access road, through establishment of Conditions, Covenants and Restrictions, 4) reestablishment of Plan Species in areas where mining **has been** completed, 5) specific measures to reduce impact on listed insects, and 6) monitoring and reporting. Graniterock shall, as a part of all management, **enhancement** and restoration plans discussed below, have the goal of establishing self-sustaining plant communities consisting of native indigenous species **emphasizing** the four **special** status species. **Performance** standards shall include intermediate standards that are **intended** to detect the need for remedial **activities**. As part of all management, enhancement and restoration plans, a contingency element shall be developed that will be **implemented** upon failure to **meet** intermediate or final performance standards,

1. Identification and Implementation of Management Activities for the Habitat Set Asides

a. For Current Mining Area

At the time Graniterock received authorization **from** the County to commence mining in areas B and C of the current mining area and prior to habitat disturbance it **granted** a conservation easement in perpetuity on the 11.1 acre North Ridge habitat set aside to the County. In addition, Graniterock provided for protection and long-term management of the North Ridge. Management activities for the North **Ridge**, which Graniterock will **fund** or USC its staff to carry out, are described below with action items **shown** in italic **type**.

North Ridge (11.1 acres). This area comprises sand parkland and northern maritime chaparral plant communities (**see** Map 3). All four of the Plan Species are found in this **area**. The North Ridge is in good **shape** biologically and **does** not need much active management. Since the site is adjacent to the Quail Hollow County Park, it may be possible to coordinate management of the North Ridge with the County Park.

A foot and horse trail traverses along the ridge. Several side trails branch off from the main ridge trail.

The North Ridge set aside will be closed to public access. The County holds the conservation easement for the North Ridge and, consistent with that easement and with the categorical approval of the Service and CDFG, may authorize access to the North Ridge on a case by case basis for educational, scientific, or other purposes that are in accordance with the express purposes of the conservation easement. Graniterock, in consultation with and with concurrence from the County, the Service, and CDFG, shall restrict access through use of fences or other barriers and shall post signs to explain the restrictions on the North Ridge and to prevent illegal access. Trails shall be closed and, where appropriate, restored. Graniterock shall have access to the North Ridge for purposes consistent with its permits.

The most notable concern in this area was the presence of young ponderosa pine trees growing in closely spaced clumps. Under natural conditions fire would eliminate many young trees, thus maintaining the open sand areas between the trees. A fire management program would be difficult at this site due to the presence of dense vegetation growing next to much of the site and homes nearby the dense vegetation. *Instead of a fire management program, in consultation with, and with concurrence from, the Service and CDFG, selected young pines shall be removed to maintain open sand parkland habitat*

A gully has been formed above the quarry sediment pond from surface water run off. Although the gully did not appear to be actively eroding, it shall be monitored during heavy rainy periods for potential erosion. *In consultation with, and with concurrence from, the Service and CDFG, the altered topography at the head of this gully shall be regraded to sheet flow surface water down the sidehill rather than focusing it into the gully.*

Although the site contained only a couple of French broom plants on the western edge of the site, there is potential for invasion of this and other pest plants (pampas grass, acacias, etc.) from nearby sources. *In consultation with, and with concurrence from the Service and CDFG, the broom plants and other exotic plants shall be removed and the area monitored to assure that continued encroachment does not take place*

b. For Future Mining Area

At the time Graniterock receives authorization from the County to commence mining in the future mining area and prior to habitat disturbance within the future mining area it shall grant to the County a conservation easement in perpetuity on the 2 1.1 acre West Ridge habitat set aside and shall provide funding for protection and long-term management of the West Ridge. It will also provide funding for long-term management of the 32.6 acre South Ridge Habitat Set Aside which the County of Santa Cruz is legally entitled and committed to purchase at the agreed upon fair market value. Graniterock shall also record Conditions, Covenants and Restrictions to permanently protect the habitat in the 54-acre Protected Area and shall provide funding for its protection and long-term management. Management activities for the South and West Ridges and for the Protected Area are described below with action items shown in bold italic type.

South Ridge (32.6 acres). This set aside area contains sand parkland, northern maritime chaparral, central coastal scrub, and woodland plant communities. It should be noted that of the three set aside areas, the South Ridge has the most diversity of vegetation assemblages. As an example, some species are found mostly on north slopes, with a gradation down the slope. Species found near the top of the north-facing slopes in bare sand include: *Hesperomecon linearts*, *Collinsia bartsiaefolia*, *Muilla maritima*, *Minuartia douglasii*, and *Layia sp.* Lower on the north slopes are found: *Delphinium parryi*, *Phacelia douglasii*, *Linanthus parviflorus*, and *Plagiobothrys tenellus*. The more stable north slopes, coated with bryophytes, support perennials including: *Armeria maritima*, *Saxifraga californica*, *Silene verecunda*, *Horkelia*

cuneata, *Dudleya cymosa*/*palmeri*, *Delphinium parryi*, and *Diplacus aurantiacus*. All of the Plan Species occur in the area.

ATTACHMENT 2
366

Several foot and horse trails traverse the site in this area. Erosion and unmanaged recreational use, including horse, pedestrian, and vehicular traffic, are the primary management concerns for the South Ridge. Horse foot holes were noted in open sand areas with resulting damage to fragile vegetation. The trail that runs along the ridge appears to be broadening as may be the trail on the northeast side. The sand at the site is especially fine textured and erodes easily when disturbed. The trail from Liebenberg flat has washed out, resulting in a deep and impassable chasm. As a result, horse riders have created an alternate trail. Narrow trails were observed off of the main trail. Steep trails showed obvious signs of erosion. Additionally, at the request of CDFG, Graniterock placed a fence across the west end of the ridge, resulting in some increased erosion at the fence ends as recreationalists move around the ends of the fence.

The County shall purchase the South Ridge for conservation purposes. Access to the South Ridge shall be governed by the principle that the habitat and biological resources must have priority over public access because of the rare, threatened, and endangered species and habitats on the South Ridge. The County, in managing the South Ridge, shall also be governed by the fact that preservation of the biological resources on the South Ridge is required mitigation for Graniterock's incidental take of Plan Species and their habitats in the current and future mining areas. Additionally, in obtaining funding for purchase of the South Ridge, the County has incurred contractual obligations to preserve the scientifically unique and globally significant Sand Parkland Habitat. Therefore, the South Ridge shall be closed to public access, except for one trail across the west end of the Ridge, as discussed below. Consistent with these goals and obligations, and with the categorical approval of the Service, and CDFG, the County may authorize access to the South Ridge on a case by case basis for educational, scientific, or other purposes consistent with these goals and obligations. Graniterock shall have access to the South Ridge for purposes consistent with its permits.

The existing trail across the west end of the South Ridge, adjacent to the former Liebenberg property, shall continue to be accessible to local horse riders and hikers and shall be identified and signed. This trail leads to the road constructed by Graniterock inside the current mining area and provides access to riding and hiking areas within the quarry. All other trails shall be closed, and restored to their June 30, 1994, condition, pursuant to the Agreement for Purchase and Sale of the South Ridge. Graniterock, in consultation with and with concurrence from the Service, CDFG and the County, shall restrict access through use of fences or other barriers that avoid habitat degradation adjacent to the fences and that allow wildlife movement. Graniterock, in consultation with and with the concurrence of the Service, the CDFG, and the County, shall also post signs explaining the restrictions on the South Ridge, the significance of the habitat, and directing riders and hikers to the access that is permitted across the west end of the South Ridge.

Graniterock shall conduct, in consultation with the Service, CDFG, the County and other concerned parties, an outreach program, including but not limited to public informational meetings and producing and distributing brochures informing residents about the biological resources, restrictions and designated open recreational areas on the Quail Hollow Quarry.

The skirts of South Ridge are vegetated with chaparral, especially *Arctostaphylos silvicola*. Ceanothus, as well as knobcone pines occur on the north slopes. Ponderosa pine colonization follows disturbance as occurred at the southern base of the North Ridge in the mid-70s; it is declining on the south side of the South Ridge. *It may be necessary to arrest succession periodically.*

The management activities described above are not the exclusive means of insuring the protection of the sensitive species and habitats existing on the South Ridge. The County and Graniterock currently have the authority and obligation, pursuant to the June 30, 1994 Agreement of Purchase and Sale for South Ridge of

Quail Hollow Quarry, to maintain the South Ridge in its existing state as of June 30, 1994. Should any act³⁶⁷ or omission by the County result in degradation or loss of Plan Species or their habitats, enhancement or restoration shall be the obligation of the County, and shall not be cause for Permit revocation by the Service or CDFG.

West Ridge (2 1.1 acres). This area contains coastal scrub and sand parkland plant communities. All of the Plan Species occur in the West Ridge set aside.

A portion of this area appears to be used as a nighttime party spot for locals (fire ring, broken beer bottles, large area of disturbed ground). Portions of the sand parkland were degraded by frequent pedestrian or equestrian traffic, both on and off existing trails, and vehicle trespass was noted in mid-May 1996. Some of the lighter disturbance appeared to promote the growth of wallflower and spineflower. Despite heavy use of the site by locals and pipeline disturbance near the top, the West Ridge has some good areas of sand parkland habitat and has good populations of some of the rare plants.

The West Ridge set aside will be closed to public access. Graniterock, in consultation with and with concurrence from the County, the Service, and CDFG, shall restrict access through use of fences or other barriers. The broken glass and fire rings shall be cleaned up. Sensitive wallflower and spineflower areas that have been used for recreational activities shall be fenced off using post and cable type fence, or by some other means approved by the Service and CDFG. The County will hold the conservation easement for the West Ridge and, consistent with that easement and with the categorical approval of the Service and CDFG, may authorize access to the West Ridge on a case by case basis for educational, scientific, or other purposes that are in accordance with the express purposes of the conservation easement. Graniterock, in consultation with and concurrence from the Service, CDFG, and the County shall post signs to explain the restrictions on the West Ridge and to prevent illegal access. Trails shall be closed and, where appropriate, restored. Graniterock shall have access to the West Ridge for purposes consistent with its permits.

Protected Area (54 acres). The Protected Area consists of about 54 acres surrounding the Current and Future Mining Areas, excluding the stockpile and overburden areas and the existing access road (Map 4). These areas contain conifer woodland, northern maritime chaparral, central coastal scrub, sand parkland, and woodland plant communities. These communities, while supporting Plan Species, do not support as high a density of Plan Species as do the North, West and South Ridge set asides.

Graniterock shall, in consultation with and with the concurrence of the Service, the County, and CDFG, include in its management plan provisions for monitoring, maintenance, enhancement and recreational uses within the Protected Area. Graniterock, with technical assistance from the Service, CDFG, and the County shall identify existing equestrian and pedestrian trails within the Protected Area. Continued reasonable recreational use of existing maintained trails of no more than eight to ten feet in width and with well-defined edges that have been identified as having a low impact to biological resources may be allowed. Motorized and non-motorized vehicles, including bicycles, are not allowed on trails within the Protected Area, except as may be required for management, enhancement or maintenance purposes consistent with Graniterock's Mining and Take Permits. If biological monitoring indicates that recreational use of this area is impacting Plan Species or their habitats, Graniterock may on its own initiative, or at the request of the Service, CDFG, and the County limit use of trails in scope or time, or close the Protected Area, or portions thereof, to all recreational use, as appropriate.

If closed to public access, Graniterock may, with the categorical approval of the Service, CDFG, and the County authorize access to the Protected Area on a case by case basis for educational, scientific, or other purposes that are in accordance with the express purposes of the Conditions, Covenants and Restrictions. Graniterock shall post signs to explain any restrictions on the Protected Area and to

prevent illegal access. Trails shall be closed and, where appropriate, restored. Graniterock shall have access to the Protected Area for purposes consistent with its permits.

368

The Outreach Program, discussed above, in the discussion of the South Ridge, shall include information on the Protected Area. Graniterock shall post signs explaining restrictions and identifying designated maintained trails. Additionally, in consultation with, and with 'concurrence from, the Service and CDFG, the broom plants and other exotic plants shall be removed and the area monitored to assure that continued encroachment does not take place

The Stipulation requires Graniterock, either prior to or concurrent with the approval of the Future Mining Approval, to execute and deliver to the other settling parties an agreement to protect in perpetuity from any, and all disturbance all areas of the Quarry site (other than in the Current Mining Area and Future Mining Area, the Stockpile Area and the Overburden Area and the existing access road) which contain Federally listed species or State listed species, or County defined rare, endangered or threatened species or sensitive habitats (the Protected Area). Additionally, the Service and CDFG have required that all other areas outside of the mining areas, stockpile and overburden area and existing access road be protected in perpetuity as mitigation for the incidental take of Plan Species in the Current and Future Mining Areas.

To comply with the requirements of the Incidental Take Permit and the Stipulation, Graniterock shall, in consultation with and with the concurrence of the County, the Service and CDFG, establish and record Conditions, Covenants and Restrictions over the 54 acres comprising the site outside of the set-asides, excluding the current and future mining areas, the stockpile and overburden areas, and existing access road

2. Additional Enhancement of Sand Parkland and Maritime Chaparral Habitat

The Stipulation specifies the conditions to be unposed on future mining activities, which include the requirement that at least an additional 5.0 acres of disturbed sand parkland habitat and 5.2 acres of maritime chaparral habitat be enhanced and permanently protected under a grant deed or conservation easement. In addition, the Stipulation requires that a long-term management and maintenance program for the enhancement areas be specified to assure long-term survival. The Service and CDFG have also required this enhancement as part of their Permit requirements to mitigate for impacts to Plan Species and their habitats in the current and future mining areas.

A program for the enhancement of two acres of sandparkland habitat, of the 10.2 acres of land that Graniterock must enhance, was initiated when Graniterock received authorization to commence mining in Areas B and C of the current mining area. The two-acre enhancement program must be finalized and the beginning phases implemented prior to site disturbing activities in the future mining area. A program for the enhancement of the remaining 8.2 acres of sand parkland and maritime chaparral habitat will be implemented when Graniterock receives authorization to commence mining in the future mining area. The 8.2-acre program shall be finalized prior to site disturbing activities in the future mining area. With the prior approval of the Service and CDFG, Graniterock may include, in the 10.2 acres of land to be enhanced or restored, restoration and enhancement of trails that are within or adjacent to sand parkland habitat or maritime chaparral habitat in the North and West Ridge conservation easements, in the Protected Area, and on the South Ridge (beyond that required to maintain the environment to its June 30, 1994 status pursuant to the June 30, 1994 Agreement for Purchase and Sale of the South Ridge).

The location and implementation program for the enhancement areas is being prepared as a separate document and will be approved by the County, the Service, and CDFG prior to the onset of mining in the future mining area.

3. Re-establishment of Plan Species in Finished Mining Areas

ATTACHMENT 2

The revegetation plan prepared by Greening Associates, dated November 1997, has the goal of establishing a self-sustaining plant community consisting of native indigenous species including the four special status species. **Performance** standards address this goal and conform to the requirements of the Santa Cruz County Mining Ordinance and the State Surface Mining and Reclamation Act. Performance standards include intermediate standards that are intended to detect the need for remedial activities. As part of the revegetation plan, a contingency element has been developed that will be implemented upon failure to meet intermediate or final performance standards.

The revegetation plan for the current and future mining areas takes into account the recommendations and conclusions of Greening Associates' May 16, 1997 Comprehensive Report. The revegetation plan will be approved by the County, the Service, and CDFG prior to the onset of work in the future mining area.

4. Specific Measures to Reduce Impacts on Insects of Concern

The following general measures are **intended** to prevent incidental loss of adults, immatures or habitat values of the Mount Hermon June beetle and Zayante Band-winged grasshopper within the protected populations. These activities will be carried out by Graniterock for both mining phases:

Shield existing exterior lights to focus illumination into specific work or security areas, taking care to avoid directing light outward toward the habitat set **asides**. Replace white spectrum light bulbs with sodium vapor units, or either yellow, red or green incandescent lights to reduce their attractiveness to male beetles. Place outside lights on timers, seasonally adjusted to come on after 10:00 p.m. PDT during June and July, and to turn off at or before 4 a.m. PST during November. Lights shall not be placed within 20 feet of sediment ponds to avoid attracting male **beetles** into the water.

Avoid **placement** of spoils in previously undisturbed habitat, or where erosion and runoff can carry loose materials into habitat areas. **Direct** all mining area surface runoff away from habitat set **asides**. Gullies and other unnatural **features** which channel surface water toward native vegetation formations shall be carefully altered to restore natural drainage **patterns** through occupied habitat.

The introduction and spread of invasive non-native plants has the potential to negatively affect herbivorous insect populations by reducing the extent and quality of their food resource. Non-native plants, particularly woody **taxa**, shall be removed from natural habitat areas throughout the property, with particular attention being given to the habitat set **asides**.

The North, South and West Ridges shall be closed to public access. The County may authorize access to these areas on a case by case basis, consistent with the principle that sensitive species and their habitats have priority over public access, as described in this **Chapter 3**. Both dogs and cats can and will capture and eat male and **female** beetles, dogs in particular being adept at detecting and excavating buried female beetles. **Therefore**, pets shall not be allowed anywhere on the **property**.

5. Monitoring and Reporting

The County of Santa Cruz or its designee will report annually to the **Service** and CDFG regarding compliance with the mitigation requirements of the HCP. The report will include a discussion of the following elements:

1. Status and condition of the three habitat set asides and the Protected Area. Because the primary mitigation for the project is the establishment, enhancement and protection of the three habitat set asides and the Protected **Area**, the monitoring program will emphasize controlling authorized use of the site, preventing illegal access, and maintaining fences and signs. Pedestrians and equestrians will be allowed on limited existing trails designated in the Protected Area, however, dogs and other pets are not allowed.
2. Exotic pest plant control. There are only a few infestations of exotic pest plants on the property, however there are nearby sources just off-site. Invasive exotic pest plants, such as broom and pampas grass, will be removed regularly as they are noticed by County Staff on the South Ridge and by Graniterock on the North and West Ridges. The annual report will provide an accounting of all exotic pest plant species control work conducted in the three habitat set asides.
3. Monitoring of Plan Species to Assess Effectiveness of Mitigation Program. The Section 10(a)(1)(B) permit will authorize the take associated with monitoring the Mount **Hermon** June Beetle and Zayante band-winged grasshopper on the Quail Hollow **Quarry site** pursuant to the HCP. Only individuals authorized under this HCP shall handle Mount Hermon June beetles or **Zayante** band-winged grasshoppers. The Service will provide authorization of specific individuals upon review of **their** credentials which must be submitted to the Ventura Fish and Wildlife Office for review and approval at least 15 days prior to the onset of **the** activities which they are being authorized to conduct.

Mount Hermon June Beetle. Relative abundance surveys shall be conducted every other year during the adult flight season of the male June beetle, in late June. In order to provide comparable information regarding adult activity in all three focal conservation areas, 4 to 6 different **low-intensity** light stations shall be set up each night for two to three nights, usually two in each area, **every** night of the surveys, with modifications **made to achieve** specific objectives. The lights shall consist of generator-powered 15 watt blacklights, **placed on white** sheets, and set down into low depressions in the center of each sheet to insure that **they** are not visible for more than a low angle of direct sight. The intent is to draw flying males from **specific areas** of habitat, but not to attract them from distances greater than a few hundred feet. Lights shall be turned-on shortly before **sundown** and left running until about 11:00 to 11:30 p.m. PDT; one set of lights shall be operated from 4:30 to 5:30 a.m. PDT to determine presence/absence of a dawn flight. In addition to the light traps, entomologists shall be deployed in each site on different nights, tracking and **observing** the flying males from the onset of the **crepuscular** activity to its cessation. Observed individuals shall be documented noting habitat preferences and behavior.

Zavante Band-winged Grasshopper. Monitoring surveys for this species shall be conducted every two years and shall consist of quantitative and qualitative **censusing**, including establishment of linear transects through prime, **occupied** habitat within conservation easements. **determining** abundance baseline averages for each **subsite** (factored over several days during the peak activity season, usually in late August or early September). Transect **sites** can conform to those used during the fieldwork for **the** original report, and **therefore** can provide a direct comparison with the 1996 **field** data. Additionally, observations of habitat preference and food plants may be refined and confirmed.

Ben Lomond Wallflower and Ben Lomond Soineflower. The general population status and distribution of these **two plants** will be assessed every two years during the bloom periods of the two plants. Observers will look for trends that show increases in populations, or decreases. If decreases are noticed, an assessment of the reason for the declining populations will be made, if possible. **37;**

6.Habitat Protection.

Graniterock shall patrol the South, North and West Ridges as well as **the Protected Area**. The Ridges shall be closed to public access, so Graniterock's primary role will be to assure that **illegal** access is not occurring. Graniterock will inspect ridge perimeters at least once **per month** to assure that no illegal access has **occurred**. Graniterock will investigate any report of unauthorized access on the ridges. Graniterock will replace fences and signs as necessary to assure compliance with the terms of the HCP and to prevent **illegal** trespass.

CHAPTER 4

ATTACHMENT 372

FUNDING AND ADMINISTRATION OF THE HABITAT CONSERVATION PLAN

The County of Santa Cruz or its designee will administer the HCP and contract with knowledgeable firms or individuals to assist with carrying out the management activities specified in Chapter 3 of this HCP.

In accordance with the Stipulation, Graniterock will carry out itself or provide funding for implementation of all habitat management activities to take place on the 220 acre parcel, as specified in Chapter 3 of this HCP, except for providing ongoing patrolling of the South Ridge. The activities to be funded or carried out by Graniterock directly are:

providing protection and long-term management of the North, South, and West Ridge habitat set asides,

implementing management activities identified for the North and West Ridge habitat set asides,

carrying out the habitat enhancement program for the 10.2 acres of disturbed sand parkland and maritime chaparral habitat. Two acres of this **enhancement** will be done in conjunction with commencement of mining activities in areas C and/or B of the current mining area.

assuring that all areas of the property that contain Plan Species are permanently protected from disturbance, except in the current and future mining areas, overburden stockpile areas, and existing access road.

Activities to be **funded** by Graniterock, but carried out by the County or its designee, include:

monitoring the relative population status of the Plan **Species** on a biannual basis, and

preparing and submitting an annual report of management and monitoring activities to the County, the Service, and CDFG.

Because Graniterock has indicated that it will use its staff to carry out the **management** activities identified above and in Chapter 3 of this HCP, it is not necessary to estimate the cost of **satisfying** these obligations. The estimated annual costs for monitoring and reporting are as follows:

Annual Reporting:	\$1,000
June beetle surveys:	\$2,500 *
Grasshopper surveys:-	\$1,500 *
Rare plant surveys:	\$1,000 *

Total Annual Expenditures: \$6,000

* surveys to be conducted every other year

Graniterock will pay the County a sum of \$6,000 annually (adjusted for inflation) for this work. Graniterock shall also **insure** that funding is available to meet its obligations under this HCP, the IA, and the Section 10(a)(1)(B) permit through an account solely **designated** for this purpose as provided in Paragraph 10.1.c. of the IA.

Prior to habitat disturbance in the Future Mining Area, Graniterock shall establish an account to ensure that funding is **available** to meet its obligations under this Agreement, the Permit and the HCP. The account shall be established in favor of a party approved by the Service and CDFG, and may be a trust account, irrevocable letter of credit, insurance or surety bond. The account, letter of credit, surety or insurance must not be disapproved by the Service or CDFG, shall be in the amount of no less than \$50,000, and shall be maintained for the life of the Permit. For the Permit term, this account shall be renewed every five years and the amount adjusted for inflation every **five** years so that this account will be maintained in an amount equal to \$50,000 in 1997 dollars. Funds from the account, insurance letter or surety shall only be used if Graniterock is **otherwise** unable to meet its obligations **under** this Agreement, the Permit, or the HCP. In the event that it becomes necessary to use funds from this account, Graniterock shall **immediately** replenish **the** account to maintain **the** amount at \$50,000 (adjusted to inflation, using an index such as the Parr Index or its equivalent). At the end of the Permit Term, or upon termination of the Permit, whichever is sooner, funds remaining in this account shall revert to Graniterock.

Prior to habitat disturbance within the Future Mining Area, Graniterock shall provide a non-wasting management endowment through a trust or escrow account approved by the Service and CDFG, in an amount to be determined in consultation with, and with the concurrence of, **the** Service and CDFG. The account, which may be invested as a special interest CD, shall mature at 1 j-year intervals. Prior to reinvestment, the amount shall be reevaluated to assure that it is adequate to **cover** the cost of maintaining and managing the **three** habitat set **asides** and the **Protected Area**. If it appears, based upon best efforts to calculate the remaining time to **mine** the Future Mining Area, that fifteen years is too long, the final investment period shall be less than fifteen years. At the end of the Permit Term or upon termination of the Permit, whichever occurs first, interest generated by the **fund** shall be used by Graniterock or its designee to **implement** the Long-term Management and Maintenance Plan discussed above in Chapter 3. If capital funds are **insufficient** to cover these costs, Graniterock shall invest such funds as are necessary to generate the required interest. If, however, the capital funds are an excess amount, the excess will be refunded to Graniterock. The habitat set **asides** and the **Protected Area** shall be managed, and the **endowment** administered, in accordance with the terms of a Management Plan approved by the Service, the CDFG and **the County**.

The endowment funds shall be used by Graniterock upon termination of the **Permit** for required management activities in the three habitat set **asides** and in the **Protected Area**, including but not limited to: conducting biological surveys to monitor the Plan Species; controlling non-native weeds; control succession in sensitive habitat areas; and other activities to be determined in conjunction with the Service and CDFG. Prior to termination of the Permit, the Service and CDFG shall work with **the transferee** to develop an approved Management Plan for the habitat set **asides** and the **Protected Area**.

CHAPTER 5

ATTACHMENT 2
374

ALTERNATIVES TO THE PROPOSED ACTION

Section 10(a)(2)(A)(iii) of the Endangered Species Act of 1973, as amended, requires that alternatives to the taking of species be considered and reasons why such alternatives are not implemented be discussed. Two alternatives to ~~the~~ proposed project were considered. These alternatives are: the no action alternative and the no take alternative. A discussion of each alternative is presented below:

A. **No Action Alternative**

The No Action alternative would occur if the Service did not ~~amend section 10(a)(1)(B) permit PRT-~~ 8304 17 for the proposed project. This alternative would maintain the status quo, preventing ~~the~~ landowner from carrying out mining in the future mining area due to the presence of listed animal species in the area. Since all new sand deposits are overlain with vegetation that could support the listed species- sand mining at the quarry would cease. Graniterock would have to complete reclamation of finished mined areas within the current mining area in **accordance** with their approved reclamation plan. Graniterock **could** submit an application to the County to develop the quarry floor with another land use which may or may not require the preparation of an HCP. Effects on the plan species may **be** better or worse than the proposed project alternative since active management of the habitat is not assured.

The **preparation** of a habitat conservation plan for the Quail Hollow Quarry is required by ~~the~~ Stipulation and required by law for any **future** mining at the **quarry**. The No Action alternative would ~~negate~~ the terms of the Stipulation and could result in continued and lengthy litigation. In the meantime, ~~the absence~~ of the HCP would effectively **preclude** the sale of the South Ridge to the **County** and the ~~establishment~~ of the West Ridge conservation easement.

The impacts of the proposed **project**, as mitigated by the conservation measures in the HCP, do not warrant the **implementation** of this alternative.

B. **No Take Alternative**

Due to the widespread distribution of listed animals and plants at the **Quarry**, particularly ~~during~~ the insects adult flight seasons, the No Take alternative is impractical and could not be implemented, ~~without~~ prohibiting further sand mining at the quarry. Surveys conducted for the **Zayante band-winged** grasshopper in August 1996 indicate that the grasshoppers are found throughout **most** of the **Quarry** property, except on scraped surfaces, hard packed ground, regularly used roadways- and ~~leveled~~ quarry areas. As a consequence, this alternative was not **advanced** for **detailed** analysis in this EA ~~and~~ will not be discussed further.

CHAPTER 6

ATTACHMENT 2**375****OTHER MEASURES REQUIRED BY THE FISH AND WILDLIFE SERVICE**

Section 10(a)(2)(A)(iv) of the Endangered Species Act of 1973, as amended, states that a Conservation Plan must specify “such other measures that the Secretary may require as being necessary, or appropriate for purposes of the plan.” Because HCPs often include relatively complex systems of phased mitigation and involve multiple parties, Region 1 of the Service usually requires that an Implementation Agreement be drafted and signed by each party to an HCP. An Implementing Agreement for this HCP has been drafted and reiterates the duties and responsibilities assigned to each party. It is attached as an accompanying document.

CHAPTER 7

CHANGED AND UNFORESEEN CIRCUMSTANCES

ATTACHMENT 2
376

Section 10 regulations [50 CFR 17.22(b)(2)(iii)] require that an HCP **specify** the procedures to be used for dealing with changed and **unforeseen** circumstances that may arise during the implementation of the HCP. In addition, the Habitat Conservation Plan **Assurances** ("No Surprises") Rule [50 CFR 17.2, 17.22 (b)(5) and (6); 63 FR 8859] defines "unforeseen circumstances" and "changed circumstances" and describes the obligations of the permittee and the Service.

The purpose of the Assurances Rule is to provide assurances to non-federal **landowners** participating in habitat conservation planning under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen **circumstances**, **without** the consent of the permittee. "Changed Circumstances" means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by Graniterock and the Service and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events). The policy defines "unforeseen **circumstances**" as changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by plan developers and the Service at **the** time of the plan's negotiation and development and that result in a substantial and adverse change in **the** status of the covered species.

Graniterock, in consultation with **the** Service has identified the following Changed Circumstances: vandalism, natural catastrophic events such as fire, **severe** wind or **water** erosion and earthquakes, and invasion by a habitat or species specific disease that threatens Plan Species or their habitats. If one of these Circumstances occurs, Graniterock shall consult with the Service and CDFG to determine what additional mitigating measures shall be implemented.

In the case of an unforeseen event, **Graniterock** shall immediately **notify** the **Service** staff **who** have functioned as the principal contacts for the proposed action. If such **unforeseen event** could cause undue additional mortality or **injury** to Plan Species, all activities that could **result** in such mortality or injury shall cease until all such **threats** to Plan Species are **eliminated** or the issue resolved.

In **determining** whether such an event **constitutes** an unforeseen circumstance, the **Service** shall consider, but not be limited to, the following factors: size of **the** current range of the **affected species**; percentage of range adversely affected by the HCP; percentage of range conserved by the HCP; ecological significance of that portion of the range affected by the HCP; level of **knowledge** about the affected species and the degree of specificity of the species' conservation program under the HCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected **species** in the wild.

If the **Service** determines that the unforeseen circumstance will **affect** the outcome of the HCP, additional conservation and mitigation measures may be necessary. **Where** the HCP is **being** properly implemented and an unforeseen circumstance has occurred, the additional measures required of the permittee must be as close as **possible** to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set aside in the **HCP's** operating conservation program. Additional conservation and mitigation measures shall not involve the commitment of additional land or financial compensation or restrictions on the use of land or other natural **resources** otherwise available for development or use under the original terms of the HCP without the

consent of the Permittee. Resolution of the situation shall be **documented** by letters **between** the Service and Graniterock.

Thus, in the event that unforeseen circumstances adversely affecting the Plan Species occur during the term of the Permit, Graniterock would not be required **to provide** additional financial mitigation or additional land use restrictions above those measures specified in the HCP, provided that the HCP is being properly implemented. Note that **the** situations or circumstances described in the Remedial Measures section of the HCP (Chapter 3.4) and Changed Circumstances discussed above are not considered unforeseen circumstances and, therefore, may require additional mitigation or restrictions on Project activities, as **described** in the HCP. In addition, if any new species are listed which may be impacted **by** Project activities, the HCP and the Permit shall be reevaluated to ensure that Project activities do not result in take and are not likely to jeopardize the continued existence of the newly **listed** species. Further, if Graniterock requests coverage for any **other** species under this HCP, Graniterock shall be responsible for any additional mitigation **measures** required to satisfy **the** permit issuance criteria under section **10(a)(2)(B)** of the ESA for such species.

CHAPTER 8

REFERENCES AND LITERATURE CITED

A. References

Pete Parkinson, formerly of Santa Cruz County Planning Department
Ken Hart, Santa Cruz County Planning Department
Jonathan **Wittwer**, formerly of Santa **Cruz** County Counsel's Office

Suzanne Schettler, Greening Associates

Jim West, Graniterock Company

Ray **Bransfield**, U.S. Fish and Wildlife Service
David Pereksta, U.S. Fish and Wildlife Service
Laura Hill, U.S. Fish and Wildlife Service

Jim Nicholson, Santa Cruz Aggregates, Quail Hollow **Quarry**

B. Literature Cited

Revised Draft Environmental Impact Report, Santa Cruz Aggregates, Quail Hollow Quay, April 1993, prepared by Stephanie **Strelow**.

Quail Hollow Quarry Stipulation for Entry of Final Judgement, June 1994

U.S. **Department** of Interior, Fish and Wildlife Service. Withdrawal of Proposed **Rule** to List the Santa Cruz Rain **Beetle** (*Pleocoma conjungens conjungens*) as Endangcred. Federal Register. January 24, 1997 (Volume 62, Number 16).

U.S. Department of **Interior**, Fish and Wildlife Service. Determination of **Endangered** Status for Two Insects from the Santa **Cruz** Mountains of California, Mount **Hermon** June Beetle (*Polyphylla barbata*) and Zayante Band-winged Grasshopper (*Trimerotropis infantilis*). Federal **Register**, January 24, 1997 (Volume 62. Number 16).