
PLANNING DEPARTMENT

GOVERNMENTAL CENTER



COUNTY OF SANTA CRUZ

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August 12, 1998

Agenda Date: August 25, 1998

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

Subject: Quail Hollow Quarry Mining Approval/Certificate of Compliance 95-0836 and South Ridge Escrow

Members of the Board:

On June 10, 1998, the Planning Commission approved Mining Approval/Certificate of Compliance No. 95-0836. Upon satisfying various pre-conditions to mining, this Mining Approval/Certificate of Compliance will allow Graniterock Company to expand operations from the Current Mining Area to the Future Mining Area at Quail Hollow Quarry. In addition, this approval by the Planning Commission was a major step in the implementation of the 1994 settlement of litigation regarding the question of vested rights to mine at Quail Hollow Quarry. The settlement provides, among other things, for the transfer of title for the 32.6 acre South Ridge from Graniterock Company to the County upon payment of \$3.2 million. The purpose of this letter is to provide your Board with information about the final implementation of the settlement and to request authorization to complete tasks related to the transfer of title and other provisions of the settlement.

In June of 1994 the parties to the litigation (Graniterock Company, the County of Santa Cruz, Santa Cruz Aggregates, the Sierra Club, the California Native Plant Society, and the South Ridge

Officer on June 29, 1994 and included for your review as Attachment 1. An

escrow account was subsequently established with Santa Cruz Title Company. Title to the South Ridge will be conveyed to the County by Grant Deed, and escrow is scheduled to close on or before September 1, 1998.

Graniterock grant to the County conservation easements in perpetuity for the 11.1 acre North Ridge and 21.1 acre West Ridge habitat set-aside areas.

The North Ridge Conservation Easement was accepted by your Board as a precondition to Graniterock commencing mining in areas B and C of the Current Mining Area and the easement was recorded on August 7, 1997. The West Ridge Conservation Easement has been accepted by your Board and will be recorded prior to or concurrent with the close of escrow for the South Ridge.

Graniterock fund preparation of a Habitat Conservation Plan in order to obtain a Section 1 O(a)(1) "incidental take" permit from the U.S. Fish and Wildlife Service (USFWS) and a Section 2081 permit from the California State Department of Fish and Game (CDFG) for impacts to federal and State listed species.

A Habitat Conservation Plan has been prepared and the necessary permits will be obtained from the USFWS and the CDFG prior to the close of escrow for transfer of the South Ridge. The Habitat Conservation Plan includes an attached Implementing Agreement which must be signed by the County. Pursuant to the Habitat Conservation Plan and the Implementing Agreement, the County will, using funds provided by Graniterock, monitor the effectiveness of the mitigation program for the species and report annually to the USFWS and CDFG. Legal counsel and staff have reviewed this document and we are requesting that your Board authorize the Board Chairperson to execute the Implementing Agreement on behalf of the County. The Habitat Conservation Plan and Implementing Agreement have been included for your review as Attachment 2.

Graniterock enter into a written agreement to protect in perpetuity from any and all disturbance, all areas of the quarry site (except for areas within the Current and Future Mining Areas, overburden and stockpile areas, and existing access road) that contain federal and State listed species and County defined rare, endangered, or threatened species and sensitive habitats (the Protected Area). The Protected Area consists of approximately 45.2 acres.

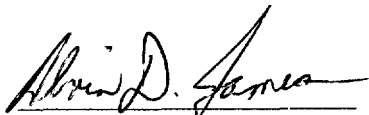
Graniterock Company has executed a Declaration of Restrictions to protect in perpetuity the specified species in the Protected Area. The County, USFWS, and CDFG will have enforcement authority over the Declaration of Restrictions, which will be recorded prior to or concurrent with the close of escrow for the South Ridge. The Declaration of Restrictions has been included for your review as Attachment 3.

The South Ridge at Quail Hollow Quarry contains the best remaining example of sand parkland habitat, which supports a number of endangered plant and insect species. This habitat has been described by experts as "the rarest plant community in California" and as a globally significant habitat. The North and West Ridges and the Protected Area also contain the same rare and endangered habitat and species as exist on the South Ridge. Completion of the actions requested in this letter will allow for the permanent protection of the South Ridge, the North Ridge, the West Ridge, and the Protected Area at Quail Hollow Quarry.

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

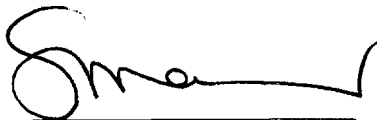
1. Authorize the Board Chairperson to execute the Implementing Agreement for federally listed species at the Quail Hollow Quarry on behalf of the County; and
2. Authorize the Auditor-Controller to transfer funds from Auditor's Fund 72-860 to Santa Cruz Title escrow account no. 805814 to provide for conveyance of the South Ridge to the County, and request that the Auditor-Controller complete this transfer.

Sincerely,



ALVIN D. JAMES
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1. Agreement of Purchase and Sale for South Ridge of Quail Hollow Quarry
2. Quail Hollow Quarry Habitat Conservation Plan and Implementing Agreement
3. Declaration of Restrictions

cc: mailing list

AGREEMENT OF PURCHASE AND SALE
FOR SOUTH RIDGE OF QUAIL HOLLOW QUARRY

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THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into, and effective, as of this 30th day of June, 1994, by and between GRANITE ROCK COMPANY, a California corporation ('Granite Rock'), and COUNTY OF SANTA CRUZ, a political subdivision of the State of California ("County").

RECITALS:

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. These Recitals utilize certain capitalized terms, which are defined in this Agreement and incorporated into these Recitals.

B. Paragraph 4 of the stipulation provides that on or before June 30, 1994, Granite Rock shall have executed an agreement for the sale of the South Ridge on the general terms and conditions specified in the Stipulation.

C. In order to effectuate these provisions of the Stipulation, the parties desire to enter into this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the foregoing Recitals, and the mutual covenants and obligations of the parties herein contained, the parties agree as follows:

1. Certain Terms Defined.

1.1. Terms in Agreement. The following terms used in this **Agreement** have the meanings set forth below for each such **term.**

Closing Date: Thirty (30) days after the fulfillment or waiver of the last of the conditions precedent under Section 4 below, but in no event later than August 1, 1998.

Commitments to Fund: Any actual funding, or written **commitment** to provide funding, for the Purchase Price for the South Ridge pursuant to Paragraph 5, at page 7, lines 14-16, of the Stipulation.

Conservation Easement: A **Conservation Easement** dedicating to County, or its designee, in perpetuity, a conservation easement over the West Ridge Area and over the North Ridge Area (as each such Area is shown on Exhibit C to the Stipulation) for the exclusive purposes of preserving the Sand Parkland Biotic and Wildlife Habitat and preventing mining thereon through a covenant by County and Granite Rock not to mine, pursuant to Paragraph 8(k) of the Stipulation.

Covenant Not to Mine: A covenant by County and Granite Rock not to mine and to preserve the Sand Parkland Biotic and Wildlife Habitat on the South Ridge in perpetuity to implement the provisions of Paragraph 4, at page 4, lines 27-28, and page 5 at lines 1-2, of the Stipulation in form and substance acceptable to Granite **Rock** and county.

Endangered Species Agreement: The agreement by Granite Rock to be delivered to **the** other Settling Parties, and **to**

which County will also be a party, to protect in perpetuity from any and all disturbance all areas of the **Quarry Site** (other than in **the** Current Mining Area, the Future Mining Area, the Stockpile Area, 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, as called for by Paragraph 7, at page 9, lines 22-25, and page 1b, lines 1-3 of the Stipulation.

Escrow: The escrow established **with** Escrow Holder through which the transactions contemplated by this Agreement will be consummated by the parties as specified by the Stipulation.

Escrow Holder: Santa **Cruz** Land Title Company.

Grant Deed: The grant deed conveying the South Ridge from Granite Rock to County in fee simple absolute.

Intervenors: Sierra **Club**, California Native **Plant** Society and South Ridge Watershed Association, the **Intervenors** as identified in the Stipulation and parties to the proceeding in which the Stipulation was entered. Reference to an "**Intervenor**" shall refer to any or all of the **Intervenors**, as the context may require,

Other Agency Approvals: **All** Approvals by relevant **regulatory** agencies, other than County, required to then enable commencement of mining of the entirety of the Current Mining Area and **Future** Mining Area.

Outside Fulfillment Date: July 1, 1998.

Permitted Assianee: The State, The Trust for **Public** Land, or another public agency **or** non-profit entity.

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Person or Persons: Individuals, groups, partnerships, firms, associations, corporations, trusts, governmental agencies, governmental officials, administrative bodies or tribunals, or any other form of business or legal entity.

Purchase Price: The sum of Three Million Two Hundred Thousand Dollars (\$3,200,000.00), as such amount may be reduced, if applicable, by offset against such amount by the price agreed upon between County and Granite Rock in the event of use of Sand Parkland on adjacent County-owned land for a portion of any biotic or wildlife mitigation required by California Department of Fish and Game or United States Fish and Wildlife Service, pursuant to the terms and conditions set forth in Paragraph 4, at page 5, lines 4-11, of the Stipulation.

Quarry Site @ u a i l Hollow Quarry, as generally shown on Exhibit A to the Stipulation, and comprised of Assessor's Parcel Nos. 72-262-03, 72-262-04, 72-262-18, 73-071-16, 73-011-05, 73-011-06, and 73-011-12.

South Ridge: That portion of the Quarry shown generally on Exhibit A to the Stipulation and more particularly described in Exhibit B to the Stipulation.

state: The State of California, including all departments, agencies and officials of the State of California.

Stipulation: That certain Stipulation for Entry of Final Judgment (including all Exhibits thereto), entered into between Granite Rock, County, Intervenors, and Santa Cruz Aggregates, Inc., in that certain proceeding entitled, Granite Rock Company, et al. v. County of Santa Cruz, et al., 'under Case

No. 113495, in the Superior Court of ~~the~~ state for the County of Santa Cruz.

1.2. Other Defined Terms. Unless otherwise provided in this Agreement, terms defined in the Stipulation shall have the same meaning when used in **this** Agreement, Certain other terms shall have the meaning set forth elsewhere in this Agreement.

2. Purchase and Sale. Granite Rock shall sell **the South Ridge** to County and County shall **purchase** the South **Ridge** from Granite **Rock**, upon all of the terms, covenants and conditions set forth in this Agreement.

3. Purchase Price. county shall pay to Granite Rqckthe Purchase Price for the South Ridge. County shall pay the **Purchase Price** in cash (including cash from a Permitted Assignee as contemplated by Paragraph 4, at page 6, lines 20-23, of the Stipulation) through Escrow as hereinafter provided. Pursuant to Paragraph 4, at page 6, lines 23-25, of the Stipulation, **the** settling Parties may also agree to any other method or methods of funding the **acquisition** of the South Ridge pursuant to this Agreement.

4. Conditions Precedent. Granite Rock's obligation to sell the South Ridge, and County's obligation to purchase the South Ridge, are conditioned upon satisfaction of the **following** conditions, in the manner and in accordance with the **procedures** hereinafter set forth.

4.1. Enumeration of Conditions. The **specific** conditions are as follows:

4.1.1. Conditions Under Stipulation. All **conditions** specified in the Stipulation for consummation of the purchase and sale of the South Ridge have been satisfied and fulfilled or waived in accordance with the applicable terms of the Stipulation. These conditions include that (i) adequate *funding in* the form of Commitments to Fund, have been obtained to purchase the South Ridge, (ii) the Future Mining Approval has become final, (iii) all Other Agency Approvals have become final, and (iv) Granite Rock has deposited the Grant Deed **and** Conservation Easement in Escrow.

4.1.2. Other Deposits in Escrow. The parties, and all other Persons responsible therefor, have made the deposits in Escrow called for by Section 6.1 below.

4.1.3. Stipulation and Final Judgment in Effect. The Stipulation and Final Judgment are *in* full force and effect, and neither the Final Judgment nor the Stipulation has been terminated, suspended or cancelled in accordance with their respective terms.

4.1.4. CEQA Compliance and General Plan Consistency Report. County shall have determined that the purchase and sale of the South Ridge as contemplated by this Agreement is categorically exempt from review under **the California** Environmental Quality Act (CEQA) (Public Resources Code **§21000, et seq.**) pursuant to **CEQA** Guidelines (14 Cal. Admin. Code **§15000, et seq.**) section 15313 (providing for acquisition of lands for fish **and** wildlife conservation purposes, including preservation **of** fish and **wildlife** habitat, and preserving access to public lands and waters

Where **the purpose** of the acquisition is to preserve the land in its natural condition) and Section 15325 (providing for transfers of ownership of interests in land in **order** to preserve open space, including acquisition of areas to preserve the existing natural conditions, and to allow restoration **of** natural conditions), or if County is unable to make such determination, the purchase and sale of the South Ridge pursuant to this Agreement has been duly addressed as part of the EIR to be prepared by County in connection with the application for the **Future** Mining Approval pursuant to Paragraph 8 of the Stipulation, subject to all of the terms and conditions of the Stipulation governing the EIR. In addition, the County Planning Commission shall have prepared and adopted a report that the acquisition of the South Ridge, as contemplated by this Agreement, is consistent with County's General Plan in accordance with the applicable requirements of the General Plan.

4.1.5. Title. The parties shall have determined that Granite Rock is in a position to fulfill the covenants concerning title set forth in Section 5 below in the manner and within the time periods therein specified.

4.2. Time for Fulfillment of Conditions. The conditions specified in Section 4.1.1 above shall be fulfilled within the applicable time limits specified in the Stipulation, but in no event later than the Outside Fulfillment Date. *The* conditions precedent specified in Sections 4.1.2, 4.1.3. and 4.1.4 above shall be fulfilled on or before the Outside Fulfillment Date. The condition specified in Section 4.1.5 above shall be fulfilled within the **time** periods specified in Section 5 below.

4.3. Efforts to Fulfill Conditions. Consistent with the terms of the Stipulation, each party responsible for fulfillment of a condition precedent under this Section 4 and/or the Stipulation shall attempt to secure fulfillment thereof with all due diligence, within the time limits specified in Section 4-2 above. Specifically, but without limiting the generality of the foregoing, the parties shall cooperate with each other in their mutual attempt to secure fulfillment of the conditions precedent, communicating with each other on the progress of such efforts and making timely requests for cooperation where such cooperation would be useful in obtaining fulfillment of the condition precedent; and each party shall execute any and all documents reasonably necessary to satisfy a condition precedent, including all applications for the Approvals required under Section 4.1.1.

4.4. Fulfillment and Waiver, If any of the conditions precedent are not satisfied within the time limits herein specified, then either party may terminate this Agreement concurrently with, but subject to, the termination of the Stipulation in accordance with its terms. Subject to the terms and conditions of the Stipulation, either party may waive any condition precedent, but only by a notice in writing signed by the waiving party.

5. Title Matters.

5.1. Manner of Conveyance. Title to the South Ridge shall be conveyed from Granite Rock to County by the Grant Deed, subject to no exceptions to title of any kind or character other than:

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5.1.1. Taxes. A lien to secure payment of real estate taxes not delinquent;

5.1.2. Covenant Not to Mine. The Covenant Not to Mine, recorded through Escrow concurrently with the Grant Deed pursuant to Section 6 below;

5.1.3. Endangered Species Agreement. The Endangered Species Agreement, recorded through Escrow concurrently with the Grant Deed pursuant to Section 6 below;

5.1.4. Approvals. All documents and instruments required to be recorded in the Official Records of County pursuant to the terms of the Current Mining Approval, Future Mining Approval and other Agency Approvals, which documents and instruments shall be recorded through Escrow concurrently with the Grant Deed pursuant to Section 6.2 below;

5.1.5. Other Encumbrances. All other matters of record, and encumbrances and encroachments which would be shown by an ALTA survey of the South Ridge (other than mortgages, liens or other monetary encumbrances), which do not materially interfere with or limit the acquisition of the South Ridge for purposes of preserving the Sand Parkland Biotic and Wildlife Habitat thereon and preserving the South Ridge as open space.

The foregoing exceptions to title are referred to hereinafter in the aggregate as the "Conditions of Title".

5.2. Review and Approval of Title. Within thirty (30) days after the effective date of this Agreement, Granite Rock and County shall procure issuance by Escrow Holder of a Preliminary Report covering the South Ridge, and obtain from Escrow Holder

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copies of all documents referred to or identified as exceptions in the Preliminary Report. **After** receipt of the **Preliminary** Report and such **documents**, County shall review the Preliminary Report and such documents and, within ninety (90) days after receipt thereof, notify Granite **Rock** of any such exceptions which, in County's reasonable judgment, do not comport **with** the standard set forth in **Section 5.1.5** above, and are, therefore, unacceptable as Conditions Of Title. County's notice shall specify the basis of its objection in reasonable detail, correlated to the standards specified in **Section 5.1.5** above. **If** County so notifies Granite Rock, then County and Granite Rock shall use reasonable good faith efforts to attempt to remove the objectionable exceptions contained in the Preliminary Report, taking such action as may be *necessary* OR appropriate so to do, except that neither County nor Granite Rock shall have any obligation to make or incur any substantial or material expenditures (including initiating litigation) in order to attempt to remove **or to remove** such **objectionable** exceptions. **If** County and Granite Rock are unable within ninety (90) days *after* the giving of **County's** notice, despite such reasonable good faith efforts, to **remove** the **objectionable** exceptions (or make provisions for such removal by **reconveyance** of such exceptions upon close of Escrow or endorsement against the same, providing title assurances under **the** title policy to be issued pursuant to Section 5.4. below), then County shall either (i) terminate this Agreement by giving written **notice to** Granite Rock (subject to the meet -and confer process and court determination called for by Paragraphs 14 and 22 *of the Stipulation*), or (ii) complete the purchase of the **South**

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Ridge and waive its objection to such exceptions. If county so waives objection to such exceptions, then such **exceptions** shall be acceptable Conditions of Title,

5.3. Survey. If County so elects, county may, **within sixty** (60) days after the effective date of this Agreement, at its cost and expense, **cause** a licensed surveyor or civil engineer acceptable to County and Granite Rock to prepare an **ALTA** survey, in form and substance acceptable and properly certified to County, Granite Rock and Escrow Holder, so as to enable Escrow Holder to issue to County an Owner's ALTA 1970 Form **B** extended coverage title insurance policy in accordance with Section 5.4 below. If (i) the results of such survey show an encroachment, easement or **other** title defect not set forth on the Preliminary report, (ii) any such matter is not acceptable to County in accordance with the standards and *criteria* set forth in Section 5.2 above with respect to review of exceptions in the Preliminary Report, and (iii) County and Granite Rock cannot make reasonably adequate arrangements to remove and/or relocate such matter or obtain title insurance protection with respect thereto **in** accordance with the standards and procedures specified in Section 5.2 above, then County shall make the election provided under clauses (i) and (ii) of Section 5.2 above within the time limits therein specified.

5.4. Title Insurance. Evidence of delivery Of title in accordance with this Section 5 shall be the willingness of Escrow **Holder** to issue, upon payment of its regularly scheduled premium, its Owner's California Land Title Association (CLTA)

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policy of title insurance, **in** the amount of the Purchase Price, **showing title to the** South Ridge vested of record **in** County, subject to **no** exceptions, conditions, easements, **reservations** or encumbrances of any kind or character, other *than* the Conditions of Title. County shall have the right to elect to cause Escrow Holder to issue, in **lieu** of the Owner's CLTA policy of title insurance hereunder, an **Owner's**-American Land **Title** Association (ALTA) 1970 Form **B** extended **coverage** title insurance policy.

5.5. Legal Description of South Ridge. Unless otherwise elected by County, Granite Rock shall convey **title** to the South Ridge under the Grant Deed by ametes and **bounds** description pursuant to **applicable** exemptions under the Subdivision Map Act (Government Code Section 66410, et seq.). County may elect, however, to prepare a parcel map under the Subdivision Map Act and process the same as the applicant, at its sole cost and expense, in order to divide the **South** Ridge from the remainder of the Quarry Site, in which event, Granite Rock shall convey title to the South Ridge by reference to such parcel map. If County so elects, then County shall process and obtain all necessary Approvals for such parcel map not **later** than the **Outside** Fulfillment Date, and **such** parcel map shall be recorded through Escrow pursuant to Section 5 below prior to recordation of *any* other document or instrument thereunder.

5.6. additional Title Information. **If** Granite Rock has current actual knowledge or, prior to the Outside Fulfillment Date, **obtains current** actual knowledge of, any claim or **interest** in **the** South Ridge, or any portion **thereof** (such as a prescriptive

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easement or right of adverse possession), or of any easements, covenants, leases or licenses in the South Ridge, or any portion thereof, which would constitute an encumbrance pursuant to section 5.1.5 above and which is not disclosed by the Preliminary Report (or the survey, if procured by County pursuant to Section 5.3 above), then promptly after obtaining such knowledge, Granite Rock shall **so** notify County and supply such nonproprietary information (including documents and instruments evidencing the same) **as** may be in Granite Rock's possession regarding the same. Upon receipt of such notice from Granite Rock, County shall have the right to review such encumbrance in the same manner and subject to the **procedures**, standards and time limitations specified in Section 5.2 above with respect to title exceptions thereunder to determine if such encumbrance is acceptable to County as a Condition of Title and if not, to make the election provided for thereunder, except that in all events such review, procedures and elections shall be completed no later than the Outside Fulfillment Date. In addition, if Granite Rock has in its possession any nonproprietary information (including documents **and instruments**) evidencing, or in connection with, exceptions to title set forth in the Preliminary Report (or **title** defects disclosed by the survey, if procured by County pursuant to Section 5.3 above), then upon request by **County** that such information is reasonably necessary or appropriate **for** County adequately to review the state of title to the South Ridge pursuant to the procedures and standards contained in this Section 5, Granite Rock shall, promptly after receipt of such request by County, supply copies of such information to County.'

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6. Consummation of Transaction Through Escrow. The parties shall consummate the transactions under this Agreement through Escrow established at the offices of Escrow Holder. The parties shall open Escrow with Escrow Holder within sixty (60) days after the effective date of this Agreement. The parties shall close Escrow on or before the **Closing** Date, unless otherwise agreed in writing by the parties and Intervenors pursuant to the Stipulation. The parties shall make (or cause to be made) the following deposits and close Escrow in the following manner:

6.1. Deposits into Escrow. The parties shall, on or before the **Closing Date**, make (or cause to be made) the following deposits into Escrow:

6.1.1. Parcel Map. If County has elected to procure a parcel map pursuant to Section 5.5 above, County shall deposit such parcel map, duly executed and acknowledged by the Persons required thereby.

6.1.2. Grant Deed. Granite Rock shall deposit the Grant Deed, duly executed and acknowledged by Granite Rock.

6.1.3. Covenant Not to Mine. county and Granite Rock shall deposit the **Covenant Not to Mine**, duly executed and acknowledged by Granite Rack and County.

6.1.4. Conservation Easement. County and Granite Rock shall deposit the Conservation Easement, duly executed and acknowledged by County and Granite Rock.

6.1.5. Current Mining Approval. Granite Rock shall deposit the Current Mining Approval and **Waiver** and Indemnification Agreement pursuant to Paragraph 6, at page 8, line

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28, and at page 9, lines 1-6, of the Stipulation, duly executed and acknowledged, if required, by Granite Rock.

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6.1.6. Endanaered Species Aareement. Granite Rock shall deposit the Endangered Species Agreement, duly executed and acknowledged by Granite Rock and County.

6.1.7. Future Mining Approval. County shall deposit ~~the~~ Future Mining Approval in the form called ~~for~~ by ~~the~~ Stipulation, duly executed by the Persons required to execute the same.

G.1.8. Other Agency Approvals. County and Granite Rock shall cause each Person having **jurisdiction** thereof to deposit all Other Agency Approvals, each in final form and duly executed and acknowledged, if required, by the Persons required thereunder.

6.1.9. Commitments to Fund Purchase Price. County, **Intervenors** and any other interested **Person** shall deposit the **Commitments** to Fund, promptly upon receipt, duly executed as required by the Persons thereto, and shall thereafter cause the funds committed thereunder to be paid into Escrow on account of the Purchase Price.

6.1.10. Other Documents and Instruments. county, Granite Rock and/or other **Persons** as required under the Current Mining Approval, Future Bining Approval, or Other Agency Approvals, shall deposit all **documents** and instruments required to be delivered or recorded thereunder in accordancewith their terms, duly executed and acknowledged where required.

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6.1.11. Escrow Instructions. County and Granite Rock shall deposit such escrow instructions as may be necessary or appropriate, consistent with the terms of this Agreement and the Stipulation, to effectuate the close of Escrow hereunder, which escrow instructions have been duly approved by the Settling Parties pursuant to Paragraph 5, at page 7, lines 9-13, of the Stipulation, and duly executed by County and Granite Rock.

6.2. Close. Escrow Holder shall close Escrow when the conditions precedent under Section 4 have been satisfied or waived in accordance with this Agreement and when Escrow Holder is in a position to issue to County the policy of title insurance specified in Section 5.4. Escrow Holder shall close Escrow by performance of the following steps in the following order:

6.2.1. Record Parcel Map. If deposited by County pursuant to Section 6.1.1 above, record the parcel map in the Official Records of county;

6.2.2. Record Grant Deed. Record the Grant Deed in the Official Records of County and deliver it to County;

6.2.3. Covenant Not to Mine. Record the Covenant Not to Mine in the official Records of County and deliver it to County;

6.2.4. Conservation Easement. Record the Conservation Easement in the Official Records of County and deliver it to County;

6.2.5. Endangered Species Agreement. Record the Endangered Species Agreement in the Official Records of County and deliver it to County;

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6.2.6. Purchase Price. After deducting **Granite** Rock's share of closing costs and fees as specified in Section 6.3, pay the balance of the Purchase Price to or for the account of Granite Rock;

6.2.7. Current Mining Approval; Future Mining Approval; Waiver and Indemnification Agreement; and Other Agency Approvals. Deliver the Current Mining Approval, Future Mining Approval, Waiver and Indemnification Agreement and Other Agency Approvals, and, if applicable, **record** in the Official Records of County and deliver all documents and instruments required to be so recorded Under the **Future** Mining Approval, Current Mining Approval, and/or Other Agency Approvals, all in accordance with the parties' escrow **instructions** deposited under Section 6.1.11 above;

6.2.8. Title Insurance. Issue and **deliver to** County one (1) original and two (2) duplicate copies of the title insurance policy specified in Section 5.4; and

6.2.9. Conformed Copies. **Deliver** to each party and the other Settling Parties certified and conformed copies of all documents and instruments deposited by either party or any other **Person** into **Escrow** under this Section 6.

6.3. Costs and Fees. Granite Rock shall pay one-half (1/2) of the escrow fee, one-half (1/2) of the premium for the **CLTA** policy of title insurance called for by Section 5.4, and any documentary transfer taxes and conveyancing taxes. County shall pay one-half (1/2) of the escrow fee, one-half (1/2) of the premium for the **CLTA** policy of title insurance called for by Section 5.4, the excess premium over the **CLTA** policy for the **ALTA** policy of

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title insurance if elected to be procured by County under section 5.4, and all recording costs. Each party shall bear one-half (1/2) of the cost of any endorsements issued to provide title assurances pursuant to Section 5.2 above, Real estate taxes shall be prorated, based -on a 365-day year, as of the date the Grant Deed is recorded.

7. Warranties and Representations.

7.1. Granite Rock Warranties and Representations.

Granite Rock hereby warrants and represents to County as follows:

7.1.1. Hazardous Materials. To Granite Rock's current actual knowledge, there are no hazardous materials on, in or under the South Ridge, nor has any release of hazardous materials occurred on, in, under or about the South Ridge. Granite Rock has not received any notice of any action or proceeding relating to any such hazardous materials or any such release. As used herein, "hazardous materials" includes petroleum, asbestos, radioactive materials or substances defined as "hazardous substances," "hazardous materials" or "toxic substances" (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.}, California Health and Safety Code (Division 20, Chapters 6.5 through 7.3, Sections 25100, et seq., and Section 25316), California Code of Regulations (Division 2, Title 22, Section 120000, et seq.), and in the regulations promulgated pursuant to such laws.

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7.1.2. Nonforeign Status. Granite Rock is not a **foreign person**, foreign corporation, foreign partnership, **foreign trust or** foreign estate, as those *terms* are defined in **the Internal Revenue Code and Regulations** thereunder.

7.1.3. Authority. Granite Rock has **full power** and authority, and has obtained all necessary consents, to enter into this Agreement, to sell and transfer the South Ridge to County and to otherwise perform its obligations under *this* Agreement. The Person executing **this** Agreement on behalf of Granite **Rock** has full power and authority so to do in accordance with the **foregoing**.

7.1.4. No Litiaation or Other Breach. o Granite Rack's current actual knowledge, (i) no litigation, proceeding (administrative OR otherwise), **order, or** judgment is pending **or** outstanding against, or affects, Granite Rock or the **South Ridge, or** any portion thereof, and (ii) Granite Rock has not committed any breach of any agreement, document or instrument to which Granite Rock is a party, any of which could adversely affect or encumber the South Ridge, or adversely affect Granite Rock's ability to perform its obligations under this Agreement.

7.1.5. No Contracts or Other Obligations. There exist no contracts, licenses or other agreements regarding maintenance of the South Ridge, personal property located on the South **Ridge, or** performance of services with respect to the South Ridge, which would obligate County, or pursuant to which County would be liable to any third Person, from and after the date of the close of Escrow, and if any such contracts, licenses or other *agreements* are iii effect, Granite Rock shall take such actions as

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may be necessary or appropriate to terminate the same with respect to the South Ridge as of the **close** of Escrow in order to **conform** with the foregoing warranty and representation as of the date of the close of Escrow.

7.1.6. Scope of Current Actual Knowledge. For purposes of Granite Rock's warranties and representations under this Section 7.1, and Granite **Rock's** obligations under Section 5.6 above, Granite **Rock's** "**current** actual knowledge" refers to the **actual** knowledge of Steve **W. Woolpert**, currently known to him as Co-President of Granite Rock, without duty **or** obligation for further or independent investigation with respect to the subject matter of the **warranty** or representation.

7.2. County Warranties and -es@-. county has full power and **authority** and has obtained all necessary consents to enter into this Agreement to purchase the South Ridge from Granite Rock and to otherwise perform its obligations under this *Agreement*. The Person executing this Agreement on behalf of County has full power and authority so to do in accordance with the foregoing.

7.3. Restatement of Warranties and Representations:
Changed Circumstances. The warranties and representations of each **party** under this Section 7 shall be deemed restated and remade by each party in their entirety as of the date of close of Escrow under this Agreement. If at any time after the effective date of this Agreement and prior to **the** close of Escrow **any facts** Or circumstances change, or a party acquires any information **or** knowledge **which** would, without disclosure, make any of the

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foregoing warranties or representations untrue or misleading, such party shall immediately notify the other party thereof, with a complete explanation of the particulars constituting such facts or circumstances.

7.4. Limitations on warranties and Representations.

Except as expressly provided in this Section 7, neither party has **made** any warranty or representation to the other with respect to the transactions **contemplated** by this **Agreement or any** other matter germane thereto. Specifically, but without limiting the generality of the foregoing, County acknowledges that, except as provided in Section 7.1, Granite Rock has made no warranty or representation with respect to any aspect of the South Ridge, and **that County** will acquire the South Ridge in accordance with the terms and conditions of this **Agreement solely** in reliance on its own independent investigation of all matters material to County with respect to **any** aspect of the South Ridge, including physical condition, hazardous materials, the state of the Sand Parkland Biotic and Wildlife Habitat, and any Federally listed species, or State listed species, or County defined rare, endangered or threatened species, or sensitive habitats. County further acknowledges that it has **had** substantial opportunity, and will have full opportunity pursuant to Section 8 below prior to the close of Escrow, to make **such** inspections and investigations as County deems necessary or appropriate with respect to or to confirm the foregoing matters.

8. Maintenance of South Ridge; Right of Entry; Indefinite Access After Close of Escrow.

8.1. Maintenance of South Ridge. Granite Rock (and County and its designated representatives pursuant to Section 8.2 below **and** continuing after the close of **Escrow**) shall, in furtherance of the terms and conditions of the Stipulation, take due care and exercise reasonable diligence in order to maintain the South Ridge in its state existent as of the effective date of this Agreement and, subject to ordinary wear and tear and other causes not due to the act or neglect of either party, shall, to the extent reasonably feasible, maintain the **South Ridge** in the state existent as of the effective date of **this Agreement**. specifically, but without limiting the generality of the foregoing, neither Granite Rock, nor County, nor the agents, employees, consultants or representatives of either, shall disturb any Federally listed species, or State listed species, or County defined rare, endangered or threatened species or sensitive habitats, on any portion of the South Ridge as provided by Paragraph 7, at page 9, lines 16-22, of the Stipulation, If either party breaches its obligations under this Section 8.1, then such party shall, at its sole cost and **expense**, be responsible for the remediation of any adverse impacts caused to the Sand Parkland Biotic and Wildlife Habitat located thereon as a result of such breach.

8.2. Limited Right of County Access Prior to Close of Escrow: Indemnification. County and County's designated representatives shall have the right, subject to and upon the terms and conditions specified in this Section 8.2, to enter the South Ridge, or any portion thereof, in order to conduct such inspections and investigations, and surveys as County deems necessary or

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appropriate to determine the Conditions of Title, **physical** condition, presence of hazardous **materials**, and/or the **state** of, and/or the preservation and enhancement of, the sand Parkland Biotic and Wildlife Habitat, and any Federally listed species, or State listed species, or County defined rare, endangered or threatened species or sensitive habitats. Prior to effecting any entry hereunder, County shall notify Granite Rock of its desire to enter the **South** Ridge for the foregoing purposes, specifying in detail the nature of the inspections, investigations, and/or surveys to be undertaken, the area or areas within the South Ridge where such inspections, investigations, and/or surveys will be undertaken, and **the** Persons undertaking the **same**. **Granite** Rock shall have **the** right to specify reasonable conditions (including **the** time, place and/or manner of entry and/or performance of such inspections, investigations, and/or surveys) as may be reasonably necessary in order to protect the Sand Parkland Biotic and Wildlife Habitat, and provide for the safety and protection of Persons **entering** the South Ridge during operations otherwise underway at the Quarry Site. In addition, Granite Rock shall have **the** right to require that any **entry** by County effected hereunder be made in the company of designated Granite Rock representatives. **To** the extent feasible in order to avoid operations at **the** Quarry Site, County and its designated representatives shall effect primary access to the South Ridge via Hihn Road and Ridgeview Drive over the **"Liebenberg"** portion of the Quarry Site, and secondary access to the South Ridge via **Elm Drive** or Willow Drive. County shall, at its sole cost and expense, **repair** and **remediate** any adverse affects

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caused by **any** inspections, investigations, and/or surveys undertaken hereunder, including remediation of any adverse effects to the Sand Parkland Biotic and Wildlife Habitat, County shall indemnify, defend, protect and hold Granite Rock harmless from and against any and all claims, loss, damage, liability, liens, *injury*, cost or expense (including reasonable attorneys' fees) arising out of or related to any entry effected hereunder or ~~the~~ performance of such **inspections, investigations, and/or surveys**. As used herein, "**County's designated representatives**" means (i) any elected or appointed County official or employee; (ii) any consultant retained by County (including the EIR consultant) to perform inspections, investigations, and/or surveys of the South Ridge as contemplated by this Agreement and/or the Stipulation; (iii) representatives of proposed Permitted Assignees performing inspections and/or investigations of the South Ridge in connection with due diligence with respect to an assignment to the Permitted Assignee pursuant to Section 9 below; (iv) officials of the State or the United States government having **jurisdiction** over the preservation, enhancement of, or the state of, the Sand Parkland Biotic **and** Wildlife Habitat, and any Federally listed species, or State **listed** species, or County defined rare, endangered or threatened species, or **sensitive** habitats; and (v) and any duly qualified scientist or **other** comparable investigative consultant retained by County, the EIR consultant, a Permitted Assignee, or any department or agency of the State or the United States government having jurisdiction, for the purpose of **inspecting and/or** investigating the state of the Sand Parkland Biotic and Wildlife Habitat, or any Federally listed

species, or State listed species, or County defined rare, endangered or threatened species, or sensitive habitats.

8.3. Access Provisions After Close of Escrow. The parties acknowledge that, after the close of Escrow, County and/or Granite Rock may require the ability to access the South Ridge for the purpose of the preservation or enhancement of the Sand Parkland Biotic and Wildlife Habitat thereon, or to effectuate biotic and wildlife mitigation with respect to or on the South Ridge. Accordingly, within six (6) months after the effective date of this Agreement (or such later date as the parties may agree), the parties (and the other Settling Parties) shall agree on provisions for access to the South Ridge from a public street (or other lawful access) abutting the Quarry Site and across the Quarry Site (other than any portion of the Current Mining Area or the Future Mining Area) solely for the purpose of providing access for the purposes contemplated hereby. Upon agreement by the parties (and the other Settling Parties) of access provisions hereunder, such access provisions shall be incorporated into the Conservation Easement, the Covenant Not to Mine and/or the Endangered Species Agreement, as appropriate, in order to provide for the access provisions agreed to hereunder. In connection with such access provisions, the parties (and the Settling Parties) shall conform to the applicable terms and conditions of the Stipulation, take into account such concerns and considerations as are necessary and appropriate to effectuate the purposes for which access is contemplated hereunder, avoidance of interference with the use of the Current Mining Area and Future Mining Area of the Quarry Site

for mining **activities**, provide for **access** of the least intrusive kind and, if reasonably feasible, **provide primary** access via Hihn Road and Ridgeview Drive (or other lawful access) abutting the Quarry Site over **the "Liebenberg"** portion of the Quarry Site and secondary access via Elm Drive or Willow Drive. The access rights contemplated hereunder shall also impose limitations with respect to the *Persons* entitled to exercise such access rights on behalf of Granite Rock and County.

9. Successors and Assigns. county shall have the right to assign its right to **acquire** the South Ridge under this Agreement to a Permitted Assignee, subject, however, to all of the **terms** and conditions contained in this **Agreement**. If County intends to assign its right to purchase the South Ridge **to** a Permitted Assignee, County shall, at least thirty (30) days prior to **consummating** such assignment, so notify **Granite** Rock, specifying in detail the terms and conditions of such assignment, and shall, concurrently with the consummation of such assignment, deliver to Granite Rock an assumption agreement in form and substance acceptable to Granite Rock by which such Permitted Assignee assumes all of County's applicable obligations under this Agreement with respect to the purchase and **sale** of the south Ridge on the terms and conditions set **forth** in County's notice. If County makes any material change to the terms and conditions **of** such assignment, County shall provide prompt notice thereof in detail to Granite Rock describing such changes and, in any event, **at** least ten **(10)** days prior to consummating such assignment. A **Permitted** Assignee *shall* have no right further to assign its right to purchase the

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South Ridge under this Agreement, or any other right, duty or obligation under this Agreement, except to another Permitted Assignee (subject to the notice and assumption provisions of this Section 9); and County shall have no other right to assign this Agreement, or any of its rights, duties, or obligations hereunder. If County effects an assignment to a Permitted Assignee, then County shall be relieved Pros its obligations under this Agreement to the extent the Permitted Assignee has assumed such obligations, except for non-monetary obligations to be performed by County under this Agreement. Subject to the foregoing, the terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the parties, and their respective heirs, successors and assigns.

10. Notices. The address of each party for the purpose of all notices permitted or required by this Agreement is as follows:

To Granite Rock: P.O. Box 50001
 Watsonville, California 95077
 Attn: Steve Woolpert, Co-President

With a copy to: Finegan & Cling
 60 West Alisal Street, Suite 1
 Salinas, California 93902
 Attn: Brian Finegan, Esq.

To County: 701 Ocean Street
 Santa Cruz, California 95060
 Attn: Real Proparty Division

With a copy to: Office of the County Counsel
 701 Ocean Street
 Santa Cruz, California 95060
 Attn: County Counsel

The notice address of either party set forth above may be changed by written notice given not less than five (5) days prior to the

date such change is to be effected. All notices under *this* Agreement shall be in writing, shall be properly **addressed and** shall be sent by personal delivery, by United States Mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of **delivery**; (ii) if sent by United States Mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by or courier delivery service, on the date of delivery as shown by the written delivery **record** of such service.

11. **Entire Agreement; Amendment.** This **Agreement** and the Stipulation contain all the **representations** and **the entire** understanding between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and the Stipulation. This Agreement may be amended only by a written agreement so **specifying**, executed by both parties.

12. **Construction and Interpretation.** This Agreement **has** been fully negotiated at **arms'** length between the parties, after advice by counsel and other representatives chosen independently by each party, and the parties are fully informed with respect thereto. Therefore, neither party shall be deemed the **scrivener** of this agreement. The provisions of this **Agreement and** the Stipulation shall be construed as a whole according to their common meaning and not strictly for or against either party, in **order** to effectuate the intent of the parties to implement the provisions of

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the stipulation for the purchase and sale of the South Ridge, except that in the event of an irreconcilable conflict between this Agreement and the Stipulation, the Stipulation shall control. The captions preceding the text of each Section and subsection are included for convenience of reference only and shall be disregarded in the construction and interpretation of this Agreement. Use in this Agreement of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to the specific items or matter, whether or not language of non-limitation such as "without limitation" or "but not limited to", or words of similar import, are used with reference thereto, but rather shall refer to all other terms or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. Unless otherwise stated, all references to "Sections" are references to the Sections of this Agreement. All references to a "party" or the "parties" in this Agreement shall refer to County or Granite Rock, or both, as the context may require.

13. No Merger. Notwithstanding anything to the contrary contained in this Agreement, all provisions contained in this Agreement and the Stipulation, intended by their terms to survive the close of Escrow hereunder, shall survive the close of Escrow and shall not merge into any instrument conveying the South Ridge, or any interest therein, to county.

14. Incorporation of Stipulation Provisions. All of the applicable terms and provisions of the Stipulation (including

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rights, duties and obligations of the parties) are incorporated into this Agreement by reference and made a part hereof, including the provisions of Paragraphs 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 29, which shall expressly apply to the terms and provisions of, and the rights duties and obligations of the parties, under this Agreement, and references in such Paragraphs to "settling parties", "Stipulation", and/or "Final Judgment" shall be deemed to refer to the parties and this Agreement, as the case may be, for purposes of incorporating such Paragraphs into this Agreement.

15. Cooperation of Parties. In furtherance of the Settling Parties' covenant to exercise good faith and fair dealing with regard to the implementation of the stipulation as provided by Paragraph 23 thereof, the parties shall take such further actions and execute such other documents as may be necessary or appropriate to effectuate the terms, conditions and objectives of this Agreement, including taking such actions and making such agreements as may be necessary or appropriate, and not in material derogation or alteration of the rights, duties and obligations of either party under this Agreement or the Stipulation, with any Permitted Assignee, which intends or desires to provide a Commitment to Fund all or a portion of the purchase Price as contemplated by this Agreement.

16. Termination of Agreement. Notwithstanding any other provision contained in this Agreement, this Agreement shall terminate and be of no further force or effect if the purchase and sale of the South Ridge and the other transactions contemplated by

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this Agreement have not been consummated by the Closing Date, **394**
unless the parties otherwise agree in writing, and subject to any
specific provisions of the Stipulation with respect thereto.

17. Governing Law. This Agreement shall be construed
and enforced in accordance with the laws of the State of
California,

IN WITNESS WHEREOF, Granite Rock and County have executed this
Agreement effective as of the day and year first above written.

"Granite Rock"

GRANITE ROCK COMPANY, a California
corporation

By Steve Woolpert 6/29/94
Steve W. Woolpert
Its Co-President

"County"

COUNTY OF SANTA CRUZ, a political
subdivision of the State of
California

By Susan A. Mauriello 6/29/94
Susan A. Mauriello
Its county Administrative
Officer

APPROVAL OF INTERVENORS AND SANTA CRUZ AGGREGATES, INC.

Intervenors, and Santa Cruz Aggregates, Inc. ("Aggregates"), hereby approve the form and substance of this Agreement pursuant to the Stipulation, and hereby acknowledge that the Agreement is consistent with the provisions of **the** Stipulation. **Intervenors** and **Aggregates** shall exercise good faith and fair dealing, render approvals, consents, satisfactions or execution of documents **as** required, and otherwise cooperate, as contemplated by **the** Stipulation in order to effectuate the terms and conditions of this Agreement to consummate **the** transactions contemplated hereby and by-the Stipulation;

"Intervenors"

SIERRA CLUB

By Deborah A Malkin 6/29/94
Deborah A. Malkin
Authorized Signatory for Santa Cruz Regional Group of the Ventana Chapter

CALIFORNIA NATIVE PLANT SOCIETY

By Steve McCabe June 29, 1994
Steve McCabe
Authorized Signatory for David Magney
Its President

SOUTH RIDGE WATERSHED ASSOCIATION

By Alma Schreiber
Alma Schreiber
Its Authorized Signatory

"Aggregates"

SANTA CRUZ AGGREGATES, INC.

By Jim Nicholson 6/29/94
Jim Nicholson
Its President

RECORDING REQUESTED BY:
Granite Rock Company

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WHEN RECORDED RETURN TO:

Jim West
Granite Rock Company
411 Walker Street
Watsonville, CA 95076

DECLARATION OF RESTRICTIONS

RECITALS

A. Declarant, Granite Rock Company, is the sole owner in fee simple of a parcel of property located in Santa Cruz County, California, and being a portion of the following lands:

1. Lands conveyed by H. A. Mitchell, et al., to Central Supply Company by deed recorded in Volume 1506, at Page 712 of Official Records of Santa Cruz County;
2. Lands conveyed by S. P. Cristina, et ux., to Central Supply Company by deed recorded in Volume 971, at Page 177 of Official Records of Santa Cruz County;
3. Lands conveyed by H. A. Mitchell, et al., to Central Supply Company by deed recorded in Volume 1474, at Page 132 of Official Records of Santa Cruz County;
4. Lands conveyed by Fred D. Hihn to Central Supply Company by deed recorded in Volume 973, at Page 233 of Official Records of Santa Cruz County, and
5. Lands conveyed by Santa Cruz Land Title Company to Central Supply Company by deed recorded in Volume 987, at Page 626 of Official Records of Santa Cruz County.

After conveyance of the lands detailed above, Central Supply Company merged into Granite Rock Company. These parcels are collectively a ±45.2-acre area, herein referred to as the PROTECTED AREA, described and shown more particularly in Exhibit A, attached hereto and incorporated herein by reference.

B. Declarant 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., Santa Cruz County Superior Court No. 113495 (Stipulation) on June 24, 1994. The Stipulation provided, in part, that as part of the mitigation for its continued mining operations in the Future Mining Area at Quail Hollow Quarry, Declarant would 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, otherwise known as the PROTECTED AREA, as shown on Exhibit A hereto.

C. The 1994 Stipulation also requires that Declarant grant conservation easements in perpetuity to the County of Santa Cruz for 11.1 acres on the North Ridge at Quail Hollow Quarry (described in Exhibit B attached hereto) and for 21.1 acres on the West

Ridge at Quail Hollow Quarry (described in Exhibit C attached hereto). The Stipulation also requires that Declarant grant the County of Santa Cruz title to the 32.6-acre South Ridge at Quail Hollow Quarry (described in Exhibit D attached hereto) in exchange for the County of Santa Cruz paying Declarant the fair market value of the South Ridge. The County of Santa Cruz shall protect the South Ridge in perpetuity from any and all activity, including mining, that would adversely affect the significant biotic resources on the South Ridge. The PROTECTED AREA contains the same rare and endangered habitat and species as are contained in the North Ridge, West Ridge and South Ridge (the BENEFITTED PROPERTY) described in Exhibits B, C and D, respectively. The Restrictions placed on the PROTECTED AREA by this Declaration will ensure the continued viability of the rare and endangered habitats and species on the BENEFITTED PROPERTY.

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D. Declarant obtained Incidental Take Permit No. PRT-830417, dated August 1, 1997, (Federal Permit) from the U. S. Fish and Wildlife Service (Service) pursuant to the Service's authority under Section 10 of the Endangered Species Act of 1973, as amended (ESA). The Federal Permit authorizes Declarant to take 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 PLAN SPECIES) as incidental to its otherwise lawful mining activity in the Current Mining Area of Quail Hollow Quarry.

E. Declarant has applied to the Service for an amendment to the Federal Permit to authorize the take of the PLAN SPECIES as incidental to its otherwise lawful mining activity in the Future Mining Area of Quail Hollow Quarry.

F. In consideration for Federal Permit Number PRT-830417, as amended, to take PLAN SPECIES in the Current and Future Mining Areas, and to comply with the ESA, the Federal Permit, its corresponding revised Habitat Conservation Plan dated August 1998 (HCP) and revised Implementing Agreement dated August 1998 (IA), Declarant must protect and preserve the PROTECTED AREA, as described in Exhibit A, in perpetuity for the protection of the PLAN SPECIES. Copies of the Permit, HCP and IA are available for review at the U. S. Fish and Wildlife Service Office in Ventura, California, at Granite Rock Company's corporate headquarters in Watsonville, California, and in the Santa Cruz County Planning Department.

G. Declarant entered into a Memorandum of Understanding (MOU), dated August 15, 1997, with the California Department of Fish and Game (Department) pursuant to the Department's authority under the California Endangered Species Act (the State Permit). The State Permit authorizes the Declarant to take the Ben Lomond wallflower (Erysimum teretifolium) as incidental to its otherwise lawful mining activity in the Current Mining Area at Quail Hollow Quarry. Declarant has applied to the Department for a State Permit pursuant to California Fish and Game Code Section 2081, to take the Ben Lomond wallflower as incidental to its otherwise lawful mining activity in the Future Mining Area at Quail Hollow Quarry. In consideration for this authority, and to comply with the California Endangered Species Act and the State Permit, Declarant

must protect and preserve the PROTECTED AREA, as described in Exhibit A, in perpetuity for the protection of the Ben Lomond wallflower.

H. Declarant has received Mining Approval No. 95-0836 from The County of Santa Cruz (County), pursuant to its authority under the California Surface Mining and Reclamation Act to permit mining activities in the Future Mining Area at Quail Hollow Quarry (the County Permit). As mitigation for impacts to biological resources as identified in the Environmental Impact Report for the Future Mining Area at Quail Hollow Quarry, Declarant is required 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, otherwise known as the PROTECTED AREA, as shown on Exhibit A hereto.

I. The PROTECTED AREA supports habitat which contains Federally listed species or State listed species, or county defined rare, endangered or threatened species or sensitive habitats, including the extremely rare Sand Parkland Habitat and the Northern Maritime Chaparral habitat.

J. Declarant, in executing and recording this Declaration of Restrictions, is complying with the portions of the Federal Permit, the State Permit, the County Permit, the HCP, IA, EIR, and Stipulation that require protection of the PROTECTED AREA in perpetuity.

RESTRICTIONS

The Declarant, owner of the PROTECTED AREA, in consideration of authorizations benefitting its Quail Hollow Quarry, and to comply with the terms of the Federal Permit, the State Permit, the County Permit, the HCP, IA, EIR, and Stipulation, certifies and declares that the PROTECTED AREA shall be held, transferred, sold, and conveyed subject to the following restrictions and conditions for the protection and benefit of the Benefitted Property, and for the benefit of the public at large:

1. Covenant Running with the Land. In consideration of the benefits deriving from the authorizations to mine in the Future Mining Area, and to comply with the terms and conditions of the Federal Permit, the State Permit, the County Permit, the HCP, IA, EIR, and Stipulation, the Declarant covenants and agrees to restrict, and by this instrument does restrict, the future use of the PROTECTED AREA as set forth below by the establishment of this covenant running with the PROTECTED AREA and shall be binding upon all parties having or acquiring any right, title or interest in the PROTECTED AREA, or part thereof, their heirs, assigns, and any other transferees and successors and shall apply to each owner thereof..

2. Restrictions Concerning the PROTECTED AREA. Neither Declarant nor any other person shall engage in any of the following activities on the PROTECTED AREA:

- a. plowing or cultivation of the PROTECTED AREA or any portion of the PROTECTED AREA;
- b. mining of the PROTECTED AREA or any portion of the PROTECTED AREA;
- c. discharging, dumping, disposing, storing or placing any materials or debris, including but not limited to any overburden, spoils, clay, trash, refuse, rubbish, grass clippings, cuttings or other waste material, whether temporarily or permanently, within the PROTECTED AREA or any portion thereof;
- d. leveling, grading, landscaping or otherwise altering the topography of the PROTECTED AREA or any portion thereof, except in compliance with the terms and conditions of the IA and HCP;
- e. destroying or removing any native tree, shrub or other vegetation that grows on the PROTECTED AREA or any portion thereof, except in compliance with the terms and conditions of the IA and HCP;
- f. operating, riding, or using motorized vehicles on any portion of the PROTECTED AREA, except as necessary for maintenance or other work consistent with the terms and conditions of the IA and HCP;
- g. erecting any building, billboard, or sign on the PROTECTED AREA except in compliance with the terms and conditions of the IA and HCP;
- h. any other activities that are incompatible with the continued viability of the PROTECTED AREA as suitable habitat for the PLAN SPECIES; or that are not consistent with the terms and conditions of the Federal, State and County Permits, the IA, the HCP, the Final EIR, and the Mining Reclamation Plan;
- i. any and all other activities, uses or disturbances of the PROTECTED AREA, or any portion thereof, which may adversely affect the purposes of these Restrictions or which are inconsistent with the terms and conditions of the IA and HCP.

3. Condition To and Termination Of This Declaration. This Declaration of Restrictions shall remain in full force and effect in perpetuity or until a conservation easement approved by the Service, Department, and the County is placed on the PROTECTED AREA that ensures the protection in perpetuity of the PLAN SPECIES and their habitat from development and all other forms of habitat destruction, degradation, or disturbance.

4. No Dedication: No Rights of Public Use. The provisions of this Declaration of Restrictions do not constitute a dedication for public use.

5. Successors and Assigns Bound. The Declarant hereby agrees and acknowledges that the PROTECTED AREA shall be held, sold, conveyed, owned, and used subject to the terms of this Declaration of Restrictions relating to the PROTECTED AREA, and matters

incidental thereto. Such terms, conditions, and obligations are a burden and restrict the use of the PROTECTED AREA, as applicable and are for the benefit of the BENEFITTED PROPERTY.

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6. Enforcement. The provisions of this Declaration of Restrictions shall be enforced as covenants and restrictions running with the land, and shall be binding upon the Declarant and upon each and all of the Declarant's respective heirs, successors and assignees, and upon future owners of the PROTECTED AREA and each of them in perpetuity, and shall benefit the BENEFITTED PROPERTY, the people of the County of Santa Cruz, the people of the State of California, and the people of the United States. Any conveyance, contract or authorization (whether written or oral) by Declarant or its successors in interest which would permit use of the PROTECTED AREA contrary to the terms of this Declaration shall be a breach of this Declaration. The United States, including but not limited to the U.S. Fish and Wildlife Service, the State of California including but not limited to the California Department of Fish and Game, and the County of Santa Cruz shall have the right to enforce each of the terms of this Declaration by bringing an action by administrative or judicial proceeding. Declarant understands and agrees that the enforcement proceedings provided in this paragraph are not exclusive and that the Service, the Department and the County may pursue any appropriate legal and equitable remedies.

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Declaration, the prevailing Party to the litigation shall recover its attorneys' fees and costs against the party in breach of the terms and conditions of this Declaration, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable Federal law.

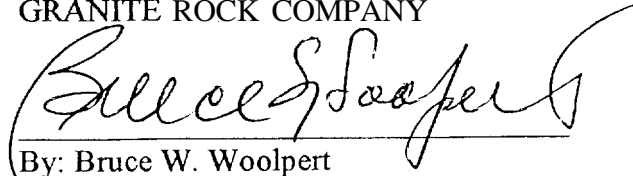
7. Management and Funding. The IA, HCP and Mining Reclamation Plan contain management obligations for the PROTECTED AREA which are to occur in perpetuity. Obligations to manage the PROTECTED AREA as described in the IA shall be binding upon the Declarant and upon each and all of the Declarant's heirs, successors and assigns, and upon future owners of the PROTECTED AREA. Funding described in the IA adequate to conduct management measures shall be borne by the Declarant and by the Declarant's heirs, successors and assigns, and by future owners of the PROTECTED AREA.

8. Recordation of Documents. This Declaration shall be duly recorded in the Office of the County Recorder. In the event that under the terms and conditions of this document, or any subsequent mutual written agreement, these restrictions are terminated with respect to all or any part of the PROTECTED AREA, the County shall, upon written request, execute and record with the County Recorder any documents necessary to evidence such termination.

9. Construction of Validity/Severability. If any provision of these restrictions shall be held to be invalid, or for any reason become unenforceable, no other provision shall be thereby affected or impaired, but rather shall be deemed severable.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this
day 7 of August 1998. 401

GRANITE ROCK COMPANY



By: Bruce W. Woolpert
President, Granite Rock Company

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5007

State of CALIFORNIA

County of SANTA CRUZ

On August 10, 1998 before me, Carol Ilse, Notary Public

personally appeared BRUCE W. WOOLPERT

[X] personally known to me - OR - [] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature of Carol L. Ilse]

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- [] INDIVIDUAL
[] CORPORATE OFFICER

- [] PARTNER(S) [] LIMITED GENERAL

- [] ATTORNEY-IN-FACT
[] TRUSTEE(S)
[] GUARDIAN/CONSERVATOR
[] OTHER:

SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Declaration of Restrictions

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

8-17-98
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE