



County of Santa Cruz

PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

Agenda Date: January 12, 1999

December 21, 1998

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

Subject: Unanticipated Revenue Related to Biotic Monitoring at Quail Hollow Quarry

Members of the Board:

On July 31st, 1997, the Board Chairperson executed the Implementation Agreement for the Habitat Conservation Plan which had been prepared in satisfaction of a condition of approval to allow Graniterock Company to enter Areas B and C of the Current Mining Area at Quail Hollow Quarry. The Implementation Agreement defines the roles and responsibilities of various parties relative to the requirements of the Habitat Conservation Plan, approved by the U.S. Fish and Wildlife Service.

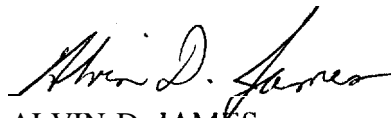
One of the provisions of the Implementing Agreement requires that Graniterock Company pay the County \$6,000 annually, adjusted for inflation, to cover the costs of monitoring the status of the endangered species protected through the Habitat Conservation Plan. The Implementation Agreement is included with this letter as Attachment 1. The requirement for the \$6,000 payment may be found in Section 10.1.b of that document. The Planning Department will use these funds to contract with a qualified consulting biologist to conduct the monitoring and prepare a report for submission to the U.S. Fish and Wildlife Service.

Because the approval authorizing Graniterock Company to enter Areas B and C of the Current Mining Area occurred at the same time that Mining Approval/Certificate of Compliance was being developed to allow for an expansion of mining activities into the Future Mining Area, the U.S. Fish and Wildlife Service allowed the first of these \$6,000 annual payments to be delayed until late 1998. Graniterock Company has recently made this payment to the Planning Department and this revenue was not included in our fiscal year 1998/99 budget request. Therefore, approval by your Board is necessary in order to accept this unanticipated revenue. A Resolution Accepting and Appropriating

Unanticipated Revenue has been prepared and is included for your consideration as Attachment 2.

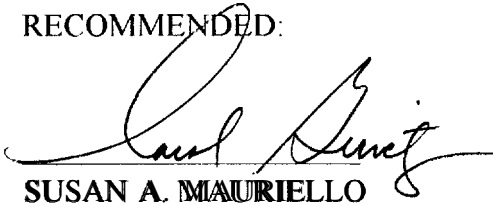
It is therefore RECOMMENDED that your Board adopt the Resolution Accepting and Appropriating Unanticipated Revenue (Attachment 2) in the amount of \$6,000 from Graniterock Company for the purpose of conducting required biotic monitoring at Quail Hollow Quarry.

Sincerely,



ALVIN D. JAMES
Planning Director

RECOMMENDED:


for SUSAN A. MAURIELLO

Attachments: 1. Habitat Conservation Plan Implementing Agreement
 2. Resolution Accepting and Appropriating Unanticipated Revenue

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IMPLEMENTING AGREEMENT**GRANITEROCK COMPANY****QUAIL HOLLOW QUARRY****HABITAT CONSERVATION PLAN**

This Implementing Agreement ("Agreement") made and entered into as of the 31st day of July, 1997 by and among Graniterock Company, the US. Fish And Wildlife Service (Service), the California Department Of Fish And Game (CDFG), and the County of Santa Cruz (County) hereinafter collectively called the "Parties," defines the Parties' roles and responsibilities and provides a common understanding of action that will be undertaken to minimize and mitigate the effects on the subject listed species and their habitats of the proposed Quail Hollow Quarry mining operations in Santa Cruz County, California.

1.0 RECITALS

This Agreement is entered into with regard to the following facts:

WHEREAS, the Mount Hermon June beetle (*Polyphylla barbata*) and the Zayante band-winged grasshopper (*Trimerotropis infantilis*), were listed as endangered species in the *Federal Register* on January 24, 1997, effective February 24, 1997, pursuant to the provisions of the Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended (ESA); and,

WHEREAS, the Ben Lomond wallflower (*Erysimum teretifolium*) and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) were listed as endangered species in the *Federal Register* on February 4, 1994, effective March 7, 1994; and,

WHEREAS, the proposed Quail Hollow Quarry site has been determined to be habitat for the federally listed Mount Hermon June beetle, Zayante band-winged grasshopper, Ben Lomond spineflower, and the federal and state listed (pursuant to the California Endangered Species Act, as amended (CESA), Fish & Game Code §2050 et seq.) Ben Lomond wallflower, (collectively referred to as "Plan Species"); and,

WHEREAS, Graniterock, with technical assistance from the Service and the CDFG, has developed a series of measures, described in the Habitat Conservation Plan, to minimize and mitigate the effects of the proposed Quail Hollow Quarry upon the subject listed species and their associated habitats;

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THEREFORE. for and in consideration of the mutual covenants and conditions contained herein, the Parties hereto do hereby understand and agree as follows:

2.0 HABITAT CONSERVATION PLAN

- 2.1** Pursuant to the provisions of section 10(a)(1)(B) of the ESA, a Habitat Conservation Plan (HCP) has been prepared and submitted to the Service by Graniterock with a request that the Service issue Graniterock a Permit to allow Plan Species to be incidentally taken, as that term is defined in the ESA, on the project site as described and depicted in the HCP. The HCP also proposes a program of conservation for Plan Species and their habitat through the:
- a. Establishment, by means of a conservation easement in perpetuity, of 3.7 acres of habitat set asides on the North and West Ridges;
 - b. Establishment through County purchase at fair market value of a 32.6-acre publicly-owned habitat preserve on the South Ridge, to be preserved in perpetuity;
 - c. Restoration and enhancement of 5 acres of disturbed sand parkland and 5.2 acres of disturbed maritime chaparral on the project site;
 - d. Written agreement of Graniterock, approved by the County, the Service and CDFG, to protect in perpetuity from any and all disturbance all areas of the project site (other than the current and future mining areas, the stockpile and overburden areas, and the existing access road) containing Plan Species, State listed species, and County defined, rare, endangered or threatened species or sensitive habitats;
 - e. Revegetation of mined areas with the goal of establishing a self-sustaining plant community of native indigenous species that include and support Plan Species; and
 - f. Long-term funding to manage and protect the habitat in perpetuity, and to monitor Plan Species.
- 2.2** The Section 10(a)(1)(B) permit will also 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 authorized individuals authorized under this HCP shall handle Mount Hermon June Beetles or Zayante band-winged grasshoppers. The names and credentials of biologists who will handle Mount Hermon June Beetles or Zayante band-winged

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grasshoppers shall be submitted to the Service for its review and approval in writing, at least 15 days prior to the onset of the activities which they are being authorized to conduct.

3.0 INCORPORATION OF HCP

The HCP and each of its terms are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the HCP shall be interpreted to be supplementary to each other.

4.0 LEGAL REQUIREMENTS

In order to fulfill the requirements which will allow the Service to issue the Permit, the HCP provides measures that are intended to assure that any take occurring within the project site will be incidental; that the impacts of the take will, to the maximum extent practicable, be minimized and mitigated; that procedures to deal with unforeseen circumstances will be provided; that adequate funding for the HCP will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of Plan Species in the wild. The HCP also includes measures that the Service has proposed as necessary or appropriate to achieve the purposes of the HCP. As used throughout this Agreement, the term "unforeseen circumstances" means any significant, unanticipated adverse change in the status of species addressed under the HCP or in their habitats; or any significant, unanticipated adverse change in impacts of the project or in other factors upon which the HCP is based.

5.0 COOPERATIVE EFFORT

In order that each of the legal requirements as set forth in Paragraph 4.0 hereof are fulfilled, each Party to this Agreement must perform certain specific tasks as set forth in the HCP. The HCP thus describes a cooperative program by Federal, State and local agencies and private interests to conserve the Plan Species.

6.0 PURPOSES

The purposes of this Agreement are:

- 6.1** To ensure the implementation of each of the terms of the HCP;
- 6.2** As stated in paragraph 13.3.a. hereof, to provide assurances to Graniterock that as long as the terms of the HCP and the Permit issued pursuant to the HCP and this

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Agreement are fully and faithfully performed, no additional mitigation will be required except as provided for in this Agreement or required by law; and

- 6.3 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities and tasks as set forth in this Agreement.

7.0 DEFINITIONS

Terms defined and utilized in the HCP and the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

8.0 TERM

- 8.1 Stated Term. This Agreement shall become effective on the date that the Service issues the Permit requested in the HCP for the current mining area and shall initially remain in full force and effect for a period of 3 years or until termination of the Permit, whichever occurs sooner. The Parties acknowledge that the HCP and this Agreement are intended to be used as the basis for an amendment to the Permit to cover the future mining area, and acknowledge that, in response to future environmental and public review, amendments to the HCP and this Agreement may be required to support such Permit amendment. The Parties intend that the amended Permit would remain in full force and effect for a period of 100 years or until termination of the Permit, whichever occurs sooner.
- 8.2 Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Plan Species have been incidentally taken and their habitat modified within the project site, the take and habitat modification will be permanent. The Parties, therefore, agree that the provisions of the HCP and of this Agreement regarding the establishment and maintenance of habitat for the Plan Species shall likewise, to the extent permitted by law, be permanent and extend beyond the term of this Agreement.

9.0 OBLIGATIONS OF THE PARTIES

9.1 MINIMIZATION AND MONITORING OF THE IMPACTS OF INCIDENTAL TAKE

In order to minimize and monitor the impacts of incidental take on the project site, the Parties agree that they shall undertake the following tasks, responsibilities, and obligations:

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- a. Graniterock shall:
 - i. At the time that it receives authorization from the County to commence mining in areas B and/or C of the current mining area, and prior to habitat disturbance:
 - (A) Grant a conservation easement in perpetuity to the County, prior to habitat disturbance, for the 11.1 acre North Ridge Habitat Set Aside;
 - (B) Provide 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, and replacing fences and signs as necessary to prevent illegal trespass; and
 - (C) Implement 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 of the HCP.
 - ii. After receiving authorization from the County to commence mining in areas B and/or C of the current mining area:
 - (A) 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 of Santa Cruz, the Service, and CDFG; and
 - (B) Revegetate slopes within the current mining area with the goal of reestablishing habitat for Plan Species.
 - iii. Subject to future environmental review, at the time it receives authorization to commence mining in the future mining area, and prior to habitat disturbance within the future mining area:
 - (A) Grant a conservation easement in perpetuity to the County for the 20.6 acre West Ridge Habitat Set Aside and provide for protection and long-term management of the area;

- (B) Provide funding for and carry out long-term management (as specified in Chapters 3 and 4 of the HCP) 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 prior to July 1, 1998;
 - (C) 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 of the HCP; and
 - (D) Provide written agreement to protect in perpetuity from any disturbance all areas of the project site (except for areas within the current and future mining areas, the overburden and stockpile areas, and existing access road, as shown on Map 2 of the HCP) which contain Plan Species, State listed species, and County defined, rare, endangered or threatened species and sensitive habitats.
- iv. Subject to future environmental review, after receiving authorization to commence mining in the future mining area:
- (A) 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 3 1.7 acre North and West Ridge habitat set asides; and
 - (B) Revegetate slopes within the future mining area with the goal of reestablishing habitat for Plan Species.
- v. Provide security and patrolling on the North and West Ridges. Because these set asides will be closed to public access, the primary role of Graniterock will be to assure that illegal access is not occurring. Graniterock will replace fences and signs as necessary to prevent illegal trespass.

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- b. The Service shall:
 - i. Conduct periodic compliance inspections and review of the activities being carried out by Graniterock;
 - iii. Provide review and comments on the revegetation plan for the future mining area and on the enhancement plans required by the approvals for the current and future mining areas; and
 - iv. Provide review and comments on annual reports.
- c. CDFG shall:
 - i. Conduct periodic compliance inspections and review of the activities being carried out by Graniterock;
 - ii. Provide review and comments on the revegetation plan for the future mining area and on the enhancement plans required by the approvals for the current and future mining areas; and
 - iii. Provide review and comments on annual reports.
- d. The County of Santa Cruz shall:
 - i. Purchase the South Ridge at the agreed upon price.
 - ii. Provide, or designate another entity approved by the Service and CDFG to provide, protection and management of the South Ridge, including patrolling the South Ridge area. The public will be allowed limited access for hiking and horse back riding on designated trails. Since the South Ridge is the most heavily used by local equestrians, this area will be monitored to determine if a combination of public education, strategically located fences, and signing prevent damage to habitat adjacent to trails. If the monitoring shows that damage is continuing to occur then the South Ridge will be closed to public use.
- e. The County of Santa Cruz or its designee shall:
 - i. Using funds provided by Graniterock, monitor the Plan Species to assess the effectiveness of the Mitigation Program as follows:

- (A) **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 black lights, 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. Document observed individuals noting habitat preferences and behavior.
- (B) **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 established 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.
- (C) **Ben Lomond Wallflower and Ben Lomond Spineflower.** 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 cause of the declining populations will be made, if possible.

- ii. Report annually to the Service and CDFG regarding Graniterock's compliance with the mitigation requirements of the HCP. The report will include a discussion of the following elements:
 - (A) Status and condition of the three habitat set asides. Since the primary mitigation for the project is the establishment and protection of the three habitat set asides, 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 existing trails on the South Ridge. Dogs and other pets will not be allowed.
 - (B) Exotic pest plant control. The annual report will provide an accounting of all exotic pest plant species control work conducted in the three habitat set asides.
 - (C) Monitoring of Plan Species to assess the effectiveness of the Mitigation Program as provided in paragraph 9.1 .e.i., and protection of habitat as provided in paragraphs 9.1 .a.v. and 9.1 .d.ii.

9.2 MITIGATION OF IMPACTS OF INCIDENTAL TAKE

- a. In order to mitigate the impacts of incidental take Graniterock shall undertake and fulfill the following responsibilities and obligations for mining operations in both the current and future mining areas:

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;

- ii. 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;
 - iii. 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 regularly from natural habitat areas throughout the property with particular attention being given to the three habitat set asides;
 - iv. Fire may have a deleterious impact upon less sheltered species (June beetle and grasshopper). Use of controlled fire as a vegetation management technique may benefit all native taxa on-site, provided that it is timed to coincide with natural wildfire regimes (usually late fall and winter). Under no circumstance shall controlled burning be permitted or encouraged during the spring and summer months; and
 - v. Limit human use of habitat set asides to existing trails and clearings, and not permitted to extend into heretofore relatively undisturbed portions of the site. Signs will be posted to educate the users as to the sensitivity of the habitat. 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 in the habitat set asides.
- b. In addition, subject to future environmental review, Graniterock shall carry out the following additional measure for the future mining area only:

Graniterock shall not remove vegetation from those portions of the future mining area that contain sand parkland, maritime chaparral, or scrub communities during the months of June, July and August, in order to avoid disruption of the adult flight seasons of the Mount Hermon June beetle and the Zayante band-winged grasshopper. If Graniterock must remove vegetation during this time, it shall consult with the Service and CDFG before commencing the activity.

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10.0 FUNDING OF THE HCP**10.1** Graniterock shall:

- a. Provide such funds as may be necessary to carry out the conservation measures for which it is responsible in accordance with the terms and conditions of Chapters 3 and 4 of the HCP and paragraph 9.0 of this Agreement. Graniterock shall notify the Service if its funding resources have materially changed, including a discussion of the nature of the change.
- b. Pay the County a sum of \$6000 annually (adjusted for inflation) to cover the costs for monitoring and reporting.
- c. Prior to habitat disturbance, ensure that funding is available to meet its obligations under this Agreement, the Permit and the HCP through the establishment of an account solely designated for this purpose. 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 meets 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).

10.2 The Service shall include in annual budget requests sufficient funds to fulfill its obligations under the HCP and its statutory requirements to protect Plan Species.

10.3 The County of Santa Cruz shall purchase the South Ridge at the agreed upon price by July 1, 1998 and use funds provided by Graniterock solely to provide enhancement of the South Ridge as applicable, monitor Plan Species, and provide an annual report of activities to the Service and CDFG.

11.0 ENVIRONMENTAL REVIEW

- 11.1 Issuance of a mining approval to conduct mining activities at Quail Hollow Quarry is an action subject to review under the California Environmental Quality Act (CEQA). The County of Santa Cruz issued a mining approval to Graniterock in 1993 to conduct mining activities in the current mining area. An Environmental Impact Report, which was prepared and certified by the County in 1993, pursuant to CEQA, analyzed the impacts of mining operations in the current mining area. The County of Santa Cruz is preparing an Environmental Impact Report which will address impacts of the proposed mining activities in the future mining area.
- 11.2 Issuance of a section 10(a) permit to Graniterock by the Service is an action subject to the National Environmental Policy Act (NEPA). The Service is the lead agency under NEPA and has prepared an Environmental Assessment addressing the project section 10(a)(1)(B) permit and accompanying HCP.

12.0 ISSUANCE OF THE PERMIT

12.1 FINDINGS

Upon finding after opportunity for public comment with respect to the Permit application and the HCP that:

a. INCIDENTAL TAKE

Any permitted taking of the Plan Species will be incidental to the carrying out of otherwise lawful activities; and,

b. MINIMIZE AND MITIGATE

The HCP and this Agreement will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; and,

c. ADEQUATE FUNDING

The funding sources identified and provided for herein will ensure that adequate funding for the HCP will be provided; and,

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d. NO LIKELY JEOPARDY

Any permitted taking of Plan Species will not appreciably reduce the likelihood of the survival and recovery of these species in the wild; and,

e. OTHER MEASURES

Any other measures set forth in the HCP and required by the Service as being necessary or appropriate for the purposes of the HCP (including any measures determined by the Parties to be necessary to deal with unforeseen circumstances) will be fulfilled; the Service shall issue a Permit to Graniterock allowing incidental take of Plan Species. Such Permit shall be issued concurrently with the execution of this Agreement by the Parties, and it is specifically agreed that this Agreement shall not become effective nor binding upon the Parties hereto until and unless the Permit has been issued.

12.2 ISSUANCE AND MONITORING

After issuance of the Permit, the Service shall monitor the implementation thereof, including each of the terms of this Agreement and the HCP, including, but not limited to the management, maintenance, and monitoring of the conservation easements in order to ensure compliance with the Permit, the HCP and this Agreement. In addition, the Service shall to the maximum extent possible, ensure the availability of its staff to cooperate with and provide technical and research assistance to the Parties.

13.0 REMEDIES AND ENFORCEMENT

13.1 REMEDIES IN GENERAL

Except as set forth hereinafter, each Party hereto shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Permit and to seek remedies and compensation for any breach hereof, consistent with and subject to the following:

a. NO MONETARY DAMAGES

None of the Parties shall be liable in damages to the other Parties or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this

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Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

i. Retain Liability

Each Party shall retain whatever liability it would possess for its present and future acts or failure to act without existence of this Agreement.

ii. Land Owner Liability

Each Party shall retain whatever liability it possesses as an owner of interests in land.

iii. Responsibility of the United States

Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA.

b. INJUNCTIVE AND TEMPORARY RELIEF

The Parties acknowledge that the Plan Species are unique and that their loss as species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

13.2 THE PERMIT

a. PERMIT SUSPENSION OR REVOCATION

i. Suspension

In the event of any significant violation or breach of the Permit or this Agreement, the Service may suspend or revoke the Permit in conformance with the provisions of 50 CFR sections 13.27 through 13.29, as the same exists as of the date hereof; however, except where the Service determines that emergency action is necessary to protect Plan Species, it would not suspend the Permit without first:

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- (A) Requesting Graniterock to take appropriate remedial, enforcement, or management actions; and
- (B) Providing Graniterock notice in writing of the facts or conduct which may warrant the suspension and an opportunity for Graniterock to demonstrate or achieve compliance with the ESA, regulations issued thereunder, the Permit, and this Agreement.

ii. Reinstatement

In the event the Permit is suspended, as soon as possible, but no later than ten (10) working days after any suspension, the Service shall consult with Graniterock concerning actions to be taken to effectively redress the violation or breach that necessitated the suspension. At the conclusion of any such consultation, the Service shall make a determination of the actions necessary to effectively redress the violation or breach. In making this determination the Service shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of Plan Species, the terms of the Permit and of this Agreement, and any comments or recommendations received during the consultations. As soon as possible, but not later than (30) days after the conclusion of the consultations, the Service shall transmit to Graniterock written notice of the actions necessary to effectively redress the violation or breach. Upon full performance of the necessary actions specified by the Service in its written notice, the Service shall immediately reinstate the Permit. It is the intent of the Parties hereto that in the event of any suspension of the Permit all Parties shall act expeditiously to cooperate to rescind any suspension to carry out the objective of this Agreement.

iii. Revocation

- (A) The Service agrees that it will revoke the Permit for violation of the Permit or breach of this Agreement only if the Service determines that:
 - (1) Such violation cannot be effectively redressed by other remedies or enforcement action; and,

- (2) Revocation is required to fulfill a responsibility of the Service under the ESA or regulations issued thereunder.
- (B) The Service agrees that it will not revoke the Permit without first:
 - (1) Requesting Graniterock to take appropriate remedial action; and,
 - (2) Providing Graniterock notice in writing of the facts or conduct which may warrant the revocation, and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, regulations issued thereunder, the Permit, and this Agreement.

13.3 LIMITATIONS AND EXTENT OF ENFORCEABILITY

a. NO FURTHER MITIGATION FOR PROJECT SITE

It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties hereto with respect to the HCP and to provide for the conservation of Plan Species and the mitigation and compensatory measures required in connection with incidental taking of these species in the course of otherwise lawful activities within the project site. Accordingly, subject to the availability of appropriated funds as provided in Paragraph 14.8 hereof, and except as otherwise required by law and/or provided under the terms of the HCP, no further mitigation for the effects of the proposed project on the Plan Species may be required from Graniterock if it has otherwise abided by the terms of the HCP, except in the event of unforeseen circumstances; provided that any such additional mitigation may not require additional land use restrictions or financial compensation from Graniterock without its written consent.

b. PRIVATE PROPERTY RIGHTS AND LEGAL AUTHORITIES UNAFFECTED

Except as otherwise specifically provided in this Agreement, nothing herein contained shall be deemed to restrict the rights of Graniterock to manage the use of and exercise all of the incidents of land ownership over those lands and interests in lands constituting the project site subject to such other limitations as may apply to such rights under the Constitution and laws of the United States, the State of California, and the County of Santa Cruz. Furthermore, nothing herein contained is intended to limit the

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authority or responsibility of the United States government to invoke penalties or otherwise fulfill its responsibilities under the ESA.

14.0 MISCELLANEOUS PROVISIONS

14.1 AMENDMENTS

a. AMENDMENTS TO THE IMPLEMENTATION AGREEMENT

Except as otherwise set forth herein, this Agreement may be amended only with the written consent of each of the Parties hereto.

b. AMENDMENTS TO THE HCP

Material changes to the HCP proposed by Graniterock after the effective date of the Permit shall be processed by the Service as an amendment to the Permit in accordance with the ESA and permit regulations at 50 CFR Parts 13 and 17 and shall be subject to appropriate environmental review.

14.2 NO PARTNERSHIP

Except as otherwise expressly set forth herein neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.3 SUCCESSORS AND ASSIGNS

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

14.4 NOTICE

Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Party in writing:

Deputy Regional Director
United States Fish and Wildlife Service
Region 1, Eastside Federal Complex
9 11 Northeast Eleventh Avenue
Portland, Oregon 97232-4 18 1

Planning Director
County of Santa Cruz
Planning Department
70 1 Ocean Street
Santa Cruz, CA 95061

July 29, 1997

Steve Woolpert, President
Graniterock Company
P.O. Box 50001
Watsonville, CA 95077-5001

Regional Manager, Region 3
California Department of
Fish & Game
P.O. Box 47
Yountville, CA 94599

14.5 ENTIRE AGREEMENT

This Agreement, together with the HCP and the Permit, constitutes the entire Agreement among the Parties. It supersedes any and all other Agreements, either oral or in writing among the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party of anyone acting on behalf of the other Party is not embodied herein. Notwithstanding the foregoing, this section shall not affect the validity of the CESA Memorandum of Understanding (MOU) entered into by CDFG and Graniterock regarding Quail Hollow Quarry; provided that, in the event of any direct contradiction between the terms of this Agreement and the MOU, the terms of this Agreement shall control.

14.6 ATTORNEYS' FEES

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable Federal law.

14.7 ELECTED OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.8 AVAILABILITY OF FUNDS

Implementation of this Agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

July 29, 1997

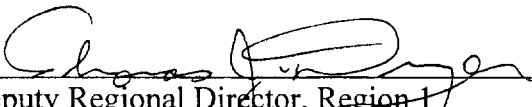
14.9 DUPLICATE ORIGINALS

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

14.10 THIRD PARTY BENEFICIARIES

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement shall not create the public or any member thereof as a third Party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed by general law.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY 
Deputy Regional Director, Region 1
United States Fish and Wildlife Service

Date 8/1/97

BY _____
Regional Manager, Region 3
California Department of Fish & Game

Date _____

BY _____
President
Graniterock Company

Date _____

BY _____
Chairman, Board of Supervisors
County of Santa Cruz

Date _____

July 29, 1997

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BY _____ Date _____
Deputy Regional Director, Region 1
United States Fish and Wildlife Service

BY Brian Hunt Date 8-1-97
Regional Manager, Region 3
California Department of Fish & Game
Approved as to legal form and sufficiency
Craig Manson
CRAIG MANSON, General Counsel

BY _____ Date _____
President
Graniterock Company

BY _____ Date _____
Chairman, Board of Supervisors
County of Santa Cruz

July 29, 1997

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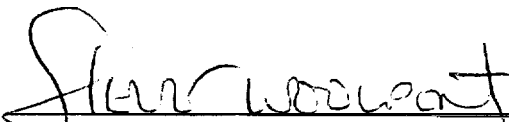
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BY _____ Date _____
Deputy Regional Director, Region 1
United States Fish and Wildlife Service

BY _____ Date _____
Regional Manager, Region 3
California Department of Fish & Game

BY  _____ Date 7/31/97
President, LAND DIVISION
Graniterock Company

BY _____ Date _____
Chairman, Board of Supervisors
County of Santa Cruz

July 29, 1997

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IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY _____ Date _____
Deputy Regional Director, Region 1
United States Fish and Wildlife Service

BY _____ Date _____
Regional Manager, Region 3
California Department of Fish & Game

BY _____ Date _____
President
Graniterock Company

BY Mari Wounhoudt Date 7/31/97
Chairman, Board of Supervisors
County of Santa Cruz

July 29, 1997



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

ATTACHMENT 1

3-201
(10 86)

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

.Graniterock Company
411 Walker Street
Watsonville, CA 95077

FISH AND WILDLIFE SERVICE

AUG 11 1997

RECEIVED
VENTURA, CA

2. AUTHORITY-STATUTES

16 USC 1539(a) 835

REGULATIONS (Attached)

50 CFR 13
50 CFR 17.22

3. NUMBER

PRT-830417

4. RENEWABLE

☒ YES

☐ NO

5. MAY COPY

☒ YES

☐ NO

6. EFFECTIVE

8/1/1997

7. EXPIRES

8/1/2000

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

Jim West

9. TYPE OF PERMIT

Endangered/Threatened Species

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Quail Hollow Quarry, Santa Cruz County, California (See Permit Condition F)

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13. AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. Further conditions of authorization are contained in the attached Permit Conditions.



ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON REVERSE ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

Charles J. [Signature]
ORIGINAL

TITLE

Deputy Regional Director

DATE

8/1/97

U.S. FISH AND WILDLIFE SERVICE, PORTLAND, OREGON
PERMIT CONDITIONS FOR PRT-830417

- D. All sections of Title 50 *Code of Federal Regulations*, parts 13 and 17.22 are conditions of this permit (copies attached).
- E. The authorization granted by this permit is subject to compliance with, and implementation of, the Habitat Conservation Plan (HCP) for the Quail Hollow Quarry, and the executed Implementing Agreement, both of which are hereby incorporated into the permit.
- F. Take associated with mining activities is authorized only within areas B and C of the current mining area, as depicted and described in the Quail Hollow HCP.
- G. The permittee and agents designated by the permittee are authorized to take (e.g. kill, harm, harass) the endangered Mount Hermon June Beetle (*Polyphylla barbata*), Zayante Band-winged Grasshopper (*Trimerotropis infantilis*), Ben Lomond Wallflower (*Erysimum teretifolium*), and Ben Lomond Spineflower (*Chorizanthe pungens* var. *hartwegiana*) to the extent that take of these species would otherwise be prohibited under section 9 of the Endangered Species Act of 1973 (as amended) and its implementing regulations. Take must be incidental to otherwise lawful activities associated with sand mining operations, and with implementing the minimizing and mitigating measures described in the Quail Hollow HCP, and as conditioned herein.
- H. With regard to monitoring and enforcement:
1. This incidental take permit also authorizes 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 and Zayante band-winged Grasshoppers. The names and credentials of biologists who will handle Mount Hermon June Beetles or Zayante band-winged Grasshoppers shall be submitted in writing, at least 15 days prior to the onset of monitoring activities, to the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California 93003, telephone 805-644-1766) for its review and approval.
 2. The permittee must ensure that Service personnel are given appropriate access (as defined under 50 CFR 13.2 l(e)(2)) to monitor the species subject to incidental take within the planning area of the Quail Hollow HCP in perpetuity.
 3. Within 1 working day of finding dead, injured, or sick endangered or threatened wildlife species, the permittee or its designated agents must orally notify the Service's Ventura Fish and Wildlife Office. Written notification to the Ventura Fish and Wildlife Office must be made within 5 calendar days and must include the date, time, and location of the specimen and any other pertinent information.

PERMIT CONDITIONS FOR PRT-8304 17, cont'd.

- I. An annual report shall be prepared as described in the Quail Hollow HCP and Implementing Agreement. This report shall be submitted to the Service by August 1 of each year that the permit is in effect, beginning in 1998. One copy of the annual report shall be submitted to the Field Supervisor of the Ventura Field Office, and one copy shall be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, Oregon 97232.
- J. A copy of this permit must be in the possession of the permittee and designated agents while conducting taking activities. Please refer to the permit number in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Ventura Fish and Wildlife Office.

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. _____

On the motion of Supervisor _____
duly seconded by Supervisor _____
the following Resolution is adopted:

RESOLUTION ACCEPTING UNANTICIPATED REVENUE

WHEREAS, the County OF Santa Cruz is a recipient of funds from the Graniterock Company for required biotic monitoring at Quail Hollow Quarry; and

WHEREAS, the County is a recipient of funds in the amount of \$6,000 which are either in excess of those anticipated or are not specifically set forth in the current fiscal year budget of the County; and

WHEREAS, pursuant to Government Code Section 29130(c)/29064(b), such funds may be made available for specific appropriation by a four-fifths vote of the Board of Supervisors;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Auditor-Controller accept funds in the amount of \$6,000 into

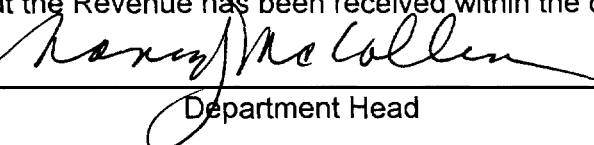
Department: Planning

<u>T/C</u>	<u>Index Number</u>	<u>Revenue Sub-Object Number</u>	<u>UCD</u>	<u>Account Name</u>	<u>Amount</u>
001	542100	2384		Other Revenue	\$6,000

and that such funds be and are hereby appropriated as follows:

<u>T/C</u>	<u>Index Number</u>	<u>Expenditure Sub-Object Number</u>	<u>UCD</u>	<u>Account Name</u>	<u>Amount</u>
021	542100	3665		Prof & Spec Services	\$6,000

DEPARTMENT HEAD -- I hereby certify that the fiscal provisions have been researched and that the Revenue has been received within the current fiscal year.

By  Date 12/10/98
Department Head

339

COUNTY. ADMINISTRATIVE OFFICER

☒ Recommended to Board☐ Not Recommended to Board

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,
State of California, this _____ day of _____ 19_____
by the following vote (requires four-fifths vote for approval):

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

Chairperson of the Board

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:


County Counsel

APPROVED, AS TO ACCOUNTING DETAIL:

 1/4/99
Auditor-Controller

Distribution:

Auditor-Controller
County Council
County Administrative Officer
Originating Department