

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA, 93710



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2020-020-04
Graniterock

Graniterock A.R. Wilson Quarry Project at South Canyon in San Benito County

INTRODUCTION

On December 13, 2022, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2020-020-04 (ITP) to Graniterock (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) (collectively, the Covered Species) associated with and incidental to the Graniterock A.R. Wilson Quarry Project at South Canyon in San Benito County, California (Project). The Project as described in the ITP originally issued by CDFW includes two discrete elements: 1) the placement of approximately 4.4 million cubic yards of soil and sedimentary rock (overburden), removed from the A.R. Wilson Graniterock Quarry, within a 36.87-acre portion of the South Canyon portion of the Brigantino property (Project Overburden Site) and 2) habitat restoration and enhancement activities within an 86-acre off-site property (Mitigation Site) associated with compensatory mitigation required for the Lake and Streambed Alteration Agreement (Notification No. 1600-2018-0129-R4) issued by CDFW to Permittee. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

Permittee originally proposed to permanently protect and perpetually manage the Mitigation Site, included as an element of the Project, to compensate for the impacts resulting from overburden placement activities within the Project Overburden Site and to serve as the Habitat Management (HM) Lands pursuant to Condition of Approval 9 of the ITP. As an element of the Project, Permittee sought to construct a pond within the Mitigation Site to serve as Covered Species breeding habitat. On September 8, 2023, Permittee requested that the Project Description be modified to reflect a change to the proposed mitigation strategy; Permittee no longer proposes the 86-acre Mitigation Site to compensate for the ITP-related impacts resulting from the Project. Therefore, construction of a pond at the Mitigation Site is no longer part of the Project. Alternatively, Permittee proposes to purchase Covered Species upland habitat conservation bank credits from the Sparling Ranch Conservation Bank to fulfill its mitigation obligation, an option included in the ITP under Condition of Approval 9.1. However, this ITP does describe impacts related to mitigation required for the Lake and

Streambed Alteration Agreement (LSAA) which would occur within approximately 1.98 acres of the 86-acre off-site parcel (formerly, "Mitigation Site"; hereafter, "LSAA Mitigation Site"). In addition, Permittee requested that Conditions of Approval 8.1, 8.2, and 8.3 exclude eucalyptus groves within the Project Overburden Site and requested minor clarifications and corrections to the Project Description.

This Major Amendment No. 1 (Amendment No. 1) makes the following changes to the existing ITP:

First, Amendment No. 1 removes Permittee's proposal to permanently protect and perpetually manage the LSAA Mitigation Site to serve as the HM Lands pursuant to Condition of Approval 9.

Second, Amendment No. 1 removes the Project activities associated with topsoil removal and stockpiling at the Project Overburden Site.

Third, Amendment No. 1 removes the Project activities associated with the construction of a pond at the LSAA Mitigation Site.

Fourth, Amendment No. 1 modifies the Project Description to reflect the updated locations of all restoration activities at the LSAA Mitigation Site.

Fifth, Amendment No. 1 recalculates the impacts of the Project based on the revised Project Description.

Sixth, Amendment No. 1 modifies Conditions of Approval 8.2 and 8.3 to no longer require the flagging and excavation of burrows/crevices within the eucalyptus groves at the Project Overburden Site.

Seventh, Amendment No. 1 removes Figure 4 and adds Figures 4a, 4b, and 4c.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. The Project Location, page 2, shall be amended to read:

The Graniterock A.R. Wilson Quarry Project at South Canyon (Project) is located near the City of Aromas in San Benito County (Figure 1). The Project is comprised of ~~two discrete locations~~: 1) the "Project Overburden Site" and 2) the "~~Mitigation Site~~" ***Lake and Streambed Alteration Agreement (LSAA) mitigation site (hereafter, "LSAA Mitigation Site")***. The Project Overburden Site is located immediately south of the existing Graniterock A.R. Wilson

Major Amendment No. 1
Incidental Take Permit 2081-2020-020-04
GRANITEROCK

Graniterock A.R. Wilson Quarry Project at South Canyon

Quarry, approximately 0.59 mile north of the intersection of California State Route (SR) 156 and Cannon Road, at approximately 36.869471, -121.602326 within United States Geological Survey (USGS) San Juan Bautista 7.5-minute quadrangle (Figure 2). The **LSAA** Mitigation Site is approximately 1.2 miles northeast of the Project Overburden Site and 1 mile west of the intersection of SR129/United States Route 101 and Anzar Road at approximately 36.881825, -121.580221 within USGS Chittenden 7.5-minute quadrangle (Figure 3).

2. Paragraph 1 of the Project Description, page 2, shall be amended to read:

The Project includes two discrete elements: 1) the placement of approximately 4.4 million cubic yards of soil and sedimentary rock (overburden), removed from the A.R Wilson Graniterock Quarry, within a 36.87-acre portion of the South Canyon portion of the Brigantino property (Project Overburden Site) and 2) habitat restoration and enhancement activities within **approximately 1.98 acres of** an 86-acre off-site ~~property~~ **parcel (LSAA Mitigation Site)** associated with compensatory mitigation required for the ~~Streambed Alteration Agreement~~ **LSAA** (Notification No. 1600-2018-0129-R4, hereafter, **SAA**) issued by CDFW to Graniterock. ~~Graniterock has also proposed the Mitigation Site to compensate for the impacts resulting from the Project and to serve as the Habitat Management Lands pursuant to Condition of Approval 9 of this ITP, but CDFW has not approved the Mitigation Site to fulfill Condition of Approval 9 at this time.~~ The Project is needed because the existing, active overburden placement area for Graniterock A.R. Wilson Quarry within Muertos Canyon, located immediately north of the Project Overburden Site, is nearing capacity.

3. Paragraph 3 of the Project Description, page 2, shall be amended to read:

A boundary, consisting of wildlife exclusion fence, will be established around the perimeter of the Project Overburden Site, **with the exception of the northern boundary of the Project Overburden Site which abuts the existing overburden placement operation**, and will remain in place until reclamation activities are completed within the Project Overburden Site. The boundary will be established to: 1) delineate the edge of Project-related disturbance and prevent work ~~for~~ **from** occurring outside of the Project Overburden Site, and 2) to serve as a wildlife exclusion fence to prevent entry by wildlife during active overburden placement. The long-term exclusion fence will be established prior to the start of initial grubbing and grading and will be maintained through the life of the Project.

4. Paragraph 5 of the Project Description, page 3, shall be amended to read:

Vegetation will be removed from the Project Overburden Site in preparation for overburden placement. ~~Following vegetation removal, the top layer of soil, to a depth of approximately 1 foot, will be removed and stockpiled on site for future use in revegetation activities.~~ Heavy equipment including dozers, scrapers, and loaders will be used to conduct vegetation and topsoil removal. To facilitate movement of overburden from the adjacent Muertos Canyon to the Project Overburden Site, an existing conveyor system will be extended into the Project Overburden Site. The conveyor system will be extended systematically, using a crane and other high-lift equipment to attach framing or place foundational supports. Once extended, placement of overburden within the Project Overburden Site via the conveyor system will begin. As overburden is deposited, heavy equipment such as loaders and dozers will key in, distribute, and compact the material to solidify and stabilize the material. Throughout the life of the Project, general equipment maintenance will occur in the Project Overburden Site.

5. Paragraph 8 of the Project Description, pages 3 and 4, shall be amended to read:

Project activities within the Project Overburden Site include: grubbing and grading of the entire Project Overburden Site, installation of wildlife exclusion fencing; vegetation and tree removal; ~~topsoil removal and stockpiling;~~ extension of an existing conveyor system; depositing overburden via conveyor system; keying in, distributing, and compacting overburden; excavating retention basin and temporary drainage channels; materials and equipment staging and laydown; transporting materials and other Project-related traffic; installing perforated pipe into drainage channels that lead to retention basin; backfilling drainage channels with aggregate; and reclamation and revegetation of the Project Overburden Site following overburden placement activities. In total, the Project will occur within the entire 36.87-acre Project Overburden Site of which approximately 9.2 acres is eucalyptus grove.

6. Paragraph 9 of the Project Description, page 4, shall be amended to read:

LSAA Mitigation Site

To mitigate for impacts to streams within the Project Overburden Site and as required by the **LSAA** No. 1600-2018-0129-R4 issued by CDFW to the Permittee, habitat enhancement activities will occur ~~on portions of an approximately 86-acre~~ **at the LSAA** Mitigation Site. Initial habitat enhancement activities will consist of reestablishment, rehabilitation, and enhancement of on-

site ephemeral drainages (i.e., streams) to restore function and/or provide stabilization against erosion. In addition, to compensate for the loss of riparian habitat from the Project Overburden Site, willow and oak riparian areas will be established through installation of riparian plantings. ~~Separate from the Streambed Alteration Agreement requirements, habitat enhancement activities also include creation of potential Covered Species breeding habitat.~~ Locations of all restoration activities are depicted in Figures **4a, 4b, and 4c**.

7. Paragraph 10 of the Project Description, page 4, shall be amended to read:

At the **LSAA** Mitigation Site, the initial restoration activities will include planting of oaks, willows, other native trees, and shrubs, application of native seed mix, ~~pond construction~~, and debris removal. A temporary irrigation system would be installed to irrigate the plantings for two to three years following installation. In addition, the installation of willow trenches and willow clusters, erosion control fabric, fiber rolls, cattle exclusion fencing, and/or minor recontouring, and placement of rock materials may be utilized. These activities are anticipated to be completed within five (5) years of issuance of this ITP.

8. Paragraph 11 of the Project Description, page 4, shall be amended to read:

Access to the **LSAA** Mitigation Site will primarily occur through existing exterior gates along Anzar Road (Figure 3). Two other existing access points to the north and west may occasionally be used to minimize vehicle traffic traversing the **LSAA** Mitigation Site. Use of these alternate access points will be informed by the location of restoration activities. Existing paved, dirt, and ranch roads and routes will be used for ingress and egress into and out of the **LSAA** Mitigation Site and no improvements or modifications to existing roads are needed to facilitate access. Access to the restoration locations within the **LSAA** Mitigation Site will predominantly follow existing routes used by the current grazing operator (Figures **4a, 4b, and 4c**). Temporary protective mats will be placed at equipment crossings over streams to prevent soil compaction and erosion during implementation of the restoration activities. No grading or other modifications for access will be needed. Staging Areas for equipment and materials will be limited to along the shoulder of Anzar Road adjacent to the **LSAA** Mitigation Site (approximately 0.3628 acre), within an extant 0.09-acre developed area, and within the approximately 0.51-acre Pacific Gas & Electric Easement that parallels Anzar Road (Figure 3).

9. Paragraph 12 of the Project Description, page 5, shall be amended to read:

Reestablishment will occur in **two** segments along Ephemeral Drainages ~~1 and 3~~ (Figure **4c**) where previous disturbance and/or automotive debris (an

abandoned bus, truck chassis, and tires) are currently restricting channel flow. Reestablishment will consist of debris removal, erosional stabilization, and adjacent riparian plantings.

10. Paragraph 13 of the Project Description, page 5, shall be amended to read:

Rehabilitation will occur in segments along Ephemeral Drainages 1, 3, and 4 (Figures **4b and 4c**) where recent/ongoing erosional issues (e.g., headcuts or slumping) will be stabilized. Stabilization activities will be confined to:

1) planting of oaks, willows, or native shrubs; 2) application of native seed mix; 3) placement of erosion control fabric; 4) minor recontouring; and/or 5) use of rock material.

11. Paragraph 14 of the Project Description, page 5, shall be amended to read:

Enhancement will occur in segments along Ephemeral Drainages 1, 3, and 4 (Figures **4b and 4c**) which are currently stable, with no active erosion concerns. Enhancement activities will be confined to planting riparian oak and/or willow trees along drainages.

12. Paragraph 15 of the Project Description, page 5, shall be amended to read:

Approximately 198 coast live oak trees as well as other native trees and shrubs will be planted within 1.60~~3~~ acres along segments of Ephemeral Drainages 1, 3, and 4 (**Figures 4b and 4c**). Oak plantings will be protected with cattle exclusion fencing and irrigated until they are established as required by the LSAA. In addition, 33 willow trees will be planted within 0.13~~2~~ acre adjacent to Ephemeral Drainages 3 and 4 (**Figures 4b and 4c**). Oaks will be sourced from the Permittee's nursery and willow pole cuttings will be sourced from existing on-site trees **and/or the Permittee's nursery**.

13. The following paragraphs of the Project Description, pages 6 and 7, shall be deleted:

~~*Pond Construction*~~

~~A pond will be constructed in the Mitigation Site in an effort to promote breeding and support population reestablishment of the Covered Species. The pond will be constructed in the eastern portion of the Mitigation Site, just east of Ephemeral Drainage 5 (Figure 4). The pond will measure approximately 0.03 acre in size, 4-foot deep at its deepest point, average depth of 36 inches, and will be designed to naturally dry down annually.~~

To construct the pond, soil will be excavated using a mid-sized excavator to form a basin in a relatively flat location where it can collect sheet flow from rain events. The side slopes will be compacted and lined with bentonite to reduce soil infiltration. Subgrade compaction will be performed within the area excavated for the pond with a tamping rammer or similar walk-behind gas-powered equipment. Once the pond is excavated to the target depth, subgrade soil will be compacted prior to the installation of a bentonite layer. The bentonite sealant layer will be compacted to meet product specifications. Specific compaction requirements will be informed by product specifications and determined based on further site studies. The bentonite layer will be comprised of a mixture of native soil and bentonite chips, roughly 1-foot deep layer (roughly 44 cubic yards) which may be installed in a series of lifts. The volume of bentonite chips to be used is estimated to be between 5 and 6 cubic yards (roughly 12% by volume) which are subject to change based on site-specific recommendations from a geotechnical engineer.

A protective layer of inert material (i.e., washed granular rock, such as crushed stone) will be applied on top of the bentonite layer to protect the bentonite from cattle disturbance. The purpose of the inert material layer is to protect the bentonite sealant layer from cattle hooves while also inhibiting the growth of emergent vegetation to provide optimal conditions for CTS. The material will be placed into the pond footprint and spread into a roughly 6-inch layer on top of the bentonite sealant. Pond side slope grades will range between 2:1 and 4:1 and will be unvegetated.

The pond will be designed so that off-site hauling of excavated material from its construction will not be needed. Instead, a broad, gently sloping berm, approximately 0.11 acre in size, will be created using a mid-sized excavator along the pond's western edge to utilize the excavated material. The berm's shape and side slope will be designed to mimic the site's existing topography and minimize erosion during high-runoff events.

Minor grading using a mid-sized excavator to repair erosion rills, approximately three to six inches deep, will occur on the scarp slope within an area of approximately 0.31 acre northeast of the pond to minimize erosion and sedimentation to the pond. Any needed fine grading associated with pond construction, berm creation, or within the scarp slope will be completed using hand tools. A handheld seed spreader will be used to seed a GDFW-approved erosion-control seed mix following completion of grading activities in the following areas: the berm, the repaired scarp slope, and the other graded areas surrounding the pond resulting from pond construction. Following seeding, placement of erosion control fabric will be installed by hand and container plants will then be planted by cutting small slits in the fabric for placement.

14. Paragraph 25 of the Project Description, page 7, shall be amended to read:

Within the **LSAA** Mitigation Site, restoration activities will be conducted by a small construction crew. All work will be confined to the dry season. Work will be conducted using handheld tools such of shovels and gas-powered augers. Use of additional equipment, such as a mid size excavator, loader, tow truck, and compactor (i.e., tamping rammer or similar walk behind gas-powered equipment) will also be needed. Trucks and/or off-road utility vehicles will be used to access the site and shuttle laborers, materials, or tools to the restoration locations.

15. Paragraph 26 of the Project Description, page 7, shall be amended to read:

Project activities within the **LSAA** Mitigation Site include the planting of oaks, willows, other native trees, and shrubs; applying native seed mix; ~~excavating/constructing the pond; compacting the pond soil; creating the pond's berm; grading slopes;~~ removing debris; installing a temporary irrigation system; installing willow revetments (willow trenches/willow clusters), erosion control fabric, fiber rolls, and cattle exclusion fencing; minor recontouring; installing rock materials, and other activities.

16. The last paragraph of the Project Description, page 7, shall be amended to read:

In total, restoration activities ~~within~~**at** the **LSAA** Mitigation Site will result in ~~the permanent disturbance to 0.03 acre for creation of the pond and the temporary disturbance of 3.14~~**2.77** acres for the initial restoration activities and staging areas.

17. Paragraph 1 of Impacts of the Taking on Covered Species, pages 7 and 8, shall be amended to read:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species within the Project Overburden Site include: installing and removing wildlife exclusion fencing; removing vegetation and trees; grubbing and grading of the entire Project Overburden Site; ~~removing topsoil;~~ stockpiling; extension of an existing conveyor system; depositing overburden via conveyor system; keying in, distributing, and compacting overburden; excavating retention basin; materials and equipment staging and laydown; transporting materials and other Project-related traffic; installing perforated pipe into drainage channels; backfilling drainage channels with aggregate; reclamation and revegetation of

the Project Overburden Site following overburden placement activities; and other related activities described in the Project Description of this ITP. The activities described above expected to result in incidental take of individuals of the Covered Species within the **LSAA** Mitigation Site include: planting of oaks, willows, other native trees, and shrubs; applying native seed mix; ~~excavating/constructing the pond; compacting soil for the pond; creating the pond's berm; grading slopes;~~ removing debris; installing temporary irrigation system; installing willow revetments (willow trenches/willow clusters), erosion control fabric, fiber rolls, and cattle exclusion fencing; minor recontouring; installing rock materials; and other related activities described in the Project Description section of this ITP. Collectively, these activities are referred to as Covered Activities.

18. Paragraph 2 of Impacts of the Taking on Covered Species, page 8, shall be amended to read:

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as construction vehicle/equipment strikes and burrow collapse associated with grubbing, grading, excavating, and vegetation ~~and topsoil~~ removal; crushing or suffocation by heavy equipment or laydown of equipment and materials; and entombment from deposition of overburden over occupied burrows. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from capture of individuals in confined areas when wildlife exclusion fencing is constructed around the Project Overburden Site and when individuals of the Covered Species are salvaged, collected, and relocated or translocated out of harm's way as required by this ITP. The areas where authorized take of the Covered Species is expected to occur include: the 36.87-acre Project Overburden Site, the Work Areas within the ~~86-acre restoration~~ **LSAA** Mitigation Site, access roads and routes, staging areas, and any location where Project activities include grading, grubbing, cut, fill, or other ground or vegetation disturbance (collectively, the Project Area). Work Areas are defined as the discrete location(s) within the **LSAA** Mitigation Site where restoration Covered Activities will occur.

19. Paragraph 3 of Impacts of the Taking on Covered Species, pages 8 and 9, shall be amended to read:

At the Project Overburden Site, the Project is expected to cause the permanent loss of 27.67 acres of upland habitat for the Covered Species. ~~Within~~ **At** the **LSAA** Mitigation Site, the Project is expected to cause the permanent loss of ~~0.03 acre of upland habitat for the Covered Species,~~ and temporary loss of

4.290.79 acres of upland habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: introduction or spread of invasive species; increased risk of exposure and desiccation along wildlife exclusion fencing; stress resulting from noise, vibrations, capture, and relocation; displacement from preferred habitat; loss of burrowing habitat used for shelter and cover; increased competition for food and space; and increased vulnerability to predation. In addition, individuals displaced due to habitat loss and degradation may be unable to survive in adjacent areas if these areas are at carrying capacity or are unsuitable for colonization.

20. Condition of Approval 6.3, Designated Biologist/Designated Monitor Authority, pages 10 and 11, shall be amended to read:

To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist and/or Designated Monitor shall have authority to immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Overburden Site and **LSAA** Mitigation Site and otherwise facilitate the Designated Biologist and/or Designated Monitor in the performance of his/her duties. If the Designated Biologist and/or Designated Monitor is unable to comply with the ITP, then the Designated Biologist and/or Designated Monitor shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

21. Condition of Approval 6.9, Delineation of the Work Areas at the Mitigation Site, page 12, shall be amended to read:

Delineation of the Work Areas at the **LSAA** Mitigation Site. Before starting Covered Activities within the **LSAA** Mitigation Site, Permittee shall clearly delineate the boundaries of each Work Site where restoration activities will occur to distinguish it from the remaining portion of the **LSAA** Mitigation Site where no activities will occur. The boundaries of each Work Area shall be

delineated with stakes and/or flags and shall be maintained with signage for the duration of Covered Activities at the **LSAA** Mitigation Site.

22. Condition of Approval 6.12, Project Access, pages 12 and 13, shall be amended to read:

Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing roads within the Project Overburden Site. Permittee shall ensure that vehicle speeds do not exceed 10 miles per hour to avoid Covered Species on or traversing identified routes within the **LSAA** Mitigation Site. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.

23. Condition of Approval 6.16, Refuse Removal, page 13, shall be amended to read:

Upon completion of Covered Activities, Permittee shall remove and properly dispose of all temporary fill and construction refuse from the Project Overburden Site and **LSAA** Mitigation Site, including, but not limited to, exclusionary fencing, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

24. Condition of Approval 7.1, Notification Before Commencement, page 13, shall be amended to read:

The Designated Representative shall notify CDFW and provide documentation of compliance with all pre-Project Conditions of Approval at least 14 calendar days before starting Covered Activities within the Project Overburden Site and the **LSAA** Mitigation Site.

25. Condition of Approval 7.4, Mitigation Site Restoration Design Plan, page 14, shall be amended to read:

LSAA Mitigation Site Restoration Design Plan. At least 30 days before starting Covered Activities within the **LSAA** Mitigation Site, the Permittee shall provide

CDFW with the final detailed Restoration Design Plan for review and approval. The Plan shall include but not be limited to detailed descriptions of the activities within each ephemeral drainage, order of operations, dimensions, areas, volumes, type and size of materials, maps, and Geographic Information Systems (GIS) data files for all initial restoration activities described in Project Description Section of this ITP, i.e., ~~pond creation, berm construction, grading cut/fill,~~ debris removal, willow trench and willow cluster placement, cattle exclusion fencing (including gate design and locations), oak and willow riparian plantings, application of native seed mix, recontouring, rock placement, placement of erosion control fabric, and fiber roll installation.

26. Condition of Approval 7.6, Geographic Information Systems Data Files, page 15, shall be amended to read:

Before starting Covered Activities, the Permittee shall provide CDFW with separate Geographic Information Systems (GIS) data files for the temporary and permanent habitat impact areas authorized under this ITP for the Covered Species for the Project Overburden Site and the **LSAA** Mitigation Site. If habitat for a Covered Species will be both temporarily and permanently impacted, the Permittee shall provide one set of GIS data files for each impact type. The Permittee shall provide any additional GIS data files for the Project or related Covered Species features within 30 days of CDFW's request. All GIS data files shall be provided in a format acceptable to CDFW.

27. Paragraph 1 of Condition of Approval 7.7, Compliance Monitoring, page 15, shall be amended to read:

The Designated Biologist shall conduct daily compliance inspections and be on site for the duration of the day while wildlife exclusion fencing is installed and until clearing, grubbing, and grading are completed at the Project Overburden Site. The Designated Biologist shall be on site for the duration of the day and conduct at least daily compliance inspections at the **LSAA** Mitigation Site until Covered Activities are completed. The Designated Biologist shall conduct compliance inspections a minimum of weekly during periods of inactivity and after wildlife exclusion fencing is installed and clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to: (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

28. Condition of Approval 8.1, Pre-Activity Clearance Survey and Reporting, page 18, shall be amended to read:

No more than 14 calendar days prior to initiating Covered Activities within the Project Overburden Site and within each Work Area at the **LSAA** Mitigation Site, the Designated Biologist shall survey the Project Area for individuals of the Covered Species. These surveys shall provide 100 percent visual coverage (including burrow and crevice openings) at the Project Area as well as a 50-foot buffer zone around the Project Area. If individuals of the Covered Species are found, the Designated Biologist(s) shall relocate them in accordance with the CDFW-approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 7.3). The Permittee shall provide the survey results to CDFW in a written report prior to the beginning of Covered Activities.

29. Condition of Approval 8.2, Flag Burrows/Crevices, pages 18 and 19, shall be amended to read:

During Pre-Activity Clearance Surveys (Condition of Approval 8.1), the Designated Biologist shall flag all animal burrows and crevices suitable for Covered Species occupancy within the **27.67 acres of Covered Species upland habitat at the Project Overburden Site including a 50-foot buffer outside the Project Overburden Site**, and within each Work Area at the **LSAA** Mitigation Site including a 50-foot buffer outside those areas. **Animal burrows and crevices located within the eucalyptus groves at the Project Overburden Site do not need to be flagged.** An avoidance buffer of 50 feet or greater around **flagged** animal burrows/crevices shall be maintained regardless of if the burrow/crevice is in the Project Area or solely within the Project Area's 50-foot buffer zone. Flagged burrows/crevices which occur within 600 meters of known or potential breeding habitat and which cannot be avoided by at least 50 feet shall be fully excavated in accordance with Condition of Approval 8.3 below.

30. Paragraph 2 of Condition of Approval 8.3, Burrow/Crevice Excavation, page 19, shall be amended to read:

Those animal burrows and crevices identified **and flagged** outside of, but within 50 feet of **the Project Overburden Site**, shall be similarly excavated if they occur within 50 feet of ground disturbance within the Project Overburden Site. This excavation requirement applies regardless of whether the burrow/crevice is located within the Project Overburden Site or within 50 feet of the Project Overburden Site, except for burrows/crevices outside of the Permittee's access and/or control, **or burrows/crevices located within the eucalyptus groves at the Project Overburden Site**, which do not need to be

excavated. The Designated Biologist(s) shall relocate any live CTS discovered during burrow/crevice excavation in accordance with the CTS Mortality Reduction and Relocation Plan required in Condition of Approval 7.3 above. Excavation shall occur no more than 14 days after the completion of the Pre-Activity Clearance Surveys as described in Condition of Approval 8.1.

31. Paragraphs 2 and 3 of Condition of Approval 8.4, Exclusion Fencing, pages 19 and 20, shall be amended to read:

Prior to initiation of Covered Activities and following surveying, flagging, and excavating burrows/crevices in accordance with Conditions of Approval 8.1, 8.2, and 8.3 above, Permittee shall install long-term exclusion fencing around the perimeter of the Project Overburden Site to prevent Covered Species from migrating into the cleared Project Overburden Site. **Exclusion fencing is not required along the Project Overburden Site's northern boundary which abuts the existing overburden placement operation.**

Permittee shall install temporary, untrenched exclusion fencing around the Staging Areas for the Project Overburden Site following surveying, flagging, and excavating burrows/crevices in accordance with Conditions of Approval 8.1, 8.2, and 8.3 above while installing the long-term exclusion fencing. Vehicles, equipment and materials shall not enter or be placed within the Staging Areas until temporary exclusion fencing has been installed around each Staging Area. Vehicles, equipment, and materials shall not enter or be placed within all other areas of the Project Overburden Site until the long-term wildlife exclusion fencing has been installed ~~around the entire perimeter~~ **in accordance with the Project's CDFW-approved Exclusion Fencing Plan.** Once long-term exclusion fencing has been installed, Permittee shall remove the temporary exclusion fencing.

32. Condition of Approval 8.7, Dry Season Work, page 20, shall be amended to read:

Within the **LSAA** Mitigation Site, Permittee shall confine ground-disturbing activities to the dry season (generally May 1 to October 31) and shall complete activities prior to the onset of winter rains. Ground-disturbing activities conducted during the dry season shall not occur until on-site ponds are dry, unless surveys are conducted to demonstrate the absence of Covered Species eggs or larvae.

33. Condition of Approval 8.8, Rain Forecast, page 21, shall be amended to read:

The Designated Biologist and Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. During rainfall events and/or when a 50 percent or greater chance of rainfall is predicted within 72 hours, Permittee shall cease all Covered Activities in all Work Areas within the **LSAA** Mitigation Site until the rainfall ceases and a zero percent chance of rain is forecast and within the Project Overburden Site where initial ground disturbance (vegetation removal, grading, grubbing, and excavation) has yet to occur until the rainfall ceases and a zero percent chance of rain is forecast. Covered Activities may continue within the Project Overburden Site if this area has already been cleared of Covered Species and is surrounded by exclusion fence that has been properly maintained and is in good repair, in accordance with the Project's CDFW-approved Exclusion Fencing Plan.

34. Condition of Approval 8.11, Vehicle and Equipment Inspection, page 22, shall be amended to read:

Within the Project Area, workers shall inspect under vehicles and equipment for Covered Species before the vehicles and equipment are moved. If a Covered Species is present, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Designated Biologist(s) may move the Covered Species out of harm's way outside of the Project Overburden Site in compliance with the approved Covered Species Mortality Reduction and Relocation Plan required in Condition of Approval 7.3. If a Covered Species is found within the **LSAA** Mitigation Site, the Designated Biologist(s) may move the Covered Species to an area where Covered Activities are not planned outside of the Work Areas, and in compliance with the approved Covered Species Mortality Reduction and Relocation Plan required in Condition of Approval 7.3.

35. Condition of Approval 8.12, Pipes and other Structures Entrapment Prevention, page 22, shall be amended to read:

Permittee shall ensure that all pipes, hoses, conduit, culverts, or similar materials stockpiled or installed in the Project Area are capped or otherwise enclosed at the ends to prevent entry by Covered Species. Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more overnight periods for the Covered Species before the object is subsequently moved, buried, or capped. If an individual of the Covered Species is discovered inside a pipe, culvert, or similar structure during inspection, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded

to a safe location. Alternatively, the Designated Biologist(s) may move Covered Species out of harm's way outside of the Project Overburden Site in compliance with the approved Covered Species Mortality Reduction and Relocation Plan required in Condition of Approval 7.3. If a Covered Species is found within the **LSAA** Mitigation Site, the Designated Biologist(s) may move the Covered Species to an area where Covered Activities are not planned outside of the Work Areas, and in compliance with the approved Covered Species Mortality Reduction and Relocation Plan required in Condition of Approval 7.3.

36. Condition of Approval 8.15, Pesticide Use, page 23, shall be amended to read:

Permittee shall ensure that all pesticide use (mixing, application, and clean-up) is done by a licensed or certified applicator in accordance with all applicable state, federal, and local regulations. Permittee shall only apply pesticide sprays via ground application when wind speed measures less than 3 miles per hour. Permittee shall ensure that great care is taken to avoid pesticide drift outside the boundaries of the Project Overburden Site and/or **LSAA** Mitigation Site Work Areas. Permittee shall ensure that any pesticide used where there is the possibility that the pesticide could come into direct contact with water is approved for use in an aquatic environment.

37. Paragraph 2 of Condition of Approval 9, Habitat Management Land Acquisition, page 23, shall be deleted:

~~The Permittee proposes to permanently protect and perpetually manage the approximately 86-acre Mitigation Site, included as an element of this Project, to serve as compensatory habitat for overburden placement and Covered Species exclusion activities within the Project Overburden Site. However, to date Covered Species breeding has not been documented within the Mitigation Site's existing on-site pond. For this reason, as an element of this Project, the Permittee seeks to construct a pond within the Mitigation Site to serve as Covered Species breeding habitat. Because breeding has not been observed and documented at the Mitigation Site, CDFW has not provided conceptual approval of its use as compensatory habitat. If successful breeding of the Covered Species is documented on the Mitigation Site, CDFW may consider the Mitigation Site as compensatory habitat if it meets the other criteria listed in Conditions of Approval 9.2, 9.3, and 9.4.~~

38. Paragraph 3 of Condition of Approval 9, Habitat Management Land Acquisition, pages 23 and 24, shall be amended to read:

~~Therefore, to~~ **To** meet compensatory habitat requirements of this ITP, the Permittee has the option to either: 1) provide for both the permanent protection and management of ~~the~~ approximately 86 acres of Habitat Management (HM) lands at the ~~Mitigation Site~~ pursuant to Condition of Approval 9.2 below, and the calculation and deposit of the management funds pursuant to Condition of Approval 9.3 below; OR 2) purchase 86 acres of Covered Species upland credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.1 below. One of the HM lands options outlined immediately above must be complete before starting Covered Activities, or within 36 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

39. On page 34, under Attachments, the following shall be amended to read:

FIGURE 1 Project Overburden Site and **LSAA** Mitigation Site Overview

FIGURE 2 Project Overburden Site Access Routes/Staging Areas

FIGURE 3 **LSAA** Mitigation Site Access Routes/Staging Areas

~~FIGURE 4 Mitigation Site Restoration Activities~~

FIGURE 4a Conceptual Mitigation Plan (Index)

FIGURE 4b Conceptual Mitigation Plan (West)

FIGURE 4c Conceptual Mitigation Plan (East)

ATTACHMENT 1 Mitigation Monitoring and Reporting Program

ATTACHMENT 2 Biologist Resume Form

ATTACHMENT 3 Fieldwork Code of Practice

ATTACHMENT 4 Letter of Credit Form

ATTACHMENT 5 Mitigation Payment Transmittal Form

40. The corresponding measures in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment 1 of the ITP) shall be amended to read the same as above. All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment may increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing the minimization measures and compensatory mitigation required by the ITP, it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: Amendment No. 1 makes the following specific changes to the ITP:

1) removes Permittee's proposal to permanently protect and perpetually manage the Mitigation Site to serve as the HM Lands pursuant to Condition of Approval 9; 2) removes the Project activities associated with topsoil removal and stockpiling at the Project Overburden Site; 3) removes the Project activities associated with the construction of a pond at the Mitigation Site; 4) modifies the Project Description to reflect the updated locations of all restoration activities at the Mitigation Site; 5) recalculates the impacts of the Project based on the revised Project Description; and 6) modifies Conditions of Approval 8.2 and 8.3 to no longer require the flagging and excavation of burrows/crevices within the eucalyptus groves at the Project Overburden Site. The resulting impacts to the Covered Species, however, including the permanent loss of 26.67 acres of upland habitat for the Covered Species within the Project Overburden Site, will remain the same. Within the Mitigation Site, the permanent loss of 0.03 acres of upland habitat for the Covered Species is no longer anticipated and the temporary loss of 1.29 acres of upland habitat for the Covered Species will be reduced to 0.79 acres.

CDFW has determined that although Amendment No. 1 may increase the amount of take of the Covered Species within eucalyptus groves due to the modification of Conditions of Approval 8.2 and 8.3, the overall Project impacts will be minimized and fully mitigated through implementation of the minimization measures and compensatory mitigation required by the ITP. Given the circumstances of this Project, CDFW believes that the changes to the Project and Conditions of Approval of the ITP described in Amendment No. 1 will not increase impacts to the Covered Species.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in December 2022 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to Amendment No. 1 because the Project and ITP as amended: (1) will have no effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or

Major Amendment No. 1
Incidental Take Permit 2081-2020-020-04
GRANITEROCK

Graniterock A.R. Wilson Quarry Project at South Canyon

California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in December 2022, as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Granite Rock Company Brigantino Overburden Project Environmental Impact Report certified by San Benito County as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that Amendment No. 1 represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes Amendment No. 1 is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of Amendment No. 1.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: Amendment No. 1 removes the Permittee's proposal to permanently protect and perpetually manage the Mitigation Site to serve as the HM Lands pursuant to Condition of Approval 9, removes the Project activities associated with topsoil removal and stockpiling at the Project Overburden Site, removes the Project activities associated with the construction of a pond at the Mitigation Site, modifies the Project Description to reflect the updated locations of all restoration activities at the Mitigation Site, recalculates the impacts of the Project based on the revised Project Description, and modifies Conditions of Approval 8.2 and 8.3 to no longer require the flagging and excavation of burrows/crevices within the eucalyptus groves at the Project Overburden Site. Therefore, Amendment No. 1 will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Attachments:

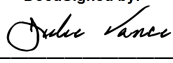
| | | |
|-----------------|-----------|---|
| Attachment A1-1 | FIGURE 1 | Project Overburden Site and LSAA Mitigation Site Overview |
| Attachment A1-2 | FIGURE 3 | LSAA Mitigation Site Access Routes/Staging Areas |
| Attachment A1-3 | FIGURE 4a | Conceptual Mitigation Plan |
| Attachment A1-4 | FIGURE 4b | Conceptual Mitigation Plan (West) |
| Attachment A1-5 | FIGURE 4c | Conceptual Mitigation Plan (East) |

Major Amendment No. 1
Incidental Take Permit 2081-2020-020-04
GRANITEROCK

Graniterock A.R. Wilson Quarry Project at South Canyon

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 2/21/2024

DocuSigned by:


FA83F09FE08945A...
Julie A. Vance
Regional Manager
Central Region

ATTACHMENT A1-1

Figure 1 Project Overburden Site and LSAA Mitigation Site Overview

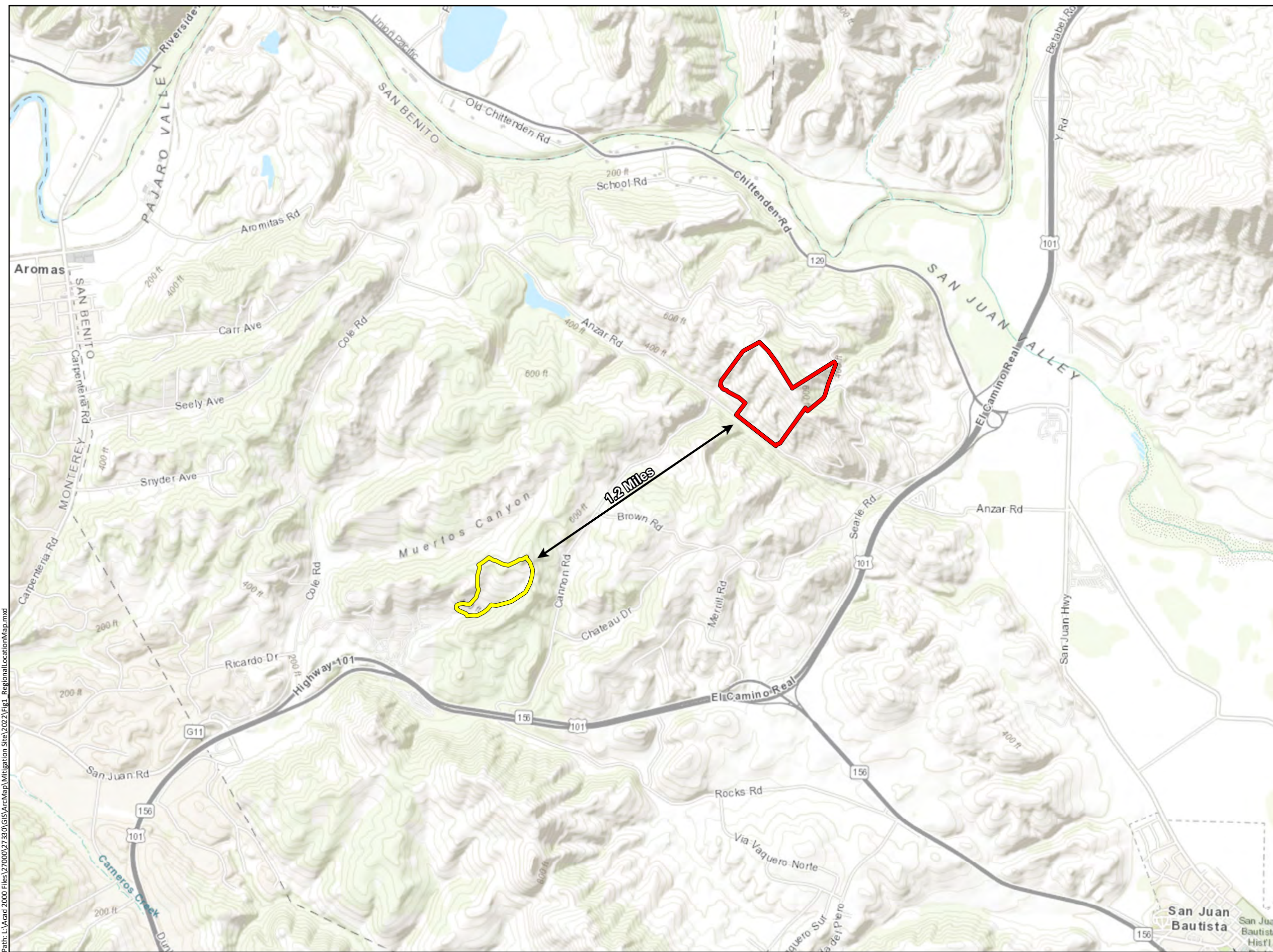
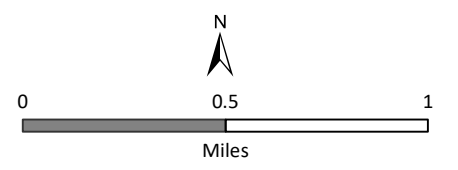


Figure 1.
Project Overburden Site and LSAA
Mitigation Site Overview

Graniterock AR Wilson Quarry
 San Benito County, California

- Project Overburden Site: (36.87 ac.)
- LSAA Mitigation Site: (86.00 ac.)



Path: L:\Acad 2000 Files\27000\27350\GIS\AcMap\Mitigation Site\2021\Fig_1_RegionalLocationMap.mxd






ATTACHMENT A1-2

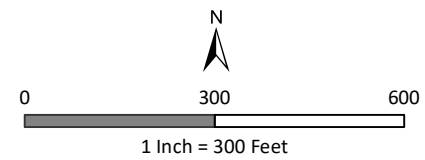
Figure 3 LSAA Mitigation Site Access Routes/Staging Areas



Figure 3.
LSAA Mitigation Site Access
Routes/Staging Areas

Graniterock AR Wilson Quarry
 San Benito County, California

-  LSAA Mitigation Site
-  Primary Access Point
-  Access Route
-  Staging Area
-  Access/Staging 50ft. Buffer



Path: L:\Acad 2000 Files\27000\27350\GIS\AcadMap\Mitigation Site\2021\Fig6_MitSiteAccess.mxd

ATTACHMENT A1-3

Figure 4a Conceptual Mitigation Plan

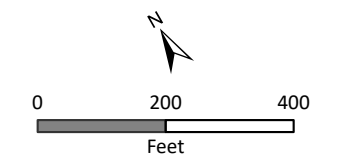
Legal counsel for Graniterock has advised that the subject presumed surface and sub-surface flows are not within CDFW's California Fish and Game Code section 1600 et seq. jurisdiction because the applicable CDFW regulation defines a stream as "watercourses having a surface or subsurface flow that supports or has supported riparian vegetation." (14CCR § 1.72.) The subject areas here (if any) do not support any riparian vegetation. In addition, the subject area has no bed or bank. It is our understanding that, to reach this jurisdictional claim, CDFW is relying on a definition produced in a 2014 field guide that did not undergo the regulatory public notice and comment process as required under the Administrative Procedures Act ("APA"). The 2014 Mapping Episodic Stream Activity ("MESA") field guide's definition of "stream" was not subject to any public review, is inconsistent with California case law, and violates the APA. Case law has established that the term "stream" is accorded its plain and common sense meaning under the California Fish and Game Code section 1602. (See Rutherford v. State of California (1987) 188 Cal.App p. 3d 1267, 1279-80.) Thus, CDFW is exceeding its statutory and regulatory authority by relying on the MESA field guide. Likewise, the oak trees in the presumed subsurface flow areas are not properly considered riparian. Graniterock reserves its right to raise all legal issues related to CDFW's asserted jurisdiction pursuant to section 1600 in the future.

Figure 4a.
Conceptual Mitigation Plan
(Index)

Graniterock AR Wilson Quarry
San Benito County, California

- LSAA Mitigation Site: (86.00 ac.)
- Approximate PG&E Easement and Utility: (+/- 0.68 ac.)
- Staging Area: (0.88 acre; to be located in upland areas only)
- Equipment Access
- Cattle Exclusion Fencing
- Re-establishment Habitats**
- Ephemeral Drainage: (102 ft., 0.01 ac.)
- Oak Planting Area: (1.63 ac.)
- Willow Planting Area: (0.12 ac.)
- Willow Riparian: (0.04 ac.)
- Rehabilitation Habitats**
- Ephemeral Drainage: (550 ft., 0.04 ac.)
- Seasonal Wetland: (0.02 ac.)
- Enhancement Habitats**
- Ephemeral Drainage: (955 ft., 0.07 ac.)
- Presumed Surface Flow: (128 ft., 0.01 ac.)
- Seasonal Wetland: (0.04 ac.)
- Preserved Habitats**
- Ephemeral Drainage: (3,283 ft., 0.28 ac.)
- Presumed Surface Flow: (2,258 ft., 0.09 ac.)
- Coast Live Oak Woodland: (3.38 ac.)
- Coyote Brush Scrub: (9.49 ac.)
- Non-native Grassland: (68.46 ac.)
- Poison Oak Scrub: (1.63 ac.)
- Pond: (0.13 ac.)
- Seasonal Wetland: (0.02 ac.)
- Willow Riparian: (0.54 ac.)
- Contour - 10 ft.

Note: All acreages exclude area of intersection with PG&E easement and utility. PG&E easement approximate. Other acreages may shift depending on final surveyed location of PG&E easement.



Path: L:\Acad\2000 Files\270000\27330\GIS\ArcMap\Mitigation Site\2022\27330Base\27330Base.aprx

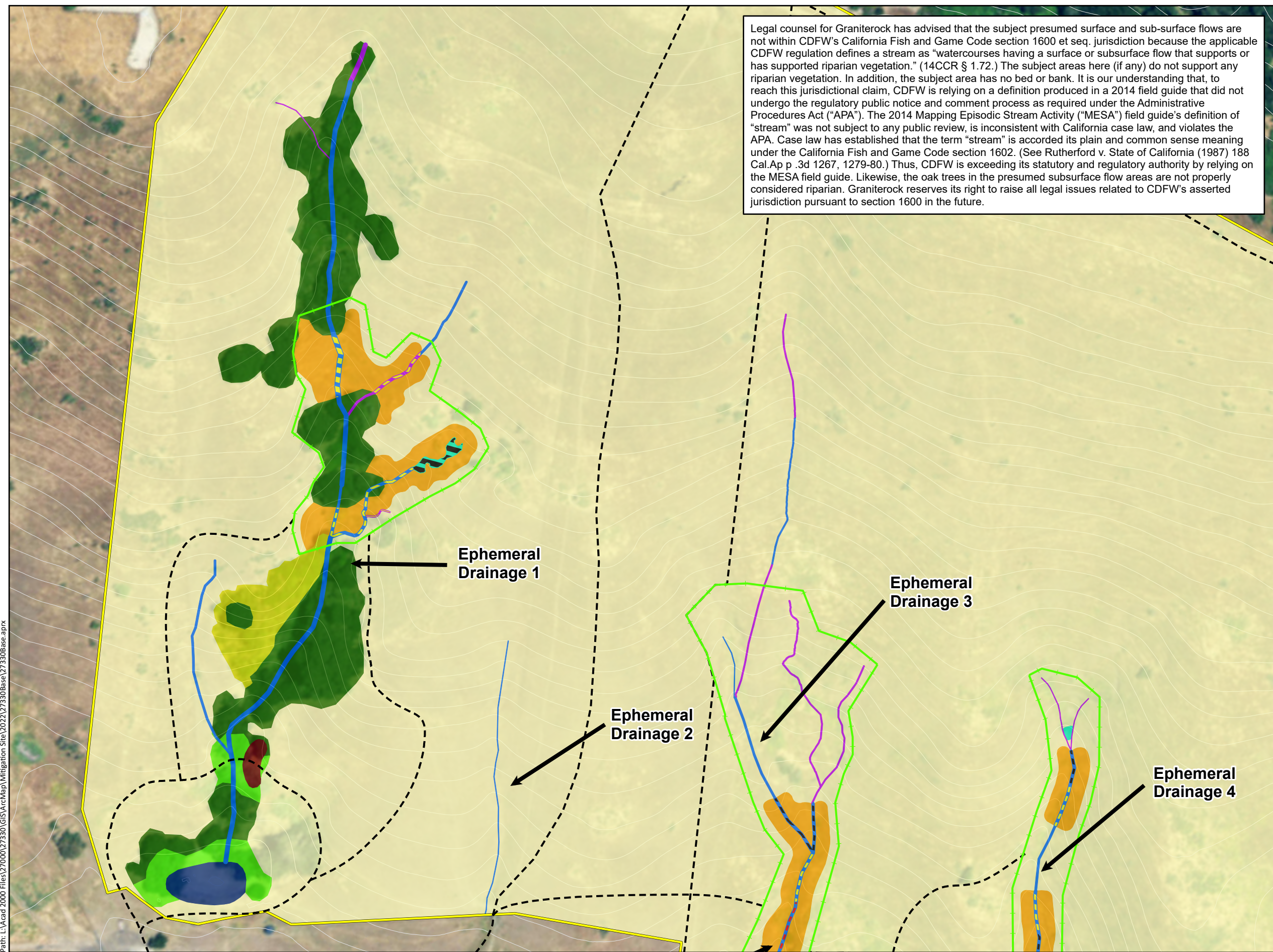
ATTACHMENT A1-4

Figure 4b Conceptual Mitigation Plan (West)

Figure 4b.
Conceptual Mitigation Plan
(West)

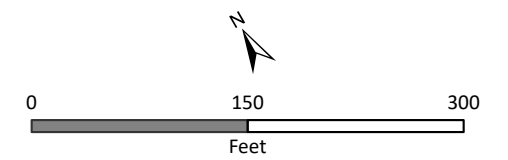
Graniterock AR Wilson Quarry
San Benito County, California

Legal counsel for Graniterock has advised that the subject presumed surface and sub-surface flows are not within CDFW's California Fish and Game Code section 1600 et seq. jurisdiction because the applicable CDFW regulation defines a stream as "watercourses having a surface or subsurface flow that supports or has supported riparian vegetation." (14CCR § 1.72.) The subject areas here (if any) do not support any riparian vegetation. In addition, the subject area has no bed or bank. It is our understanding that, to reach this jurisdictional claim, CDFW is relying on a definition produced in a 2014 field guide that did not undergo the regulatory public notice and comment process as required under the Administrative Procedures Act ("APA"). The 2014 Mapping Episodic Stream Activity ("MESA") field guide's definition of "stream" was not subject to any public review, is inconsistent with California case law, and violates the APA. Case law has established that the term "stream" is accorded its plain and common sense meaning under the California Fish and Game Code section 1602. (See Rutherford v. State of California (1987) 188 Cal.App 3d 1267, 1279-80.) Thus, CDFW is exceeding its statutory and regulatory authority by relying on the MESA field guide. Likewise, the oak trees in the presumed subsurface flow areas are not properly considered riparian. Graniterock reserves its right to raise all legal issues related to CDFW's asserted jurisdiction pursuant to section 1600 in the future.



- LSAA Mitigation Site: (86.00 ac.)
- Approximate PG&E Easement and Utility: (+/- 0.68 ac.)
- Staging Area: (0.88 acre; to be located in upland areas only)
- Equipment Access
- Cattle Exclusion Fencing
- Re-establishment Habitats**
- Ephemeral Drainage: (102 ft., 0.01 ac.)
- Oak Planting Area: (1.63 ac.)
- Willow Planting Area: (0.12 ac.)
- Willow Riparian: (0.04 ac.)
- Rehabilitation Habitats**
- Ephemeral Drainage: (550 ft., 0.04 ac.)
- Seasonal Wetland: (0.02 ac.)
- Enhancement Habitats**
- Ephemeral Drainage: (955 ft., 0.07 ac.)
- Presumed Surface Flow: (128 ft., 0.01 ac.)
- Seasonal Wetland: (0.04 ac.)
- Preserved Habitats**
- Ephemeral Drainage: (3,283 ft., 0.28 ac.)
- Presumed Surface Flow: (2,258 ft., 0.09 ac.)
- Coast Live Oak Woodland: (3.38 ac.)
- Coyote Brush Scrub: (9.49 ac.)
- Non-native Grassland: (68.46 ac.)
- Poison Oak Scrub: (1.63 ac.)
- Pond: (0.13 ac.)
- Seasonal Wetland: (0.02 ac.)
- Willow Riparian: (0.54 ac.)
- Contour - 10 ft.

Note: All acreages exclude area of intersection with PG&E easement and utility. PG&E easement approximate. Other acreages may shift depending on final surveyed location of PG&E easement.



Path: L:\Acad\2000 Files\270000\27330\GIS\ArcMap\Mitigation Site\2022\27330Base\27330Base.aprx

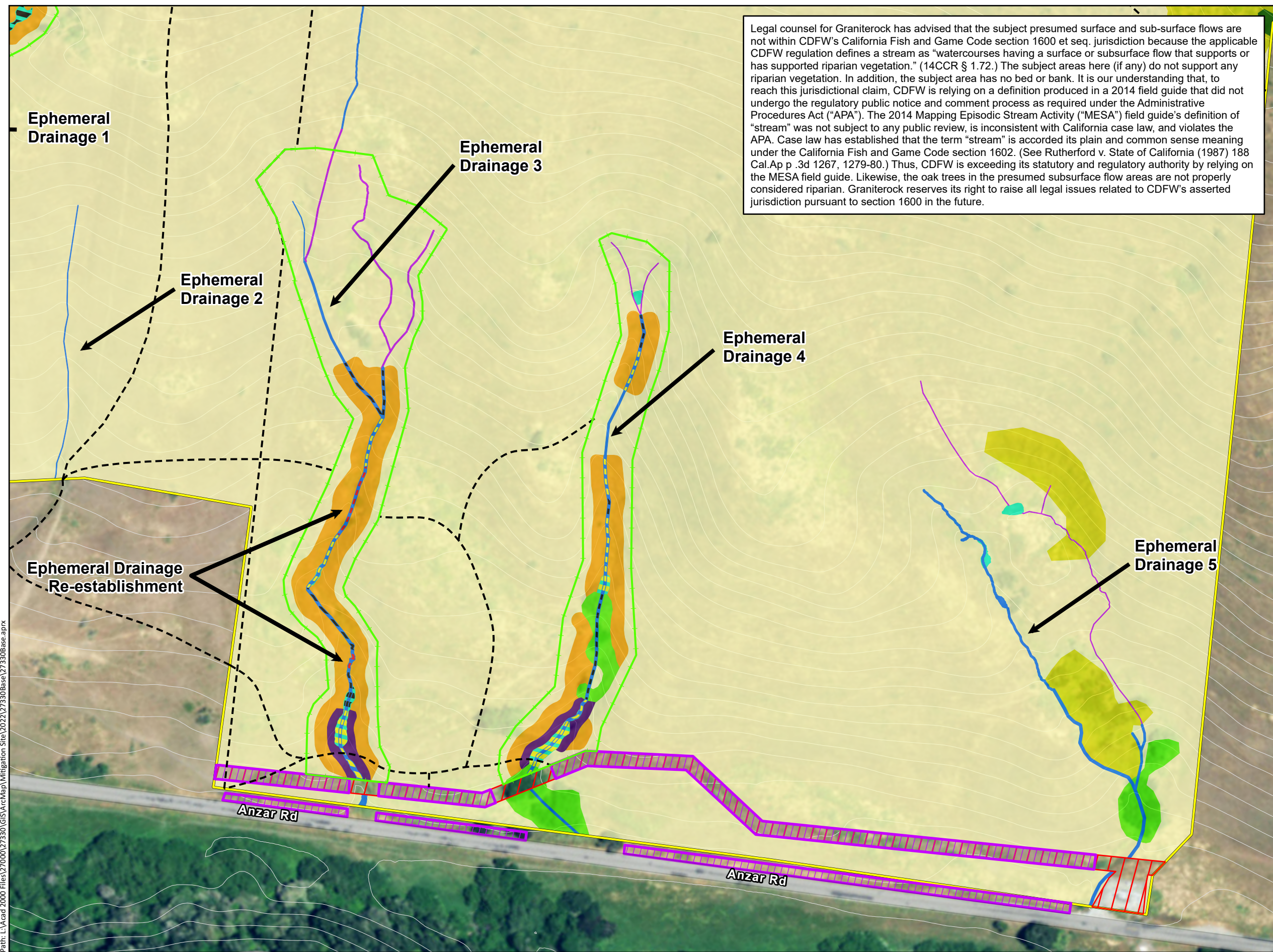
ATTACHMENT A1-5

Figure 4c Conceptual Mitigation Plan (East)

Figure 4c.
Conceptual Mitigation Plan
(East)

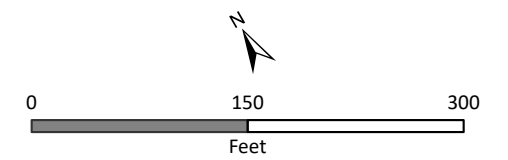
Graniterock AR Wilson Quarry
San Benito County, California

Legal counsel for Graniterock has advised that the subject presumed surface and sub-surface flows are not within CDFW's California Fish and Game Code section 1600 et seq. jurisdiction because the applicable CDFW regulation defines a stream as "watercourses having a surface or subsurface flow that supports or has supported riparian vegetation." (14CCR § 1.72.) The subject areas here (if any) do not support any riparian vegetation. In addition, the subject area has no bed or bank. It is our understanding that, to reach this jurisdictional claim, CDFW is relying on a definition produced in a 2014 field guide that did not undergo the regulatory public notice and comment process as required under the Administrative Procedures Act ("APA"). The 2014 Mapping Episodic Stream Activity ("MESA") field guide's definition of "stream" was not subject to any public review, is inconsistent with California case law, and violates the APA. Case law has established that the term "stream" is accorded its plain and common sense meaning under the California Fish and Game Code section 1602. (See Rutherford v. State of California (1987) 188 Cal.App 3d 1267, 1279-80.) Thus, CDFW is exceeding its statutory and regulatory authority by relying on the MESA field guide. Likewise, the oak trees in the presumed subsurface flow areas are not properly considered riparian. Graniterock reserves its right to raise all legal issues related to CDFW's asserted jurisdiction pursuant to section 1600 in the future.



- LSAA Mitigation Site: (86.00 ac.)
- Approximate PG&E Easement and Utility: (+/- 0.68 ac.)
- Staging Area: (0.88 acre; to be located in upland areas only)
- Equipment Access
- Cattle Exclusion Fencing
- Re-establishment Habitats**
 - Ephemeral Drainage: (102 ft., 0.01 ac.)
 - Oak Planting Area: (1.63 ac.)
 - Willow Planting Area: (0.12 ac.)
 - Willow Riparian: (0.04 ac.)
- Rehabilitation Habitats**
 - Ephemeral Drainage: (550 ft., 0.04 ac.)
 - Seasonal Wetland: (0.02 ac.)
- Enhancement Habitats**
 - Ephemeral Drainage: (955 ft., 0.07 ac.)
 - Presumed Surface Flow: (128 ft., 0.01 ac.)
 - Seasonal Wetland: (0.04 ac.)
- Preserved Habitats**
 - Ephemeral Drainage: (3,283 ft., 0.28 ac.)
 - Presumed Surface Flow: (2,258 ft., 0.09 ac.)
 - Coast Live Oak Woodland: (3.38 ac.)
 - Coyote Brush Scrub: (9.49 ac.)
 - Non-native Grassland: (68.46 ac.)
 - Poison Oak Scrub: (1.63 ac.)
 - Pond: (0.13 ac.)
 - Seasonal Wetland: (0.02 ac.)
 - Willow Riparian: (0.54 ac.)
 - Contour - 10 ft.

Note: All acreages exclude area of intersection with PG&E easement and utility. PG&E easement approximate. Other acreages may shift depending on final surveyed location of PG&E easement.



Path: L:\Acad\2000 Files\270000\27330\GIS\ArcMap\Mitigation Site\2022\27330Base\27330Base.aprx