

PERPETUAL CONSERVATION EASEMENT GRANT

This PERPETUAL CONSERVATION EASEMENT GRANT ("Easement") is made this 9th day of Aug, 2002 by

GRANTORS	Tony B. de Bellis	Terry Francis de Bellis	Vincent de Bellis
	231 Kuss Road	1057 Badger Court	19248 Johnson Cr. Rd.
	Danville, CA 94526	Santa Rosa, CA 94509	Tenino, Wa 98589

GRANTEE

County of San Mateo
c/o Michael Murphy
Chief Deputy County Counsel
San Mateo County
400 County Center, 6th Floor
Redwood City, CA 94063

His phone number is (650) 363-4762

RECITALS

A. Grantors are the sole owners in fee simple of certain real property located in the County of San Mateo, State of California, more particularly described in Exhibit A .1, hereto (the "Grantors' Property") . The portions of the Grantors' property described in Exhibit A.1 which are subject to this easement are shown on the map attached hereto as Exhibit A.2 as parcels 8 A and 8 B, and are particularly described in Exhibit B, attached hereto (the "Protected Property")

B. GRANTEE is a county formed under the laws of the State of California and is authorized to hold conservation easements under California Civil Code Section 815 et seq.: and

C. SERVICE is the United States Fish and Wildlife Service within the United States Department of the Interior, which is authorized by Federal law to administer the Federal Endangered Species Act and other laws and regulations; and

D. The Protected Property possesses significant ecological and habitat values that benefit endangered, threatened, and other rare species (Collectively, "**Conservation Values**"). These species and their habitats are of ecological value to the people of California and the people of the United

States. These values include patches of silver lupine (*Lupinus albifrons*) which are habitat for the federally-listed endangered Mission blue butterfly, and are of great importance to both GRANTORS and GRANTEE; and

E. Significant portions of the Protected Property, consisting of approximately 450 square feet, have been presently identified as being occupied by species of native plants and wildlife which GRANTORS and GRANTEE desire to conserve and protect pursuant to the de Bellis Property Take Avoidance and Habitat Protection Plan which is attached to this EASEMENT as Exhibit C; and

F. GRANTORS intend to convey to GRANTEE the right to denforce GRANTORS' obligation to conserve and protect the conservation values of the property in perpetuity; and

G. GRANTEE agrees by accepting this grant to honor the intentions of GRANTOR stated herein and to conserve and protect in perpetuity the conservation values of the Protected Property in accordance with the terms of this EASEMENT and the de Bellis Property Take Avoidance and Habitat Protection Plan; and

H. This EASEMENT provides mitigation for certain impacts located in the City of Daly City, County of San Mateo, State of California, described in the de Bellis Property Take Avoidance and Habitat Protection Plan.

COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and California Civil Code section 815 et seq., GRANTORS hereby voluntarily grant and convey to GRANTEE a perpetual conservation easement over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this EASEMENT to assure that the Protected Property will be retained forever in a natural and open space condition and to prevent any uses of the Protected Property that will impair or interfere with the Conservation Values of the Protected Property. GRANTORS intend that this EASEMENT (i) will assure that the Protected Property will be used for such activities as are consistent with the conservation purposes of this EASEMENT, and (ii) shall be implemented consistently with the deBellis Property Take Avoidance and Habitat Protection Plan.

2. RIGHTS OF GRANTEE

To accomplish the purpose of this EASEMENT, the following rights are conveyed to GRANTEE by this EASEMENT:

(a) To ensure that Grantors conserve and protect the Protected Property in a manner consistent with the de Bellis Property Take Avoidance and Habitat Protection Plan.

(b) To enter upon and traverse all portions of the Protected Property at all times to monitor GRANTORS' compliance with and otherwise enforce the terms of this EASEMENT provided that such entry shall not unreasonably impair or interfere with GRANTORS' use and quiet enjoyment of the Grantors' Property or unreasonably disturb natural resources on the Grantors' Property, and

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

(d) To conserve and protect all mineral, air, water rights, and ground water required to protect and to sustain the biological resources of the Protected Property.

3. PROHIBITED USES

Subject to the provisions of Paragraph 4 herein, any activity on or use of the Protected Property inconsistent with the conservation purposes of this easement is prohibited. Without limiting the generality of the foregoing, GRANTORS, their personal representative, heirs, assigns, agents, and potential future lessees are expressly prohibited from doing any of the following on Protected Property.

(a) Erecting of any building, billboard, or sign;

(b) Unseasonal watering, use of herbicides, pesticides, or weed abatement activities, incompatible fire abatement activities, and any and all other uses which may adversely affect the purposes of this EASEMENT;

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

(d) Excavating, dredging, or removing of loam, gravel, soil, rock, sand or other material;

(e) Otherwise altering the general topography of the Protected Property;

(f) Removing, destroying, or cutting of trees, shrubs, or other vegetation except as required to maintain the EASEMENT free of exotic pest plants;

(g) Granting use of the land to any third party for off-vehicle road vehicle use;

(h) Legally subdividing the Protected Property, recording of a subdivision plan, partition,

or any other division of the Conservation Property into two or more parcels;

(i) Paving or otherwise covering of the Protected Property with concrete, asphalt, or any other impervious paving material;

(j) Transferring any appurtenant water right required to maintain and restore the biological resources of the Protected Property and

(k) Granting surface entry for the exploration or extraction of minerals without approval by the SERVICE.

4. GRANTORS' DUTIES

GRANTORS shall implement the de Bellis Property Take Avoidance and Habitat Protection Plan. GRANTORS shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Protected Property. In addition, GRANTORS shall undertake all necessary actions to perfect GRANTEE'S rights under section 2 of this EASEMENT.

5. RESERVED RIGHTS

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

6. REMEDIES

IF GRANTEE or SERVICE determines that there is a violation of the terms of this EASEMENT or that a violation is threatened, such party shall give written notice to the other GRANTORS of such violation and demand corrective action sufficient to cure the violation and where the violation involved injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this EASEMENT, to restore the portion of the Protected Property so injured. In any instance, measures to cure the violation shall be reviewed and approved by the SERVICE. If GRANTORS fail to cure a violation within sixty (60) days after receipt of notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fail to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this EASEMENT, to enjoin the

violation, exparte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this EASEMENT or injury to any conservation values protected by this EASEMENT, including damages for the loss of ecological values, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, such party may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this EASEMENT, and each party agrees that the other party's remedies at the law for any violation of the terms of this EASEMENT are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this EASEMENT, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code section 815 et seq., are incorporated herein by this reference and this EASEMENT is made subject to all of the rights and remedies set forth therein. If at any time in the future GRANTORS or any subsequent transferees or assignee uses or threatens to use such lands for purposes not in conformance with the provisions of this EASEMENT, or releases or abandons this EASEMENT in whole or in part, notwithstanding California Civil Code 815 et seq., the California Attorney General or the United States through the SERVICE, shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this EASEMENT.

(a) Costs of Enforcement. Reasonable costs incurred by any party enforcing the terms of this EASEMENT, including without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by a violation of the terms of this EASEMENT shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this EASEMENT, such party's costs of suit including, without limitation, attorneys fees, shall be borne by the other party.

(b) GRANTEE'S Discretion. Enforcement of the terms of this EASEMENT shall be at the discretion of GRANTEE, and any forbearance by GRANTEE to exercise its rights under this EASEMENT shall not be deemed or construed to be a waiver by GRANTEE of such term or of any subsequent breach

of the same or any other term of this EASEMENT or of any GRANTEE'S rights under this EASEMENT. No delay or omission by GRANTEE in the exercise of any right or remedy upon any breach by GRANTOR shall impair such right or remedy or be construed as a waiver. Notwithstanding any other provision of this EASEMENT to the contrary, GRANTEE shall not be obligated under the terms of this EASEMENT to take any action against GRANTORS or third persons to enforce the terms and conditions of this EASEMENT, and SERVICE shall not have the right, by virtue of its designation as a third party benefiting under this EASEMENT to require GRANTEE to take any specific enforcement action.

(c) Acts Beyond GRANTORS' Control. Nothing contained in this EASEMENT shall be construed to entitle GRANTEE to bring any action against GRANTORS for any injury to or change in the Protected Property resulting from causes beyond GRANTORS' control, including, without limitation, fire, drought, flood, storm, and earth movement caused by an earthquake.

7. COSTS AND LIABILITIES

Except as set forth in this EASEMENT, or as otherwise agreed in writing between the parties hereto, GRANTORS retain all responsibilities related to the ownership, operation, upkeep and maintenance of the Protected Property.

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

(b) Hold Harmless: GRANTORS or their successor shall hold harmless and indemnify GRANTEE and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition or other matter occurring on the Protected Property, unless caused by the acts or omissions of any of the Indemnified Parties; and (2) the existence or administration of this EASEMENT. The duty of GRANTORS to hold harmless and indemnify shall include the duty to defend set forth in Section 2778 of the California Civil Code.

8. ASSIGNMENT

This EASEMENT is transferable, but GRANTEE shall give GRANTOR and the SERVICE at least thirty (30) days prior written notice of the transfer. GRANTEE may assign its rights and obligations under this EASEMENT only to an organization that is 1) approved by the SERVICE and 2) a public agency or a qualified organization at the time of transfer under section 170 (h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and, 3) authorized to acquire and hold conservation easements under California Civil Code section 815 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the conservation purposes that this grant is intended to advance shall continue to be fulfilled and notice of such restrictions shall be recorded in the county where the property is located. In the event of the termination of GRANTEE'S existence, the rights and obligations of GRANTEE hereunder shall, by that fact itself, and without any further action on the part of any entity, be deemed assigned to SERVICE.

9. SUBSEQUENT TRANSFERS

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

10. ESTOPPEL CERTIFICATES

Upon request by GRANTORS, GRANTEE shall within thirty (30) days execute and deliver to GRANTOR any document, including an estoppel certificate, which certifies GRANTORS' compliance with any obligation of GRANTORS contained in this EASEMENT and otherwise evidences the status of this EASEMENT as may be requested by GRANTORS.

11. NOTICES

Any notice, demand, request, consent, approval, or communication that the parties desire or is required to give the others shall be in writing and either served personally or sent by

first class mail, postage prepaid, addressed as follows:

To Grantors:

Tony B. de Bellis
231 Kuss Road
Danville, CA 94526

Terry Francis de Bellis
1057 Badger Ct.
Santa Rosa, CA 95409

Vincent de Bellis
19248 Johnson Cr. Rd.
Tenino, WA 98589

To Grantee:

County of San Mateo
c/o Michael Murphy
Chief Deputy County Counsel
San Mateo County
400 County Center, 6th Floor
Redwood City, CA 94063

To Service:

United States Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95841

Attn. : Chief Endangered Species Division

or to such other address or the attention of such other officer from time to time shall designate by written notice to the other.

12. RECORDATION

GRANTORS shall submit an original, signed and notarized Conservation Easement Grant to GRANTEE and GRANTEE shall promptly record this instrument in the official records of San Mateo County, California, and may rerecord it at any time as may be required to preserve its rights in this EASEMENT.

13. FUNDING

GRANTORS or grantors' successor in interest shall provide the sum of \$15,000 to the San Bruno Mountain Habitat Conservation Trust upon issuance of a building permit to construct any improvement on the Protected Property, and shall enter into a Declaration of Trust in the form attached as Exhibit D with the parties named therein for the purposes of fulfilling monitoring obligations of the EASEMENT as described in the de Bellis Property Take Avoidance and Habitat Protection Plan.

San Bruno Mountain Habitat Conservation Trust
c/o Michael Murphy
Chief Deputy County Counsel
Hall of Justice and Records
400 County Center
Redwood City, California 94063

His phone number is: 650 363-4762

14. ADDITIONAL EASEMENTS

GRANTORS shall not grant any additional easements, rights-of-way, or other interests in the Protected Property, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust), or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any waters associated with the Protected Property without the prior written authorization of GRANTEE give through the SERVICE, among other things, determines that the proposed interest or transfer will interfere with the uses of the Protected Property as habitat suitable for federally listed species or other federally protected species. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Protected Property that is subject to the terms of this EASEMENT. This paragraph shall also not prohibit the granting of future compatible utility easements, as authorized by the SERVICE.

15. GENERAL PROVISIONS

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

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

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

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with

respect to the EASEMENT and all exhibits and supersedes all prior discussions, negotiations, understandings, or agreements relating to the EASEMENT.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of GRANTOR'S title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this EASEMENT shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representative, heirs, successors, and assigns and shall continue as servitude running in perpetuity with the Protected Property.

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

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

(i) Third-Party Beneficiary. GRANTORS and GRANTEE acknowledge that the SERVICE is a third party beneficiary of this EASEMENT with the right of access to the EASEMENT property and the right to enforce all of the provisions of this EASEMENT.

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

GRANTORS:

<u>Tony B. de Belle</u>	<u>OWNER</u>
<u>Jessica R. Francis</u>	<u>OWNER</u>
<u>Vincent de Belle</u>	<u>OWNER</u>



GRANTEE:

Entity

name

title

Exhibit A.1
Legal Description of Grantors' Property

The land referred to in this Report is situated in the State of California, County of San Mateo, City of Daly City and is described as follows:

PARCEL ONE:

All that portion of Block "A", lying Southwesterly of the Southeasterly extension of the Northeasterly line of Oliver Street, as said Block and Street as shown on that certain map entitled "MAP OF CONCORDIA LAND COMPANY'S PROPERTY SAN MATEO COUNTY, CAL", filed in the office of the County Recorder of San Mateo County, State of California on January 21, 1907 in Book "B" of Maps at page 50 and copied into Book 4 of Maps at page 50, saving and excepting therefrom that portion thereof conveyed by Howard H. Morris, Mrs. W. F. Bannister (formerly Treasure H. Morris), and Muriel H. Morris, to N. H. Marsh and Hazel Marsh, by Deed dated March 23, 1942 and recorded April 7, 1942 in Book 1002 of Official Records at page 441, more particularly described as follows:

TO FIND the point of beginning, begin at the point of intersection of the Southwesterly line of Oliver Street with the Northwesterly line of Henry, formerly Edgmar Street, as said Streets are shown on the map above referred to; running thence in a Southeasterly direction along the Southwesterly line of Oliver Street if the same were extended in a Southeasterly direction, a distance of 160 feet to the actual point of beginning of this description; running thence Southwesterly along a line drawn parallel to and distant thereon 160 feet Southwesterly from the said Northwesterly line of Henry Street 410 feet, more or less, to the said Westerly line of Lot "A" above referred to; thence Northeasterly along the Southerly line of said Lot "A" to point that is intersected by the direct extension Southeasterly of the Southwesterly line of Oliver Street and thence Northwesterly along said last mentioned line to the actual point of beginning of this description.

PARCEL TWO:

Portion of Block "A", as shown on that certain map entitled "MAP OF CONCORDIA LAND COMPANY'S PROPERTY SAN MATEO COUNTY, CAL", filed in the office of the County Recorder of San Mateo County, State of California, on January 21, 1907 in Book "B" of Maps at page 50 and a copy thereof in Book 4 of Maps at page 50 and being more particularly described as follows:

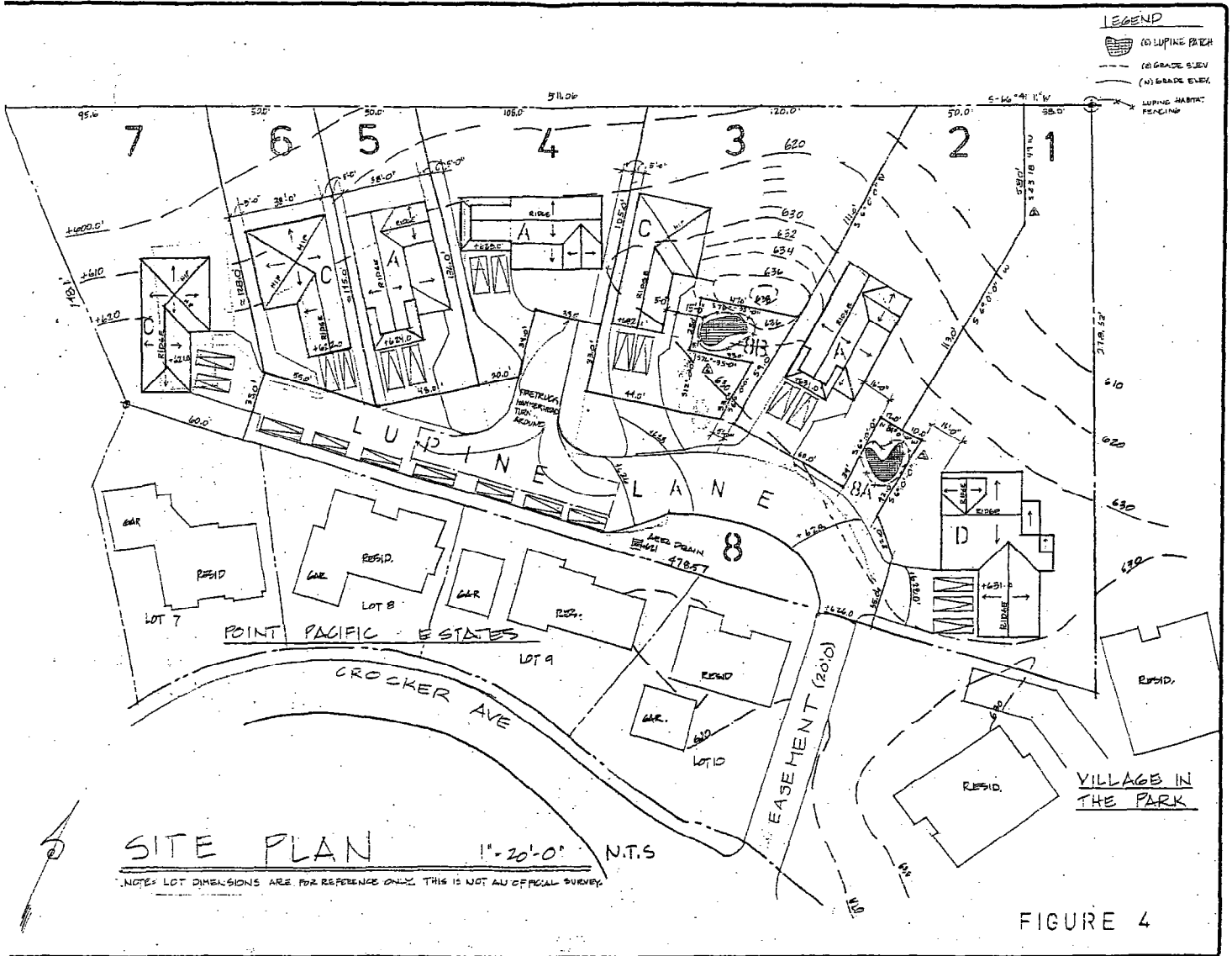
TO FIND the point of beginning, begin at the point of intersection of the Southwesterly line of Oliver Street with the Northwesterly line of Edgmar Street, sometimes known as Henry Street, as said Streets are shown on the map above referred to; running thence Southeasterly along the Southwesterly line of Oliver Street if the same were extended in a Southeasterly direction a distance of 160 feet to the true point of beginning of this

description; running thence Southwesterly along a line drawn parallel with the said Northwesterly line of Edgmar Street 410 feet, more or less to the said Westerly line of Lot "A" above referred to ; thence Southeasterly along said last mentioned line to the most Southwesterly corner thereof; thence Northeasterly along the Southerly line of said Lot "A" to the direct extension Southeasterly of the Southwesterly line of Oliver Street and thence Northwesterly along said last mentioned line to the true point of beginning of this description.

PARCEL THREE:

A non-exclusive easement for ingress, egress, and utility purposes over portions of land situated in the City of Daly City, County of San Mateo, State of California; said lands being a portion of the lands shown on that certain Parcel Map, filed for record on January 5, 1971, in Book 11 of Parcel Maps at Page 42, San Mateo County Records; said easement being in, on, over, under and along a strip of land 20 feet in width lying Northeasterly of and immediately adjacent to the following described Southwesterly line thereof:

BEGINNING at a point of intersection of the Northerly line of Crocker Boulevard with the general Westerly line of said Parcel Map which bears North 6° 38' 10" West as said intersection and lines are shown on said Parcel Map; thence from said point of beginning Northerly along said Westerly line North 6° 38' 10" West 115.87 feet (115.58 feet shown on said Parcel Map) to the general Northerly line of the lands shown on said Parcel Map and the Northerly terminus of this description; said easement being contiguous for its full width at its Southerly terminus to said Northerly line of Crocker Boulevard and at its Northerly terminus to said Northerly line of the lands shown on said Parcel Map.



SUBDIVISION FOR
 11 2 3 4 5 7 8 9 10

EXHIBIT B

LEGAL DESCRIPTIONS FOR THE LUPINE HABITAT EASEMENTS

EASEMENT 8 A

Starting at the northeast corner of the 2.277 acre property, go south $66^{\circ} 41' 11''$ west for 38 ft. From there south $23^{\circ} 18' 49''$ east for 58 ft. From there go south $6^{\circ} 0' 0''$ west for 113 ft. Land lying within the following boundaries is the Lupine Easement 8A. From there go north $84^{\circ} 0' 0''$ west for 11 ft. From there go south $6^{\circ} 0' 0''$ west for 39 feet to the Lupine Lane Easement. Returning to the southern end of the 113 foot bisector of the Lupine Habitat go south $84^{\circ} 0' 0''$ for 11 ft. And then south $6^{\circ} 0' 0''$ for 42 feet to the Lupine Lane Easement. Access to the Fenced Lupine Patch is from anywhere along the 22 ft. wide Lupine Lane Easement.

EASEMENT 8 B

Starting from the northeast corner of the 2.277 acre property go south $66^{\circ} 41' 11''$ west for 88 ft. From that point go south $6^{\circ} 0' 0''$ west for 111 ft. to the start of the Lupine Habitat Easement. The Access Easement continues for 50 ft. to the Lupine Lane Utility Easement. Returning 59 ft. to the start of the Lupine Easement, we go south $76^{\circ} 35' 0''$ west for 47 ft. From there go south $12^{\circ} 0' 0''$ east for 25 ft. and then north $76^{\circ} 50' 0''$ east for 33 ft. Then go south $6^{\circ} 0' 0''$ west for 33 ft. This provides a 5 foot Easement to the 8B Lupine Habitat Patch and Buffer Zone from Lupine Lane.

EXHIBIT "C"
de Bellis Property, Daly City
Take Avoidance and Habitat Protection Plan

This document describes measures to avoid take of the federally-listed Mission blue butterfly (*Icaricia icarioides missionensis*) and to protect two patches of its larval food plant, silver lupine (*Lupinus albifrons*), on a 2.28-acre parcel on San Bruno Mountain in Daly City (Figure 1) during and after construction of seven single-family homes on the site.

I. Summary of Biological Issues

The site is located on the northwestern side of San Bruno Mountain, approximately 200 feet north of Crocker Avenue (Figure 2). The property is outside of the San Bruno Mountain Habitat Conservation Plan (HCP) area and is separated from HCP conserved habitat by Crocker Avenue and a row of single-family houses.

Most of the vegetation on the property consists of dense coastal scrub on a north-facing slope on the north side of the property. The upper portion (south side) of the site has been previously graded and the vegetation there is primarily non-native exotic species, primarily fennel (*Foeniculum vulgare*), and wild radish (*Raphanus sativa*). Between the steep north-facing slope and the upper graded area of the site, a few pockets of native grassland are found clustered on and around rocky outcroppings.

A biological inventory of the site was conducted in November 2000. At that time two patches of silver lupine were identified on and around the rocky outcrops. The two patches contain a total of 32 individual lupine plants (Figure 3). At the time of the November 2000 survey, Mission blue butterflies had not been documented on the two lupine patches. The site also supports several plants that Mission blue butterflies use for nectar including: buckwheat (*Eriogonum latifolium*) and coyote mint (*Monardella villosa*). The nearest lupine patches to the two identified on the site are located on the south side of Crocker Avenue between Crocker and Guadalupe Canyon Parkway, and to the west on the slopes south of the Pointe Pacific residential neighborhood. Mission blue butterflies have been documented on these patches of lupines (Thomas Reid Associates, 1981 to 2001).

A survey of adult Mission blue butterflies was commenced in April 2001 to determine presence of the butterfly at the two lupine patches. Mission blue butterflies typically fly from late March to early June on San Bruno Mountain. In spring 2001, the first recorded observations on San Bruno Mountain was on April 12th. Surveys were conducted at the site on three days: April 23, May 7, and May 14th. No adult Mission blue butterflies or eggs laid on lupine leaves were observed on or near the two patches during the three survey days. Mission blue butterflies were observed those same days and under similar weather conditions at Pointe Pacific and on the patches located on the south side of Crocker Avenue about 500 feet from the site.

According to biologists at the U.S. Fish and Wildlife Service negative findings of the butterfly at a specific site during a single flight season does not guarantee absence of the butterfly, particularly when the butterfly is known from 500 feet away. As a result, the landowner has agreed construct the seven single family home project in a manner that avoids disturbance to the two lupine patches, and that provides for the long-term protection of the patches through establishment of habitat easements, use of native landscaping, and contribution of funds to the San Bruno Mountain HCP.

II. Measures to Avoidance Take and Protect Habitat During Project Construction

The following measures shall be implemented by the developer.

1. The final project plan is shown in Figure 4. The plan establishes a minimum fifteen-foot separation between finished buildings and the edge of the lupine patches.
2. The two patches of lupine shall be protected from grading or other disturbance through the placement of a chain link fence around each patch during clearing, grading and construction activities. Signs stating the penalty for grading or disturbing land within the fenced area shall be posted around the fence perimeter. The signs shall specifically state: "Notice: Grading or Disturbance within this area could result in a violation of federal law (16 U.S. Code Sections 1531-1543) and could result in a fine of \$50,000 and imprisonment for one year (16 USC Section 1540(b))". Figure 5 shows a detail of the habitat fence and signs. Any exotic pest plants found growing in and around the patches shall be carefully hand removed prior to fence placement. Figure 6 shows the fence locations for each patch. A qualified biologist shall supervise the fence installation.
3. Prior to the start of any clearing, grading or construction activities, a pre-grading conference shall be held with on-site grading and construction personnel. The primary purpose of the conference is to inform all parties involved with the project development that: 1) the lupine patches could support federally-listed endangered species, 2) the purpose of the fences and signs are to assure protection of those species, and 3) the potential penalties for disturbing the protected areas. All personnel shall sign an acknowledgement form stating that they understand the stated penalties (see sample attached as Exhibit "A").
4. Spray painting shall be prohibited on all buildings adjacent to the lupine patches to prevent air borne contaminants from settling on the lupine plants. Frequent watering for dust control during project grading shall be required to minimize dust accumulations on the lupine plants.
5. A qualified biologist shall inspect the site at least once a week during the clearing and grading phase of the project to assure fences and signs are left intact and there have been no violations of the terms of this plan. Inspections shall be reduced to every other week during the construction phase of the project. The biological inspector can issue a stop work order for the entire project if any violations are suspected. This could delay project development until the suspected violation is resolved.

6. The biological inspector shall submit monthly inspection reports to the U.S. Fish and Wildlife Service beginning with the initial fence installation and proceeding through the completion of grading activities. Less frequent reports shall be provided during the construction phase.

III. Habitat Enhancement Measures

The following measures shall be carried out by qualified specialists and funded by the developer.

1. Completed landscaping for the common areas of the project site shall include native annual and perennial plants known to occur in grassland land areas of San Bruno Mountain. In addition, individual homeowners shall be encouraged to use native species in their yards. A list of appropriate species is attached as Exhibit "B" and shall specifically include the silver lupine, which must come from seed stock of the plants found on the site or in nearby locations. The USFWS shall review and approved the landscaping plan.

2. All invasive exotic pest plants shall be removed from the common area of the project during landscaping and must be kept from re-invading the common areas. A list of the target invasive plants is attached as Exhibit "C".

3. The developer shall post a \$25,000 bond in favor of the City of Daly City to secure performance of measures III. 1 and 2 above. The bond shall be released upon successful completion of the habitat based landscaping and removal of the exotic pest plants as determined by the City or its representative.

IV. Long-Term Habitat Protection Measures

The following measures shall be performed by the developer initially and then by the Homeowners Association.

1. Land containing the lupine patches shall be permanently fenced and maintained in permanent open space through the establishment of a USFWS approved habitat easement or other similar legal mechanism that guarantees its protection. Recordation of the easement shall be required prior to the issuance of a grading permit. Permanent "sensitive habitat, no entry" signs shall be posted on the fence.

2. The Developer shall contribute a sum of \$15,000 to the San Bruno Mountain Habitat Conservation Trust Fund prior to project grading. In return for the payment of such funds, County HCP contractors shall include the project site in its annual adult Mission blue monitoring program and incorporate survey results in the annual report submitted to the USFWS.

3. The large-scale use of herbicides for landscape maintenance shall be prohibited in areas within 100 feet of the lupine patches. The restriction shall be contained as a CC&R for the project.

LIST OF FIGURES AND EXHIBITS

Figure 1: Project Vicinity
Figure 2: Project Location
Figure 3: Lupine Patch Location
Figure 4: Project Plan
Figure 5: Detail of Habitat Fence and Signs
Figure 6: Fence Location

Exhibit A: Sample Acknowledgment Form
Exhibit B: List of Native Plants for Common Area Landscaping
Exhibit C: List of Invasive Exotic Pest Plants to be Removed

Report Prepared by: Victoria Harris, Thomas Reid Associates, Palo Alto and Sacramento, California. Phone: 650 327-0429, ext. 82, Fax: 650 327-4024, E-mail: harris@traenviro.com. Website: traenviro.com.

Exhibit A

ACKNOWLEDGEMENT OF CRIMINAL PENALTIES
FOR GRADING BEYOND DESIGNATED AREAS

I understand that grading and construction is being permitted by Federal authority in certain areas on the de Bellis property project site in Daly City which are adjacent to area which may contain an endangered species – the Mission blue butterfly. The areas which may support the Mission blue butterfly are protected by fences. I also understand that grading or ground disturbance beyond areas marked in the field by a fence is not permitted and that it may be punishable as a Federal Crime to grade or disturb ground within areas protected by the fence if such grading kills or injures butterfly eggs, larvae, or adult butterflies. The following notice shall be read and understood by all personnel operating equipment in the field:

NOTICE: Grading beyond or within the fenced areas could result in a violation of federal law (16 U.S.C. Section 1513-1543) and could result in a fine of \$50,000 and imprisonment for one year (16 U.S.C. Section 1540(b)).

Signature

Title

City Representative, Witness

Date

Exhibit B – Recommended Plants to use in Common Areas *

Silver Lupine (*Lupinus albifrons collinus*) (from on-site or vicinity sources only)

Buckwheat (*Eriogonum latifolium*)

Coyote mint (*Monardella villosa*)

Checkerbloom (*Sidalcea malvaeflora*)

Phacelia (*Phacelia californica*)

California poppy (*Eschscholtzia californica*)

Aster (*Aster chilense*)

Douglas Iris (*Iris douglasiana*)

Blue-eyed grass (*Sisyrinchium bellum*)

Grasses

Purple needlegrass (*Nesella pulchra*)

California brome (*Bromus maritimus*)

California oatgrass (*Danthonia californica*)

California red fescue (*Festuca rubra*)

Meadow barley (*Hordeum brachyantherum*)

* Others can be added with approval from USFWS.

Exhibit C – List of Invasive Pest Plants to be Removed

Fennel (*Foeniculum vulgare*)

Wild radish (*Raphanus sativa*)

French broom

Scotch Broom

Portugese Broom

Gorse (*Ulex europaeus*)

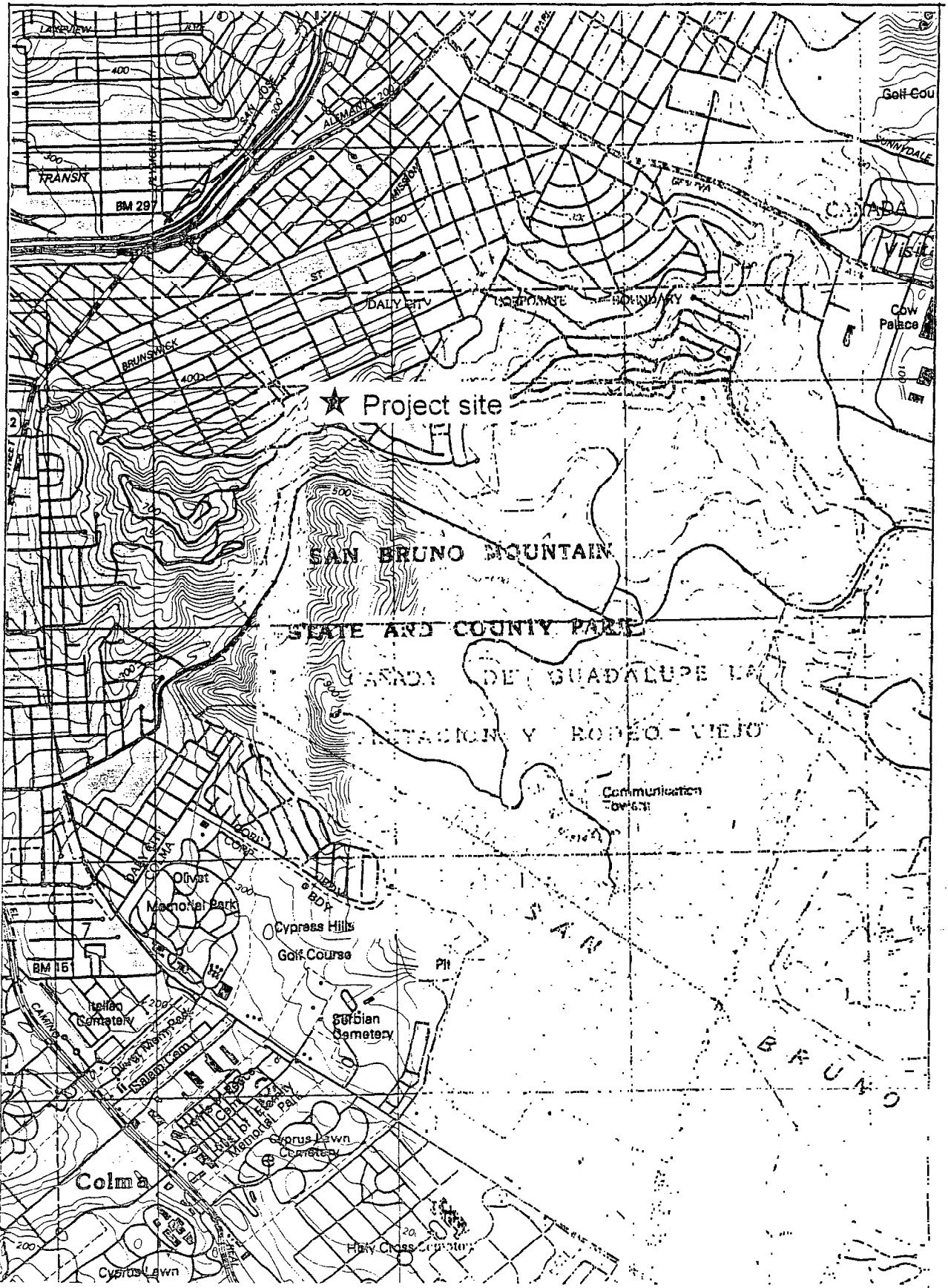
Pampas Grass (*Cortedaria jubata*)

Ice plant

Cotoneaster

Oxalis

Figure 1. Location of project site (APN 004-330-010 and 004-330-020) Daly City, California.



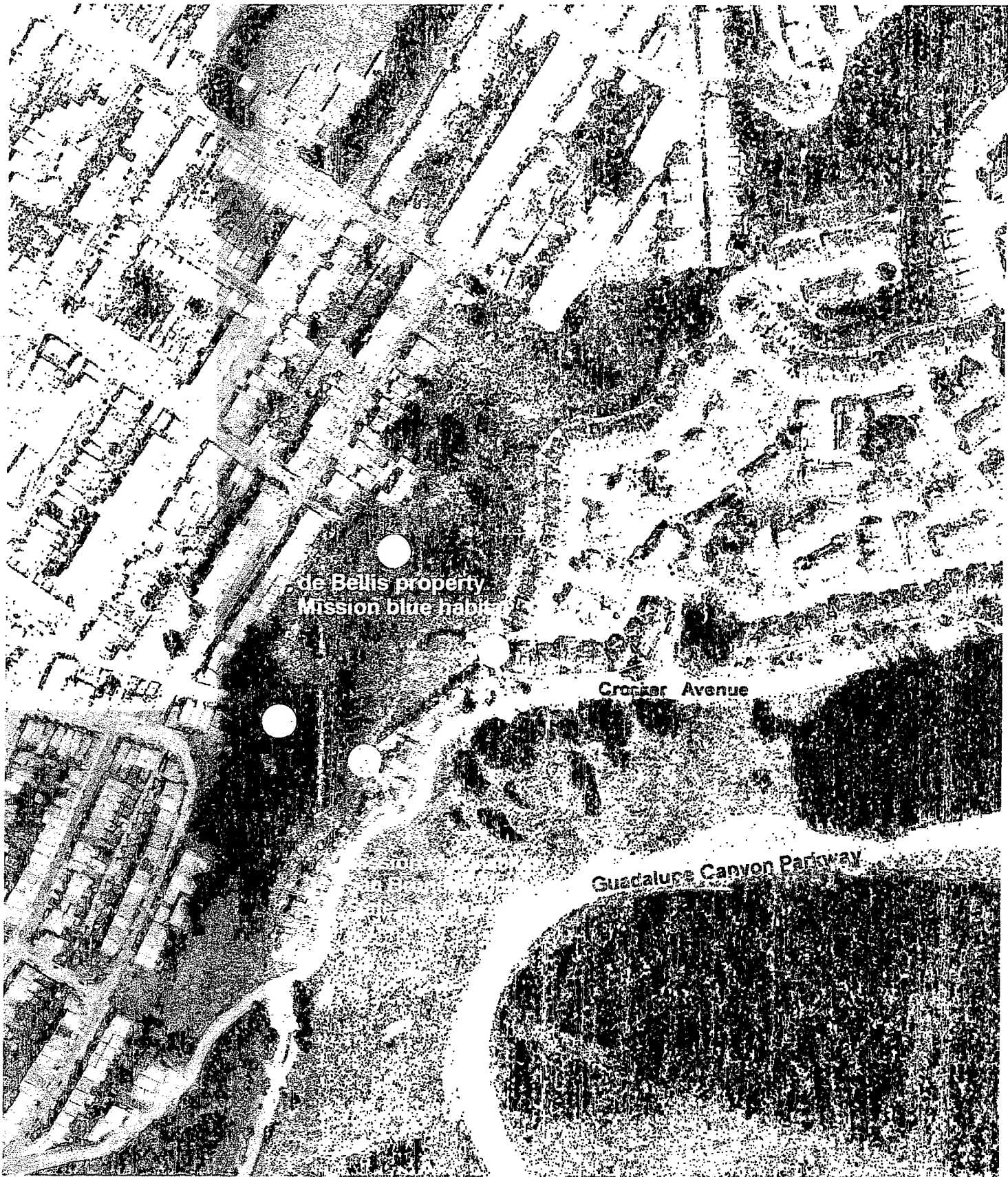
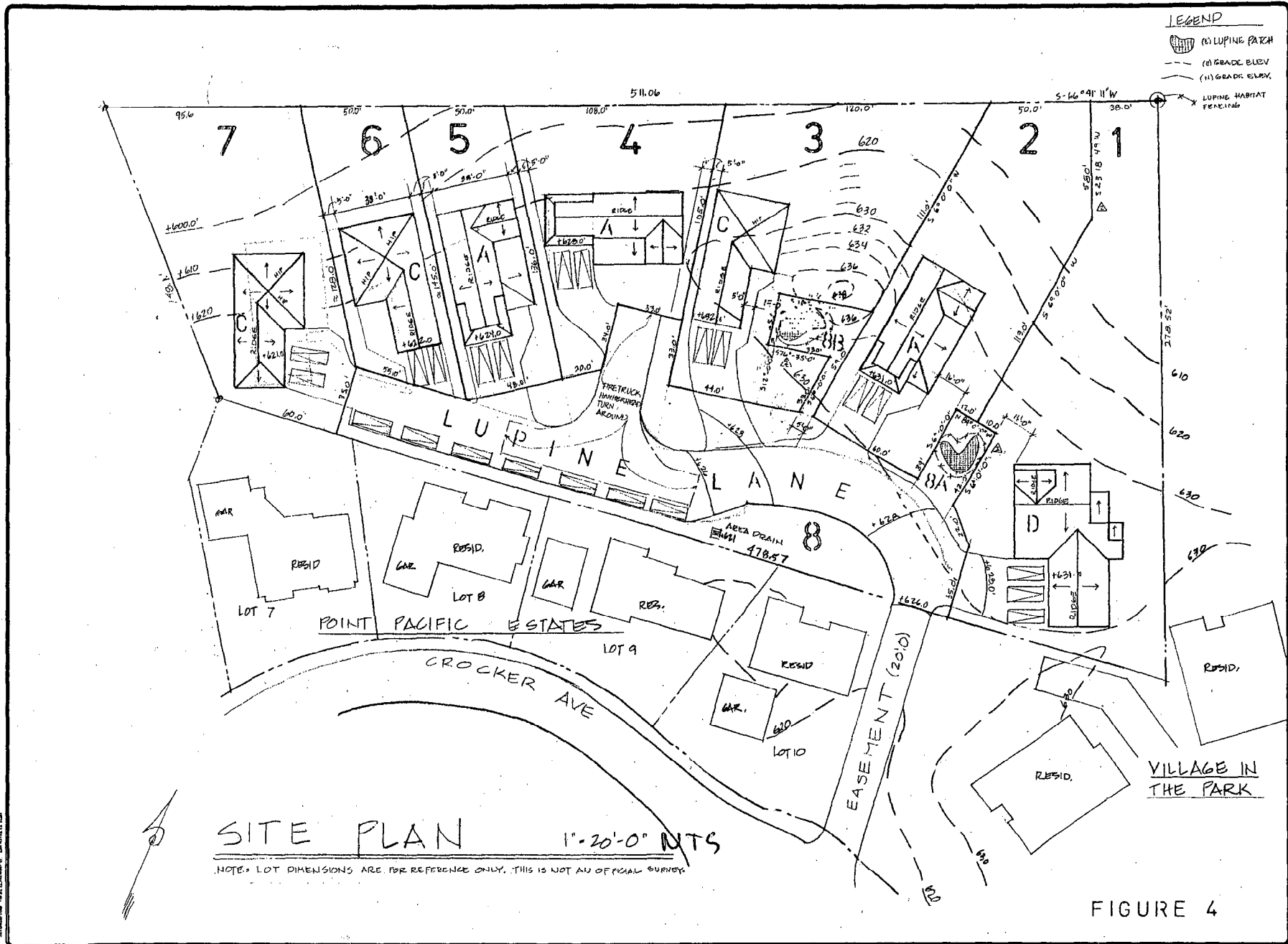


Figure 2. Location of Mission blue butterfly habitat on de Bellis property, Daly City, California. Nearest location of Mission blue habitat on San Bruno Mountain County Park lands shown for comparison. Approximate scale: 1 inch = 500 feet. Photo date: 3/19/01.

Photo: Source: Pacific Aerial Surveys.

Map by Thomas Reid Associates.





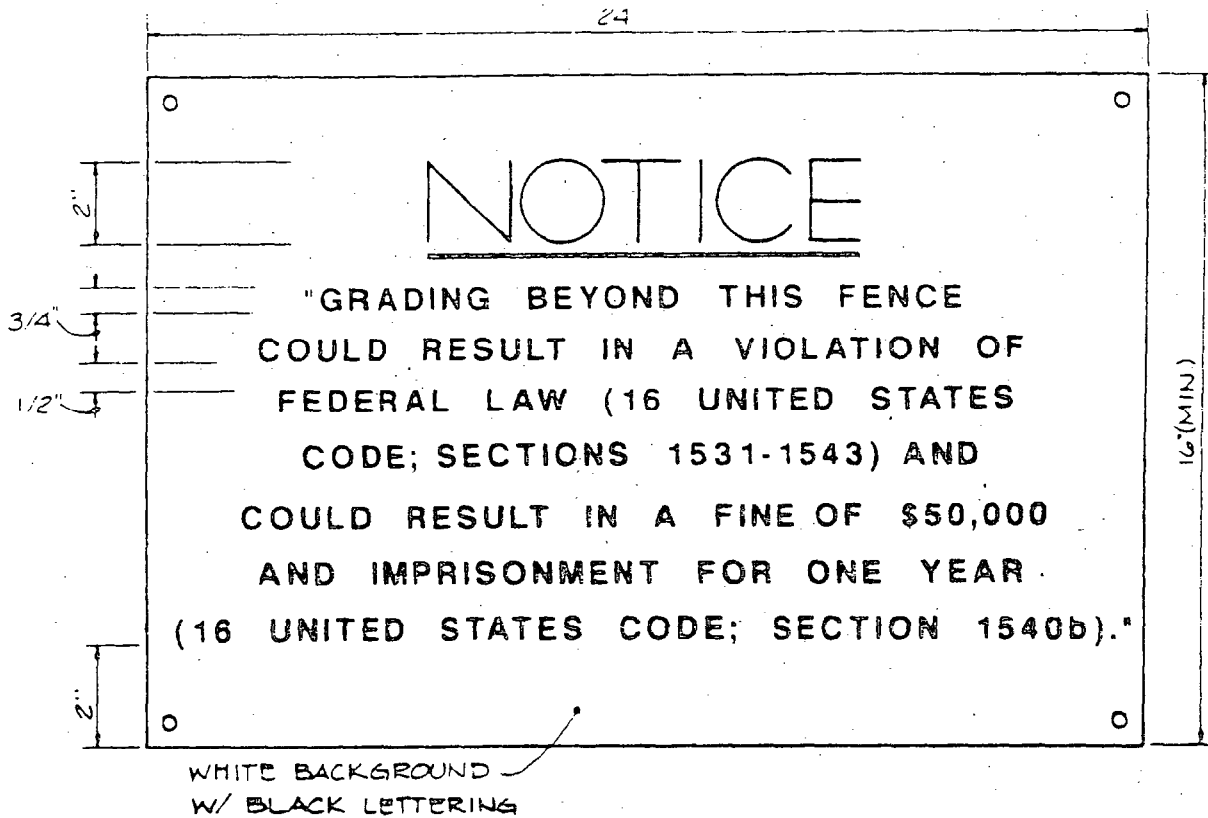
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1	AUS
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AL SKEBUTENAS
 ARCHITECT
 202 AVENUE D
 SUITE 100
 PORTLAND, OREGON 97208

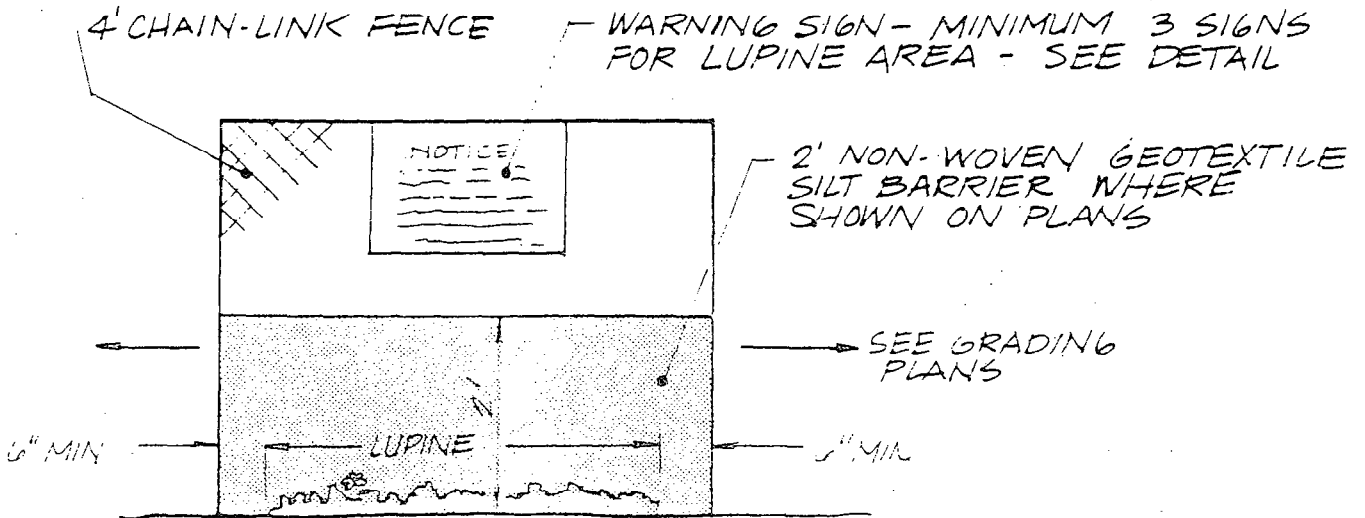
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 AP# 004-330-010 & 004-330-020

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3/28
SHEET 1

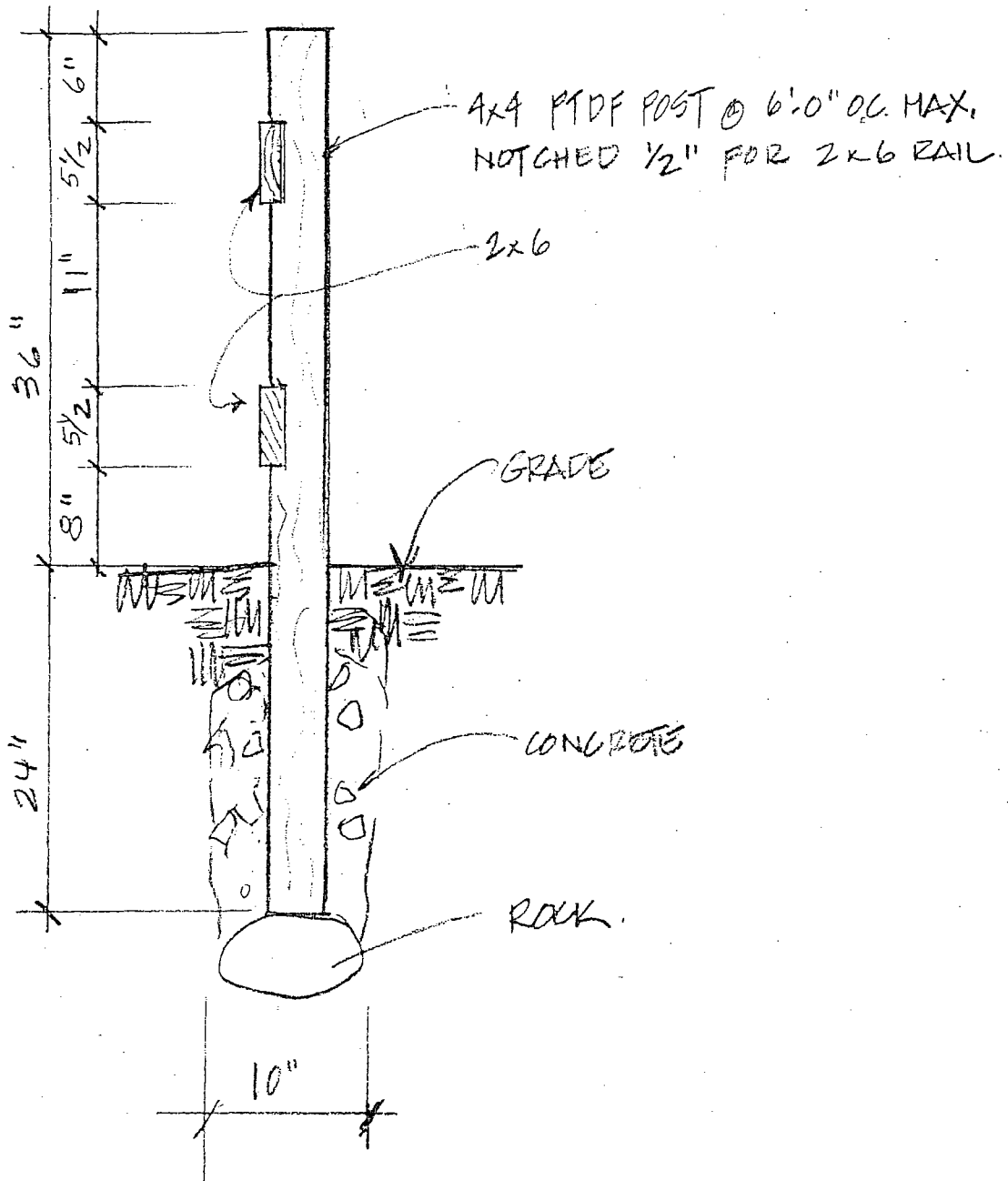
Figure 5: Detail of Habitat Fence and Signs



TYPICAL HABITAT & LUPINE WARNING SIGN DETAIL



TEMPORARY HABITAT FENCE



FENCE DETAIL

1" = 1'-0"

1

LUPINE HABITAT ENCLOSURE FENCE FOR

de BELLIS DEV

AP# 004-330-010 & 004-330-020

DATE = 1-20-01

AL SKREBUTENAS

ARCHITECT

252 Avalon Dr.

Pacifica, CCA 94044

(650) 355-6559 FAX (650) 359-022

DECLARATION OF TRUST

I

_____ ("Trustor") hereby pledges to transfer and deliver to the Trustees of the San Bruno Mountain Habitat Conservation Trust ("Trustees") In perpetuity the sum of \$15,000 (the "Trust Fund") on the date that the first grading permit is issued to improve any portion of the real property described on Exhibit B attached hereto. These funds are to be held, administered, disbursed and expended as is more particularly set forth and provided herein.

II

- A. The Trustees shall hold, administer, disburse and expend, from time to time, from the principal and income of the Trust Fund, deposited with it from time to time, such amounts as shall be required to preserve, operate, and maintain in perpetuity, the real property described on Exhibit B attached hereto, as a Conservation Bank and habitat for wildlife, pursuant to the terms of the San Bruno Mountain Habitat Conservation Trust Agreement ("Trust Agreement") dated November 15, 1982.
- B. The Trustee may make direct disbursements from the Trust Fund for the purposes of this Trust, or it may from time to time disburse such funds to the Trustor or persons or entity charged with the responsibility of preserving, operating, and maintaining the Conservation Bank, which funds shall be used by such persons or entity only for the purposes set forth herein and in said Agreement. Notice of such disbursement shall be provided to the Conservation Bank Coordinator, Sacramento Fish and Wildlife Office, U. S. Fish and Wildlife Service.
- C. The Trustee may be directed from time to time by the then Conservation Bank Coordinator, Sacramento Fish and Wildlife Office, U. S. Fish and Wildlife Service, as to the persons or entity to whom such funds are to be disbursed and used for the purposes set forth in this Trust. Notwithstanding any other provision of this Agreement, Trustees shall have no obligation to determine when or in what manner funds from the Trust Fund shall be expended, nor shall the Trustees have any obligation to perform work on the real property described in Exhibit B.

III

The name of the Trust to which the funds are transferred hereunder is the "San Bruno

Mountain Habitat Conservation Trust.”

IV

The property of this Trust is irrevocably dedicated to charitable purposes and no part of the net income or assets of this trust shall ever inure to the benefit of any Trustor, Trustee, officer, or member hereof or to the benefit of any private person. Upon any termination of this Trust, its assets remaining after payment, or provision for payment, or all debts and liabilities of the Trust shall be distributed to a non profit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501 (c)(3) of the Internal Revenue Code, and whose purposes are consistent with the overall public purposes of this “Trust to develop, acquire, and maintain in perpetuity wetland habitats and their associated adjacent upland wildlife habitats”.

V

No substantial part of the activities of the Trust shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

VI

- A. In the event the Trustee resigns or is removed, such vacancy may be filled by the appointment of a Successor Trustee, in accordance with the Trust Agreement.
- B. The Trustee shall at all times keep the Trust on deposit with a federally insured financial institution, at the maximum obtainable interest rate.

TRUSTOR:

By: _____

TRUSTEE:

By: _____

Approved:

U. S. FISH AND WILDLIFE SERVICE

By: _____