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Endangered and Threatened Wildlife and Plants; Final Rule Designating Critical Habitat for Ambrosia pumila (San Diego ambrosia); Final Rule

DEPARTMENT OF THE INTERIOR

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[Docket No. FWS–R8–ES–2009–0054; MO 92210–0–0009–B4]

RIN 1018–AW20

Endangered and Threatened Wildlife and Plants; Final Rule Designating Critical Habitat for Ambrosia pumila (San Diego ambrosia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Ambrosia pumila* (San Diego ambrosia) under the Endangered Species Act of 1973, as amended. Approximately 783 acres (317 hectares) are being designated as critical habitat for *A. pumila* in Riverside and San Diego counties, California.

DATES: This rule becomes effective on December 30, 2010.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0054. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

We intend to discuss only those topics directly relevant to the designation of critical habitat for *Ambrosia pumila* under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), in this final critical habitat designation. For more information on the taxonomy, biology, and ecology of *A. pumila,* refer to the final listing rule published in the **Federal Register** on July 2, 2002 (67 FR 44372), the proposed critical habitat designation published in the **Federal Register** on August 27, 2009 (74 FR 44238), and the Notice of Availability (NOA) of the draft economic analysis (DEA) published in the **Federal Register** on May 18, 2010 (75 FR 27690).

New Information on Species' Description, Life History, Ecology, Habitat, and Geographic Range and Status

We received no new information pertaining to the description, life history, ecology, or habitat of *Ambrosia pumila* following the 2009 proposed critical habitat designation (74 FR 44238, August 27, 2009). However, we did receive and analyze new information related to the distribution and status of *A. pumila,* which is described below.

Geographic Range and Status

As described in the proposed rule, *Ambrosia pumila* is distributed in southern California from northwestern Riverside County, south through western San Diego County, to northwestern Baja California, Mexico (CNDDB 2010). It is generally found at or below elevations of 1,600 feet (ft) (487 meters (m)) in Riverside County, and 600 ft (183 m) in San Diego County (CNDDB 2010). Since publication of the proposed rule in the **Federal Register** on August 27, 2009 (74 FR 44238), we became aware of two additional occurrences of this species, both of which fall within the previously known geographic range of the species. One occurrence (Subunit 3B) is in the City of Temecula in Riverside County near the western end of 1st Street, just west of Murrieta Creek. This occurrence is believed to have been present at the time of listing because plants with clonal growth patterns tend to be long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). Although stems may die and portions of the rhizome may disintegrate over time, except under extreme conditions, enough of the rhizome survives from one growing season to the next to support continued growth of an individual plant. Additionally, because the plants produce very few if any seeds, the ability of the plant to disperse into and colonize previously unoccupied areas is diminished. The second occurrence is located just west of Lake Hodges in the western portion of central San Diego County, on and adjacent to the west side of the Crosby National Golf Club. This occurrence was included in the listing rule, but was thought to have been possibly extirpated since the species was listed. This occurrence is now known to be extant.

Previous Federal Actions

Ambrosia pumila was listed as an endangered species on July 2, 2002 (67 FR 44372). Designation of critical habitat was found to be prudent in the proposed (64 FR 72993; December 29, 1999) and final listing rules, but was deferred due to budgetary constraints and higher listing priorities. The Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California on December 19, 2007, challenging the Service's failure to designate critical habitat for four endangered plants, including *A. pumila* (*Center for Biological Diversity* v. *United States Fish and Wildlife, et al.,* Case No. 07–CV–2378 NLS). The April 11, 2008, settlement agreement stipulates that the Service shall submit a determination as to whether it is prudent to designate critical habitat for *A. pumila,* and if prudent, submit a proposed critical habitat designation to the **Federal Register** for publication by August 20, 2009, and submit a final critical habitat designation to the **Federal Register** for publication by before August 19, 2010. By order dated August 3, 2010, the district court approved a modification to the settlement agreement that extends to November 19, 2010, the deadline for submission of a final revised critical habitat designation to the **Federal Register**. The proposed critical habitat designation published in the **Federal Register** on August 27, 2009 (74 FR 44238).

Summary of Changes From Proposed Rule To Designate Critical Habitat

In our 2009 proposed rule (74 FR 44247, August 27, 2009), we proposed approximately 802 acres (ac) (324 hectares (ha)) as critical habitat in 7 units with 8 subunits in Riverside and San Diego Counties, California. We reevaluated our data in conjunction with information received during the comment period and information obtained after the publication of the 2009 proposed rule. Based on this reevaluation, we changed our proposal to approximately 1,140 ac (461 ha) in 7 units, which collectively consist of 13 subunits (75 FR 27690, May 18, 2010). In this final critical habitat rule, we are designating approximately 783 ac (317 ha) as critical habitat in 6 units with 13 subunits, reflecting the exclusion of approximately 329 ac (133 ha) based on consideration of relevant impacts under section 4(b)(2) of the Act. All land designated as critical habitat in this final rule was included in the 2009 proposed rule (74 FR 44247, August 27, 2009) or the Notice of Availability

(NOA) for the Draft Economic Analysis (DEA) (75 FR 27690, May 18, 2010). Changes between this designation and the 2009 proposed designation are described below and in Table 1.

(1) In the proposed rule and the NOA, we considered lands covered under the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) in Subunits 1A and 1B, Unit 2 and Subunit 3B for exclusion under section 4(b)(2) of the Act. We have analyzed each of the areas considered for exclusion under the Western Riverside County MSHCP and determined that the benefits of exclusion outweigh the benefits of inclusion of approximately 118 ac (48 ha) of land in Unit 2 covered by the Western Riverside County MSHCP. We also determined that exclusion of this area will not result in extinction of the species. Therefore, we excluded this area from this critical habitat designation under section 4(b)(2) of the Act. For a complete discussion of the benefits of inclusion and exclusion, see Exclusions Under Section 4(b)(2) of the Act section below.

(2) In the proposed rule as modified by the NOA, we considered lands in Units 5A and 6 owned by or under the jurisdiction of the City of San Diego within the City of San Diego Subarea Plan under the Multiple Species Conservation Program (City of San Diego MSCP Subarea Plan) for exclusion under section 4(b)(2) of the Act. We have analyzed each of the areas considered for exclusion under the City of San Diego MSCP Subarea Plan and determined that the benefits of exclusion outweigh the benefits of inclusion of approximately 160 ac (65 ha) of land in Unit 6 covered by the City of San Diego MSCP Subarea Plan. Exclusion of this area will not result in extinction of the species. Therefore, we excluded this area from this critical habitat designation under section 4(b)(2) of the Act (*see* Exclusions Under Section 4(b)(2) of the Act section below).

(3) In the proposed rule as modified by the NOA, we considered lands in Subunit 5B and Unit 7 (Subunits 7A, 7B and 7C) owned by or under the jurisdiction of the County of San Diego within the County of San Diego Subarea Plan under the MSCP (County of San Diego MSCP Subarea Plan) for exclusion under section 4(b)(2) of the Act. We have analyzed each of the proposed areas within the County of San Diego MSCP Subarea Plan area and determined that the benefits of exclusion outweigh the benefits of inclusion of approximately 52 ac (21 ha) of land in Subunit 5B covered by the County of San Diego MSCP Subarea Plan that are conserved and managed under the Crosby at Rancho Santa Fe Habitat Management Plan. We also determined that exclusion of this area will not result in extinction of the species. Therefore, we excluded this area from this critical habitat designation under section 4(b)(2) of the Act (*see* Exclusions Under Section 4(b)(2) of the Act section below).

(4) The boundaries of Subunits 4A, 4B, and 4C have been modified to remove habitat that is not suitable for *Ambrosia pumila* according to data received after the proposed rule was published, and to remove widened portions of State Route 76 where habitat is no longer suitable for *A. pumila* (*see* Criteria Used To Identify Critical Habitat section below).

(5) To prepare final critical habitat maps, we overlay maps of those lands we are excluding from this critical habitat designation on polygons that are delineated using physical and biological features. This process often leaves small fragments of a proposed critical habitat unit or subunit that are not excluded but that, by themselves, may not be considered essential. We evaluated these areas and removed from the final designation habitat fragments remaining after areas are excluded that were not considered essential. As a result, the sum of the areas designated and excluded is slightly reduced in this final critical habitat designation compared to the size of the total proposed designation due to removal of small artifacts or fragments created by the exclusion process.

TABLE 1—A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF AMBROSIA PUMILA IN THE 2009 PROPOSED CRITICAL HABITAT DESIGNATION AND THIS FINAL CRITICAL HABITAT DESIGNATION

Location	2009 Proposed critical habitat		Excluded under section 4(b)(2)		2010 Final critical habitat	
	Acres	Hectares	Acres	Hectares	Acres	Hectares
Unit 1: Santa Ana River watershed	112	45	0	0	112	45
Subunit 1A: Alberhill (Lake Street)	41	17	0	0	41	17
Subunit 1B: Nichols Road	70	29	0	0	70	29
Unit 2: Skunk Hollow Vernal Pool watershed	118	48	118	48	0	0
Unit 3: Santa Margarita River watershed	77	31	0	0	77	31
Subunit 3A: Santa Gertrudis Creek	33	13	0	0	33	13
Subunit 3B: Murrieta Creek	44	18	0	0	44	18
Unit 4: San Luis Rey River watershed	126	51	0	0	92	37
Subunit 4A: Calle de la Vuelta	30	12	0	0	15*	6
Subunit 4B: Olive Hill Road	35	14	0	0	23*	9
Subunit 4C: Jeffries Ranch	40	16	0	0	33*	13
Subunit 4D: Gird/Monserate Hill	21	9	0	0	21**	8
Unit 5: San Dieguito River watershed—Lake Hodges	294	119	52	21	249	101
Subunit 5A: Lake Hodges East (Via Rancho Pkwy)	21	9	0	0	21	9
Subunit 5B: Lake Hodges West (Crosby Estates)	279	113	52	21	228	92
Unit 6: San Diego River watershed—Mission Trails Regional Park	198	80	160	65	38	16
Unit 7: Sweetwater River watershed	215	87	0	0	215	87
Subunit 7A: Jamul Drive	39	16	0	0	39	16
Subunit 7B: San Diego National Wildlife Refuge	133	54	0	0	133	54
Subunit 7C: Steele Canyon Bridge	44	18	0	0	44	18
Total	1,146	461	329	133	783	317

Values in this table may not sum or may differ slightly from values in the proposed rule and NOA due to rounding.

* Modified to remove habitat that is not suitable for *Ambrosia pumila.*
** This number is different than the number given in the NOA due to a typographical error in the NOA.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as:(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3(3) of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and—in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved—regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species; that is, areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Under section 3(5)(A)(ii) of the Act, the Secretary can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when he/she determines that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may naturally move within an area or from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all habitat areas that may eventually be determined necessary for recovery of the species, based on scientific data not now available. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species. Federal activities that may affect areas outside of critical habitat are still subject to review under section 7 of the Act if they may affect *Ambrosia pumila*. The prohibitions of section 9 of the Act applicable to listed plant species also continue to apply both inside and outside of designated critical habitat.

Areas that support occurrences of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. In these areas, the species is also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement essential for the

conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

Little is known about the specific characteristics of *Ambrosia pumila* habitat. Therefore, the PCEs for this species are based on our assessment of the ecosystem settings in which the species has most frequently been detected. The physical and biological features essential to the conservation of *A. pumila* are derived from studies of this species' habitat, ecology, and life history as described below, in the Background section of the proposed critical habitat designation published in the **Federal Register** on August 27, 2009 (74 FR 44238), and in the final listing rule published in the **Federal Register** on July 2, 2002 (67 FR 44372).

Space for Individual and Population Growth and for Normal Behavior

Clonal Growth—Rhizome Spread and New Aerial Stems

Individual *Ambrosia pumila* plants spread by slender underground rhizomes to produce a group of genetically identical aerial (above-ground) stems—a clone. Growing rhizomes extend underground beyond the extent of the aerial stems into adjacent suitable habitat, and rhizomes of adjacent plants likely intermingle to a degree. The distance rhizomes extend beyond the standing aerial stems is difficult to measure because of the difficulty in unearthing an intact rhizome system.

The number and spatial distribution of the aerial stems of *Ambrosia pumila* patches can differ from one growing season to the next (Martin 2005, p. 3; City of San Diego 2008a, p. 1). For example, a study that monitored *A. pumila* in 2000 and 2005 observed patches of *A. pumila* differing in shape and size (up to several square meters), with some patches not producing any stems in 2005 (some of the patches that did not produce stems in 2005 were observed to produce stems in 2008 (Martin 2005, p. 8; A. Folarin 2008, pers. comm.)). Differences in patch size and shape may be due to differences in available moisture or competition from other plants (Martin 2005, p. 3; City of San Diego 2008a, p. 1). Based on these and other observations, we conclude that the rhizome system of a group of *A. pumila* stems likely occupies a greater underground area than that occupied by the aerial stems at any given time, and aerial stems may be produced only when and where conditions are appropriate. Thus, habitat occupied by *A. pumila* extends beyond that seen to be occupied by the aerial stems, and area designated as critical habitat must extend beyond the area seen to be occupied by standing aerial stems to encompass the estimated limits of the underground rhizome system.

Germination of Seeds and Spread of Seedlings

It is unknown to what extent and with what frequency *Ambrosia pumila* reproduces by seeds. Based on genetic studies described below, at least some low rate of sexual reproduction has occurred. We are not aware of any research that would provide the information needed to assess the species' germination and seedling needs.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Water

Specific water needs of the species are unknown. *Ambrosia pumila* is adapted to the dry conditions which occur annually throughout its range (Keck 1959, p. 1103; Munz 1974, p. 112; Dudek 2000, Appendix A; CNLM 2008, p. 18). Service biologists have observed fresh (not desiccated) aerial stem shoots after small amounts of precipitation and after annual vegetation in the area had desiccated (A. Folarin 2008, pers. comm.), implying that either *A. pumila* requires less water than other grassland plants, that the underground perennial rhizome system has some capacity to store enough water to sustain growth, or both. Additionally, we believe that periodic flooding may be necessary at some stage of the plant population's life history (such as seed germination, dispersal of seeds and rhizomes) or to maintain some essential aspect of its habitat, because native occurrences of the plant are always found on river terraces or within the watersheds of vernal pools.

Light

Ambrosia pumila is limited to open or low-growing plant communities, which implies that the species is not shade tolerant (Dudek 2000, pp. 18–19). *Ambrosia pumila* stems amid taller vegetation obtain adequate sunlight by growing taller and more slender compared to those in more open areas (Dudek 2000, p. 19), which implies the species is not shade tolerant.

Soil

Ambrosia pumila is found primarily on sandy loam or clay soils including (but not limited to) the Placentia (sandy loam), Diablo (clay), and Ramona (sandy loam) series (Dudek 2000, Appendix A; CNDDB 2010). *Ambrosia pumila* is rarely found growing on other substrate types (such as gravel).

Chemical soil attributes and other abiotic and biotic characteristics have been measured and documented for *Ambrosia pumila* occurrences at Skunk Hollow (Riverside County), Mission Trails Regional Park, and San Diego National Wildlife Refuge (San Diego County) (Dudek 2000, Appendix A; CNLM 2008, pp. 6–7, 12, and 18), including pH, percent organic matter, soil moisture, and elemental composition. These measurements did not provide consistent results across the range of the species; thus, we are unable to make generalizations as to needs of the species as far as soil attributes are concerned.

Temperature

We have no information on the tolerance of *Ambrosia pumila* to climatic extremes. Temperature is thought to potentially play a role in inducing (or prohibiting) seed germination (Johnson 1999, p. 5), although there is limited information at this time as to how often this species currently reproduces via seed.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

As stated in the "Life History" section of the proposed rule, little is known about the nature and frequency of sexual reproduction in *Ambrosia pumila.* Occurrences are consistently found on the upper terraces of rivers and other waterways; consequently, periodic flooding of these waterways likely plays or likely has played a role in the life history of the plant. For example, Johnson (1999, p. 5) postulated that *A. pumila* seeds may require soaking in flood waters or scarification as they are churned about with debris in flood waters to germinate. Additionally, floods may disperse *A. pumila* rhizomes and seeds (Dudek 2003, p. P–332) and create space for new stems by removing or limiting the growth of competitors.

Presuming *Ambrosia pumila* is wind pollinated, as discussed in the "Life

History" section of the proposed rule, the species requires sufficient airflow through inflorescences to pick up and carry pollen (McGlaughlin and Friar 2007, p. 329). This is another reason (in addition to not being shade-tolerant) that *A. pumila* may require habitat containing primarily low-growing plants—low-growing plants do not block or dramatically reduce airflow to plants of *A. pumila's* stature, which is generally less than 12 inches (30 centimeters) tall (McGlaughlin and Friar 2007, p. 329).

Ambrosia pumila is presumed to be self-compatible (an individual can produce viable seed with its own pollen), but this aspect of the species' reproductive strategy has not been well-examined. In a recent study, another *Ambrosia* species previously thought to be self-compatible was found not to be self-compatible (Friedman and Barrett 2008, p. 4). If *A. pumila* likewise is not self-compatible, genetically distinct individuals in close proximity to one another may be crucial to maintaining sexual reproduction in the species (McGlaughlin and Friar 2007, p. 329).

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Ambrosia pumila occurs most frequently on upper terraces of rivers with flat or gently sloping areas of 0 to 42 percent slopes. *A. pumila* occurrences are found near, but not directly adjacent to, the river channels and along other drainages in western Riverside County, western San Diego County, and northwestern Baja California, Mexico (Beauchamp 1986, p. 94; Johnson *et al.* 1999, p. 1; McGlaughlin and Friar 2007, p. 321; CNDDB 2008). These areas are or likely have been associated with a natural flood disturbance regime. The species is primarily associated with native and nonnative grassland and ruderal communities, and openings in coastal sage scrub (Johnson *et al.* 1999, p. 1; Dudek 2000, p. 18; Dudek 2003, p. P–330; CNDDB 2010). In Riverside County, *A. pumila* occurs in ruderal and nonnative grassland communities adjacent to creeks and other smaller drainages (for example, Temescal (Alberhill) Creek and Santa Gertrudis Creek) (Dudek 2003, p. P–326; CNDDB 2010). *Ambrosia pumila* also occurs in nonnative grassland community adjacent to and within the watershed of Skunk Hollow vernal pool in Riverside County (Dudek 2003, p. P–326; CNDDB 2010). In San Diego County, *A. pumila* is more often found adjacent to larger waterways (for example, San Luis Rey River, San Diego River, and Sweetwater River), although the species is also often found associated with smaller drainages and washes (CNDDB 2010).

Occurrences in Riverside County are found further inland and at higher elevations than in San Diego County. For example, the occurrence at Skunk Hollow in Riverside County is 1,350 ft (411 m) above sea level, while the occurrences at Mission Trails Regional Park and San Diego National Wildlife Refuge in San Diego County are about 315 ft and 360 ft (96 m and 110 m) above sea level, respectively (CNLM 2008, p. 7)).

The documented range of *Ambrosia pumila* in Mexico at the time of listing extended from Cabo Colonet south to Lake Chapala in north-central Baja California. We have no information regarding additional occurrences in Mexico, or the physical and biological features essential to the conservation of the species there.

Primary Constituent Elements for Ambrosia pumila

Under the Act and its implementing regulations at 50 CFR 424.12, we are required to identify the specific areas within the geographical area occupied by a species, at the time it is listed, on which are found those physical or biological features determined to be essential to the conservation of the species and that may require special management considerations or protection. The essential physical and biological features are those PCEs laid out in the appropriate spatial arrangement and quantity determined to be essential to the conservation of the species. Because not much is known about the specific needs and characteristics of this species, the PCEs are based on observed characteristics of the habitats in which the species is most often found. All areas designated as critical habitat for *A. pumila* were occupied at the time the species was listed, occur within the species' historical geographic range, and contain sufficient PCEs to support at least one life-history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of *Ambrosia pumila,* and the characteristics of the areas where the species is known to occur, we identified two PCEs for *A. pumila:*

1. Sandy loam or clay soils (regardless of disturbance status), including (but not limited to) the Placentia (sandy loam), Diablo (clay), and Ramona (sandy loam) soil series that occur near (up to several hundred meters from but not directly adjacent to) a river, creek, or other drainage, or within the watershed of a vernal pool, and that occur on an upper terrace (flat or gently sloping areas of 0 to 42 percent slopes are typical for terraces on which *Ambrosia pumila* occurrences are found).

2. Grassland or ruderal habitat types, or openings within coastal sage scrub, on the soil types and topography described in PCE 1, that provide adequate sunlight, and airflow for wind pollination.

Based on our current knowledge of the needs of the species, we believe the need for space for individual and population growth and normal behavior is met by PCE 2, and areas for reproduction, water, light, and soil are provided by PCEs 1 and 2. These areas provide nutrients, moisture, and proximity to water features that provide periodic flooding presumed necessary for the plant's persistence.

In designating this critical habitat, we intend to conserve the physical and biological features considered essential to support the life-history functions of the species. All units and subunits designated here as critical habitat contain sufficient PCEs in the appropriate quantity and spatial arrangement to provide for one or more of the life-history functions of *Ambrosia pumila.*

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the physical and biological features that are essential to the conservation of the species, and whether these features may require special management considerations or protection. The area designated as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. In all units, special management will be required to ensure that the habitat is able to provide for the growth and reproduction of the species.

Records indicate that *Ambrosia pumila* historically was known from over 50 locations in San Diego and Riverside counties, but the number of extant occurrences has been dramatically reduced because much of the species' habitat has been impacted by human activities (Burrascano and Hogan 1997, p. 7; Dudek 2000, p. 17; CNDDB 2010). A detailed discussion of threats to *A. pumila* and its habitat can be found in the final listing rule (67 FR 44372, July 2, 2002). The features essential to the conservation of *A. pumila* require special management

considerations or protection to reduce the following threats, among others:

• Habitat destruction caused by urban development, including highway and utility corridor construction and maintenance, highway expansion, and development of recreational facilities (such as golf courses and campgrounds). These activities can destroy the PCEs by removing or compacting soil, making habitat unsuitable for *Ambrosia pumila.*

• Soil compaction caused by the creation and use of trails by hikers, horses, and vehicles. *Ambrosia pumila* appears to be tolerant to some level of disturbance caused by trail creation and use; it is often found in the disturbed areas along margins of dirt trails. However, it is found less often in trailways, implying that although the appropriate soil type might be present, soil compaction can alter soil physical characteristics such that the soil can no longer support plant growth (PCE 1).

• Habitat alteration caused by invasion of nonnative plant species that may, if present in large enough numbers, change the plant assemblage or cover density to the extent that *Ambrosia pumila* plants can no longer receive adequate sunlight and airflow (PCE 2).

• Alteration of hydrological and floodplain dynamics, such as channelization and water diversions, (an additional threat not discussed in the listing rule), which can change the frequency of flooding in occupied areas or eliminate natural periodic flooding presumed necessary for the plant's long-term persistence (PCE 1).

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include fencing *Ambrosia pumila* occurrences and providing signage to discourage encroachment by hikers, horses, and off-road vehicle users; control of nonnative plants using methods shown to be effective (for examples, see CNLM 2008); guiding the design of development projects to avoid impacts to *A. pumila* habitat; and restoring and maintaining natural hydrology and floodplain dynamics of waterways associated with *A. pumila* occurrences where feasible. These management activities will help protect the PCEs for the species by reducing soil compaction (PCE 1), lowering the density of nonnative plants thereby maintaining the appropriate community structure (PCE 2), and maintain periodic flooding of *A. pumila* habitat where possible (PCE 1).

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of *Ambrosia pumila.* We are designating critical habitat in areas that we consider to have been occupied by the species at the time of listing and that continue to be occupied today, and that contain the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (*see* the "*Geographic Range and Status*" section of the proposed critical habitat rule (74 FR 44241, August 27, 2009) for more information). We are not designating any areas outside the geographical range occupied at the time of listing. All units and subunits contain the PCEs of *A. pumila* habitat.

We also reviewed available information that pertains to the habitat requirements of this species, although *A. pumila* has not been well-studied and little is known about its breeding system or habitat requirements and characteristics. Additionally, some data from different information sources conflict, further complicating the task of discerning species' habitat requirements. We used sources of information, such as reports submitted to the Service during section 7 consultations and other project reviews, and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles; research presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; and data collected in the field by Service biologists.

Ambrosia pumila was first detected after listing of the species in two of the areas we are designating as critical habitat. We concluded these areas were occupied at the time the species was listed because individuals of species with a clonal growth habit like *A. pumila* are usually long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). The occurrence at the intersection of State Route 76 and Olive Hill Road in San Diego County (Subunit 4B) was found during a general survey for *A. pumila* in 2006 (CNDDB 2010). The occurrence near the intersection of State Route 76 and Gird Road in San Diego County (Subunit 4D) was mapped during a survey for a State Route 76 road widening project (GIS data provided to the Service by California Department of Transportation in 2009; USFWS 2008). To our knowledge, these two areas had not been adequately, if at all, surveyed for *A. pumila* prior to discovery, and we have no reason to believe the plant was imported, or had dispersed into these areas from other locations after listing because the plants produce very few if any seeds and, consequently, the ability of the plant to disperse into and colonize previously unoccupied areas is diminished. It is unlikely that the species would be able to disperse great distances and colonize new areas (*see* Index Map below). We believe that the occurrences identified since listing were in existence for many years and were only recently detected due to increased awareness of this species.

We are also designating critical habitat in some areas where Ambrosia pumila was thought to be extirpated and where an occurrence exists that was not considered viable at the time of listing. We conducted surveys of historical occurrences as part of the background research for this rule. Based on information provided by a local biological consultant, we were able to verify one occurrence east of Lake Hodges in San Diego County that was previously thought to be extirpated because it had not been seen since 1999. During our development of the proposed rule, we were unable to verify this site because the available records contained minimal site location information. However, our recent survey (2009) of the site east of Lake Hodges in San Diego County found a viable, relatively large *A. pumila* occurrence and we determined this site meets the definition of critical habitat (*see* criteria below). All units and subunits contain the physical and biological features believed to be essential to the conservation of this species.

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in trying to determine areas that contain the physical and biological features that are essential to the conservation of *Ambrosia pumila,* and that may require special management considerations or protection.

After identifying the PCEs, we followed these steps to delineate critical habitat:

(1) We identified all extant, natural occurrences of *Ambrosia pumila,* which consist of those known to exist at the time of listing, and those subsequently detected that we believe existed at the time of listing. We compiled data from the following sources to create our database of *A. pumila* occurrences: (1) Data used in the 2002 listing rule for *A. pumila* (67 FR 44372, July 2, 2002); (2)

the current CNDDB element occurrence data report for *A. pumila* and accompanying GIS references (CNDDB 2010, pp. 1–50); (3) data from the on-line Consortium of California Herbaria and accompanying Berkeley Mapper GIS records (Consortium of California Herbaria 2010); (4) the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) species GIS database; and (5) the Carlsbad Fish and Wildlife Office's (CFWO) internal GIS species database, which includes the species data used for the San Diego Multiple Species Conservation Program (MSCP) and the San Diego Multiple Habitat Conservation Plan (MHCP), reports from section 7 consultations, and Service observations of *A. pumila* (CFWO internal species GIS database). We used these data to delineate GIS polygons around *A. pumila* occurrences.

First, we reviewed the data that we compiled to ensure its accuracy. We checked each data point to ensure it represented a site documented by a herbarium voucher or reported observation of *Ambrosia pumila* and was not a duplicate occurrence in the database. Any duplicates detected were removed from the database. Secondly, we checked each data point to ensure that it was correctly mapped. Data points that did not match the description for the original herbarium collection or observation were remapped in the correct location, if possible. We removed occurrences where the location could not be determined from available data or site visits. Third, we determined occupancy status. For areas where we have past occupancy data for *A. pumila,* we assumed the area remained occupied unless: (1) Multiple surveys for the species did not find *A. pumila;* (2) the site was significantly disturbed (for example, developed) since the last observation of the species; or (3) records lacked specific location information, and field surveys carried out in conjunction with this critical habitat determination could not locate the occurrence.

(2) We determined there are no specific areas outside the geographical area occupied by *Ambrosia pumila* at the time it was listed that are essential for the conservation of the species. Information obtained during the Service's research in connection with this action indicates that the geographical area occupied by the species at the time it was listed provides sufficient resources for the conservation of the species. For example, McGlaughlin and Friar (2007, p. 329) conducted an analysis of genetic diversity within and among populations of *A. pumila* and determined that the existing occurrences could support recovery of the species. We do not have sufficient information regarding the specific needs of the species to determine if any areas outside the geographical area occupied by *Ambrosia pumila* at the time it was listed are essential for the conservation of the species.

(3) We removed areas where *Ambrosia pumila* occurs in habitat of low quality for growth and propagation (such as paved areas, or relatively small urban lots surrounded by residential development and continuously subjected to impacts of urbanization such as mowing or foot and vehicle traffic). For example, we did not include one occurrence in the City of El Cajon on a site composed of two residential lots less than half an acre in size, one mowed and landscaped, the other with highly disturbed and compacted soil. Although occupied, we did not consider these locations for critical habitat because they likely do not contribute to the long-term conservation of the species. We made this determination using site descriptions in the CNDDB, satellite imagery, and by talking with Service biologists, other researchers, and land managers familiar with the areas in question.

(4) Using data from studies that mapped the aerial stems of *Ambrosia pumila,* we estimated the distance the rhizome system likely extends beyond aerial stems clusters by calculating the average distance between aerial stems clusters within a CNDDB occurrence polygon. An occurrence is defined by CNDDB as an occupied habitat area separated by 0.25 mi (0.40 km) or more from the next nearest occupied habitat area. Using this method we estimated the average distance of underground rhizome expansion beyond the above-ground aerial stems as approximately 1,181 ft (260 m). Therefore, we expanded the outer boundary of the above-ground extent of each CNDDB occurrence polygon by 1,181 ft (260 m) to account for the underground rhizome system extending beyond the area occupied by visible stems. We believe this distance adequately captures the extent of individual occurrences.

(5) We removed any areas within the boundary mapped in step (4) above where vegetation type was not grassland, ruderal, or coastal sage scrub, using the vegetation types in our GIS database and personal observations by Service biologists and other researchers or land managers.

When determining the critical habitat boundaries, we made every effort to map precisely only the areas that contain the PCEs and provide for the conservation of *Ambrosia pumila.* However, we cannot guarantee that every fraction of critical habitat contains the PCEs due to the mapping scale we use to identify critical habitat boundaries. We made every attempt to avoid including developed areas such as lands underlying buildings, paved areas, and other structures that lack PCEs for *A. pumila.* The scale of maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final critical habitat designation are excluded by text in this rule and are not designated as critical habitat. Therefore, Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the species or PCEs in adjacent critical habitat.

Critical Habitat Designation

We are designating 783 ac (317 ha) of critical habitat for *Ambrosia pumila* in 6 units that include 13 subunits. The critical habitat areas outlined in Table 2 and described below constitute our best assessment of areas occupied at the time of listing that contain the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species that may require special management considerations or protection. We are not designating any areas outside the geographic area occupied by the species at the time of listing because we determined that occupied lands within the species' known geographical range are sufficient for the conservation of *A. pumila.* Each unit and subunit include suitable habitat that will allow for population growth and growth of individual plants represented by aerial stems and the associated rhizome system.

TABLE 2—AREA ESTIMATES (ACRES) (HECTARES) AND LAND OWNERSHIP FOR AMBROSIA PUMILA FINAL CRITICAL HABITAT

Unit #: Unit name (CNDDB element occurrence number)	Federally owned land		State or local government-owned land		Privately-owned land		Total area	
	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares
RIVERSIDE COUNTY								
Unit 1: Santa Ana River watershed	.....	.....	26	11	85	35	112	45
1A. Alberhill (58)	.....	.....	23	10	18	7	41	17
1B. Nichols Road (44)	.....	.....	3	1	67	27	70	29
Unit 3: Santa Margarita River watershed	.....	.....	8	3	69	28	77	31
Subunit 3A: Santa Gertrudis Creek	.....	.....	8	3	25	10	33	13
Subunit 3B: Murrieta Creek	.....	.....	.....	.....	44	18	44	18
Subtotal:	.....	.....	34	14	154	62	189	76
SAN DIEGO COUNTY								
Unit 4: San Luis Rey River watershed	.....	.....	17	7	75	30	92	37
4A. Calle de la Vuelta (43)	.....	.....	1	0	14	6	15	6
4B. Olive Hill Road (16)	.....	.....	16	6	8	3	23	9
4C. Jeffries Ranch (45)	.....	.....	0	0	33	13	33	13
4D. Gird/Monserate Hill (n/a)	.....	.....	1	0	20	8	21	8
Unit 5: San Dieguito River watershed	.....	.....	129	52	121	49	249	101
5A. Lake Hodges East (Via Rancho Pkwy) (14)	.....	.....	16	6	5	2	21	9
Subunit 5B: Lake Hodges West (Crosby Estates)	.....	.....	113	46	115	47	228	92
Unit 6: San Diego River watershed—Mission Trails Regional Park	.....	.....	6	3	32	13	38	15
Unit 7: Sweetwater River watershed	146	59	13	5	57	23	215	87
Subunit 7A: Jamul Road	.....	.....	3	1	36	15	39	16
7B. SDNWR (48)	118	48	.....	.....	15	6	133	54
7C. Steele Canyon Bridge (34)	28	11	10	4	6	2	44	18
Subtotal	146	59	164	67	284	115	594	240
Total	146	59	199	81	438	178	783	316

Values in this table may not sum due to rounding.

Critical Habitat Units

Presented below are brief descriptions of all subunits included in the final critical habitat designation and reasons why they meet the definition of critical habitat for *Ambrosia pumila.* The subunits are listed in order geographically north to south and east to west.

Unit 1: Santa Ana River Watershed

Unit 1 is located in western Riverside County and consists of two subunits totaling approximately, 26 ac (11 ha) of State or local government-owned land, and 85 ac (35 ha) of private land for a total of approximately 112 ac (45 ha) (values do not sum due to rounding).

Subunit 1A: Alberhill

Subunit 1A is located near Alberhill, north of Lake Elsinore and just west of Interstate Highway 15 in Riverside County, California. This subunit is near the northern base of Alberhill Mountain, and near the intersection of Lake Street and Temescal Canyon Road. Subunit 1A consists of approximately 23 ac (10 ha) of County-owned land, and 18 ac (7 ha) of privately owned land for a total of approximately 41 ac (17 ha). The approximately 23 ac (10 ha) of County-owned land in Subunit 1A are conserved and currently managed by the Western Riverside County Regional Conservation Authority; transfer of ownership by the County of Riverside to the Western Riverside County Regional Conservation Authority is planned for the near future. This conserved area is not yet receiving active management. This subunit was occupied at the time of listing and remains occupied and, like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 1A contains the physical and biological features essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and potentially periodic flooding presumed necessary for the plant's persistence (PCE 1); and coastal sage scrub vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and from human encroachment and development. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 1B: Nichols Road

Subunit 1B is located about 2.1 mi (3.5 km) southeast of Subunit 1A (Alberhill), on the north and south sides

of Nichols Road, in Riverside County, California. This subunit is near the southeastern base of Alberhill Mountain, just west of Durant Road and Temescal Creek. Subunit 1B consists of approximately 3 ac (1 ha) of State or local government-owned land, and 67 ac (27 ha) of privately owned land for a total of approximately 70 ac (29 ha) (values do not sum due to rounding). No lands in Subunit 1B are conserved or managed for biological resources. This subunit was occupied at the time of listing and remains occupied, and is essential to the conservation of this species because this subunit (along with Subunit 1A) represents the northernmost occurrences of this species, which is geographically situated to potentially assist this species expand its range northward. Like all other extant occurrences, this subunit is also essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). However, due to impacts from unauthorized grading and disking, and a permitted road realignment project, *Ambrosia pumila* within this subunit may be in imminent danger of extirpation. Subunit 1B contains physical and biological features that are essential to the conservation of *A. pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and from activities (grading, construction, human encroachment) that occur in the area. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Unit 3: Santa Margarita River Watershed

Unit 3 is located in western Riverside County and consists of two subunits totaling approximately, 8 ac (3 ha) of State or local government-owned land, and 69 ac (28 ha) of private land for a total of 77 ac (31 ha).

Subunit 3A: Santa Gertrudis Creek

Subunit 3A is located about 1 mile (1.6 km) southwest of Unit 2, along the San Diego Aqueduct, south of the intersection of Chandler and Suzi Roads and north of Santa Gertrudis Creek in Riverside County. Subunit 3A consists of approximately 8 ac (3 ha) of State-owned land and 25 ac (10 ha) of privately owned land for a total of approximately 33 ac (13 ha). No lands in Subunit 3A are conserved or managed for biological resources. This unit was occupied at the time of listing and remains occupied, and like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 3A contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, and utility maintenance activities. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 3B: Murrieta Creek

Subunit 3B is located in the City of Temecula in southwestern Riverside County, California. This subunit is near the western end of 1st Street, just west of Murrieta Creek. Subunit 3B consists of approximately 44 ac (18 ha) of privately owned land. No lands in Subunit 3B are conserved or managed for biological resources. This subunit meets the definition of critical habitat for this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 3B contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from human foot and vehicle traffic that may occur in the area, and from development. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Unit 4: San Luis Rey River Watershed

Unit 4 is located in northwestern San Diego County and consists of four subunits of approximately 17 ac (7 ha) of State or local government-owned land and approximately 74 ac (30 ha) of privately owned land, for a total of approximately 91 ac (37 ha).

Subunit 4A: Calle de la Vuelta

Subunit 4A is located near junction of State Route 76 and Calle de la Vuelta in unincorporated San Diego County. Subunit 4A consists of approximately 0.8 ac (0.3 ha) of State or local government-owned land and 14 ac (6 ha) of privately owned land, for a total of approximately 15 ac (6 ha). No lands in Subunit 4A are conserved or managed for biological resources. This subunit was occupied at the time of listing and, like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 4A contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations

where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road maintenance activities, and future widening of State Route 76. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 4B: Olive Hill Road

Subunit 4B is located on the west side of State Route 76, south of Olive Hill Road in unincorporated San Diego County. Subunit 4B consists of approximately 16 ac (6 ha) of State or local government-owned land and approximately 8 ac (3 ha) of privately owned land, for a total of approximately 23 ac (9 ha) (values do not sum due to rounding). No lands in Subunit 4B are conserved (a portion of Subunit 4B is within the Groves mitigation preserve, managed by the California Department of Transportation (Caltrans); this area has not yet been conserved). The occurrence in this subunit was erroneously considered extirpated at the time of listing, but has since been found to be extant. Like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 4B contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and flooding presumed necessary for the plant's persistence (PCE 1), and grassland vegetation which allow adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road maintenance activities, and future widening of State Route 76. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 4C: Jeffries Ranch

Subunit 4C is located approximately 0.7 mi (1 km) southwest of Bonsall Bridge, adjacent to the south side of State Route 76 in the City of Oceanside, San Diego County. Subunit 4C consists of approximately 0.1 ac (0.05 ha) of State or local government-owned land and approximately 33 ac (13 ha) of privately owned land for a total of approximately 33 ac (13 ha). No lands in Subunit 4C are conserved. This subunit was occupied at the time of listing and, like all other extant occurrences, we believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 4C contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road and utility maintenance activities, future widening of State Route 76, and potential development. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 4D: Gird/Monserate Hill

Subunit 4D is located in the Fallbrook area of northern San Diego County, California. This subunit is adjacent to the north side of State Route 76, almost equidistant from Gird Road (to the west) and Monserate Hill Road (to the east). Subunit 4D consists of 0.7 ac (0.3 ha) of State-owned land and 20 ac (8 ha) of privately owned land, for a total of 21 ac (9 ha) (values do not sum due to rounding). No lands in Subunit 4D are conserved or managed for biological resources. This subunit was occupied at the time of listing and, like all other extant occurrences, we believe this subunit is also essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 4D contains physical and biological features that are essential to the conservation of *A. pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1); and nonnative grassland vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from human encroachment that may occur in the area, and from development and road maintenance. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Unit 5: San Dieguito River Watershed—Lake Hodges

Unit 5 is located in central San Diego County and consists of two subunits comprised of approximately 129 ac (52 ha) of State or local government-owned land and approximately 121 ac (49 ha) of privately owned land, for a total of approximately 249 ac (101 ha) (values do not sum due to rounding). This total does not include a portion of Subunit 5B (52 ac (21 ha)) that we have excluded from this designation under section 4(b)(2) of the Act (*see* the Exclusions under Section 4(b)(2) of the Act section of this rule).

Subunit 5A: Lake Hodges East (Via Rancho Pkwy)

Subunit 5A is located on the west side of Interstate 15, just north of Lake Hodges and south of Via Rancho Parkway in San Diego County. Subunit 5A consists of approximately 16 ac (6 ha) of State or local government owned land and approximately 5 ac (2 ha) of privately owned land, for a total of approximately 21 ac (9 ha) (values do not sum due to rounding). No lands in Subunit 5A are conserved or managed for biological resources. This subunit was occupied at the time of listing and, like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 5A contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water

source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this unit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, utility maintenance activities, and potential development. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 5B: Lake Hodges West—Crosby Estates

Subunit 5B is located just west of Lake Hodges in the western portion of central San Diego County, California. This subunit is on and adjacent to the west side of the Crosby National Golf Club. Subunit 5B consists of approximately 113 ac (46 ha) of State or local government owned land, 115 ac (47 ha) of privately owned land for a total of approximately 228 ac (92 ha) (values do not sum due to rounding). This subunit meets the definition of critical habitat for this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 5B contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are out-competing *A. pumila* for resources, from human encroachment that may occur in the area, and from golf course maintenance. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Unit 6: San Diego River Watershed—Mission Trails Regional Park

Unit 6 is located in Mission Trails Regional Park in the City of San Diego. Unit 6 consists of approximately 6 ac (3 ha) of State or local government owned land, and approximately 32 ac (13 ha) of privately owned land, for a total of 38 ac (15 ha) (values do not sum due to rounding). This total does not include a portion of Unit 6 (160 ac (65ha)) that we have excluded from this designation under section 4(b)(2) of the Act (*see* the Exclusions under Section 4(b)(2) of the Act section of this rule). This unit was occupied at the time of listing and remains occupied, and like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Unit 6 contains physical and biological features that are essential to the conservation of *A. pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Unit 7: Sweetwater River Watershed

Unit 7 is located in southwestern San Diego County and consists of three subunits containing approximately 146 ac (60 ha) of federally owned land (San Diego National Wildlife Refuge), approximately 13 ac (5 ha) of State or local government owned land, and approximately 57 ac (23 ha) of privately owned land, for a total of approximately 215 ac (87 ha) (values do not sum due to rounding).

Subunit 7A: Jamul Road

Subunit 7A is located southeast of the City of El Cajon at and near junction of Jamul Road and Steele Canyon Road, on the north and south sides of Jamul Road. Subunit 7A consists of approximately 3 ac (1 ha) of State or local government owned land, and approximately 36 ac (15 ha) of privately owned land, for a total of approximately 39 ac (16 ha). No lands in Subunit 7A are conserved or managed for biological resources. This subunit was occupied at the time of listing and remains occupied. This subunit, like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 7A contains physical and biological features that are essential to the conservation of *A. pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, alterations of site hydrology, and off-highway vehicle use. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 7B: San Diego National Wildlife Refuge (SDNWR)

Subunit 7B is located on the San Diego National Wildlife Refuge, south of Sweetwater River between Rancho San Diego Golf Course and the hills to the south, and on the north and south sides of a dirt trail adjoining the end of Par Four Drive in unincorporated San Diego County. Subunit 7B consists of approximately 118 ac (48 ha) of Federal land owned and managed by the Service, and approximately 15 ac (6 ha) of privately owned land, for a total of approximately 133 ac (54 ha). No private lands in Subunit 7B are conserved or managed for biological resources. This subunit was occupied at the time of listing and, like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329 see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 7B contains physical

and biological features that are essential to the conservation of *A. pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require continued management and protection on federally owned lands to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 7C: Steele Canyon Bridge

Subunit 7C is located mainly on the east side of State Route 94 on a slope between a concrete-lined ditch and a fence adjacent and parallel to State Route 94, approximately 0.7 mi (1.1 km) southeast of Subunit 7B, in unincorporated San Diego County. A small portion of the subunit is located on the opposite side of State Route 94 just south of Steele Canyon Bridge in a split-rail exclosure. Subunit 7C consists of approximately 28 ac (11 ha) of federally owned land managed by the Service, approximately 10 ac (4 ha) of State or local government owned land, and approximately 6 ac (2 ha) of privately owned land, for a total of approximately 44 ac (18 ha) (values do not sum due to rounding). No private or state/local government owned lands in Subunit 7C are conserved or managed for biological resources. This subunit was occupied at the time of listing and, like all other extant occurrences, we also believe this subunit is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329; see Genetics section of the proposed rule (74 FR 44241, August 27, 2009)). Subunit 7C contains physical and biological features that are essential to the conservation of *Ambrosia pumila,* including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland vegetation, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The PCEs in this subunit may require continued management and protection on federally owned lands to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the Special Management Considerations or Protection section of this rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Service 2004a, p. 3).

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us in most cases. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or designated critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or designated critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects on lands managed by the U.S. Bureau of Land Management (BLM) or the U.S. Forest Service (USFS). However, none of the lands we are designating as critical habitat are located on BLM or USFS lands.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying its critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify its critical habitat but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We then define "Reasonable and Prudent Measures" considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific "Terms and Conditions" that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Ambrosia pumila* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Ambrosia pumila.* Generally, the conservation role of the *A. pumila* critical habitat units is to support viable occurrences in appropriate habitat areas.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and therefore should result in consultation for *Ambrosia pumila* include, but are not limited to, the following:

(1) Actions that would alter the configuration of the water sources associated with *Ambrosia pumila* habitat or the upper terraces where *A. pumila* habitat is found. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the biological and physical features that provide the appropriate habitat for *A. pumila* by altering or eliminating flooding events that this species may rely on for dispersal, seed germination, and control of competitors; reducing or increasing the availability of groundwater that may result in a shift of habitat type to a community unsuitable for *A. pumila* (shrub- or tree-dominated habitat, which would inhibit exposure to needed sunlight and airflow); or causing increased erosion that could remove soils appropriate for *A. pumila* growth.

(2) Activities that cover or remove soils appropriate for *A. pumila* growth such as development, plowing or grading, or activities that change the characteristics of soils so that *A. pumila* growth is impeded, such as soil compaction due to hiking and off-highway vehicle use.

Exemptions Under Section 4(a)(3) of the Act

No lands meet the criteria for being exempted from the designation of critical habitat for *Ambrosia pumila* pursuant to section 4(a)(3) of the Act.

Exclusions Under Section 4(b)(2) of the Act

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following paragraphs we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. The designation of critical habitat may strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in long-term conservation; the continuation, strengthening, or encouragement of partnerships that result in conservation of listed species; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. Specifically, when evaluating a conservation plan we consider, among other factors:

(1) Whether the plan is complete and provides a benefit for the species by conserving and managing the features

essential for the conservation of the species;

(2) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology; and

(3) Whether there is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, and effective based on past practices, written guidance, or regulations.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

In the case of *Ambrosia pumila,* the areas proposed and ultimately designated as critical habitat do not include any tribal lands or tribal trust resources or DOD lands. However, this designated critical habitat does include some lands covered by HCPs, specifically, the Western Riverside County MSHCP, the City of San Diego MSCP Subarea Plan, and the County of San Diego MSCP Subarea Plan.

The information provided above applies to the following discussions of exclusions under section (4)(b)(2) of the Act. *Ambrosia pumila* is covered under the Western Riverside County MSHCP, the County of San Diego MSCP Subarea Plan, and the City of San Diego MSCP Subarea Plan. After considering the following areas under section 4(b)(2) of the Act, we are exercising our discretion to exclude from critical habitat designation: Subunit 2 within the Western Riverside County MSHCP; a portion of Subunit 5B within the County of San Diego MSCP Subarea Plan area and conserved and managed under the Crosby at Rancho Santa Fe Habitat Management Plan; and a portion of Subunit 6 within the City of San Diego MSCP Subarea Plan. As described in the following exclusion analyses for the three HCPs, we made this determination because we believe that the value of the excluded lands for *A. pumila* conservation will be preserved for the foreseeable future by existing protective actions and they are appropriate for exclusion under the "other relevant factor" provisions of section 4(b)(2) of the Act. We concluded that the benefits of excluding these areas from critical habitat outweigh the benefits of including the areas. With regard to the remaining portions of essential habitat covered by the Western Riverside County MSHCP, the City of San Diego MSCP Subarea Plan, and the County of San Diego MSCP Subarea Plan, we concluded that the benefits of inclusion outweigh the benefits of exclusion; therefore we are not exercising our discretion to exclude these lands from critical habitat designation. Brief descriptions of each plan and lands excluded from critical habitat covered by each plan are described below. The areas where we determined the benefits of exclusion outweigh the benefits of inclusion are listed in Table 3. Additional details on these areas can be found in the proposed critical habitat rule (74 FR 44238, August 27, 2009) and the NOA (75 FR 27690, May 18, 2010).

TABLE 3—AREAS EXCLUDED FROM AMBROSIA PUMILA CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT

Subunit	Excluded under section 4(b)(2) of the Act	
	Acres	*Hectares*
Western Riverside County MSHCP		
2. Skunk Hollow	118	48
County of San Diego MSCP Subarea Plan (The Crosby at Rancho Santa Fe Habitat Management Plan)		
5B. Lake Hodges west—Crosby estates	52	21
City of San Diego MSCP Plan		
6. Mission Trails Regional Park	160	65
Total	329	133

Values in this table may not sum due to rounding.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

We determined that approximately 298 ac (121 ha) of land in Subunits 1A and 1B, Unit 2, and Subunits 3A and 3B that are within the Western Riverside County MSHCP planning area meet the definition of critical habitat under the Act (approximately 9 ac (3 ha) in Subunit 1A are not covered by the Western Riverside County MSHCP as a result of a legal settlement reached between certain landowners and the County of Riverside in 2004 exempting the landowners from the HCP (Murdock Settlement, 2004)). In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, existing consultations, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, we have determined to exercise our delegated discretion to exclude 118 ac (48 ha) of land within Unit 2 from this final critical habitat designation. We are including 189 ac (76 ha) of land within Subunits 1A, 1B, 3A, and 3B in this critical habitat designation (including approximately 9 ac (3 ha) in Subunit 1A not covered by the Western Riverside County MSHCP). As described in our analysis below, we reached this conclusion by weighing the benefits of exclusion against the benefits of including each area in the final critical habitat designation.

The Western Riverside County MSHCP is a regional, multijurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP addresses 146

listed and unlisted "covered species," including *Ambrosia pumila.* The Western Riverside County MSHCP includes a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species, while allowing development to occur. On June 22, 2004, the Service issued a single incidental take permit (Service 2004b, TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004, TE–088609–0). We concluded in our biological opinion (Service 2004b, p. 342) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of *A. pumila.* Our determination was based on our conclusion that 62 percent of *A. pumila* suitable habitat and at least 2 (Nichols Road (Subunit 1B) and Skunk Hollow (Unit 2)) of the 3 extant occurrences known at that time would be protected or remain within the Western Riverside County MSHCP Conservation Area (lands conserved under the Western Riverside County MSHCP). We also noted that the surveys required by the HCP (*see* Narrow Endemic Plant Species survey area discussed below) could result in newly discovered occurrences of *A. pumila.* These potentially new occurrences would be conserved by being added to the Western Riverside County MSHCP Conservation Area.

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of preexisting natural and open space areas (Public/Quasi-Public (PQP) lands). These PQP lands include those under ownership of public or quasi-public agencies, primarily the United States Forest Service (USFS) and Bureau of Land Management (BLM), as well as permittee-owned or controlled open-space areas managed by the State of California and Riverside County. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands (ARL) is not mapped or precisely delineated ("hard-lined") in the Western Riverside County MSHCP. Instead, the ARL are textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area and is determined as implementation of the Western Riverside County MSHCP takes place.

Three species-specific conservation objectives are included in the Western Riverside County MSHCP for *Ambrosia pumila.* The first objective is to conserve at least 21,800 ac (8,822 ha) of occupied or suitable habitat for the species. This objective can be attained through acquisition or other dedications of land assembled from within the Criteria Area (*i.e.,* the ARL) or Narrow Endemic Plant Species Survey Area and through coordinated management of existing PQP. We mapped a "Conceptual Reserve Design" that illustrates existing PQP lands and predicts the geographic distribution of the ARL based on our interpretation of the textual descriptions of habitat conservation necessary to meet Western Riverside County MSHCP conservation goals. Our Conceptual Reserve Design is the Service's estimate of one possible future configuration of 153,000 ac (61,916 ha) of ARL in conjunction with the existing PQP lands, including approximately 21,800 ac (8,822 ha) of "suitable" *A. pumila* habitat that will be conserved to meet the goals and objectives of the plan (Service 2004b, p. 73). Preservation and management of approximately 21,800 ac (8,822 ha) of suitable *A. pumila* habitat under the Western Riverside County MSHCP will contribute to conservation and ultimate recovery of this species.

The second species-specific conservation objective included in the Western Riverside County MSHCP for *Ambrosia pumila* is to include within the Conservation Area at least two of the three occupied locations identified at the time the Western Riverside County MSHCP was permitted. *Ambrosia pumila* is threatened in the plan area primarily by habitat loss due to urbanization, flood control activities, and nonnative species competition (Service 2004b, pp. 334–342). The Western Riverside County MSHCP is designed to remove or reduce threats to this species as the plan is implemented by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. The two areas identified for inclusion in the Conservation Area are the occurrences at the Barry Jones (Skunk Hollow) Wetland Mitigation Bank (in Unit 2), and the occurrence near Temescal Creek at Nichols Road (in Subunit 1B).

The third species-specific conservation objective included in the Western Riverside County MSHCP for *Ambrosia pumila* is the requirement of surveys for *A. pumila* as part of the project review process for public and private project proposals where suitable habitat is present within a defined Narrow Endemic Plant Species survey area (*see* Narrow Endemic Plant Species Survey Area Map, Figure 6–1 of the Western Riverside County MSHCP, Volume I in Dudek 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided; when it is demonstrated the conservation objectives for the species under the HCP are met, avoided areas will be evaluated to determine whether they will be open for development or considered for inclusion into the MSHCP Conservation Area (*see* Additional Survey Needs and Procedures; Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek 2003). The Western Riverside County MSHCP anticipated inclusion of a third occurrence, near Temescal Creek east of Lake Street (in Subunit 1A), into the MSHCP Conservation Area in accordance with its Narrow Endemics Policy (Dudek 2003, pp. P–327–P–328). This area has been conserved but is not currently managed to benefit *A. pumila* and its habitat.

Below is a brief analysis of the relative benefits of inclusion and exclusion of Unit 2, which we have exercised our discretion to exclude from critical habitat designation and our analysis of the relative benefits of inclusion and exclusion of Subunits 1A, 1B, 3A and 3B which we have not exercised our discretion to exclude from critical habitat designation.

Benefits of Inclusion—Western Riverside County MSHCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including *Ambrosia pumila*), and in some locations, the outcome of these

analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat may provide a regulatory benefit for *Ambrosia pumila* when there is a Federal nexus present for a project that might adversely modify critical habitat. A Federal nexus generally exists where land is federally owned, or where actions proposed on non-Federal lands require a Federal permit or Federal funding. In the absence of a Federal nexus, the regulatory benefit provided through Section 7 consultation under the Act does not exist. Clearly, any activities affecting designated critical habitat on Federal land would trigger a duty to consult under Section 7. In contrast, the potential for a Federal nexus for activities proposed on non-Federal lands varies widely and depends on the particular circumstances of each case. Nevertheless, because the breadth of potential Federal actions that may trigger a duty to consult under Section 7 is quite broad, we cannot say with certainty that future development of, or activities on non-Federal lands will always lack a Federal nexus. However, where there is no discernable Federal nexus on non-Federal lands we propose to designate as critical habitat, we consider the regulatory benefit of designation of those non-Federal lands to be small.

Any protections provided by critical habitat that are redundant with protections already in place on lands proposed for designation also reduce the benefits of inclusion in critical habitat. Protections provided by HCPs or other conservation and management, may prevent the destruction or adverse modification of habitat to the same or greater extent as would the consultation provisions under section 7(a) of the Act for critical habitat.

None of the land in Unit 2 is Federal land. The majority of Unit 2 is within the Barry Jones (Skunk Hollow) Wetland Mitigation Bank on privately owned lands owned and managed by Center for Natural Lands Management (CNLM) and protected by a conservation easement held by the California Department of Fish and Game. Two smaller portions of this unit are adjacent to the Barry Jones (Skunk Hollow) Wetland Mitigation Bank, one to the east on Johnson Ranch and Metropolitan Water District lands, and the other to the west on lands conserved as part of the Rancho Bella Vista HCP. All land in Unit 2 is conserved under conservation easement and actively managed by CNLM in accordance with the Western Riverside County MSHCP. We consider the likelihood of a Federal nexus for activities occurring on lands in Unit 2 to be remote. It is possible that the Army Corps of Engineers may take jurisdiction over portions of Unit 2 if a project were to occur in that area; however, the probability of project impacts in Unit 2 is slight because the area is conserved and managed and thus protected from direct development impacts. Because Unit 2 is already permanently conserved and managed to benefit *Ambrosia pumila,* the regulatory benefit of designating this area as critical habitat would be redundant with the protections already in place. Because the existence of a future Federal nexus in Unit 2 is remote and the protections afforded by designation would be redundant with protections already in place, we believe the regulatory benefit of designation of Unit 2 is negligible and not significant.

Similar to Unit 2, none of the land in Units 1 and 3 is federally owned, and we consider the likelihood of a future Federal nexus in Units 1 and 3B to be remote. There is a potential that Federal funds may be applied to future projects related to the San Diego Aqueduct in Subunit 3A (*see* Comment 14 in the Summary of Comments and Recommendations section below); however the probability of a project with a Federal nexus occurring in Subunit 3A is uncertain. The absence of a discernable Federal nexus in Unit 1 and Subunit 3B, and the uncertainty regarding a future Federal nexus in Subunit 3A reduce the potential regulatory benefits of designation of these areas.

In contrast to Unit 2, Subunits 1B, 3A, and 3B are not currently protected or managed under the Western Riverside MSHCP for the benefit of *A. pumila* and its essential habitat. Subunit 1A is largely conserved, but it is not currently managed to protect the species and its habitat.

As summarized above, under the Western Riverside County MSHCP on lands within the Narrow Endemic Plant Species survey area with positive survey results for *Ambrosia pumila,* impacts to 90 percent of portions of the property that provide long-term conservation value for the species are to be avoided until it is demonstrated that the conservation objectives for the species have been met, at which time avoidance is no longer be required (*see* Protection of Narrow Endemic Plant Species; Western Riverside County MSHCP, Volume 1, section 6.1.3, in Dudek 2003). Also, projects proposed in areas within the Western Riverside County MSHCP Criteria Area (Criteria Area) are to be implemented through the Joint Project Review Process to ensure that the requirements of the Western Riverside County MSHCP permit and the Implementing Agreement are properly met and are protecting essential habitat for *A. pumila* (Western Riverside County MSHCP, Volume 1, section 6.6.2 in Dudek 2003, p. 82).

Portions of Subunits 1A, 1B, and 3B are within the Narrow Endemic Plant Species Survey Area or the Criteria Area under the Western Riverside County MSHCP, and we anticipate that these areas will eventually be protected and managed under the plan. As noted above, a large portion of Subunit 1A is already conserved, but it is not actively managed for the benefit of *Ambrosia pumila.* Because none of these areas are both conserved and managed, they remain vulnerable to threats from nonnative species, human encroachment and development related impacts as discussed above in the Special Management Considerations or Protection section. We recognize that the regulatory benefit of designating Subunits 1A, 1B, and 3B is partially redundant with existing and anticipated protection (conservation) and management of these areas under the Western Riverside County MSHCP; however because such protection is not yet fully in place, we believe there is some regulatory benefit to designation of these areas. Subunit 3A is neither within the Narrow Endemic Plant Species survey area or the Criteria Area and is not targeted for conservation and management under the Western Riverside County MSHCP. As a result, the regulatory benefit provided by the designation of critical habitat within Subunit 3A would not be redundant with conservation measures outlined in the plan. We conclude that the regulatory benefit of designating Subunits 1A, 1B and 3B is partially redundant with the anticipated protection of these areas under the Western Riverside County MSHCP, while the regulatory benefit of designating Subunit 3A would not be redundant with conservation provided under the plan. However, because the likelihood of a future Federal nexus on any of these lands is remote we consider

the regulatory benefit of designation of the entirety of Units 1 and 3 to be small and not significant.

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on lands we propose to designate as critical habitat, our criteria to assess those lands, potential impacts from the proposal, and information on the taxon itself. We believe the designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about *Ambrosia pumila* and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is valuable because the public may not be aware of documented (or undocumented) *A. pumila* occurrences that have not been conserved or are not being managed.

Because Unit 2 is already permanently conserved and actively managed for the benefit of *Ambrosia pumila,* we believe there is little educational benefit to designation of this area. The education benefit of designation is somewhat lower for Subunits 1A and 1B because educational information regarding the importance of the *A. pumila* occurrences in these two areas to the conservation of the species has been presented to the public during development and implementation of the Western Riverside County MSHCP. However, this critical habitat rule provides more specific information regarding the entire habitat area in Subunits 1A and 1B (not just the above-ground portions of the occurrences) that we consider essential to the conservation of the species. Therefore, we believe the education benefit to including Subunits 1A and 1B in this designation is still significant.

Subunits 3A and 3B were unknown at the time the Western Riverside County MSHCP was finalized, and therefore educational information regarding the *Ambrosia pumila* occurrences in Subunits 3A and 3B was not presented to the public during development and implementation of the Western Riverside County MSHCP. Designating as critical habitat for *Ambrosia pumila* Subunits 3A and 3B will identify these specific areas as essential for the conservation and recovery of *Ambrosia pumila* and in doing so, provide an educational component that is a significant benefit to the conservation of this species. The educational information contained in this rule provides information that can be used by the public to learn about *A. pumila* and its essential habitat in Subunits 3A and 3B and that can refine the broader conservation goals for *A. pumila* under the Western Riverside County MSHCP by focusing conservation on the specific areas essential for the recovery of the species.

The designation of *Ambrosia pumila* critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. In Riverside County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws. In the case of CEQA, this could be a benefit, since CEQA may require additional review of projects that may affect critical habitat and protection of essential habitat if its destruction would constitute a significant environmental effect. However, this benefit is a minor benefit in the case of NEPA, because NEPA does not require project proponents to protect sensitive habitat. The potential ancillary benefits under other laws of critical habitat designation would be higher in Subunits 1A, 1B, 3A, and 3B where the species and its habitat are not currently conserved. The benefits would be negligible in Unit 2 because *A. pumila* and its essential habitat are protected and managed.

In summary, we believe that the regulatory benefit of designating critical habitat under section 7(a) of the Act is small in Subunits 1A, 1B, and 3B because the likelihood of a future Federal nexus in these areas is remote. There is a higher potential for a Federal nexus in Subunit 3A, but it is still uncertain. Overall, we believe the regulatory benefit of designation of Subunits 1A, 1B, 3A and 3B is not significant. We believe that the educational benefit of designation is significant in Subunits 1A, 1B, 3A, and 3B because these areas are not conserved and managed and designation may help focus conservation efforts for this species under the Western Riverside County MSHCP on these specific essential habitat areas. There are also potential ancillary benefits under other laws that would result from designation of Subunits 1A, 1B, 3A, and 3B. In Unit 2, which is conserved and managed, we believe the benefits of critical habitat designation are not significant. The regulatory benefit of designation in Unit 2 is likely redundant with protection provided by the conservation and management of the area, and because this area is already conserved and managed, the public education and ancillary benefits are also insignificant in Unit 2. We conclude that among lands proposed as critical habitat that are covered by the Western Riverside County MSHCP, the educational benefit of designation in Subunits 1A, 1B, 3A, and 3B is significant, and the regulatory and ancillary benefits of designating these areas are small and not significant. The regulatory, educational and ancillary benefits of designating Unit 2 as critical habitat are negligible.

Benefits of Exclusion—Western Riverside County MSHCP

We believe benefits could be realized by forgoing designation of critical habitat for *Ambrosia pumila* on lands covered by the Western Riverside County MSHCP including:

(1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP jurisdictions and stakeholders to promote conservation of *Ambrosia pumila,* its habitat, and 145 other species covered by the HCP and their habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this species and the many other species covered by the HCP, including conservation benefits that might not otherwise occur;

(3) Encouragement for local jurisdictions to fully participate in the Western Riverside County MSHCP; and

(4) Encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species, including incorporation of protections for plant species which is voluntary because the Act does not prohibit take of plant species.

The Western Riverside County MSHCP provides substantial protection and management for *Ambrosia pumila* and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale

conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of *Ambrosia pumila* and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP. Exclusion of Western Riverside County MSHCP lands would help preserve the partnerships we developed with the County of Riverside and other local jurisdictions in the development of the HCP, and foster future partnerships and development of future HCPs, and in particular HCPs that include protections for listed plants, such as *A. pumila.*

In summary, we believe excluding land covered by the Western Riverside County MSHCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion for all lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees as critical habitat for *Ambrosia pumila.* The benefits of including conserved and managed lands in the critical habitat designation are small. All of the approximately 118 ac (48 ha) of land in Unit 2 at the Barry Jones (Skunk Hollow) Wetland Mitigation Bank are already conserved and managed. Therefore we do not believe critical habitat designation for *A. pumila* will provide significant regulatory, educational or ancillary benefits for this area. In contrast to Unit 2, the designation as critical habitat of essential habitat for *Ambrosia pumila* in Subunits 1A, 1B, 3A, and 3B will provide a significant educational benefit and may also result in small regulatory and ancillary benefits for *A. pumila* and its essential habitat. None of these subunits are currently both conserved and managed to benefit *A. pumila* (a large portion of Subunit 1A is conserved, but not actively managed), the broad conservation goals for this species under the Western Riverside County MSHCP do not explicitly require and assure protection of the specific lands included in Subunits 1A, 1B, and 3B, and the plan does not identify the lands in Subunit 3A for conservation. Therefore designation of these units will provide a significant educational benefit by focusing attention on the specific lands within Western Riverside County MSHCP that are essential for the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation in the unlikely circumstance that a Federal nexus exists in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

Excluding Subunits 1A, 1B, Unit 2, and Subunits 3A and 3B from critical habitat designation will further our existing partnerships with permittees under the Western Riverside County MSHCP and encourage future voluntary conservation efforts for this species by relieving landowners of the any additional regulatory burden stemming from designation. We consider this a significant benefit of excluding these lands.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting *Ambrosia pumila* (Unit 2) will preserve our partnership with the County of Riverside and other permittees in the Western Riverside County MSHCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including Unit 2 in critical habitat for *A. pumila.* We find that including lands as critical habitat that are not yet receiving long-term conservation and management (Subunits 1A, 1B, 3A, and 3B) will provide additional regulatory protection under section 7(a) of the Act if there is a Federal nexus, and will provide a significant educational benefit by focusing conservation efforts by the Western Riverside County MSHCP permittees on conservation and management of these specific essential habitat areas for *A. pumila* and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for *A. pumila* will provide significant educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a significant benefit to the partnership that we have with the County of Riverside and other permittees under the Western Riverside MSHCP, we believe that the significant educational along with the potential regulatory and ancillary benefits to conservation of the species and its essential habitat in Subunits 1A, 1B, 3A, and 3B of including these lands as critical habitat outweighs the benefit of exclusion. Therefore we have not exercised our delegated discretion to exclude these areas.

Exclusion Will Not Result in Extinction of the Species—Unit 2, Western Riverside County MSHCP

We determined that exclusion of 118 ac (48 ha) of land in Unit 2 within the Western Riverside County MSHCP planning area from the final critical habitat designation for *Ambrosia pumila* will not result in extinction of the species. This area is permanently conserved and managed to provide a benefit to *A. pumila* and its habitat. The jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation where habitat is occupied by *A. pumila* or other federally listed species. Therefore, based on the above discussion, we have determined to exercise our delegated discretion to exclude approximately 118 ac (48 ha) of land in Unit 2 owned by or under the jurisdiction of Western Riverside County MSHCP permittees from this critical habitat designation.

San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego MSCP Subarea Plans

We determined that approximately 207 ac (84 ha) of habitat in Subunit 5A and Unit 6 within the City of San Diego MSCP Subarea Plan, and approximately 488 ac (198 ha) of habitat in Subunits 5B, 7A, 7B, and 7C within the County of San Diego MSCP Subarea Plan meet the definition of *Ambrosia pumila* critical habitat under the Act. In making our decision with regard to designating lands within these two subarea plans as critical habitat, we considered several factors, including our relationship with the participating MSCP jurisdictions, our relationship with other MSCP stakeholders, non-covered activities, existing consultations, conservation measures in place that benefit *A. pumila,* and impacts to current and future partnerships. We recognize that *A. pumila* conservation efforts required under the City and County of San Diego MSCP Subarea Plans will continue regardless of whether covered areas are

designated as critical habitat. Under section 4(b)(2) of the Act, we have decided to exercise our delegated discretion to exclude approximately 160 ac (65 ha) of non-Federal land in Unit 6 covered by the City of San Diego MSCP Subarea Plan, and approximately 52 ac (21 ha) of non-Federal land in Subunit 5B covered by the County of San Diego MSCP Subarea Plan from this critical habitat designation. The remaining approximately 228 ac (92 ha) of land in Subunit 5B in the County of San Diego MSCP Subarea Plan area and the remaining 38 ac (15 ha) of land covered by the City of San Diego MSCP Subarea Plan in Unit 6, and all lands covered by the City of San Diego MSCP Subarea Plan in Subunit 5A (9 ac (4 ha)), and all lands covered by the County of San Diego MSCP Subarea Plan in Subunits 7A, 7B, and 7C (215 ac (87 ha)) are being designated as critical habitat for *A. pumila.*

The MSCP is a subregional HCP made up of several subarea plans that has been in place for more than a decade. The subregional plan area encompasses approximately 582,243 ac (235,626 ha) (MSCP 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species ("covered species") through the existing preserve lands and establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City and County) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and included many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. *Ambrosia pumila* was evaluated in the MSCP subregional plan, the City of San Diego MSCP Subarea Plan, and the County of San Diego MSCP Subarea Plan.

Upon completion of preserve assembly, approximately 171,920 ac (69,574 ha) of the 582,243 ac (235,626 ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1 and 4–2 to 4–4). The MSCP identifies areas where mitigation activities should be focused to assemble its preserve areas (*i.e.,* MHPA and PAMA). Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the "preserve area" in this critical habitat designation. When the preserve is completed, the public sector (*i.e.,* Federal, State, and local government, and general public) will have contributed 108,750 ac (44,010 ha) (63 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Currently and in the future, Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1 and 4–2 to 4–4).

Private lands within the MHPA (City and County of San Diego) and PAMA (County of San Diego) are subject to special restrictions on development, and lands that are dedicated to the preserve must be permanently protected and managed to conserve the covered species. Public lands owned by the cities, county, State of California, and the Federal Government that are identified for conservation under the MSCP must also be protected and permanently managed to conserve the covered species. Numerous processes are incorporated into the MSCP that allow Service oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements, provides for Service review and approval of proposed subarea plan amendments and preserve boundary adjustments, and for Service review and comment on projects during CEQA review process. We also chair the MSCP Habitat Monitoring Subcommittee (MSCP 1998, pp. 5–11 to 5–23). Each MSCP subarea plan must account annually for the progress it is making in assembling conservation areas and show that preserve assembly is in rough step with the development allowed in each jurisdiction. We receive annual reports that detail the habitat acreage lost and conserved within the subareas by project and cumulatively. This accounting process ensures habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans' associated implementing agreements.

The City of San Diego MSCP Subarea Plan and the County of San Diego MSCP Subarea Plan contain requirements to monitor and adaptively manage *Ambrosia pumila* habitats and provide for the conservation of this species. The framework and area-specific management plans are required to be comprehensive and address a broad range of management needs at the preserve and species levels intended to reduce the threats to covered species and thereby contribute to recovery. These plans are to include the following: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor, interpretive, and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes of covered species; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (MSCP 1998, p. 49–97).

City of San Diego MSCP Subarea Plan

In addition to the protections described above, the City of San Diego MSCP Subarea Plan requires preservation of over 90 percent of the occurrence of *Ambrosia pumila* at Mission Trails Regional Park, additional impact avoidance and other measures required under the MSCP narrow endemic species policy, and area-specific management directives designed to maintain long-term survival in the planning area (Service 1997, pp. 104–105; Dudek 2000, p. 28). Under the City of San Diego MSCP Subarea Plan, impacts to narrow endemic plants, including *A. pumila,* inside the MHPA will be avoided, and outside the MHPA will be protected as appropriate by management, enhancement (for example, removing nonnative species), restoration, or transplantation to areas identified for preservation (City of San Diego 1997, pp. 105–106; Service 1997, p. 15). These measures help protect *Ambrosia pumila,* whether located on lands targeted for preserve status within the MHPA or located outside of the MHPA in the City of San Diego MSCP Subarea Plan area. Within the MHPA, the narrow endemic policy for the City of San Diego MSCP Subarea Plan requires *in situ* conservation of *A. pumila* or mitigation to ameliorate any habitat loss.

Below is a brief analysis of the benefits of inclusion and exclusion of a portion of Unit 6 which we have

exercised our delegated discretion to exclude from critical habitat designation under section 4(b)(2) of the Act and our analysis of the relative benefits of inclusion and exclusion of the remaining portion of Unit 6 and the portions of Subunit 5A covered under the City of San Diego MSCP Subarea Plan which we have not exercised our delegated discretion to exclude from critical habitat designation.

Benefits of Inclusion—City of San Diego MSCP Subarea Plan

As discussed above in our section 4(b)(2) analysis of lands within the Western Riverside County MSHCP, the principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including *Ambrosia pumila*), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat may provide a regulatory benefit for *Ambrosia pumila* when there is a Federal nexus present for a project that might adversely modify critical habitat. A Federal nexus generally exists where land is federally owned, or where actions proposed on non-Federal lands require a Federal permit or Federal funding. In the absence of a Federal nexus, the regulatory benefit provided through Section 7 consultation under the Act does not exist. Clearly, any activities affecting designated critical habitat on Federal land would trigger a duty to consult under Section 7. In contrast, the potential of a Federal nexus for activities proposed on non-Federal lands varies widely and depends on the particular circumstances of each case. Nevertheless, because the breadth of potential Federal actions that may trigger a duty to consult under Section 7 is quite broad, we cannot say with certainty that future development of, or activities on non-Federal lands will always lack a Federal nexus. However where there is no discernable Federal nexus on non-Federal lands we propose to designate as critical habitat, we consider the regulatory benefit of designation of those non-Federal lands to be small.

Any protections provided by critical habitat that are redundant with protections already in place also reduce the benefits of inclusion in critical habitat. Other protections, such as may be provided by HCPs or conservation and management, may prevent the destruction or adverse modification of habitat to the same or greater extent as would the consultation provisions under section 7(a) of the Act for critical habitat.

None of the land in Subunit 5A or Unit 6 is federally owned. In Subunit 5A, which lies adjacent to Interstate 15, there is the potential of Federal funding for future projects related to the interstate (*see* Comment 14 in the Summary of Comments and Recommendations section below). However the probability of a project with a Federal nexus occurring in Subunit 5A is uncertain. We are not aware of any current or potential future Federal nexus on the lands in Unit 6.

A portion of Unit 6, 160 ac (65 ha) lies within the Mission Trails Regional Park and is conserved and managed in accordance with the City of San Diego MSCP Subarea Plan and the City of San Diego Mission Trails Regional Park San Diego Ambrosia Management Plan (Dudek 2000), which includes ongoing monitoring (City of San Diego 2000, 2001, 2003, 2006, and 2008b) and management, including building and maintaining fencing and rerouting or closing trails to protect plants (Dudek 2000, pp. 29–30). Because this 160 ac (65 ha) portion of Unit 6 is already permanently conserved and managed to benefit *Ambrosia pumila,* we believe the regulatory benefit of designating this area as critical habitat is redundant with the protections already in place. As noted above, there is also little likelihood of a future Federal nexus in the conserved portion of Unit 6. The lack of a discernable Federal nexus combined with the redundancy of Federal protections afforded by designation with those already in place in this area, render the regulatory benefit of designating the conserved portion of Unit 6 negligible and insignificant.

In contrast to the 160 ac (65 ha) conserved and managed portion of Unit 6, neither the remaining portion of Unit 6 nor Subunit 5A is currently conserved and managed under the City of San Diego MSCP Subarea Plan.

As discussed above, the City of San Diego MSCP Subarea Plan provides for protection of *Ambrosia pumila* habitat considered necessary for survival and recovery of the species. Areas that we have identified as essential for the conservation of *A. pumila* (portion of Subunit 5A and Unit 6) that occur with the MHPA are targeted for conservation under the City of San Diego MSCP Subarea Plan, and as noted above, a 160 ac (65 ha) portion of Unit 6 is already conserved and managed. Also, under the City of San Diego MSCP Subarea Plan, impacts to narrow endemic plants, including *A. pumila,* inside the MHPA must be avoided. Outside of the MHPA *A. pumila* may be afforded protection as appropriate by management, enhancement (such as removing nonnative species), or restoration (City of San Diego 1997, pp. 105–106; Service 1997, p. 15).

The portion of Unit 6 that is not conserved and a portion of Subunit 5A are both within the MHPA, and we anticipate that these areas may eventually be conserved under the City of San Diego MSCP Subarea Plan. However, the areas are not currently conserved or managed and remain more vulnerable to threats, including competition from non-native plant species and human encroachment as discussed above in the Special Management Considerations or Protection section. That portion of Subunit 5A within the City of San Diego MSCP Subarea Plan area, but outside of the MHPA, will also be protected to the extent practicable under the City of San Diego MSCP Subarea Plan, but the plan allows for the transplantation of *Ambrosia pumila* individuals to areas identified for preservation under the subarea plan's narrow endemic policy if impacts outside of the MHPA cannot be avoided. We recognize that the regulatory benefit of designating Subunit 5A, and in particular that portion of Subunit 5A within the MHPA, and the currently unconserved portion of Unit 6 is partially redundant

with the anticipated conservation and management of these areas under the City of San Diego MSCP Subarea Plan. However, because such protections are not yet in place, and are not certain to occur, we believe there is some regulatory benefit to designation of these areas notwithstanding the existing and anticipated protections under the City of San Diego MSCP Subarea Plan. Because the likelihood of a future Federal nexus on Subunit 5A is uncertain and on Unit 6 is remote, we believe this regulatory benefit is small and not significant.

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on lands we propose to designate as critical habitat, our criteria to assess those lands, potential impacts from the proposal and information on the taxon itself. We believe the designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about *Ambrosia pumila* and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is also valuable because the public may not be aware of documented (or undocumented) *A. pumila* occurrences that have not been conserved or are not being managed.

Because the 160 ac (65 ha) portion of Unit 6 is already permanently conserved and is actively managed for the benefit of *Ambrosia pumila,* there is little educational benefit to designation of this area.

Designating as critical habitat for *Ambrosia pumila* Subunit 5A and the portions of Unit 6 that are not conserved will identify areas essential for the conservation and recovery of *A. pumila* and in doing so, provide an educational component that is a significant benefit to the conservation of *A. pumila.* The educational information contained in this rule provides information that can be used by the public to learn about *A. pumila* and its essential habitat in the currently unconserved portion of Unit 6 and in Subunit 5A and that can refine the broader conservation goals for *A. pumila* under the City of San Diego MSCP Subarea Plan by focusing conservation on the specific areas essential for the recovery of the species.

The designation of *Ambrosia pumila* critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In the City of San Diego, the additional protections associated with critical habitat would be beneficial in areas not currently conserved. Critical habitat signals the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws. In the case of CEQA, this could be a benefit, since CEQA may require protection of essential habitat if its destruction would constitute a significant environmental effect. However, this benefit is a minor benefit in the case of NEPA, because NEPA does not require project proponents to protect sensitive habitat. The potential ancillary benefits under other laws of critical habitat designation would be higher in the currently unconserved portion of Unit 6 and in Subunit 5A because *A. pumila* and its habitat are not protected and managed in these areas. The ancillary benefits of designation would be negligible in the 160 ac (65 ha) conserved portion of Unit 6 because the species and its essential habitat in that area are protected and managed.

In summary, we believe that the regulatory benefit of designating critical habitat under section 7(a) of the Act is small in Subunit 5A and in the portion of Unit 6 that is not conserved and managed. The likelihood of a future Federal nexus in the unconserved portion of Unit 6 is remote; there is a higher potential for a Federal nexus in Subunit 5A, but it is still uncertain. While the regulatory benefit of designation in these areas is only partially redundant with existing protections for *Ambrosia pumila* provided under the City of San Diego MSCP Subarea Plan, the regulatory benefit is lower because of the uncertainty of a future Federal nexus for activities that could adversely affect essential habitat for *A. pumila* on these lands. We believe that the regulatory benefit of designation in Subunit 5A and in the unconserved and unmanaged portion of Unit 6 is not significant. We consider the educational benefit of designation of Unit 5A and the unconserved and unmanaged portion of Unit 6 to be significant because designation will help focus conservation efforts for this species under the City of San Diego MSCP Subarea Plan on these specific essential habitat areas and educate the public about the importance of these areas for the conservation of this species. There are also potential ancillary benefits under other laws that would result from designation of Subunit 5A and the portion of Unit 6 that is not conserved or managed. In the 160-ac (65-ha) portion of Unit 6 that is conserved and managed, we believe the benefits of critical habitat designation are not significant. The regulatory benefit of designation in this area is redundant with protection provided by the conservation and management of the area, and because this area is already conserved and managed, the public education and ancillary benefits are also insignificant. We conclude that among lands proposed as critical habitat that are covered by the City of San Diego MSCP Subarea Plan, the educational benefit of designation of Subunit 5A and the portion of Unit 6 that is not conserved and managed is significant, and the regulatory and ancillary benefits of designating these areas are small and not significant. The regulatory, educational and ancillary benefits of designating the 160 ac (65-ha) conserved portion of Unit 6 as critical habitat are negligible.

Benefits of Exclusion—City of San Diego MSCP Subarea Plan

We believe benefits would be realized by forgoing designation of critical habitat for *Ambrosia pumila* on lands covered by the City of San Diego MSCP Subarea Plan including:

(1) Continuance and strengthening of our effective working relationships with all MSCP jurisdictions and stakeholders to promote conservation of *Ambrosia pumila* and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this species and the many other species covered by the Subarea plan, including conservation benefits that might not otherwise occur;

(3) Encouragement for local jurisdictions to fully participate in the MSCP; and

(4) Encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species, including incorporation of protections for plant species which is voluntary because the Act does not prohibit take of plant species.

The City of San Diego MSCP Subarea Plan provides substantial protection and management for *Ambrosia pumila* and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would

occur under sections 7 and 9 of the Act or smaller HCPs); therefore, it is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the City of San Diego MSCP Subarea Plan. Exclusion of the City of San Diego MSCP Subarea Plan lands from critical habitat would help preserve the partnerships we developed with the City of San Diego in the development of the MSCP and the City of San Diego MSCP Subarea Plan, and foster future partnerships and development of future HCPs, and in particular HCPs that include protections for listed plants, such as *A. pumila.*

In summary, we believe excluding land covered by the City of San Diego MSCP Subarea Plan from critical habitat will provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—City of San Diego MSCP Subarea Plan

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands within the City of San Diego MSCP Subarea Plan (approximately 207 ac (84 ha)) as critical habitat for *Ambrosia pumila.* The benefits of including conserved and managed lands in the critical habitat designation are small. Approximately 160 ac (65 ha) of land in Unit 6 are conserved and managed. We do not believe critical habitat designation for *A. pumila* will provide significant regulatory, educational or ancillary benefits for this area. In contrast, the designation as critical habitat of essential habitat for *A. pumila* in Subunit 5A and the unconserved portion of Unit 6 will provide a significant educational benefit and may provide some regulatory and ancillary benefits for the species and its habitat. Neither of these areas is currently conserved and managed to benefit *A. pumila.* Therefore designation of these areas will provide a significant educational benefit by focusing conservation efforts under the City of San Diego MSCP Subarea Plan on habitat for *A. pumila,* both within and outside the MHPA, that is essential for the recovery of the species. We also anticipate some regulatory benefit from designation of Subunit 5A and the unconserved portion of Unit 6 in the unlikely circumstance that a Federal nexus exists in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA.

Excluding the portion of Subunit 5A covered under the City of San Diego MSCP Subarea Plan and all of Unit 6 from critical habitat designation will further our existing partnerships with permittees under the City of San Diego MSCP Subarea Plan and encourage future voluntary conservation efforts for this species by relieving landowners of any additional regulatory burden stemming from designation. We consider this a significant benefit of excluding these lands.

In summary, we find that the benefits of excluding lands from critical habitat that are receiving long-term conservation and management for the purpose of protecting *Ambrosia pumila* (160 ac (65 ha) in Unit 6) will preserve our partnership with the City of San Diego and other permittees of the MSCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including those lands as critical habitat for *A. pumila.* We find that including lands as critical habitat that are not yet receiving long-term conservation and management (Subunit 5A and portions of Unit 6 that are not conserved) will provide additional regulatory protection under section 7(a) of the Act if there is a Federal nexus and will provide a significant educational benefit by focusing conservation efforts by the City of San Diego under the City of San Diego MSCP Subarea Plan on conservation and management of these specific essential habitat areas for *A. pumila* and educating the public about the importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for *A. pumila* will provide significant educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a significant benefit to the partnership that we have with the City of San Diego and other permittees under the MSCP, we believe that the significant educational benefit along with the potential regulatory and ancillary benefits to conservation of the species and its essential habitat in Subunit 5A and in the unconserved portion of Unit 6 of including these lands as critical habitat outweighs the benefits of exclusion. Therefore we have not exercised our delegated discretion to exclude these areas.

Exclusion Will Not Result in Extinction of the Species—Portions of Unit 6, City of San Diego MSCP Subarea Plan

We determined that exclusion of 160 ac (65 ha) of land in Unit 6 within the City of San Diego MSCP Subarea Plan planning area from the final critical habitat designation for *Ambrosia pumila* will not result in extinction of the species. This area is permanently conserved and managed to provide a benefit to *A. pumila* and its habitat. The jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation where habitat is occupied by *A. pumila* or other federally listed species. Therefore, based on the above discussion, we have determined to exercise our delegated discretion to exclude approximately 160 ac (65 ha) of land in Unit 6 covered under the City of San Diego MSCP Subarea Plan.

County of San Diego MSCP Subarea Plan

In addition to the protections described above under the "*San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego's Subarea Plans*" section, the County of San Diego MSCP Subarea Plan dictates that all occurrences (including any newly discovered occurrences) of *A. pumila* will be protected by impact avoidance measures required under the County's Biological Mitigation Ordinance (BMO; County of San Diego 1997, p. 11). Narrow endemic plants, including *A. pumila,* are conserved under the BMO using a process that: (1) Requires avoidance to the maximum extent feasible, (2) restricts encroachment into a population not already conserved to a maximum of 20 percent if total avoidance is not feasible, and (3) requires in-kind mitigation at 1-to-1 to 3-to-1 ratios for impacts if avoidance and minimization of impacts would preclude reasonable use of the property (County of San Diego 1997, p. 11; USFWS 1998, p. 12). Thus, the narrow endemic species policy for the County of San Diego MSCP Subarea plan requires *in situ* conservation of *A. pumila* or mitigation to ameliorate any habitat loss.

Below is a brief analysis of the relative benefits of inclusion and exclusion of that portion of Subunit 5B which we have exercised our delegated discretion to exclude from critical habitat designation under section 4(b)(2)

of the and our analysis of the relative benefits of inclusion and exclusion of the remaining portion of Unit 5B and all of Unit 7 which we have not exercised our delegated discretion to exclude from critical habitat designation.

Benefits of Inclusion—County of San Diego MSCP Subarea Plan

As discussed above in our section 4(b)(2) analysis of lands within the Western Riverside County MSHCP, the principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including *Ambrosia pumila*), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat may provide a regulatory benefit for *Ambrosia pumila* when there is a Federal nexus present for a project that might adversely modify critical habitat. A Federal nexus generally exists where land is federally owned, or where actions proposed on non-Federal lands require a Federal permit or Federal funding. In the absence of a Federal nexus, the regulatory benefit provided through Section 7 consultation under the Act does not exist. Clearly, any activities affecting designated critical habitat on Federal land would trigger a duty to consult under Section 7. In contrast, the potential of a Federal nexus for activities proposed on non-Federal lands varies widely and depends on the particular circumstances of each case. Nevertheless, because the breadth of potential Federal actions that may trigger a duty to consult under Section 7 is quite broad, we cannot say with certainty that future development of, or activities on non-Federal lands will always lack a Federal nexus. However where there is no discernable Federal nexus on non-Federal lands we propose to designate as critical habitat, we consider the regulatory benefit of designation of those non-Federal lands to be small.

Any protections provided by critical habitat that are redundant with protections already in place also reduce the benefits of inclusion in critical habitat. Other protections, such as may be provided by HCPs or conservation and management, may prevent the destruction or adverse modification of habitat to the same or greater extent as would the consultation provisions under section 7(a) of the Act for critical habitat.

The County of San Diego MSCP Subarea Plan dictates that occurrences of *A. pumila* will be protected by impact avoidance measures required under the County's BMO. Narrow endemic plants, including *A. pumila,* are conserved under the BMO using a process that:

(1) Requires avoidance to the maximum extent feasible;

(2) Restricts encroachment into a population not already conserved to a maximum of 20 percent if total avoidance is not feasible; and

(3) Requires in-kind mitigation at 1-to-1 to 3-to-1 ratios for impacts if avoidance and minimization of impacts would preclude reasonable use of the property (County of San Diego 1997, p. 11; Service 1998, p. 12).

None of the lands in Subunit 5B are federally owned and only a portion of the lands in Unit 7 are federally owned. (We are not considering exercising our discretion to exclude the federally owned portions of Unit 7.) We are not aware of any current or future Federal nexus on the non-Federal lands in Subunit 5B and Unit 7.

Approximately 52 ac (21 ha) of Subunit 5B are within the Crosby at Rancho Santa Fe preserve area and have been conserved and are managed in accordance with the Crosby at Rancho Santa Fe Habitat Management Plan (Rincon Consultants, Inc. 2008, pp. 1–6), which includes ongoing monitoring and management (such as conducting regular surveys of sensitive species including *Ambrosia pumila,* managing weeds, conducting erosion control activities, installing and maintaining fencing and signage, removing trash, and enhancing public awareness of the preserve). Because this 52 ac (21 ha) portion of Subunit 5B is already permanently protected and managed to benefit *A. pumila,* we believe the regulatory benefit of designating this area as critical habitat is redundant with the protections already in place. As noted above, there is also little likelihood of a future Federal nexus in the conserved portion of Subunit 5B. The lack of a discernable Federal nexus combined with the redundancy of Federal protections afforded by designation with those already in place under the Crosby at Rancho Santa Fe Habitat Management Plan, render the regulatory benefit of designating the conserved portion of Subunit 5B negligible and insignificant.

In contrast to the 52 ac (21 ha) conserved and managed portion of Subunit 5B, neither the remaining portion of Unit 5B nor the portion of Unit 7 that is not federally owned is currently conserved and managed under the County of San Diego's MSCP Subarea Plan. As discussed above, the County of San Diego MSCP Subarea Plan dictates that occurrences of *A. pumila* both inside and outside of the PAMA will be protected by impact avoidance measures required under the County's BMO using a process that requires avoidance to the maximum extent feasible; restricts encroachment into a population not already conserved to a maximum of 20 percent if total avoidance is not feasible; and requires in-kind mitigation if avoidance and minimization of impacts would preclude reasonable use of the property (County of San Diego 1997, p. 11; Service 1998, p. 12).

We anticipate that the portions of Unit 7 that are not federally owned and the unconserved portion of Subunit 5B may eventually be protected under the County of San Diego MSCP Subarea Plan as the BMO is applied to future development. However, these areas are currently not conserved and managed and remain vulnerable to threats, including competition from non-native plant species and human encroachment as discussed above in the Special Management Considerations or Protection section. In addition, the County of San Diego MSCP Subarea Plan does allow for some impacts to the species and its habitat where avoidance is not feasible. We recognize that the regulatory benefit of designating the portion of Unit 7 that is not federally owned and the currently unconserved portion of Subunit 5B is partially

redundant with the anticipated protection and management of these areas for the benefit of *A. pumila* under the County of San Diego MSCP Subarea Plan. However, because conservation and management are not yet in place and protection under the County's BMO may not be coextensive with the protections afforded by critical habitat in these areas, we believe there is some regulatory benefit to designation of these areas notwithstanding the existing and anticipated protections under the County of San Diego MSCP Subarea Plan. Because the likelihood of a future Federal nexus in these areas is remote, we believe this regulatory benefit is small and not significant.

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on lands we propose to designate as critical habitat, our criteria to assess those lands, potential impacts from the proposal and information on the taxon itself. We believe the designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about *Ambrosia pumila* and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is also valuable because the public may not be aware of documented (or undocumented) *A. pumila* occurrences that have not been conserved or are not being managed.

Because the 52 ac (21 ha) portion of Subunit 5B is already permanently conserved and is actively managed for the benefit of *Ambrosia pumila,* there is little educational benefit to designation of this area.

Designating as critical habitat for *Ambrosia pumila* Unit 7 and the portion of Subunit 5B that is not conserved will identify areas essential for the conservation and recovery of *A. pumila* and in doing so, provide an educational component that is a significant benefit to the conservation of *A. pumila.* The educational information contained in this rule provides information that can be used by the public to learn about *A. pumila* and its essential habitat in Unit 7 and the currently unconserved portion of Unit 5B and that can refine the broader conservation goals for *A. pumila* under the County of San Diego MSCP Subarea Plan by focusing conservation on the specific areas essential for the recovery of the species.

The designation of *Ambrosia pumila* critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In the County of San Diego, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat would signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws. In the case of CEQA, this could be a benefit, since CEQA may require protection of essential habitat if its destruction would constitute a significant environmental effect. However, this benefit is a minor benefit in the case of NEPA, because NEPA does not require project proponents to protect sensitive habitat. The potential ancillary benefits under other laws of critical habitat designation would be higher in Unit 7 and the currently unconserved portion of Subunit 5B because *A. pumila* and its habitat are not protected and managed in these areas. The ancillary benefits of designation would be negligible in the 52 ac (21 ha) conserved portion of Subunit 5B because the species and its essential habitat in that area are protected and managed.

In summary, we believe that the regulatory benefit of designating critical habitat under section 7(a) of the Act is small in Unit 7 and in the portion of Subunit 5B that is not conserved and managed. While the regulatory benefits of designation in these areas are only partially redundant with existing and anticipated protections for *Ambrosia pumila* provided under the County of San Diego MSCP Subarea Plan, the regulatory benefit is lower because of the uncertainty of a future Federal nexus for activities that could adversely affect essential habitat for *A. pumila* on these lands. We believe that the regulatory benefit of designation in Unit 7 and in the portion of Subunit 5B that is not conserved and managed is not significant. We consider the educational benefit of designation of Unit 7 and the unconserved and unmanaged portion of Subunit 5B to be significant because designation will help focus conservation efforts for this species under the County of San Diego MSCP Subarea Plan on these specific essential habitat areas and educate the public about the importance of these areas for the conservation of *A. pumila.* There are also potential ancillary benefits from other laws that would result from designation of Unit 7 and the unconserved portion of Unit 5B. In the 52 ac (21 ha) portion of Subunit 5B that is conserved and managed, we believe the benefits of critical habitat designation are not significant. The regulatory benefit of designation in this area is redundant with protection provided by the conservation and management of the area, and because this area is already conserved and managed, the public education and ancillary benefits are also insignificant. We conclude that among the lands proposed as critical habitat that are covered by the County of San Diego MSCP Subarea Plan, the educational benefit of designation of Unit 7 and the portion of Subunit 5B that is not conserved and managed is significant, and the regulatory and ancillary benefits of designating these areas are small and not significant. The regulatory, educational and ancillary benefits of designating the 52 ac (21 ha) conserved and managed portion of Subunit 5B are negligible.

Benefits of Exclusion—County of San Diego MSCP Subarea Plan

We believe benefits would be realized by forgoing designation of critical habitat for *Ambrosia pumila* on lands covered by the County of San Diego MSCP Subarea Plan including:

(1) Continuance and strengthening of our effective working relationships with all MSCP jurisdictions and stakeholders to promote conservation of *Ambrosia pumila* and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this species and the many other species covered by the subarea plan, including conservation benefits that might not otherwise occur;

(3) Encouragement for local jurisdictions to fully participate in the MSCP; and

(4) Encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species, including incorporation of protections for plant species which is voluntary because the Act does not prohibit take of plant species.

The County of San Diego MSCP Subarea Plan provides substantial protection and management for *Ambrosia pumila* and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act or smaller

HCPs). Therefore it is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the MSCP and County of San Diego MSCP Subarea Plan. Exclusion of the County of San Diego MSCP Subarea Plan lands from critical habitat would help preserve the partnerships we developed with the County of San Diego in the development of the MSCP and the County of San Diego MSCP Subarea Plan, and foster future partnerships and development of future HCPs, and in particular HCPs that include protections for listed plants, such as *A. pumila.*

In summary, we believe that excluding land covered by the County of San Diego MSCP Subarea Plan from critical habitat will provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—County of San Diego MSCP Subarea Plan

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for lands within the County of San Diego MSCP Subarea Plan area (approximately 494 ac (200 ha) in Subunits 5B, 7A, 7B, and 7C) as critical habitat for *Ambrosia pumila.* The benefits of including conserved and managed lands in the critical habitat designation are small. Approximately 52 ac (21 ha) of land in Subunit 5B are conserved and managed. We do not believe that critical habitat designation for *A. pumila* will provide significant regulatory, educational, or ancillary benefits for this area. In contrast, the designation as critical habitat of essential habitat for *A. pumila* in the non-federally owned portions of Unit 7 and the unconserved portion of Subunit 5B will provide a significant educational benefit and may provide some regulatory and ancillary benefits for the species and its habitat. Neither of these areas is currently both conserved and managed to benefit *A. pumila.* Therefore designation of these areas may provide a significant educational benefit by focusing conservation efforts under the County of San Diego Subarea Plan on habitat for *A. pumila,* both within and outside the PAMA, which is essential for the recovery of the species. We also anticipate some regulatory benefit from designation of Unit 7 and the unconserved portion of Subunit 5B in the unlikely circumstance that a Federal nexus exists in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA.

Excluding Unit 7 and all of Subunit 5B from critical habitat designation will further our existing partnerships with permittees under the City of San Diego MSCP Subarea Plan and encourage future voluntary conservation efforts for this species by relieving landowners of any additional regulatory burden stemming from designation. We consider this a significant benefit of excluding these lands.

In summary, we find that excluding lands from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting *Ambrosia pumila* (52 ac (21 ha) in Subunit 5B) will preserve our partnership with the County of San Diego and other permittees of the MSCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including those lands in critical habitat for *A. pumila.* We find that including lands as critical habitat that are not yet receiving long-term conservation and management (Subunits 7A, 7B, and 7C, and portions of Subunit 5B that are not conserved) will provide additional regulatory protection under section 7(a) of the Act if there is a Federal nexus, and will provide a significant educational benefit by focusing conservation efforts by the County of San Diego under the County of San Diego MSCP Subarea Plan on conservation and management of these specific essential habitat areas for *A. pumila* and educating the public about the importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for *A. pumila* will provide significant educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a significant benefit to the partnership that we have with the County of San Diego and other permittees under the MSCP, we believe that the significant educational along with the potential regulatory and ancillary benefits to conservation of the species and its essential habitat in Unit 7 and the unconserved portion of Subunit 5B of including these lands as critical habitat outweighs the benefit of exclusion. Therefore we have not exercised our delegated discretion to exclude these areas.

Exclusion Will Not Result in Extinction of the Species—Portions of Subunits 5B, County of San Diego MSCP Subarea Plan

We determined that exclusion of 52 ac (21 ha) of land in Subunit 5B within the County of San Diego MSCP Subarea Plan planning area from the final critical habitat designation for *Ambrosia pumila* will not result in extinction of the species. This area is permanently conserved and managed to provide a benefit to *A. pumila* and its habitat. The jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation where habitat is occupied by *A. pumila* or other federally listed species. Therefore, based on the above discussion, we have determined to exercise our delegated discretion to exclude approximately 52 ac (21 ha) of land in Subunit 5B covered under the County of San Diego MSCP Subarea Plan.

Economics

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on (May 18, 2010; 75 FR 27690), based on the August 27, 2009, proposed rule (74 FR 44238). We accepted comments on the draft analysis until May 17, 2010. Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for *Ambrosia pumila;* some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat"

scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur during the 20 year period following the designation of critical habitat. This period was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The final economic analysis determined that the costs associated with critical habitat for *A. pumila,* across the entire area considered for designation (both designated and excluded areas), are primarily a result of residential and commercial development and transportation and utility projects. The incremental economic impact of designating critical habitat was estimated to be $8,990 over the next 20 years using a 7 percent discount rate (Industrial Economics, Inc. 2010, p. ES–9). Based on the 2010 final economic analysis, we concluded that the designation of critical habitat for *A. pumila,* as proposed in 2009 and as finalized in this rule, would not result in significant small business impacts and no areas are expected to experience disproportionate economic impacts as a result of the designation. We have not exercised our delegated discretion to exclude any areas from this critical habitat designation for economic reasons. A copy of the final economic analysis with supporting documents may be obtained by contacting the Carlsbad Field Office (*see* **ADDRESSES**) or for downloading from the Internet at *http://www.regulations.gov.*

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule to designate critical habitat for *Ambrosia pumila* during two comment periods. The first comment period opened with the publication of the proposed rule in the **Federal Register** on August 27, 2009 (74 FR 44238), and closed on October 26, 2009. The second comment period opened with the publication of the notice of availability of the Draft Economic Analysis (DEA) in the **Federal Register** on May 18, 2010 (75 FR 27690) and closed on June 17, 2010. During the public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to designate critical habitat for *A. pumila* and the associated DEA. During the comment periods, we requested all that interested parties submit comments or information related to the proposed critical habitat, including (but not limited to) the following: Reasons why we should or should not designate habitat as "critical habitat"; information that may assist us in clarifying or identifying more specific PCEs; the appropriateness of designating critical habitat for this species; the amount and distribution of *A. pumila* habitat included in this proposed rule; what areas are essential to the conservation of the species; unit boundaries and methodology used to delineate the areas proposed as critical habitat; land use designations and current or planned activities in the areas proposed as critical habitat; economic, national security, or other relevant impacts of designating any area; issues with the exclusions being considered under section 4(b)(2) of the Act; special management considerations; how to improve public outreach during the critical habitat designation process; and whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act.

During the first comment period, we received nine comment letters, two from peer reviewers and seven from public organizations or individuals. During the second comment period we received 4 comment letters addressing the proposed critical habitat designation and the DEA. All four of these latter comment letters were from public organizations or individuals. We did not receive any requests for a public hearing. We appreciate all peer reviewer and public comments submitted and their contributions to the improvement of the content and accuracy of this document.

Peer Review

In accordance with our Policy for Peer Review in Endangered Species Act Activities, published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that includes familiarity with *Ambrosia pumila,* the geographic region in which it occurs, and conservation biology principles. Two peer reviewers submitted responses that included additional information, clarifications, and suggestions that we incorporated into the final critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for *Ambrosia pumila.* All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer's Comments

Comment 1: One peer reviewer noted that it is important to be careful and conservative in our designation of the critical habitat for *Ambrosia pumila* to protect as many occurrences as possible to ensure the long-term viability of the species. This is important because there are critical questions about the ecology and habitat requirements that remain unanswered, and we do not have enough information to confidently extend the critical habitat designation far beyond the known occurrences of this species.

Our Response: The approach recommended in this peer reviewer's comment mirrors the approach we used in designating critical habitat for *Ambrosia pumila.* See Criteria Used To Identify Critical Habitat section above.

Comment 2: One peer reviewer suggested that data such as distance to water source could help expand the critical habitat of this species to areas outside of where it is known to occur, and pointed out that these data are available for three of the seven proposed critical habitat units (CNLM 2008, p. 7).

Our Response: According to our GIS analysis conducted during the development of the proposed critical habitat rule, distance to water source is very inconsistent throughout the range of the species. Using GIS data we estimated the distance between

Ambrosia pumila and associated waterways for over 30 *A. pumila* patches, and the results ranged from approximately 330 ft (100 m) to over 2,400 ft (750 m). Because of the wide range of results, distance to water source was not included as part of the finalized criteria or methodology used to designate critical habitat.

Comment 3: One peer reviewer stated that it would be helpful to know how many and which occurrences were removed in step (3) of the Methods section in the proposed critical habitat rule (74 FR 44245).

Our Response: The CNDDB Element Occurrence numbers that were removed in step (3) of the Criteria Used To Identify Critical Habitat section above are Element Occurrence numbers 11, 24, and 29.

Comment 4: One peer reviewer noted that there may be some particular circumstances where an occurrence should be protected even if it does not protect the full life history of the species.

Our Response: We attempted to designate sites that protect the full life history of *Ambrosia pumila,* as such sites will provide the greatest conservation benefit for the species. Some of the sites we designated may not provide for all life history requirements of the species. Also, sites occupied by the species that did not meet the criteria set forth for this critical habitat designation may still contribute to the conservation and recovery of the species.

Comment 5: One peer reviewer noted that to better make an informed decision about the process of the critical habitat delineation, it would be helpful to know the extent to which each step refined the critical habitat.

Our Response: After eliminating many CNDDB Element Occurrences from consideration in step (1) of our methodology due to these being extirpated or nonnatural occurrences (transplants), we further refined the proposed critical habitat by removing three areas (CNDDB Element Occurrence numbers 11, 24, and 29) where the species occurs in habitat of low quality for growth and propagation. After adding area to each unit or subunit to account for the underground rhizomes that extend beyond the visible extent of the above-ground stems, we further refined the proposed critical habitat by removing habitat types inappropriate for the species and developed areas. See the Criteria Used To Identify Critical Habitat section above for a more detailed description of the steps we followed to delineate critical habitat for *Ambrosia pumila.*

Comment 6: One peer reviewer stated that there should be a clear goal of how many occurrences will be protected.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. Although the peer reviewer's request is to protect a certain number or percentage of occurrences, such an approach would not be consistent with the conservation purpose of critical habitat designation. Therefore, goals of how many occurrences will be protected are not outlined in this rule.

Comment 7: One peer reviewer requested information on how many of the known extant *Ambrosia pumila* occurrences are protected in the seven critical habitat units, what percentage of the existing *Ambrosia pumila* occurrences will be protected by this critical habitat designation, and what percentage of the existing population (percent of total stems) will be protected by this critical habitat designation.

Our Response: Each critical habitat subunit corresponds with one CNDDB Element Occurrence of *Ambrosia pumila;* thus, the final critical habitat designation for this species includes all or portions of 9 occurrences of *A. pumila* (or 63 percent of the 16 currently known extant occurrences of *A. pumila*) (some portions of the area containing occurrences have been excluded under section 4(b)(2) of the Act). Although critical habitat designation does not guarantee protection of a species in an area designated as critical habitat, it is a regulatory mechanism that can aid in the recovery of a species. All or portions of 9 occurrences of *A. pumila* will receive additional regulatory protection. We do not have range-wide data sufficient to estimate the total number of *Ambrosia pumila* aerial stems in 2010 or any year prior; therefore, we are unable to determine what percent of total stems are included in this critical habitat designation.

Comment 8: One peer reviewer noted that on p. 44248 of the proposed critical habitat rule, under the heading "Unit 2: Skunk Hollow Vernal Pool Watershed," sentence three should read, "Unit 2 consists of approximately 118 ac (48 ha) of privately owned land owned and managed by Center for Natural Lands Management that is also protected by a Conservation Easement held by the California Department of Fish and Game."

Our Response: We have revised this sentence in the unit description in this final rule.

Comment 9: One peer reviewer noted that the USGS 7.5′ quadrangle maps used as a base layer for the maps published with the proposed critical habitat for *A. pumila* are obsolete due to recent urban development that has occurred since the maps were published. The peer reviewer suggested we use a more recent road map or aerial photograph that they believe would better depict the boundaries of the units and allow photos for a more constructive evaluation of the units.

Our Response: We use the most recent data available to create our critical habitat maps. However, we may remove some roads and other features to avoid creating maps that are too complex or unclear. If roads appear to be missing from critical habitat maps, it is not because we have used outdated maps that do not have more recently built roads, but rather because we removed those roads in order to maintain clarity.

Comment 10: One peer reviewer noted that the description of basic biology and current knowledge about *Ambrosia pumila* is detailed and accurate.

Our Response: We appreciate the peer reviewer's comment.

Comment 11: One peer reviewer agreed with our determination that including unoccupied habitat in the critical habitat designation for *Ambrosia pumila* is not warranted. The peer reviewer stated they believe there are too many gaps in the knowledge of habitat requirements for this species, and that adding unoccupied habitat to that designated as critical habitat would potentially far exceed what is necessary to adequately protect this species.

Our Response: We appreciate the peer reviewer's insight and critical review of our analysis of areas considered essential to the conservation of the species.

Comment 12: One peer reviewer expressed concern that the methodology for determining potential habitat for *Ambrosia pumila* does not adequately account for the down-slope, stream, or drainage dispersal of seeds or rhizomes. The peer reviewer noted that although it is reasonable to assume that flooding or runoff would carry seeds and rhizomes beyond the designated areas, the amount is difficult to quantify.

Alternatively, the peer reviewer stated that accounting for the down-slope, stream, or drainage dispersal of seeds or rhizomes may not be an issue if the down-slope areas are adequately protected under a local HCP.

Our Response: Not enough information is available to determine what down-slope, stream, or drainage areas might be essential to the conservation of this species or to what extent current drainage systems affect the distribution and survival of the species. We likewise have no direct evidence that seeds or rhizomes are currently dispersed (or are dispersible in the case of the rhizomes) by current annual drainage events. Therefore, we did not specifically include these areas in the critical habitat designation (although some down-slope or drainage areas may overlap with areas included in the designation), and we were not able to assess whether relevant HCPs adequately protected the physical and biological features essential to the conservation of *A. pumila* in these unoccupied areas.

Comment 13: One peer reviewer expressed concern that some of the proposed exclusion areas contained within the Western Riverside County MSHCP may overstate the degree of protection that any area is likely to receive since the protected areas are not clearly defined at this time.

Our Response: Section 4(b)(2) of the Act authorizes the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of designating a particular area as critical habitat, unless the failure to designate will result in the extinction of the species. We believe the exclusions made in this final rule are legally supported under section 4(b)(2) of the Act and scientifically justified. After analyzing the benefits of inclusion and exclusion of proposed critical habitat units and subunits on lands covered under the Western Riverside County MSHCP, we determined that the benefits of exclusion outweighed the benefits of inclusion for Unit 2 because this area is conserved and managed (*see* Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP section above). Service biologists continue to work with the County of Riverside and permittees of the HCP to ensure that *A. pumila* and its habitat receive the full extent of protections anticipated by the Western Riverside County MSHCP.

Comment 14: One peer reviewer expressed concern regarding the potential exclusion of Subunit 3A (Santa Gertrudis Creek) because they believe this area could potentially be eligible for Federal funds related to the San Diego Aqueduct. The peer reviewer also expressed concern regarding the exclusion of Unit 5A, which the reviewer believes may conflict with necessary conservation associated with Federal funds directed toward the adjacent Interstate 15.

Our Response: The probability of a project with a Federal nexus occurring in Subunit 3A is uncertain; we do not know if Federal funds will be used for future maintenance of the San Diego Aqueduct (*see* Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP); however, we have not excluded Subunit 3A from this critical habitat designation. We have not excluded any part of Subunit 5A from this critical habitat designation; therefore, the peer reviewer's concern regarding potential conflicts with necessary conservation associated with Federal funds directed toward the adjacent Interstate 15 is no longer an issue.

Comments From Representatives of Local Jurisdictions

Comment 15: One commenter stated that since *Ambrosia pumila* is a covered species under the Western Riverside County MSHCP, lands covered by this HCP should be excluded from the critical habitat designation because the HCP provides adequate protection for the species. The commenter asserted that including land covered by the Western Riverside County MSHCP in the critical habitat designation for *Ambrosia pumila* would be in violation of section 6.9 of the Western Riverside County MSHCP and section 14.10 of the associated Implementing Agreement, while exclusion of these lands would be consistent with *Home Builders Association of Northern California* v. *U.S. Fish and Wildlife Service* (E.D. Cal. Nov. 11, 2006) Case No. 05–629–WBS–KJMA, which upheld the exclusion of Western Riverside County MSHCP lands from critical habitat for 15 vernal pool species, finding that the exclusion was a reasonable exercise of Service discretion.

Our Response: With regard to the commenter's assertion that lands owned or under the jurisdiction of the Western Riverside County MSHCP should be excluded because the HCP provides adequate protection for the species, the adequacy of an HCP to protect a species and its essential habitat is one consideration taken into account in our evaluation under Section 4(b)(2) of the Act. Exclusion of an area from critical habitat is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process. We have examined the protections afforded *Ambrosia pumila* by the Western Riverside County MSHCP during our exclusion analysis in this critical habitat designation, and have determined that the benefits of excluding in areas owned by or under the jurisdiction of Western Riverside County MSHCP permittees do not outweigh the benefits of including Unit 1 and 3 because these areas are not conserved and managed. However, we also determined that the benefits of excluding lands in areas owned by or under the jurisdiction of Western Riverside County MSHCP permittees that are conserved and managed (Unit 2) outweigh the benefits of including those lands as critical habitat for *A. pumila* (*see* Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP section above).

With regard to the commenter's belief that critical habitat should not be designated in the Western Riverside County MSHCP Plan Area based on language in section 6.9 of the HCP and section 14.10 of the associated Implementing Agreement, the Implementing Agreement does not preclude critical habitat designation within the plan area (Dudek 2003, p. 6–109; Western Riverside County Regional Conservation Authority *et al.,* p. 51). Consistent with our commitment under the Implementing Agreement, and after public review and comment on the proposed critical habitat for *Ambrosia pumila,* we determined through our analysis under section 4(b)(2) of the Act that exclusions under the Western Riverside County MSHCP are limited to the exclusion of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP that are both conserved and managed (Unit 2). The Western Riverside County MSHCP does not specifically identify which lands will be conserved and managed and allows lands which may be essential for *A. pumila* to be developed as long as the Plan's overall goals for conservation are achieved over the term of the permit. As a result, the exclusion from critical habitat of all lands within the boundary of the Western Riverside County

MSHCP would be premature and potentially not assist in conservation of *A. pumila* (*see* Benefits of Exclusion—Western Riverside County MSHCP section above for a detailed discussion of the exclusion analysis).

Comment 16: One commenter asserted that since the Service has maintained in previous critical habitat rules that the benefits of excluding Western Riverside County MSHCP lands outweigh the benefits of including this HCP in the designation, not excluding lands covered by this HCP in the designation of critical habitat for *Ambrosia pumila* would be arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*). Further, the commenter cited several examples of past critical habitat designations wherein the Service has excluded lands covered by the Western Riverside County MSHCP, and detailed the reasoning used by the Service to justify these exclusions.

Our Response: We agree that the Service has in the past excluded Western Riverside County MSHCP lands from critical habitat designations. We do not agree that designating critical habitat on lands covered under the Western Riverside County MSHCP is arbitrary and capricious under the Administrative Procedure Act because we have a reasoned basis for our decision. Section 3(5)(A) of the Endangered Species Act defines critical habitat, in part, as areas containing physical or biological features that may require special management considerations or protection, while section 4(b)(2) directs the Secretary to consider the impacts of designating such areas as critical habitat and provides the Secretary with discretion to exclude particular areas if he determines that the benefits of exclusion outweigh the benefits of inclusion. In this rule, we considered the protection and management of particular areas covered by the Western Riverside County MSHCP that meet the definition of critical habitat in our exclusion analyses under section 4(b)(2) of the Act.

Upon weighing the benefits of inclusion against benefits of exclusion, we determined the benefits of excluding 118 ac (48 ha) owned by or under the jurisdiction of permittees of the Western Riverside County MSHCP in Unit 2 outweigh the benefits of including this area in the final critical habitat designation. Further, we determined that exclusion of this area will not result in extinction of *Ambrosia pumila.* Therefore, we excluded Unit 2 from this final critical habitat designation (*see* the "Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)" subsection under the Exclusions Under Section 4(b)(2) of the Act section above).

Comment 17: One commenter stated that the establishment of the Western Riverside County MSHCP was intended, in part, to replace the need for critical habitat, not to implement an additional layer of regulation. The commenter stated that this was the reason all of these stakeholders, including private parties such as the Building Industry Association, agreed to support the establishment of this HCP. If the Service includes lands covered by the Western Riverside County MSHCP in the critical habitat designation for *Ambrosia pumila,* the commenter believes the Service would be establishing a precedent that there was no reason behind the work and effort that the County of Riverside and other stakeholders invested in initially creating the Western Riverside County MSHCP. Thus, the commenter believes that not excluding lands covered by the Western Riverside County MSHCP from the critical habitat designation for *A. pumila* would dissuade creation of future HCPs.

Our Response: We appreciate the efforts of the many local jurisdictions and other stakeholders in developing the Western Riverside County MSHCP. Those efforts are anticipated to result in significant protection for numerous species including *Ambrosia pumila* under the plan, including conservation of *A. pumila* habitat in a reserve system (the Conservation Area), protection for *A. pumila* habitat within the Criteria Area and the Narrow Endemic Plant Species survey area), avoidance and minimization measures, and management for *A. pumila* and its habitat on lands covered by the Western Riverside County MSHCP in Units 1, 2, and 3. However, we have examined the current protections afforded *A. pumila* by the Western Riverside County MSHCP during our exclusion analysis in this critical habitat designation, and have determined that the benefits of excluding Units 1 and 3 from critical habitat do not outweigh the benefits of including Unit 1 and 3 because these areas are not conserved and managed, and therefore the regulatory, educational and ancillary benefit of critical habitat designation of these areas outweighs the partnership benefits furthered by their exclusion. We also determined that the benefits of excluding lands in Unit 2 which are conserved and managed outweigh the benefits of including those lands as critical habitat for *A. pumila* (*see* Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP section above).

Comment 18: One commenter submitted comments opposing the designation of critical habitat for *Ambrosia pumila* on lands covered by the County of San Diego MSCP Subarea Plan under the MSCP. The commenter asserted that sensitive plant and wildlife species covered by the County of San Diego MSCP Subarea Plan and their habitats are conserved to the maximum extent practicable under this HCP, and that designation of critical habitat on lands covered by the County of San Diego MSCP Subarea Plan would not add more protection for *A. pumila,* but could add economic burdens on County of San Diego MSCP Subarea Plan participants. The commenter goes on to state that portions of Unit 7 that are not already preserved are covered by the County of San Diego MSCP Subarea Plan.

Our Response: We appreciate the commenter's concerns regarding what the commenter believes is the maximum protection afforded to *Ambrosia pumila* under the County of San Diego MSCP Subarea Plan and realize that Unit 7 (and portions of Subunit 5B that are not already preserved) are covered by the County of San Diego MSCP Subarea Plan. Although not specifically stated by the commenter, their comment indicates they believe:

(1) The benefits of exclusion would be higher than the benefits of inclusion because the existing protections provide adequate protection to *Ambrosia pumila* to date, and the economic burden on participants would be high; and

(2) The benefits of inclusion (nonredundant protections provided by critical habitat designation) are less because conservation actions mandated by the HCP are already in place and are being implemented.

Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. With regard to the commenter's assertion that lands owned or under the jurisdiction of the County of San Diego MSCP Subarea Plan should be excluded because the HCP provides adequate protection for the species, the adequacy of an HCP to protect a species and its essential habitat is one consideration taken into account in our evaluation under Section 4(b)(2) of the Act. Exclusion of an area from critical

habitat is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analytical process.

We have examined the protections afforded *Ambrosia pumila* by the County of San Diego MSCP Subarea Plan during our exclusion analysis in this critical habitat designation, and have determined that the benefits of exclusion in areas covered under the County of San Diego MSCP Subarea Plan do not outweigh the regulatory, educational and ancillary benefits of including Unit 7 and the portion of Subunit 5B that is not conserved because these areas are not conserved and managed. However, we also determined that the benefits of excluding lands in areas under the County of San Diego MSCP Subarea Plan that are conserved and managed (portion of Subunit 5B) outweigh the benefits of including those lands as critical habitat for *A. pumila* (*see* Weighing Benefits of Exclusion Against Benefits of Inclusion—County of San Diego MSCP Subarea Plan section above).

With regard to the commenter's statement that critical habitat designation for *Ambrosia pumila* could add economic burdens on County of San Diego MSCP Subarea Plan participants, section 4(b)(2) of the Act states that the Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact to national security, and any other relevant impact, of specifying any particular area as critical habitat. In accordance with 50 CFR 424.19, in conducting an impact analysis of critical habitat, the Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation on proposed or ongoing activities. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Therefore, consistent with the Act and our implementing regulations, we must consider the relevant impacts of designating areas that meet the definition of critical habitat prior to finalizing a critical habitat designation.

After determining which areas met the definition of critical habitat for *Ambrosia pumila* under section 3(5)(A) of the Act, we took into consideration the economic impact, the impact on national security, and other relevant impacts of specifying any particular area as critical habitat for this species. In this final designation, we recognize that designating critical habitat in areas where we have partnerships with landowners that have led to conservation or management of listed species on non-Federal lands has a relevant, perceived impact to landowners and a relevant impact to future partnerships and conservation efforts on non-Federal lands. Economic impacts are benefits of exclusion that are evaluated in an exclusion analysis. The commenter provided no data to support the assertion that designating critical habitat on lands owned by or under the jurisdiction of draft North County MSCP permittees could add economic burdens on potential North County MSCP participants. According to the Final Economic Analysis completed for this critical habitat designation, the economic impact of this designation on landowners is not expected to be significant.

Comment 19: One commenter opposed designating critical habitat for *Ambrosia pumila* on lands covered by the draft North County MSCP. The commenter asserted that sensitive plant and wildlife species anticipated to be covered by the draft North County MSCP and their habitats will be conserved to the maximum extent practicable under this HCP, and that designation of critical habitat on lands that will be covered by the draft North County MSCP would not add more protection for *A. pumila,* but could add economic burdens on potential North County MSCP participants. The commenter goes on to state that the *A. pumila* populations within the County's jurisdiction along the San Luis Rey River (Units 4A and 4B) are within the Pre-approved Mitigation Area (PAMA) of the draft North County MSCP and would be subject to the proposed Narrow Endemic Policy.

Our Response: We did not consider exercising our delegated discretion to exclude any habitat from this critical habitat designation that falls within the plan area of an HCP where an incidental take permit has not yet been issued because until we have reviewed the completed HCP and issued an incidental take permit, we do not know whether the protections afforded the species under the draft plan are adequate or will be implemented.

After determining which areas met the definition of critical habitat for *Ambrosia pumila* under section 3(5)(A) of the Act, we took into consideration the economic impact, the impact on national security, and other relevant impacts of specifying any particular area as critical habitat for this species. According to the Final Economic Analysis completed for this critical habitat designation, the economic impact of this designation on landowners is not expected to be significant and we declined to exercise our delegated discretion to exclude any areas based on economic impacts. The commenter provided no data to support the assertion that designating critical habitat on lands owned by or under the jurisdiction of draft North County MSCP permittees could add economic burdens on potential North County MSCP participants. Therefore, we disagree with the commenter's assertion that lands owned by or under the jurisdiction of draft North County MSCP permittees should be excluded because of possible economic impacts.

Other Comments:

Comment 20: One commenter stated that the values in Tables 3 and 4 either do not match summary totals in the text of the proposed rule, or are presented awkwardly and cause confusion. The commenter suggested that we correct the figures if they are in error, or present them in a clearer format allowing readers to match figures in the text to figures in tables.

Our Response: We agree that the manner in which data were presented in Tables 3 and 4 could be confusing to the reader. We removed these tables from the final rule, and have presented this data in text only to alleviate confusion.

Comment 21: One commenter submitted comments on behalf of an organization which, as a whole, supports designation of critical habitat within HCPs, but in the case of the City and County of San Diego MSCP Subarea Plans under the MCSP, acknowledges there may be some merit to the argument that excluding MSCP lands will benefit coordination with stakeholders, and that the City and County Subarea Plans are already offering benefits to covered species, including *Ambrosia pumila.* Additionally, the commenter stated that rare plant protection mechanisms were already in place prior to protections afforded under the MSCP, and there are serious efforts to implement the MSCP, at least at the County level.

Our Response: Exclusions under section 4(b)(2) of the Act consider the

benefits of partnerships together with numerous other factors to determine whether the benefits of exclusion outweigh the benefits of inclusion. In our exclusion analyses for the City and County of San Diego MSCP Subarea Plans, we reviewed the goals and objectives that provide beneficial conservation measures for *Ambrosia pumila* that are redundant with conservation measures provided by critical habitat designation, and therefore would reduce the benefits of inclusion in critical habitat. When considering the benefits of exclusion, we consider a variety of factors, including but not limited to whether the plan is finalized (*i.e.,* approved by all parties) and if there is a reasonable expectation that conservation management strategies and actions will be implemented into the future (*see* Exclusions under Section 4(b)(2) of the Act section above for further discussion). We determined that the benefits of exclusion do not outweigh the benefits of inclusion of essential habitat covered by the City and County of San Diego MSCP Subarea Plan with the exception of those lands that are both conserved and managed. See the San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego's Subarea Plans section above for the exclusion analyses for the City and County of San Diego MSCP Subarea Plans.

Comment 22: One commenter believes that critical habitat designations within HCP lands are reasonable and prudent and exclusions under section 4(b)(2) of the Act should not be given for HCP lands.

Our Response: Section 4(b)(2) of the Act authorizes the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary is vested with discretion to exclude any particular area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless the failure to designate will result in the extinction of the species. We believe the exclusions made in this final rule are legally supported under section 4(b)(2) of the Act and scientifically justified. The commenter specifically addressed exclusions where HCPs are in place. Areas excluded under section 4(b)(2) based on completed HCPs or other Service-approved management plans typically receive long-term protection and conservation under their HCPs or management plans. As discussed above, we fully considered and weighed the benefits to the conservation of *Ambrosia pumila* in determining whether to exclude from critical habitat designation any particular area of essential *A. pumila* habitat within an HCP area (*see* response to Comments 13 though 19 above, and Exclusions Under Section 4(b)(2) of the Act section for further discussion on the exclusion analyses for the Western Riverside County MSHCP, City of San Diego MSCP Subarea Plan under the MSCP, and County of San Diego MSCP Subarea Plan under the MSCP).

Comment 23: One commenter opposed excluding lands under the Western Riverside County MSHCP, stating that coordination is poor, habitat continues to degrade at rates equal to or exceeding rates when the Western Riverside County MSHCP was adopted, and it is not clear that there is a serious effort in Western Riverside County to implement the plan (at least in terms of rare plant conservation).

Our Response: We appreciate the commenter's concerns regarding adequate protection of *Ambrosia pumila* under the Western Riverside County MSHCP. We have determined that the benefits of excluding lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees outweigh the benefits of inclusion only in Unit 2, which is both conserved and managed. Coordination between the Service and the managers of the land in Unit 2 (CNLM) is ongoing and has resulted in research and conservation actions for the benefit of *Ambrosia pumila* onsite and elsewhere. The remaining Subunits in Western Riverside County (Subunits 1A, 1B, 3A, and 3B) have not been excluded from this designation, and thus will receive the benefits of critical habitat designation under the Act. We therefore believe the commenter's concern regarding excluding lands covered under the Western Riverside County MSHCP is no longer an issue. We will continue to monitor the Western Riverside County MSHCP implementation on the status of *A. pumila* in other areas owned by or under the jurisdiction of Western Riverside County MSHCP permittees, and work with HCP permittees and landowners to continue and improve implementation of the Western Riverside County MSHCP.

Comment 24: One commenter stated that HCPs are required only to meet an extinction (*i.e.,* jeopardy) standard, and because recovery is not a requirement of HCPs, Section 10/HCP requirements to avoid jeopardy could result in reducing a species to a minimal existence that contributes little to the overall biotic community, and could also leave a species at perpetual risk of extinction from a variety of factors, while technically not qualifying as a jeopardy.

Our Response: We appreciate the commenter's concerns regarding the long-term recovery of *Ambrosia pumila.* Although not specifically stated by the commenter, their comment indicates they believe that lands covered under an HCP should not be a basis for exclusion from a critical habitat designation because the plans do not protect a listed species to the level beyond that evaluated in a jeopardy analysis under section 7 of the Act. However, the Secretary is vested with broad discretion under Section 4(b)(2) in evaluating whether the benefits of excluding an area from critical habitat designation outweigh the benefits of designating the area, so long as exclusion of an area will not result in extinction of a species. We consider a number of factors in a section 4(b)(2) analysis, including (but not limited to) the protections afforded for a species and its essential habitat under an HCP, whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat, particularly partnerships that include voluntary protections for listed plant species in an HCP or other management plan, and the economic, regulatory and educational impacts of including a particular area as critical habitat. See Exclusions under Section 4(b)(2) of the Act and "*Benefits of Excluding Lands with HCPs*" section for further discussion.

We found the benefits of excluding lands that are both conserved and managed under the Western Riverside County MSHCP, the City of San Diego MSCP Subarea Plan, and the County of San Diego MSCP Subarea Plan to be greater than the benefits of including these lands. See the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

Comment 25: One commenter stated that critical habitat is intended to provide for the conservation of the species (*i.e.,* to go beyond just preventing extinction and achieve a status where the protections afforded by the Act are no longer necessary); and that critical habitat designations within the context of regional HCPs could assure that the intent of the Act is achieved and improve the opportunity for recovery. A second commenter stated that relinquishing an important tool for conservation (*i.e.,* critical habitat) in cases where a Federal nexus would otherwise exist because of the HCP overlay is not wise if the overall

strategic goal is to recover or stabilize an endangered species.

Our Response: Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, impacts on national security, or other relevant impacts, such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species. See the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

We found the benefits of excluding lands that are both conserved and managed under the Western Riverside County MSHCP, the City of San Diego MSCP Subarea Plan, and the County of San Diego MSCP Subarea Plan to be greater than the benefits of including these lands. See the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

Comment 26: One commenter stated that the Service should not exclude HCPs from critical habitat because critical habitat is a Federal tool for conserving species and their habitats and by excluding HCPs we are depriving Federal agencies opportunities to conserve species.

Our Response: As a conservation tool, a critical habitat designation ensures that when actions with a Federal nexus may impact critical habitat, the Federal action agency consults with the Service to determine if the action will adversely modify critical habitat. Critical habitat does not require a Federal agency to perform any additional conservation actions nor does it direct conservation actions. In instances where the critical habitat is unoccupied, there may be additional benefit in that the Federal agency is required to consult under section 7 of the Act if its proposed action would affect critical habitat. With regard to areas that are within the boundaries of an HCP, exclusions are based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. In the areas that we are excluding from this final rule (lands that are both conserved and managed), we have evaluated the benefits of highlighting the importance of these areas for Federal agencies and the public, but found that the benefits of exclusion outweigh the benefits of inclusion for the areas we have excluded (*see* the Exclusions under Section 4(b)(2) of the Act section above for details).

Comment 27: One commenter noted that the information on the life history and geographical range in the proposed rule appears to be accurate overall, but also noted that more detailed editing of the text would greatly improve the readability of the Life History and Geographic Range and Status sections of the proposed rule.

Our Response: We appreciate the commenter's critical review. However, the commenter did not specify how or what portions of the text in these sections should be edited, nor what could be improved for clarity/readability. However, we thank the commenter for their suggestion, and have reevaluated the information provided in the proposed critical habitat rule and believe that it is complete, clear, and accurate based on the best information available.

Comment 28: One commenter suggested that the descriptions of the critical habitat units be expanded to provide more detail on the distribution of *Ambrosia pumila* within these units. This commenter suggested that we describe in detail the current conditions and land use practices within these localities, and note potential threats, even at localities with Western Riverside County MSHCP or HCP reserve or reserve study areas.

Our Response: Regarding the distribution of *Ambrosia pumila* within critical habitat units/subunits, we presume each unit/subunit to be entirely occupied by the species; areas not occupied by aerial stems are presumed to be occupied by rhizomes (*see* Criteria Used To Identify Critical Habitat section above). Therefore, a discussion of the distribution of *A. pumila* plants within each unit/subunit is not needed. Regarding the description of current conditions, land use practices, and potential threats within each unit, we provided all information we are aware of in this final critical habitat designation. Any additional relevant details received during the comment periods have been incorporated into this final rule where appropriate.

Comment 29: One commenter noted that the acreage figures between Table 1 and Table 2 appear to be different than the 41.4 ac (16.8 ha) of occupied habitat for this species in Unit 1A; Table 2 notes that there are 58.3 ac (23.6 ha) of occupied habitat.

Our Response: Each column in Table 2 of the proposed rule was intended to present a separate set of data; the acreages should not sum across each row. We understand that the presentation used was confusing, and have attempted to make presentation of all data as clear as possible in this final critical habitat rule.

Comment 30: One commenter believes that text in the proposed critical habitat rule fails to mention the distribution of *Ambrosia pumila* within proposed Subunit 1A. The commenter further states that from Table 1 it would appear that 56 percent of this habitat is already within County-owned property that will be a reserve area. The commenter suggests that the text clearly note whether the occurrence is within County or private property.

Our Response: As stated above in our response to Comment 28, we presume each unit/subunit to be entirely occupied by the species; areas not occupied by aerial stems are presumed to be occupied by rhizomes (*see* Criteria Used To Identify Critical Habitat section above). The boundaries of all critical habitat subunits represent our estimation of the underground extent of the *Ambrosia pumila* rhizome of each occurrence. Therefore, a discussion of the distribution of *A. pumila* plants within each unit/subunit is not needed and we believe the species occupies 100 percent of Subunit 1A, approximately 23 ac (10 ha) of which is on County property and 18 ac (7 ha) of which is on private property (*see* Criteria Used To Identify Critical Habitat above, and our response to Comment 29).

Comment 31: One commenter stated that the description of critical habitat units should clearly note any current or future threats to Subunit 1A, if there is any planned expansion of Lake Street, and if this or other projects could further fragment the clones found at this locality and how this could affect the viability of the clonal stands found within this subunit.

Our Response: In our description of Subunit 1A we have included all known threats to the habitat in this subunit. We are not aware of a planned expansion of Lake Street or any other proposed project at this site, and thus how any future project that we are not aware of could affect the species in this area.

Comment 32: One commenter stated that the text in the proposed critical

habitat rule should note current land use practices and threats in proposed Subunits 1B and 3A. The commenter pointed out that lands on the south side of Nichols Road (Subunit 1B) are often disked, and lands on the north side of Nichols Road are subject to OHV activity and trash dumping.

Our Response: In our description of Subunits 1B and 3A, we included all known land use practices and threats to the habitat in this subunit that we are aware of (*see* Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) section above). We appreciate the additional information provided by the commenter regarding activities in Subunit 1B that impact *Ambrosia pumila* habitat, and we have incorporated this information into this final rule where appropriate.

Comment 33: One commenter believes the expansion of Nichols Road is a likely possibility; thus, further analysis is needed to determine the viability of Subunit 1B if only the 1.1 ac (0.5 ha) within the Criteria Area is retained as occupied habitat for this species. The commenter believes it will be difficult to complete any expansion of Nichols Road without major impacts to at least one of the clonal units in Subunit 1B.

Our Response: The City of Lake Elsinore informed us that the Nichols Road expansion project will avoid the above-ground portion of the *Ambrosia pumila* occurrence in that area (T. Weiner. pers. comm. 2009). Service biologists will continue to work with the City of Lake Elsinore to avoid impacts to all parts of this occurrence of *Ambrosia pumila* as the proposed Nichols Road expansion project goes forward. See the Western Riverside County Multiple Species Habitat Conservation Plan section for further discussion on this exclusion analysis.

Comment 34: One commenter suggested that since Subunit 3A is not proposed to be included within a reserve, further analysis on the viability of this subunit should be provided. The commenter believes there is no justification for excluding this locality from critical habitat if it is not managed within a reserve because the site could be developed (once Western Riverside County MSHCP provisions for *Ambrosia pumila* have been met).

Our Response: We have determined that the benefits of excluding Subunit 3A from this designation do not outweigh the benefits of inclusion because this area has not been conserved and is not managed; therefore the commenter's concern is no longer an issue (*see* the "Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)" subsection under the Exclusions Under Section 4(b)(2) of the Act section above).

Comment 35: One commenter requested clarification as to whether the land in Subunit 3A is owned or under easement by Metropolitan Water District or a private landowner.

Our Response: According to the best available information we have regarding land ownership within Subunit 3A, these lands are not owned or under easement held by Metropolitan Water District.

Comment 36: One commenter stated that the size and distribution of *Ambrosia pumila* patches in Subunit 3A should be noted within the text.

Our Response: The boundaries of the critical habitat subunits represent our estimation of the underground extent of the *Ambrosia pumila* rhizome for each occurrence. Therefore, it is our estimation that *A. pumila* occupies 100 percent of Subunit 3A (*see* Criteria Used To Identify Critical Habitat, and our responses to Comments 30 and 32 above).

Comment 37: One commenter stated that more explanation should be provided on the implications of the last column in Table 2, as it appears to the commenter that the majority of the proposed critical habitat in Western Riverside County is not within an existing reserve or proposed reserve area (criteria area), and thus there would be little protection for any of these localities, except County-owned lands in Subunit 1A, and the CNLM-managed lands in Unit 2. (The commenter believes there is a potential argument for excluding the lands within Unit 2 because there is current management at this locality.)

Our Response: A more thorough explanation of protections afforded habitat in each unit/subunit of proposed critical habitat for *Ambrosia pumila* in Western Riverside County is provided in the final rule (*see* the "*Western Riverside County Multiple Species Habitat Conservation Plan*" section above). With regard to our exclusion analysis for the Western Riverside County MSHCP, exclusion of an area from critical habitat is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a complex analytical process. We found the benefits of excluding lands covered by the Western Riverside County MSHCP in Unit 2 to be greater than the benefits of including these lands in the critical habitat designation because this area has been conserved and is managed, and exclusion will not result in extinction of *Ambrosia pumila;* the commenter's concern is, therefore, no longer an issue. For more information, see the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

Comment 38: One commenter stated that more details are required on potential fragmentation, potential infrastructure impacts and the "importance" of the clonal populations on County of Riverside lands versus private lands.

Our Response: We appreciate the information provided by the commenter; however, the amount of detail requested by the commenter to be added to the final rule was not necessary for the purpose of designating critical habitat. Therefore, this additional information was not incorporated.

Comment 39: One commenter stated that considering the current land use management practices and proposed reserve protection of only 1.6 percent of the occupied acreage "at this locality", there appears to be little justification for excluding this locality from critical habitat designation. Further, the commenter states that the Western Riverside County MSHCP is to conserve two known localities of *Ambrosia pumila* (near Lake Street (within Subunit 1A) and near Nichols Road (within Subunit 1B)), which could easily lead to the loss of the clones at the other sites in western Riverside County considered suitable for critical habitat designation. The commenter also states that landowner participation within the Western Riverside County MSHCP is voluntary and generally not requested for any property outside of the criteria areas.

Our Response: It is unclear what specific area of Western Riverside County the commenter was referring to as "this locality"; however, we appreciate the commenter's concerns regarding adequate protection of *Ambrosia pumila* under the Western Riverside County MSHCP. Although not specifically stated by the commenter, their comment indicates they believe that the benefits of inclusion (non-redundant protections and education provided by critical habitat designation) are greater than the benefits of exclusion because conservation actions mandated by the HCP are inadequate.

We have found the benefits of exclusion outweigh the benefits of including land in the critical habitat designation only where lands are both conserved and managed (Unit 2); therefore the commenter's concern is no

longer an issue. Please refer to the Exclusions Under Section 4(b)(2) of the Act section, and our response to Comments 13 through 17 above for further discussion on the benefits of exclusion for the Western Riverside County MSHCP. We will continue to monitor the Western Riverside County MSHCP implementation on the status of *Ambrosia pumila.*

Comment 40: One commenter asserted that the final critical habitat rule may not exclude essential habitat covered by other conservation mechanisms. The commenter stated that HCPs utilize a different part of the Act—Section 10, and allow for the "take" of species including *Ambrosia pumila* and are not a substitute for the designation of critical habitat, which focuses on the recovery of species.

Our Response: We respectfully disagree with the comment. Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

It is appropriate under Section 4(b)(2) to consider the effect of critical habitat designation on our ability to maintain existing partnerships and encourage future partnerships to conserve listed species, including partnerships with local jurisdictions and other stakeholders to develop HCPs. We note that the Act does not prohibit take of listed plant species and HCPs developed under Section 10 of the Act in support issuance of incidental take permits for listed animal species are not required to include protections for listed plant species. Thus, we believe it is particularly relevant and appropriate to evaluate the impacts of critical habitat designation under Section 4(b)(2) on our ability to encourage development of HCPs and other management plans that voluntarily include protections for listed plant species such as *Ambrosia pumila.* For more information, see response to Comments 13 through 17 and the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

Comment 41: One commenter stated that the Service should not exclude habitat within the plan area of HCP permits that are not yet issued such as the City of Oceanside's Subarea Plan under the Northwestern San Diego County Multiple Habitat Conservation Plan. They argued draft plans provide no guarantee that the final HCPs will provide adequate species conservation.

Our Response: We did not exclude any habitat from this critical habitat designation that falls within the plan area of an HCP permit that has not yet been issued. Please see the Exclusions Under Section 4(b)(2) of the Act section for a detailed discussion on our exclusion analyses of those areas we considered for exclusion in the proposed critical habitat designation (74 FR 44238) and the associated NOA announcing the DEA (75 FR 27690, May 18, 2010).

Comment 42: One commenter stated that the draft proposed critical habitat is not adequate to inform a decision as important as the designation of critical habitat for *A. pumila.*

Our Response: Because little is known about the biology and life history of *Ambrosia pumila* at this time, it is difficult to construct a critical habitat designation that we can be certain fully addresses the needs of the species. However, we are mandated to complete and publish a critical habitat designation for this species by a court-ordered deadline (*see* Previous Federal Actions section of this rule). This final critical habitat designation is based on the best available scientific and commercial data as well as information we obtained during the public comment periods.

Comment 43: One commenter believes the proposed rule is fatally flawed because the agency fails to consider all currently occupied habitat. The commenter believes it is incumbent upon the Service to re-examine all of the extant populations and include a critical habitat designation for each of them, not just those known at the time of listing, in the critical habitat designation. Another commenter stated that no justification is given as to why all extant CNDDB Element Occurrences were not included in the proposed critical habitat designation.

Our Response: All currently occupied and formerly occupied habitat (including all extant CNDDB Element Occurrences) was considered for designation as critical habitat for *Ambrosia pumila,* and all occurrences were included in the proposed critical habitat unless they were known to have been extirpated, presumed to have been extirpated based on documented negative survey results, are not natural occurrences (transplants or plants moved from their natural location with fill soil), or did not meet the criteria used to identify critical habitat (*see* Criteria Used To Identify Critical Habitat section above). Extant occurrences not proposed as critical habitat in the proposed rule were reevaluated prior to publication of the NOA. Based on additional information provided for our analysis, we determined that one occurrence (Gird/Monserate Hill; Subunit 4D) previously analyzed for the proposed rule meets the definition of critical habitat and it was added to the proposed critical habitat designation as identified in the NOA. Additionally, two occurrences of which we were not aware until after the publication of the proposed rule were also added to the proposed critical habitat designation as identified in the NOA.

We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of *Ambrosia pumila,* and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the final critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect *A. pumila;* these protections and conservation tools will continue to contribute to recovery of this species.

Comment 44: One commenter believes that all areas occupied by *Ambrosia pumila* clearly support all of the PCEs, because they support *A. pumila.*

Our Response: Critical habitat designations identify habitat areas that provide essential life cycle needs of the species (areas on which are found the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). Based on the best available commercial and scientific information available, we are unable to be more specific about the PCEs for *Ambrosia pumila* due to the lack of information available regarding the biology and life history of the species. Therefore, we are unable to determine whether areas containing transplant occurrences and occurrences highly impacted by human

activities sufficiently support the biology and life history of the species. For this reason, we have not included these areas in the final critical habitat designation.

Comment 45: One commenter noted that according to the CNDDB (2009), several extant occurrences of *Ambrosia pumila* are completely absent in the critical habitat designation, including Element Occurrence 54 (which is 0.5 mi (0.8 km) southeast of Steele Peak) and Element Occurrence 57 (which is adjacent to the west end of Santiago Road, just west of Murrieta Creek).

Our Response: We were not aware of Element Occurrence 57 until after the proposed critical habitat rule was completed. Upon evaluation of the new information received and evaluated, we included a critical habitat subunit (Subunit 3B) in the proposed critical habitat designation, as described in the NOA that published on May 18, 2010 (75 FR 27690). Service and CDFG staff attempted to locate and map Element Occurrence 54 during a site visit in 2009 (A. Folarin, pers. comm. 2009); however, the occurrence was not found and was thus presumed to be extirpated. Other extant occurrences were not proposed as critical habitat because they were not natural occurrences (transplants or plants moved from their natural location with fill soil), or did not meet the criteria used to identify critical habitat (*see* Criteria Used To Identify Critical Habitat section above).

Comment 46: One commenter believes the Service ignored the recovery goal of critical habitat by failing to include additional and adjacent habitat that may not currently be occupied, but could provide an opportunity for *Ambrosia pumila* recovery. This commenter believes that without critical habitat, *A. pumila* has a reduced chance of persisting and recovering, citing Taylor *et al.* 2005. This commenter goes on to state that the Service should consider and evaluate the recovery benefits of critical habitat designation in order to promulgate a legally valid critical habitat rule (which the commenter believes was not done in the proposed rule).

Our Response: Critical habitat designation is a different process than development of recovery goals and objectives that are outlined in a recovery plan (which has not yet been developed for *Ambrosia pumila*). A critical habitat designation is a regulatory action that defines specific areas that are essential to the conservation of the species in accordance with the statutory definition. A recovery plan (and the associated recovery goals and objectives) is a guidance document developed in cooperation with partners, which provides a roadmap with detailed site-specific management actions to help conserve listed species and their ecosystems. Recovery plans provide important information about the species and the actions that are needed to bring about a species recovery.

Based on the best available commercial and scientific information available, we are unable to be more specific about the PCEs for *Ambrosia pumila* due to the paucity of information available regarding the biology and life history of the species. We believe we have, to the best of our ability, determined and designated all habitat areas that are essential to the conservation of the species. We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of *A. pumila,* and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect *A. pumila;* these protections and conservation tools will continue to contribute to recovery of this species.

Comment 47: One commenter noted that models are available that specifically address conservation designs to ensure rare species persistence (Burgman *et al.* 2001). The commenter recommended implementation of this type of modeling to improve the methodology used to delineate the areas proposed as critical habitat. Another commenter noted that a relatively recent scientific approach to identifying the size of plant conservation areas takes into consideration multiple variables including life strategy, disturbance probability, potential habitat, population size, recovery from disturbance, habitat suitability, predation, and competition (Burgman *et al.* 2001). This commenter believes that these types of factors are all critical components when establishing critical habitat needs for species and strongly recommends that the Service implement a similar modeling effort for *Ambrosia pumila.*

Our Response: Models such as those discussed by Burgman *et al.* (2001) are useful in identifying target areas for conservation. We have used different types of models to help us identify critical habitat for several federally-listed species. For *Ambrosia pumila,* we have chosen to identify areas where the species is known to occur rather than use a model due to the fact that we would have had difficulty defining the parameters of the model in a way that would have produced meaningful results due to the of paucity of information available regarding the biology and life history of the species. By using the methods described in this final rule, the designation of critical habitat will contribute to the conservation of this species (*see* Criteria Used To Identify Critical Habitat section).

Comment 48: One commenter believes that if an exclusion is contemplated, then consideration must be given not only to the species extinction thresholds, but also to species recovery standards during critical habitat designations.

Our Response: The process for evaluating the exclusion of an area from critical habitat is defined in and governed by Section 4(b)(2) of the Act. As discussed above, that Section vests the Secretary with broad discretion to consider any relevant factor in determining whether the benefits of excluding a particular area from designation as critical habitat outweigh the benefits of designating the area, so long as exclusion of the area would not result in extinction of the species.

We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of *Ambrosia pumila,* and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect *A. pumila;* these protections and conservation tools will continue to contribute to recovery of this species. Critical habitat designation is a different process than development of recovery goals and objectives that are outlined in a recovery plan (which has not yet been developed for *Ambrosia pumila*). A critical habitat designation is a regulatory action that defines specific areas that are essential to the conservation of the species in accordance with the statutory definition. A recovery plan (with

associated recovery goals and objectives) is a guidance document developed in cooperation with partners, which provides a roadmap with detailed site-specific management actions to help conserve listed species and their ecosystems. Recovery plans provide important information about the species and the actions that are needed to bring about a species recovery, while critical habitat designations identify specific areas that are essential for the species' conservation.

Comment 49: One commenter stated that connectivity needs to be included and fragmentation avoided, and based on the paucity of knowledge about the reproductive mechanisms, and the documented genetic diversity within studied populations (McGlaughlin and Friar 2005), a conservative approach to connectivity especially between adjacent populations is prudent.

Our Response: To include areas in the critical habitat designation that increase connectivity between areas occupied by *Ambrosia pumila,* we would need to determine what unoccupied areas are essential to the conservation of the species and the function of these areas in the life history of the species. This rule describes our best understanding at this time of the physical and biological features essential to the conservation of *A. pumila.* Due to the lack of information available regarding the biology and life history of the species, we are unable to determine how such unoccupied areas would support the biology and life history of the species, and where they should be located. Therefore, we are unable to include unoccupied areas in between adjacent populations.

Because relatively little is known about the biology and life history of *Ambrosia pumila* at this time, it is difficult to construct a critical habitat designation that we can be certain addresses every need of the species. However, we are mandated to complete and publish a critical habitat designation for this species by a court-ordered deadline (*see* Previous Federal Actions section of this rule). This final critical habitat designation is based on the best available scientific and commercial data as well as information we obtained during the public comment periods.

Comment 50: One commenter stated that the Service needs to include all occupied habitat in the Economic Analysis (and final critical habitat rule), and not rely on the proposed critical habitat as the basis for the Economic Analysis.

Our Response: The purpose of the Economic Analysis is to identify and analyze the potential economic impacts associated with the designation of critical habitat for *Ambrosia pumila.* Occupied areas not proposed as critical habitat are outside the scope of the Economic Analysis, as they are not expected to be impacted by the designation.

Comment 51: One commenter stated that areas that require special management considerations that are covered or will be covered in the future by management plans or conservation plans should not be excluded pursuant to section 3(5)(A) or 4(b)(2) of the Act.

Our Response: Exclusion of an area from critical habitat designation is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of the area will not result in extinction of a species, which is a complex analysis process. We found the benefits of exclusion of lands that are both conserved and managed under HCPs or long-term management plans to be greater than the benefits of including these lands in the critical habitat designation, because the associated HCPs and management plans afford protection to the excluded areas, and because of the benefits of preserving partnerships and encouraging development of additional HCPs and other conservation plans in the future. For more information, see the Exclusions under Section 4(b)(2) of the Act section above for a detailed discussion.

Comment 52: One commenter stated that in *Center for Biological Diversity, et al.* v. *Norton,* 240 F. Supp. 2d 1090, 1099 (D. Az. 2003) the court found that the existence of a management plan, far from being a reason to exclude an area from critical habitat, is indisputable proof that the area qualifies as critical habitat.

Our Response: In some instances, it may not be appropriate to exclude areas from critical habitat based on a management plan. We review each area that we consider for exclusion on an individual basis and base our conclusion on the results of the analysis conducted in accordance with a section 4(b)(2) of the Act. Our analysis is based on weighing the benefits of excluding the area from the critical habitat designation against the benefits of including the area in the critical habitat designation, and typically includes consideration of the conservation of the species and its habitat achieved under an HCP or other management plan. Please see the Exclusions Under Section 4(b)(2) of the Act section for a detailed discussion of our analyses of those areas we considered for exclusion in the proposed critical habitat designation (74 FR 44238, August 27, 2009) and the NOA announcing the availability of the DEA (75 FR 27690, May 18, 2010).

Comment 53: One commenter stated that whether habitat does or does not require special management is not determinative of whether that habitat is "critical" to a threatened or endangered species; what is determinative is whether or not the habitat is "essential to the conservation of the species" and special management of that habitat is possibly necessary.

Our Response: We agree with the commenter that prong one of the definition of critical habitat in Section 2 of the Act only requires that an area contain an essential physical or biological feature that "may require" special management considerations; it does not require an absolute finding that the area requires special management. Prong two of the definition of critical habitat does not require a finding that special management is required. Please see the Criteria Used To Identify Critical Habitat and Exclusions Under Section 4(b)(2) of the Act sections for a detailed discussion of the process followed to delineate critical habitat for this designation.

Comment 54: One commenter stated that recent scientific reports support the conservation all of the *Ambrosia pumila* populations (McGlaughlin and Friar 2005, Machearn *et al.* 2006, Hierl *et al.* 2007). They stated that conservation of *A. pumila* should include the maintenance of multiple populations throughout the species range.

Our Response: We believe we have designated all habitat areas that we are able to determine are essential to the conservation of the species at this time. We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of *Ambrosia pumila,* and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect *A. pumila;* these protections and conservation tools will continue to contribute to recovery of this species.

Comment 55: One commenter stated a belief that *Ambrosia pumila* definitely needs critical habitat designated for it. The commenter goes on to note that at Sweetwater Gorge, the County of San

Diego has an area fenced to preserve this plant which is full of weeds; and the plant did not have a chance. The commenter believes that we need not only designated habitat but a way to keep areas open for this plant, so it will survive.

Our Response: We thank the commenter for the information provided regarding this *Ambrosia pumila* occurrence. Over-competition from nonnative plant species is a threat to *A. pumila* throughout its range. Insuring the implementation of management actions needed to maintain *A. pumila* habitat is beyond the scope of this critical habitat designation. However, Service biologists are working with partners in San Diego and Riverside counties to recover *A. pumila* and insure management and monitoring of the species and its essential habitat.

Comments Regarding the Draft Economic Analysis

General Comments Regarding Assumptions

Comment 56: One comment states that assumptions in the draft economic analysis (DEA), such as the discount rate, should be revised in light of current economic conditions, citing reductions in home prices and rates of development.

Our Response: The DEA quantifies reductions in private land values associated with avoidance requirements, which reflects the market's evaluation of the future development potential of a parcel given this encumbrance. This expectation reflects long-term development potential, periods over which housing market fluctuations historically have and will continue to occur. The market value of parcels is determined by adjusting assessed values to current values using the OFHEO Home Price Index. Over the last three years the index indicates reductions in home prices ranging from 7 to 32 percent in Riverside County and 8 to 18 percent in San Diego County. Thus, property values reflect current housing market conditions in these areas. Finally, with respect to the discount rate(s) applied in the analysis, the U.S. Office of Management and Budget (OMB) requires Federal agencies to report results using discount rates of three and seven percent (*see* OMB, Circular A–4, 2003). In the DEA these rates provide a means to present impacts on an annual basis and do not affect their absolute magnitude.

Comment 57: One comment states that the DEA inappropriately includes and does not clearly define potential costs associated with time delays, regulatory uncertainty, and stigma.

Our Response: Chapter 2 of the DEA defines these categories of costs to provide context for EAs in general. Data are not available to investigate and quantify any potential costs associated with these categories in the DEA. Rather, costs are associated directly with avoidance requirements and associated reductions in developable land value.

Comment 58: One comment states that the DEA understates consultation costs in terms of costs, time and opportunity costs.

Our Response: The DEA presents a range of consultation costs based on a broad review of consultation records from several Service field offices around the country. Absent specific information on consultation costs for the *Ambrosia pumila,* the average of this range of costs represents the best available estimate at this time.

Impacts to Private Lands

Comment 59: One comment states in multiple sections that the DEA fails to acknowledge planned, approved and ongoing development projects in the Alberhill and Nichols Road subunits (1A and 1B). In addition, the DEA does not rely on the most current property value information for these areas, does not account for property value losses on parcels adjacent to designated areas, does not quantify associated regional economic impacts in terms of jobs and wages, and does not acknowledge additional constraints such as affordable housing requirements.

Our Response: As suggested by the commenter, the City of Lake Elsinore was contacted to determine the status of these projects and relevance of ambrosia conservation measures. The planning department was unable to readily identify these projects and provide requested information regarding status, value, permitting, and the potential for a Federal nexus in a reasonable timeframe. However, the DEA provides estimates of potential losses in market value associated with these parcels, which partially reflect any limitations on future development potential. Additional text describing the concerns raised in the comment and subsequent discussions with the City have been added to the final economic analysis (FEA).

Impacts to Infrastructure Projects

Comment 60: One comment states that the DEA fails to recognize the I–15 "multi-modal widening project" in the Alberhill and Nichols Road subunits.

Our Response: The DEA estimates incremental impacts for all properties, including those within Subunits 1A and 1B (Alberhill and Nichols Road respectively). Although the project in question was not discussed specifically, incremental impacts to properties in Subunits 1A and 1B that would occur in the event of a project with a Federal nexus were calculated and included in the DEA.

Comment 61: One comment states that the Mission Trails Region Park unit (Unit 6) overlaps with an infrastructure easement for a water pipeline. The commenter is concerned that the designation may result in additional section 7 consultations over and above those that would result under its proposed HCP.

Our Response: While GIS data were not available to confirm overlap, it does appear that a portion of the easement is within the boundaries of the Mission Trails unit. Padre Dam Municipal Water District along with Helix Water District, Sweetwater Authority, and Otay Water District is in the process of developing a Joint Water Agencies Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP or plan). The plan will govern project location, development, maintenance, and operation of the parties' water delivery facilities. *Ambrosia pumila* is identified as a covered species under the proposed plan. We have not formally reviewed the proposed plan and determined whether to issue an incidental take permit under Section 10 of the Act to the water agencies. However, as part of our anticipated review of the water agencies' permit application, we must conduct an internal consultation under Section 7 of the Act to insure that the proposed permit is not likely to jeopardize the continued existence of *A. pumila,* and will not adversely modify any designated critical habitat for this species. Assuming the project meets applicable statutory standards under Section 7 and Section 10, we will issue an incidental take permit based on the protections provided under the plan for the covered species, including *A. pumila.* Because we will have evaluated the effects of the water agencies' anticipated activities on *A. pumila* and its designated critical habitat within the plan area as part of our review of the proposed NCCP/HCP, future Section 7 consultations, if any, that may occur with regard to *A. pumila* designated critical habitat are not anticipated to result in additional restrictions on or mitigation for the water agencies' activities beyond the measures provided under the NCCP/HCP. Therefore, the DEA does not forecast additional costs

associated with conservation efforts to maintain the district's water delivery facilities.

Benefits of Designation

Comment 62: One comment states that the potential slowing of development as a result of the designation and corresponding reduction in infrastructure needs has a benefit in reducing greenhouse gases. This benefit should be included in the DEA.

Our Response: Whether the proposed designation will have a measurable impact on greenhouse gas emissions is uncertain, both because of the absence of specific information on the nature and extent of future development in designated areas and because projects may find alternate locations, redistributing emissions geographically without producing a net reduction. Finally, the Service has stated previously that the underlying causes of climate change are complex global issues that are beyond the scope of the Act (*see* 74 FR 56070). Thus, the potential for such benefits is not discussed in the DEA.

Comment 63: One comment states that the DEA fails to quantify benefits associated with open space, aesthetics, and educational opportunities and does not recognize benefits associated with improving water quality and quantity and preservation of habitat for other species.

Our Response: As described in Chapter 4 of the DEA, the purpose of critical habitat is to support the conservation of the *Ambrosia pumila.* The data required to estimate and value in monetary terms the incremental changes in the probability of conservation resulting from the designation are not available. Depending on the project modifications ultimately implemented as a result of the rule, other ancillary benefits that are not the stated objective of critical habitat (such as those identified by the commenter) may occur. However, because these benefits are not associated with the stated goals of the rule (*i.e.,* conservation of the species) they do not inform the designation decision.

Comment 64: One comment states that the DEA fails to identify referenced studies that have estimated the public's willingness to pay for endangered species and open space preservation.

Our Response: Richardson and Loomis (2009; *Ecological Economics* 68, p. 1535–1548) present a meta-analysis of 31 studies that estimate the value of threatened, endangered and rare species. Similarly, McConell and Walls (2005) provide an overview of the extensive literature on the value of open space: *http://www.rff.org/Publications/Pages/PublicationDetails.aspx?PublicationID=9562.*

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for *Ambrosia pumila* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the designation of critical habitat for *Ambrosia pumila* would significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Ambrosia pumila.* Federal agencies also must consult with us if their activities may affect critical

habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (*see* Application of the "Adverse Modification" Standard section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the designation of critical habitat for *Ambrosia pumila.* The analysis is based on the estimated impacts associated with the rulemaking as described in sections 2 and 3 of the analysis and evaluates the potential for economic impacts related to: Commercial and residential development and transportation and utility projects (Industrial Economics, Inc. 2010, p. 1–6). The FEA estimates the total incremental impacts associated with development as a whole to be $0 to $8,990 over the 20-year timeframe of the FEA. The FEA identifies incremental impacts to small entities to occur only due to residential and commercial development (Industrial Economics, Inc. 2010, pp. A–3–A–5). The other category of projects either will have no impacts (transportation and utility) or are Federal, State, or public entities not considered small or exceed the criteria for small business status. Please refer to our final economic analysis of critical habitat designation for *A. pumila* for a more detailed discussion of potential economic impacts.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. The annualized impact to each entity identified in the analysis was estimated to be approximately $225. This impact is less than 10 percent of the total incremental impact identified for development activities. Based on the above reasoning and currently available information, we concluded this rule would not result in a significant economic impact on a substantial number of small entities as identified in the FEA (Industrial Economics, Inc. 2010, p. A–3–A–5). Therefore, we are certifying that the designation of critical habitat for *Ambrosia pumila* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of Federal assistance." Second, it also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the FEA of the proposed designation of critical habitat for *Ambrosia pumila,* we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development activities; however, these are not expected to affect small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we analyzed the potential takings implications of designating critical habitat for *Ambrosia pumila* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits and the removal or destruction of listed plant species such as *A. pumila* does not require issuance of a Federal incidental take permit. The designation of critical habitat for *A. pumila* does not pose significant takings implications for the above reasons.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of *Ambrosia pumila.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands occupied at the time of listing that contain the features essential to the conservation of the species, nor are there any unoccupied tribal lands that are essential for the conservation of *Ambrosia pumila.* Therefore, critical habitat for *A. pumila* is not being designated on tribal lands.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for this designation, we determined that the final designation of critical habitat for *Ambrosia pumila* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary author of this notice is the staff from the Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for "*Ambrosia pumila* (San Diego ambrosia)" under family Asteraceae to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Ambrosia pumila	San Diego ambrosia.	U.S.A. (CA), Mexico.	Asteraceae	E	727	17.96	NA
*	*	*	*	*	*		*

■ 3. In § 17.96(a), add an entry for "*Ambrosia pumila* (San Diego ambrosia)" in alphabetic order under family Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Ambrosia pumila* (San Diego ambrosia).

(1) Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements (PCE) for *Ambrosia pumila* are:

(i) PCE 1—Sandy loam or clay soils (regardless of disturbance status), including (but not limited to) the Placentia (sandy loam), Diablo (clay), and Ramona (sandy loam) soil series that occur on or near (up to several hundred meters from but not directly adjacent to) a river, creek, or other drainage, or within the watershed of a vernal pool, and that occur on an upper terrace (flat or gently sloping areas of 0 to 42 percent slopes are typical for terraces on which *Ambrosia pumila* occurrences are found).

(ii) PCE 2—Grassland or ruderal habitat types, or openings within coastal sage scrub, on the soil types and topography described in PCE 1, that provide adequate sunlight, and airflow for wind pollination.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) **Note:** Index Map of critical habitat units for *Ambrosia pumila* (San Diego ambrosia) follows:

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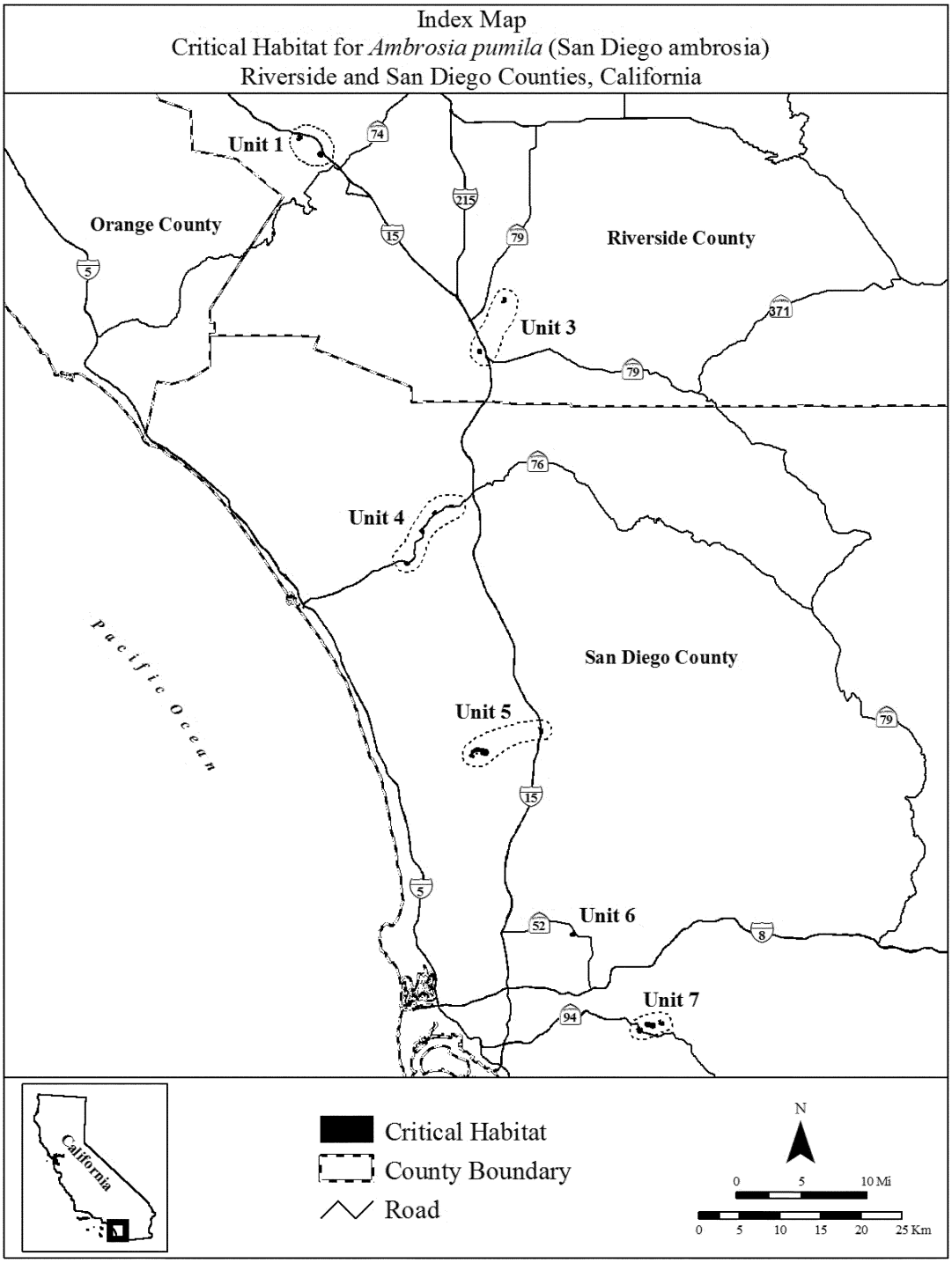


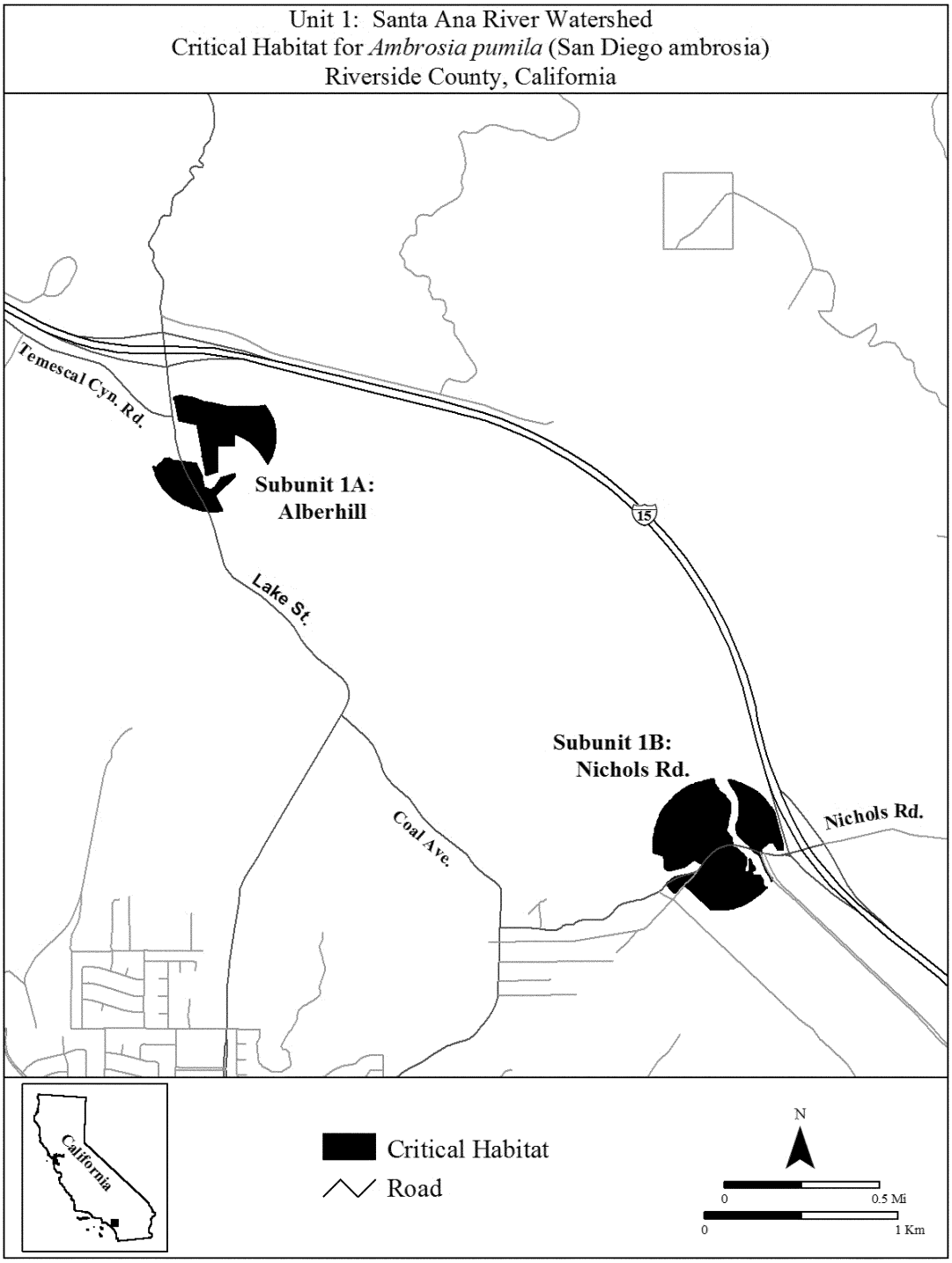
(6) Unit 1: Santa Ana River Watershed, Riverside County, California.

(i) Subunit 1A: Alberhill (Lake Street). From USGS 1:24,000 quadrangle Alberhill, land bounded by the following Universal Transverse Mercator (UTM) Zone 11, North American Datum of 1983 (NAD83) coordinates (E, N): 463686, 3731715; 463700, 3731686; 463720, 3731646; 463716, 3731644; 463729, 3731595; 463760, 3731582; 463782, 3731595; 463814, 3731641; 463886, 3731662; 463886, 3731649; 463787, 3731553; 463823, 3731472; 463814, 3731470; 463800, 3731468; 463786, 3731467; 463772, 3731467; 463757, 3731467; 463743, 3731468; 463729, 3731470; 463715, 3731473; 463701, 3731476; 463687, 3731480; 463684, 3731482; 463668, 3731487; 463658, 3731491; 463653, 3731493; 463650, 3731494; 463643, 3731498; 463626, 3731504; 463609, 3731512; 463606, 3731513; 463589, 3731523; 463575, 3731532; 463568, 3731536; 463565, 3731539; 463559, 3731544; 463555, 3731547; 463546, 3731555; 463529, 3731572; 463521, 3731580; 463514, 3731589; 463501, 3731607; 463491, 3731625; 463483, 3731641; 463479, 3731650; 463477, 3731653; 463475, 3731658; 463471, 3731671; 463465, 3731693; 463464, 3731699; 463467, 3731698; 463480, 3731696; 463496, 3731713;

463509, 3731725; 463524, 3731739; 463548, 3731743; 463563, 3731732; 463661, 3731718; thence returning to 463686, 3731715. Continue to 463692, 3732048; 463718, 3732037; 463768, 3732026; 463824, 3732016; 463861, 3732009; 463916, 3732007; 463940, 3732008; 463960, 3732009; 464014, 3732012; 464040, 3732016; 464046, 3732009; 464054, 3731998; 464062, 3731986; 464068, 3731974; 464070, 3731971; 464071, 3731969; 464074, 3731962; 464080, 3731949; 464084, 3731936; 464088, 3731923; 464092, 3731910; 464094, 3731896; 464096, 3731883; 464097, 3731869; 464098, 3731856; 464098, 3731842; 464097, 3731828; 464095, 3731815; 464093, 3731802; 464090, 3731789; 464086, 3731776; 464081, 3731763; 464076, 3731751; 464071, 3731739; 464068, 3731734; 464064, 3731727; 464058, 3731715; 464056, 3731713; 464009, 3731786; 463961, 3731829; 463909, 3731858; 463881, 3731872; 463883, 3731805; 463875, 3731807; 463798, 3731811; 463797, 3731677; 463737, 3731653; 463731, 3731686; 463720, 3731746; 463718, 3731748; 463717, 3731750; 463718, 3731754; 463719, 3731756; 463690, 3731916; 463615, 3731934; 463595, 3731939; 463577, 3732046; 463573, 3732046; 463571, 3732055; 463582, 3732063; 463596, 3732066; 463615, 3732066; 463641, 3732062; 463665, 3732057; thence returning to 463692, 3732048.

(ii) Subunit 1B: Nichols Road. From USGS 1:24,000 quadrangle Lake Elsinore, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 466525, 3729671; 466527, 3729663; 466525, 3729648; 466520, 3729639; 466517, 3729631; 466515, 3729619; 466517, 3729609; 466525, 3729603; 466531, 3729605; 466542, 3729615; 466543, 3729628; 466542, 3729639; 466540, 3729658; 466538, 3729667; 466538, 3729671; 466544, 3729674; 466548, 3729670; 466551, 3729656; 466555, 3729647; 466561, 3729637; 466566, 3729631; 466569, 3729625; 466569, 3729622; 466565, 3729616; 466559, 3729613; 466555, 3729607; 466555, 3729600; 466558, 3729592; 466563, 3729586; 466573, 3729586; 466580, 3729589; 466589, 3729589; 466594, 3729586; 466603, 3729577; 466610, 3729562; 466611, 3729550; 466613, 3729539; 466622, 3729531; 466631, 3729528; 466621, 3729517; 466609, 3729506; 466596, 3729495; 466589, 3729490; 466549, 3729462; 466543, 3729457; 466528, 3729448; 466513, 3729440; 466498, 3729433; 466482, 3729427; 466466, 3729422; 466461, 3729420; 466437, 3729416; 466398, 3729412; 466363, 3729411; 466339, 3729413; 466254, 3729494; 466239, 3729510; 466203, 3729537; 466200, 3729537; 466191, 3729537; 466155, 3729497; 466153, 3729498; 466128, 3729522; 466109, 3729547; 466153, 3729578; 466204, 3729592; 466209, 3729593; 466229, 3729595; 466270, 3729602; 466302, 3729640; 466254, 3729669; 466206, 3729633; 466121, 3729614; 466103, 3729626; 466102, 3729659; 466095, 3729690; 466054, 3729701; 466046, 3729702; 466044, 3729730; 466043, 3729733; 466043, 3729740; 466042, 3729757; 466043, 3729774; 466044, 3729791; 466047, 3729808; 466051, 3729824; 466054, 3729834; 466064, 3729867; 466066, 3729873; 466072, 3729889; 466079, 3729904; 466087, 3729919; 466096, 3729934; 466106, 3729948; 466117, 3729961; 466128, 3729973; 466131, 3729976; 466157, 3730001; 466167, 3730011; 466180, 3730021; 466194, 3730031; 466208, 3730040; 466223, 3730048; 466239, 3730055; 466255, 3730061; 466260, 3730063; 466294, 3730073; 466305, 3730077; 466322, 3730081; 466338, 3730083; 466355, 3730085; 466357, 3730085; 466359, 3730079; 466361, 3730061; 466379, 3730040; 466384, 3730029; 466392, 3730021; 466402, 3730013; 466413, 3730002; 466421, 3729993; 466427, 3729983; 466433, 3729973; 466438, 3729964; 466441, 3729946; 466442, 3729922; 466439, 3729903; 466435, 3729886; 466432, 3729870; 466432, 3729866; 466430, 3729857; 466425, 3729842; 466422, 3729831; 466420, 3729819; 466420, 3729814; 466424, 3729812; 466446, 3729784; 466454, 3729740; 466456, 3729738; 466474, 3729727; 466486, 3729719; 466494, 3729711; 466509, 3729699; 466518, 3729688; 466522, 3729681; thence returning to 466525, 3729671. Continue to 466671, 3729914; 466713, 3729743; 466713, 3729740; 466713, 3729724; 466687, 3729719; 466666, 3729753; 466662, 3729760; 466636, 3729756; 466601, 3729723; 466601, 3729720; 466604, 3729684; 466609, 3729671; 466629, 3729620; 466637, 3729599; 466662, 3729569; 466654, 3729557; 466651, 3729566; 466639, 3729588; 466623, 3729610; 466616, 3729630; 466614, 3729636; 466611, 3729645; 466605, 3729660; 466603, 3729663; 466594, 3729679; 466590, 3729692; 466585, 3729699; 466584, 3729700; 466568, 3729709; 466550, 3729723; 466538, 3729743; 466517, 3729758; 466500, 3729775; 466487, 3729788; 466478, 3729801; 466470, 3729816; 466468, 3729836; 466473, 3729853; 466481, 3729871; 466486, 3729892; 466488, 3729922; 466489, 3729957; 466481, 3729991; 466469, 3730020; 466456, 3730035; 466447, 3730047; 466438, 3730059; 466432, 3730077; 466432, 3730082; 466448, 3730079; 466465, 3730075; 466481, 3730070; 466497, 3730064; 466511, 3730058; 466538, 3730045; 466554, 3730036; 466568, 3730027; 466582, 3730018; 466583, 3730016; 466595, 3730007; 466607, 3729995; 466619, 3729983; 466628, 3729972; 466642, 3729953; 466650, 3729943; 466652, 3729942; 466662, 3729928; thence returning to 466671, 3729914.

(iii) **Note:** Map of Unit 1: Santa Ana River Watershed (Map 2) follows:



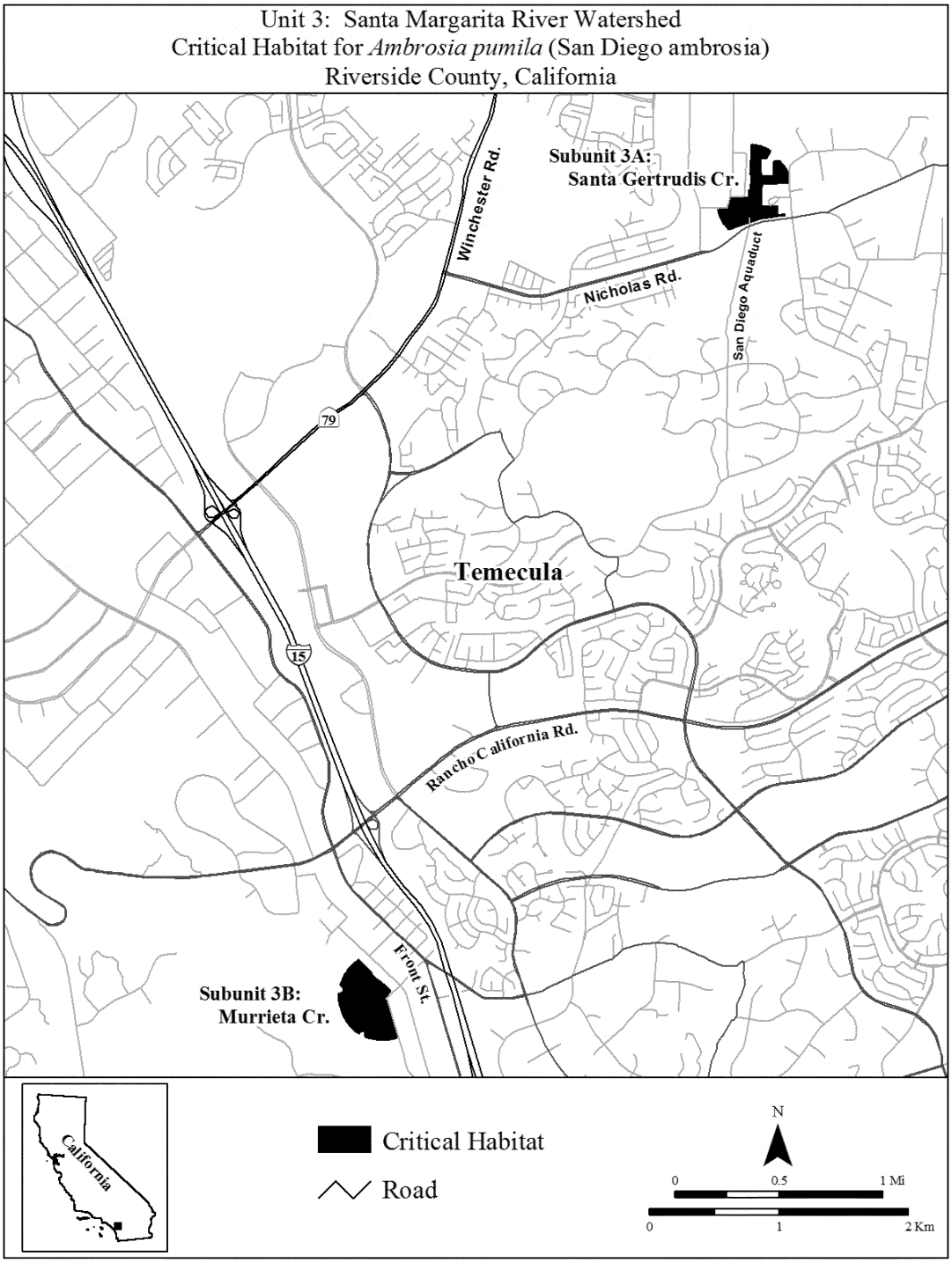
(7) Unit 3: Santa Margarita River Watershed, Riverside County, California.

(i) Subunit 3A: Santa Gertrudis Creek. From USGS 1:24,000 quadrangle Bachelor Mountain, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 489149, 3711597; 489149, 3711584; 489149, 3711536; 489150, 3711526; 489182, 3711531; 489207, 3711536; 489206, 3711534; 489204, 3711530; 489150, 3711522; 489032, 3711505; 489029, 3711505; 489004, 3711496; 488986, 3711490; 488853, 3711446; 488773, 3711419; 488772, 3711420; 488762, 3711430; 488752, 3711440; 488743, 3711451; 488735, 3711462; 488727, 3711474; 488720, 3711486; 488714, 3711498; 488708, 3711511; 488703, 3711524; 488698, 3711537; 488695, 3711551; 488692, 3711565; 488690, 3711573; 488740, 3711573; 488761, 3711585; 488780, 3711661; 488930, 3711666; 488932, 3711728; 488940, 3711726; 488943, 3711766; 488947, 3711838; 488937, 3711846; 488946, 3712065; 488946, 3712074; 488957, 3712074; 488971, 3712072; 488984, 3712071; 488987, 3712071; 488990, 3712070; 489021, 3712064; 489021, 3712064; 489051, 3712053; 489080, 3712039; 489095, 3712029; 489094, 3712020; 489063, 3711973; 489021, 3711968; 489016, 3711967; 489020, 3711850; 489021, 3711849; 489029, 3711846;

489029, 3711830; 489071, 3711829; 489078, 3711826; 489096, 3711829; 489115, 3711828; 489118, 3711942; 489129, 3711946; 489173, 3711946; 489176, 3711940; 489179, 3711934; 489188, 3711925; 489197, 3711915; 489205, 3711904; 489212, 3711894; 489219, 3711882; 489224, 3711872; 489231, 3711772; 489227, 3711772; 489148, 3711771; 489032, 3711771; 489029, 3711742; 489031, 3711597; 489081, 3711597; 489094, 3711588; 489105, 3711597; 489136, 3711597; thence returning to 489149, 3711597.

(ii) Subunit 3B: Murrieta Creek. From USGS 1:24,000 quadrangle Temecula, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 486159, 3705522; 486130, 3705488; 486110, 3705464; 486117, 3705456; 486125, 3705449; 486155, 3705347; 486174, 3705279; 486208, 3705158; 486202, 3705156; 486186, 3705151; 486169, 3705147; 486165, 3705147; 486153, 3705145; 486140, 3705142; 486130, 3705142; 486123, 3705141; 486116, 3705140; 486104, 3705140; 486076, 3705140; 486058, 3705142; 486045, 3705144; 486030, 3705146; 486014, 3705150; 486008, 3705152; 485996, 3705155; 485986, 3705159; 485970, 3705165; 485960, 3705169; 485954, 3705172; 485959, 3705189; 485959, 3705209; 485945, 3705214; 485921, 3705201; 485918, 3705191; 485913, 3705194; 485902, 3705202; 485889, 3705211; 485876, 3705222; 485870, 3705227; 485861, 3705236; 485855, 3705242; 485843, 3705254; 485834, 3705265; 485827, 3705275; 485824, 3705277; 485815, 3705291; 485806, 3705306; 485803, 3705310; 485797, 3705321; 485791, 3705332; 485784, 3705347; 485780, 3705357; 485776, 3705369; 485774, 3705375; 485769, 3705391; 485765, 3705408; 485763, 3705420; 485760, 3705437; 485758, 3705453; 485758, 3705461; 485758, 3705473; 485758, 3705501; 485774, 3705498; 485777, 3705509; 485794, 3705516; 485793, 3705526; 485785, 3705556; 485769, 3705566; 485769, 3705568; 485773, 3705580; 485776, 3705591; 485781, 3705605; 485787, 3705618; 485794, 3705634; 485802, 3705649; 485811, 3705664; 485817, 3705673; 485825, 3705683; 485828, 3705688; 485839, 3705701; 485845, 3705707; 485853, 3705716; 485859, 3705722; 485871, 3705734; 485881, 3705742; 485891, 3705750; 485894, 3705752; 485908, 3705762; 485910, 3705763; 486004, 3705670; 486019, 3705644; 486044, 3705619; 486065, 3705600; 486086, 3705587; 486119, 3705557; thence returning to 486159, 3705522.

(iii) **Note:** Map of Unit 3: Santa Margarita River Watershed (Map 3) follows:



(8) Unit 4: San Luis Rey River Watershed. From USGS 1:24,000 quadrangle Bonsall, San Diego County, California.

(i) Subunit 4A: Calle de la Vuelta. Land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 480305, 3685329; 480306, 3685327; 480308, 3685328; 480309, 3685328; 480311, 3685328; 480313, 3685329; 480315, 3685330; 480317, 3685330; 480320, 3685329; 480322, 3685328; 480323, 3685327; 480324, 3685326; 480326, 3685325; 480327, 3685324; 480329, 3685322; 480330, 3685320; 480331, 3685319; 480332, 3685317; 480333, 3685316; 480336, 3685314; 480337, 3685313; 480339, 3685311; 480340, 3685310; 480366, 3685285; 480367, 3685284; 480360, 3685275; 480359, 3685274; 480359, 3685272; 480356, 3685271; 480355, 3685269; 480336, 3685247; 480331, 3685240; 480296, 3685207; 480296, 3685206; 480289, 3685200; 480288, 3685202; 480285, 3685211; 480277, 3685232; 480274, 3685237; 480263, 3685253; 480275, 3685262; 480329, 3685305; 480324, 3685305; 480323, 3685305; 480321, 3685305; 480319, 3685304; 480317, 3685303; 480315, 3685302; 480313, 3685302; 480312, 3685301; 480311, 3685301; 480309, 3685300; 480307, 3685299; 480305, 3685298; 480302, 3685297; 480300, 3685296; 480298, 3685296; 480296, 3685296;

480298, 3685298; 480298, 3685300; 480298, 3685301; 480297, 3685303; 480298, 3685305; 480298, 3685306; 480299, 3685307; 480298, 3685308; 480294, 3685308; 480292, 3685308; 480291, 3685307; 480291, 3685308; 480291, 3685311; 480292, 3685312; 480294, 3685312; 480296, 3685314; 480296, 3685315; 480297, 3685317; 480298, 3685318; 480300, 3685321; 480298, 3685322; 480297, 3685323; 480295, 3685324; 480295, 3685326; 480294, 3685328; 480294, 3685330; 480294, 3685332; 480294, 3685334; 480294, 3685336; 480294, 3685337; 480295, 3685339; 480295, 3685342; 480295, 3685343; 480295, 3685345; 480295, 3685346; 480295, 3685348; 480296, 3685349; 480296, 3685350; 480297, 3685351; 480299, 3685351; 480300, 3685351; 480301, 3685350; 480301, 3685348; 480302, 3685347; 480302, 3685345; 480302, 3685343; 480303, 3685341; 480303, 3685340; 480304, 3685338; 480304, 3685336; 480304, 3685335; 480304, 3685333; 480304, 3685331; 480305, 3685330; thence returning to 480305, 3685329. Continue to 480281, 3685448; 480265, 3685444; 480258, 3685449; 480259, 3685460; 480259, 3685463; 480266, 3685476; 480280, 3685473; 480282, 3685470; 480291, 3685457; 480288, 3685454; 480284, 3685450; thence returning to 480281, 3685448. Continue to 480471, 3685448; 480481, 3685448; 480488, 3685448; 480488, 3685439; 480489, 3685426; 480491, 3685416; 480496, 3685411; 480501, 3685405; 480503, 3685395; 480503, 3685383; 480503, 3685369; 480504, 3685363; 480505, 3685359; 480506, 3685357; 480503, 3685356; 480493, 3685354; 480473, 3685347; 480450, 3685339; 480438, 3685334; 480433, 3685338; 480433, 3685339; 480426, 3685349; 480422, 3685367; 480423, 3685373; 480422, 3685375; 480422, 3685375; 480421, 3685377; 480421, 3685380; 480422, 3685382; 480423, 3685383; 480423, 3685385; 480424, 3685414; 480424, 3685429; 480418, 3685444; 480418, 3685445; 480407, 3685469; 480413, 3685469; 480434, 3685478; 480439, 3685478; 480446, 3685474; 480450, 3685465; 480454, 3685459; 480457, 3685457; 480463, 3685450; thence returning to 480471, 3685448. Continue to 480206, 3685424; 480222, 3685406; 480227, 3685407; 480242, 3685411; 480241, 3685409; 480240, 3685408; 480236, 3685404; 480234, 3685402; 480233, 3685401; 480229, 3685397; 480228, 3685396; 480226, 3685393; 480185, 3685351; 480185, 3685341; 480185, 3685341; 480176, 3685316; 480175, 3685315; 480165, 3685301; 480158, 3685312; 480155, 3685316; 480155, 3685318; 480149, 3685342; 480146, 3685367; 480146, 3685375; 480147, 3685393; 480159, 3685450; 480160, 3685475; 480157, 3685495; 480156, 3685498; 480152, 3685510; 480146, 3685517; 480150, 3685520; 480165, 3685512; 480167, 3685505; 480170, 3685495; 480175, 3685478; thence returning to 480206, 3685424. Continue to 480632, 3685486; 480641, 3685475; 480652, 3685481; 480655, 3685484; 480659, 3685481; 480675, 3685473; 480676, 3685472; 480688, 3685465; 480679, 3685457; 480637, 3685427; 480565, 3685379; 480560, 3685386; 480559, 3685387; 480557, 3685389; 480551, 3685391; 480546, 3685396; 480544, 3685402; 480539, 3685413; 480534, 3685422; 480534, 3685431; 480530, 3685442; 480526, 3685450; 480552, 3685443; 480557, 3685447; 480565, 3685457; 480567, 3685477; 480568, 3685489; 480566, 3685510; 480566, 3685518; 480568, 3685524; 480571, 3685531; 480578, 3685533; 480588, 3685535; 480607, 3685520; 480621, 3685509; 480632, 3685499; thence returning to 480632, 3685486. Continue to 480543, 3685580; 480538, 3685577; 480549, 3685584; 480549, 3685596; 480549, 3685637; 480548, 3685669; 480553, 3685667; 480559, 3685665; 480566, 3685661; 480575, 3685657; 480578, 3685655; 480579, 3685655; 480583, 3685653; 480594, 3685647; 480600, 3685642; 480606, 3685638; 480612, 3685634; 480615, 3685632; 480598, 3685617; 480596, 3685616; 480592, 3685612; 480588, 3685609; 480583, 3685606; 480579, 3685602; 480579, 3685602; 480575, 3685599; 480570, 3685596; 480566, 3685593; 480561, 3685590; 480557, 3685587; 480552, 3685585; 480548, 3685582; thence returning to 480543, 3685580. Continue to 480521, 3685637; 480528, 3685571; 480524, 3685570; 480518, 3685568; 480496, 3685558; 480406, 3685519; 480399, 3685517; 480398, 3685516; 480397, 3685515; 480392, 3685513; 480390, 3685517; 480387, 3685522; 480384, 3685523; 480304, 3685547; 480318, 3685574; 480331, 3685590; 480351, 3685594; 480357, 3685595; 480360, 3685629; 480360, 3685634; 480361, 3685647; 480367, 3685674; 480372, 3685675; 480376, 3685632; 480378, 3685620; 480378, 3685613; 480439, 3685629; 480436, 3685656; 480435, 3685661; 480432, 3685687; 480435, 3685687; 480439, 3685688; 480446, 3685688; 480454, 3685688; 480461, 3685688; 480465, 3685688; 480480, 3685686; 480487, 3685685; 480488, 3685685; 480502, 3685683; 480510, 3685681; 480516, 3685680; thence returning to 480521, 3685637.

(ii) Subunit 4B: Olive Hill Road. Land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 478735, 3683078; 478770, 3683404; 478753, 3683404; 478723, 3683406; 478682, 3683412; 478683, 3683413; 478685, 3683416; 478689, 3683422; 478693, 3683429; 478702, 3683441; 478716, 3683458; 478723, 3683466; 478729, 3683475; 478737, 3683483; 478753, 3683499; 478761, 3683506; 478770, 3683514; 478776, 3683518; 478774, 3683498; 478770, 3683407; thence returning to 478770, 3683404. Continue to 478854, 3683318; 478868, 3683273; 478920, 3683299; 478923, 3683301; 478925, 3683303; 478929, 3683306; 478929, 3683310; 478933, 3683309; 478936, 3683312; 478940, 3683314; 478944, 3683315; 478950, 3683319; 478954, 3683322; 478915, 3683171; 478919, 3683133; 478923, 3683087; 478929, 3683027; 478936, 3682992; 478924, 3682992; 478912, 3682993; 478907, 3682992; 478896, 3682993; 478892, 3682993; 478870, 3682995; 478858, 3682996; 478847, 3682999; 478844, 3683000; 478825, 3683005; 478815, 3683008; 478805, 3683012; 478784, 3683022; 478774, 3683026; 478763, 3683033; 478744, 3683046; 478742, 3683048; 478739, 3683051; 478735, 3683053; 478724, 3683062; 478708, 3683079; 478694, 3683096; 478681, 3683114; 478674, 3683124; 478669, 3683134; 478659, 3683154; 478655, 3683164; 478652, 3683175; 478646, 3683197; 478642, 3683219; 478639, 3683242; 478639, 3683253; 478639, 3683256; 478639, 3683259; 478639, 3683271; 478641, 3683293; 478645, 3683316; 478650, 3683337; 478658, 3683358; 478659, 3683361; 478664, 3683373; 478667, 3683380; 478670, 3683386; 478676, 3683399; 478721, 3683395; 478718, 3683381; 478737, 3683377; 478836, 3683359; thence returning to 478854, 3683318.

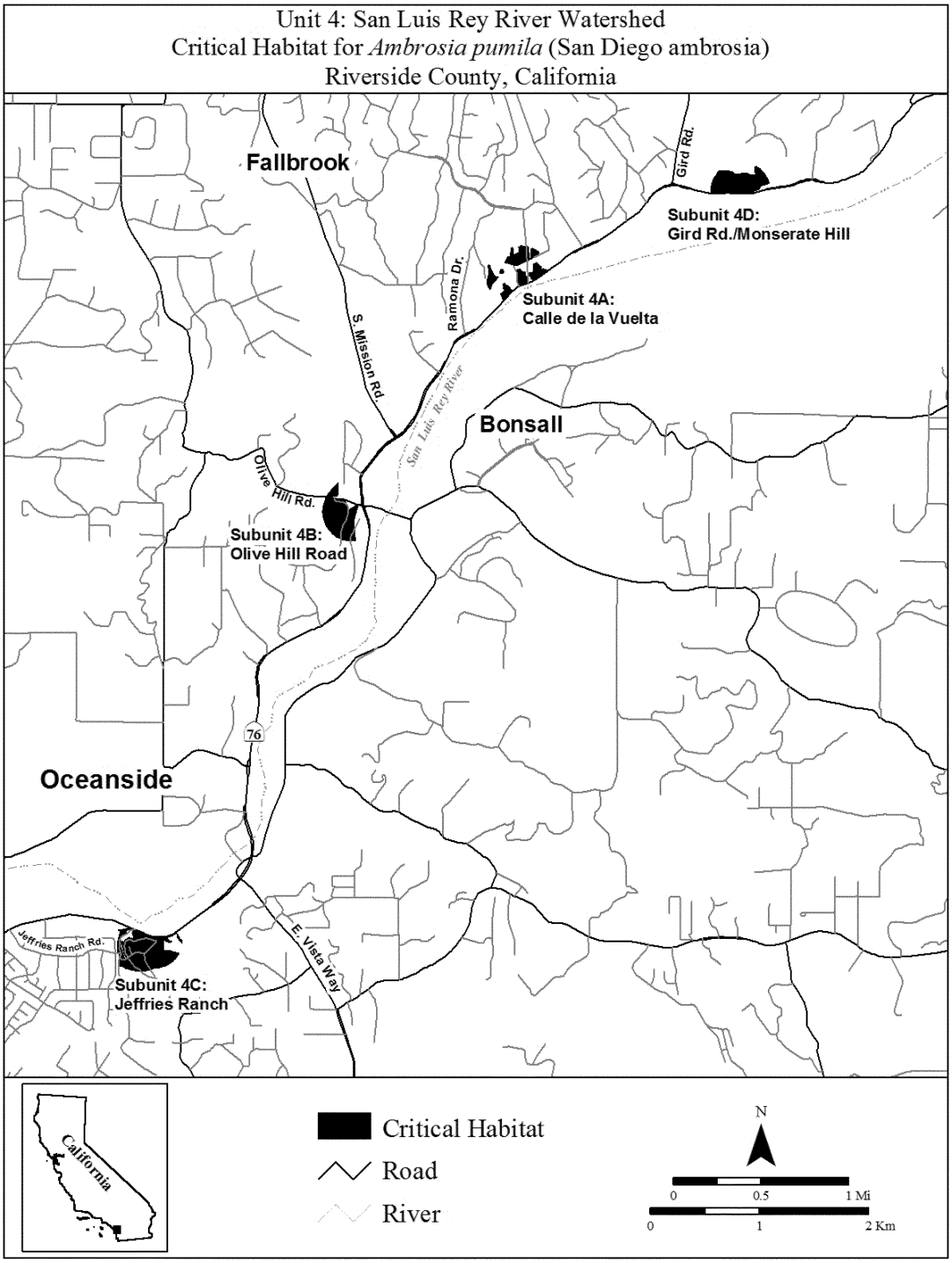
(iii) Subunit 4C: Jeffries Ranch. Land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 477180, 3679339; 477189, 3679340; 477202, 3679341; 477218, 3679343; 477236, 3679323; 477240, 3679318; 477245, 3679320; 477249, 3679321; 477248, 3679320; 477247, 3679319; 477244, 3679316; 477232, 3679315; 477228, 3679315; 477221, 3679318; 477202, 3679329; thence returning to 477180, 3679339. Continue to 477347, 3679308; 477347, 3679303; 477338, 3679320; 477327, 3679331; 477325, 3679333; 477322, 3679335; 477310, 3679356; 477305, 3679360; 477305, 3679360; 477307, 3679372; 477305, 3679382; 477306, 3679382; 477313, 3679367; 477314, 3679365; 477324, 3679343; 477326, 3679341; 477328, 3679338;

477336, 3679332; 477349, 3679324; 477349, 3679323; thence returning to 477347, 3679308. Continue to 477180, 3679339; 477179, 3679339; 477177, 3679338; 477176, 3679337; 477178, 3679332; 477179, 3679311; 477180, 3679306; 477179, 3679299; 477179, 3679275; 477177, 3679247; 477177, 3679233; 477179, 3679233; 477181, 3679233; 477185, 3679232; 477189, 3679232; 477193, 3679232; 477197, 3679232; 477201, 3679232; 477205, 3679232; 477209, 3679231; 477213, 3679231; 477217, 3679231; 477221, 3679231; 477225, 3679231; 477229, 3679231; 477233, 3679231; 477238, 3679231; 477242, 3679231; 477245, 3679231; 477257, 3679223; 477316, 3679212; 477317, 3679212; 477310, 3679201; 477303, 3679189; 477294, 3679178; 477285, 3679167; 477275, 3679156; 477265, 3679146; 477254, 3679137; 477243, 3679128; 477231, 3679120; 477219, 3679113; 477207, 3679106; 477194, 3679100; 477180, 3679094; 477179, 3679094; 477167, 3679090; 477164, 3679089; 477153, 3679086; 477139, 3679083; 477125, 3679080; 477111, 3679079; 477097, 3679078; 477083, 3679078; 477070, 3679072; 477058, 3679067; 477045, 3679062; 477032, 3679058; 477018, 3679055; 477005, 3679052; 476991, 3679051; 476977, 3679049; 476970, 3679049; 476963, 3679049; 476949, 3679049; 476935, 3679050; 476922, 3679052; 476913, 3679054; 476909, 3679055; 476896, 3679057; 476883, 3679061; 476871, 3679066; 476857, 3679070; 476844, 3679074; 476831, 3679079; 476818, 3679085; 476806, 3679091; 476793, 3679097; 476780, 3679103; 476778, 3679104; 476775, 3679106; 476775, 3679111; 476776, 3679141; 476776, 3679173; 476776, 3679195; 476777, 3679200; 476778, 3679204; 476778, 3679212; 476778, 3679213; 476776, 3679215; 476776, 3679222; 476776, 3679223; 476769, 3679223; 476766, 3679225; 476759, 3679227; 476761, 3679268; 476763, 3679301; 476765, 3679328; 476766, 3679328; 476769, 3679327; 476772, 3679326; 476772, 3679333; 476772, 3679356; 476776, 3679373; 476777, 3679376; 476780, 3679385; 476782, 3679422; 476765, 3679423; 476765, 3679424; 476797, 3679423; 476810, 3679428; 476839, 3679438; 476866, 3679437; 476870, 3679436; 476874, 3679435; 476866, 3679427; 476864, 3679429; 476862, 3679431; 476853, 3679434; 476845, 3679429; 476842, 3679426; 476842, 3679426; 476837, 3679420; 476837, 3679415; 476837, 3679411; 476836, 3679407; 476836, 3679406; 476835, 3679403; 476834, 3679400; 476833, 3679398; 476830, 3679396; 476826, 3679394; 476824, 3679393; 476821, 3679392; 476816, 3679391; 476808, 3679381; 476799, 3679375; 476787, 3679367; 476785, 3679365; 476785, 3679365; 476785, 3679362; 476786, 3679360; 476786, 3679356; 476785, 3679354; 476783, 3679351; 476782, 3679348; 476784, 3679345; 476786, 3679343; 476784, 3679323; 476780, 3679305; 476779, 3679300; 476780, 3679295; 476781, 3679279; 476784, 3679265; 476785, 3679260; 476790, 3679238; 476797, 3679220; 476808, 3679196; 476817, 3679171; 476825, 3679161; 476834, 3679155; 476837, 3679153; 476843, 3679150; 476849, 3679151; 476851, 3679155; 476850, 3679159; 476847, 3679167; 476842, 3679174; 476829, 3679187; 476820, 3679205; 476812, 3679230; 476804, 3679260; 476799, 3679289; 476799, 3679312; 476800, 3679317; 476825, 3679309; 476827, 3679321; 476828, 3679322; 476832, 3679332; 476841, 3679342; 476849, 3679349; 476857, 3679352; 476864, 3679354; 476871, 3679346; 476879, 3679344; 476885, 3679346; 476886, 3679345; 476891, 3679344; 476897, 3679342; 476904, 3679344; 476907, 3679347; 476909, 3679354; 476909, 3679359; 476907, 3679365; 476903, 3679372; 476899, 3679383; 476896, 3679393; 476897, 3679401; 476899, 3679407; 476902, 3679414; 476904, 3679422; 476911, 3679419; 476936, 3679408; 476958, 3679401; 476963, 3679400; 476972, 3679397; 477007, 3679382; 477018, 3679377; 477030, 3679373; 477041, 3679369; 477047, 3679368; 477063, 3679358; 477062, 3679364; 477065, 3679363; 477076, 3679361; 477088, 3679359; 477100, 3679357; 477112, 3679356; 477125, 3679355; 477137, 3679355; 477149, 3679355; 477161, 3679356; 477165, 3679352; 477172, 3679345; 477179, 3679339; thence returning to 477180, 3679339.

(iv) Subunit 4D: Gird Road/Monserate Hill. Land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 482662, 3686370; 482664, 3686368; 482667, 3686364; 482670, 3686360; 482677, 3686352; 482680, 3686347; 482689, 3686335; 482693, 3686329; 482701, 3686316; 482704, 3686309; 482710, 3686295; 482713, 3686288; 482718, 3686274; 482719, 3686271; 482707, 3686267; 482696, 3686261; 482680, 3686257; 482666, 3686254; 482650, 3686251; 482642, 3686248; 482640, 3686242; 482638, 3686238; 482634, 3686226; 482631, 3686222; 482624, 3686213; 482583, 3686199; 482566, 3686188; 482563, 3686187; 482511, 3686179; 482469, 3686178; 482449, 3686178; 482429, 3686181; 482416, 3686180; 482389, 3686180; 482344, 3686184; 482323, 3686183; 482302, 3686181; 482294, 3686181; 482290, 3686180; 482260, 3686179; 482237, 3686178; 482208, 3686183; 482193, 3686186; 482193, 3686194; 482193, 3686200; 482193, 3686201; 482193, 3686209; 482193, 3686213; 482194, 3686228; 482195, 3686231; 482196, 3686239; 482197, 3686246; 482199, 3686254; 482200, 3686257; 482204, 3686272; 482205, 3686277; 482208, 3686286; 482210, 3686291; 482212, 3686295; 482213, 3686299; 482216, 3686305; 482217, 3686308; 482222, 3686319; 482225, 3686324; 482232, 3686336; 482236, 3686341; 482244, 3686354; 482247, 3686357; 482250, 3686361; 482251, 3686363; 482256, 3686368; 482261, 3686374; 482264, 3686377; 482268, 3686381; 482286, 3686374; 482325, 3686376; 482352, 3686373; 482384, 3686368; 482397, 3686358; 482421, 3686349; 482446, 3686348; 482467, 3686353; 482493, 3686354; 482507, 3686353; 482521, 3686352; 482526, 3686350; 482529, 3686349; 482529, 3686349; 482530, 3686349; 482533, 3686349; 482537, 3686349; 482539, 3686347; 482539, 3686347; 482584, 3686340; 482595, 3686333; 482602, 3686317; 482610, 3686315; 482613, 3686332; 482611, 3686335; 482604, 3686346; 482599, 3686352; 482598, 3686367; 482597, 3686370; 482595, 3686369; 482595, 3686371; 482593, 3686392; 482595, 3686409; 482596, 3686422; 482604, 3686417; 482606, 3686416; 482609, 3686414; 482617, 3686409; 482621, 3686406; 482631, 3686399; 482636, 3686395; 482642, 3686390; 482648, 3686384; 482649, 3686383; 482652, 3686380; thence returning to 482662, 3686370.

(v) **Note:** Map of Unit 4, San Luis Rey River Watershed (Map 4) follows:

BILLING CODE 4310–55–P



(9) Unit 5: San Dieguito River Watershed, San Diego County, California.

(i) Subunit 5A: Lake Hodges East Unit. From USGS 1:24,000 quadrangle Escondido, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 493490, 3658493; 493465, 3658587; 493409, 3658642; 493384, 3658647; 493357, 3658702; 493353, 3658702; 493349, 3658704; 493347, 3658705; 493346, 3658708; 493340, 3658712; 493338, 3658714; 493335, 3658716; 493334, 3658719; 493334, 3658721; 493335, 3658722; 493338, 3658722; 493340, 3658723; 493342, 3658726; 493344, 3658727; 493340, 3658734; 493338, 3658733; 493336, 3658736; 493336, 3658738; 493337, 3658740; 493322, 3658771; 493287, 3658855; 493261, 3658917; 493249, 3658947; 493290, 3658913; 493335, 3658913; 493339, 3658882; 493358, 3658839; 493375, 3658814; 493376, 3658816; 493379, 3658816; 493380, 3658812; 493379, 3658812; 493381, 3658810; 493383, 3658809; 493386, 3658808; 493387, 3658806; 493387, 3658805; 493386, 3658802; 493382, 3658803; 493414, 3658753; 493470, 3658649; 493496, 3658550; thence returning to 493490, 3658493. Continue to 493410, 3658814; 493412, 3658812; 493413, 3658809; 493414, 3658806; 493414, 3658805; 493412, 3658805; 493410, 3658808; 493407,

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Continue to 493574, 3658234; 493567, 3658232; 493570, 3658252; 493572, 3658311; 493575, 3658321; 493594, 3658404; 493592, 3658411; 493590, 3658421; 493589, 3658432; 493588, 3658442; 493588, 3658451; 493588, 3658460; 493589, 3658472; 493591, 3658482; 493591, 3658493; 493591, 3658502; 493592, 3658512; 493593, 3658523; 493593, 3658533; 493593, 3658541; 493595, 3658547; 493596, 3658552; 493595, 3658559; 493596, 3658563; 493597, 3658569; 493598, 3658574; 493597, 3658577; 493597, 3658582; 493597, 3658588; 493598, 3658591; 493599, 3658596; 493601, 3658600; 493603, 3658602; 493603, 3658600; 493604, 3658599; 493605, 3658597; 493606, 3658596; 493608, 3658594; 493609, 3658592; 493611, 3658588; 493612, 3658585; 493612, 3658580; 493612, 3658572; 493610, 3658568; 493609, 3658561; 493609, 3658555; 493609, 3658549; 493610, 3658541; 493611, 3658536; 493612, 3658528; 493613, 3658523; 493615, 3658516; 493617, 3658513; 493618, 3658510; 493620, 3658507; 493624, 3658498; 493628, 3658487; 493632, 3658478; 493636, 3658470; 493639, 3658463; 493642, 3658457; 493645, 3658450; 493647, 3658442; 493648, 3658435; 493650, 3658429; 493651, 3658422; 493654, 3658416; 493657, 3658411; 493661, 3658405; 493664, 3658402; 493667, 3658400; 493669, 3658397; 493672, 3658394; 493674, 3658390; 493676, 3658385; 493678, 3658379; 493680, 3658372; 493683, 3658364; 493684, 3658359; 493685, 3658351; 493686, 3658343; 493686, 3658334; 493685, 3658326; 493683, 3658310; 493681, 3658298; 493679, 3658291; 493676, 3658288; 493663, 3658278; 493654, 3658272; 493636, 3658259; 493634, 3658258; 493626, 3658253; 493610, 3658246; 493605, 3658244; 493584, 3658236; 493581, 3658236; thence returning to 493574, 3658234. Continue to 493505, 3658583; 493507, 3658582; 493509, 3658583; 493510, 3658581; 493509, 3658579; 493509, 3658576; 493509, 3658573; 493508, 3658571; 493506, 3658569; 493509, 3658565; 493511, 3658562; 493511, 3658559; 493508, 3658558; 493507, 3658558; 493505, 3658560; 493506, 3658564; 493506, 3658566; 493502, 3658565; 493499, 3658566; 493497, 3658566; 493496, 3658568; 493497, 3658570; 493502, 3658572; 493497, 3658575; 493496, 3658579; 493496, 3658580; 493497, 3658582; 493496, 3658584; 493498, 3658585; 493499, 3658585; 493502, 3658587; 493503, 3658588; 493505, 3658585; thence returning to 493505, 3658583. Continue to 493492, 3658487; 493493, 3658490; 493496, 3658491; 493496, 3658494; 493498, 3658496; 493498, 3658498; 493498, 3658501; 493498, 3658504; 493499, 3658507; 493499, 3658509; 493499, 3658511; 493500, 3658513; 493499, 3658515; 493499, 3658517; 493499, 3658519; 493499, 3658521; 493497, 3658523; 493499, 3658525; 493499, 3658528; 493502, 3658529; 493506, 3658530; 493508, 3658530; 493508, 3658526; 493510, 3658525; 493512, 3658523; 493511, 3658519; 493511, 3658516; 493511, 3658513; 493510, 3658511; 493511, 3658509; 493510, 3658507; 493510, 3658506; 493510, 3658503; 493509, 3658500; 493507, 3658498; 493507, 3658495; 493507, 3658493; 493508, 3658492; 493509, 3658489; 493507, 3658486; 493506, 3658483; 493497, 3658486; 493496, 3658486; thence returning to 493492, 3658487. Continue to 493492, 3658487; 493507, 3658446; 493509, 3658440; 493508, 3658433; 493497, 3658322; 493498, 3658242; 493498, 3658230; 493499, 3658224; 493495, 3658224; 493486, 3658225; 493472, 3658226; 493468, 3658227; 493452, 3658230; 493448, 3658231; 493434, 3658234; 493425, 3658237; 493415, 3658240; 493410, 3658242; 493398, 3658247; 493377, 3658256; 493360, 3658266; 493356, 3658269; 493367, 3658284; 493417, 3658415; 493405, 3658433; 493480, 3658486; 493490, 3658493; thence returning to 493492, 3658487.

(ii) Subunit 5B: Lake Hodges West (Crosby Estates). From USGS 1:24,000 quadrangle Rancho Santa Fe, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 486068, 3656371; 486163, 3656336; 486256, 3656332; 486280, 3656334; 486338, 3656338; 486341, 3656338; 486358, 3656339; 486365, 3656339; 486384, 3656338; 486394, 3656338; 486406, 3656337; 486411, 3656336; 486428, 3656334; 486445, 3656330; 486449, 3656328; 486467, 3656323; 486479, 3656319; 486496, 3656313; 486602, 3656268; 486668, 3656246; 486770, 3656215; 486780, 3656211; 486784, 3656210; 486800, 3656204; 486809, 3656200; 486816, 3656197; 486819, 3656195; 486823, 3656193; 486829, 3656190; 486837, 3656186; 486846, 3656181; 486853, 3656177; 486867, 3656168; 486881, 3656159; 486885, 3656155; 486894, 3656148; 486905, 3656138; 486917, 3656126; 486918, 3656125; 486924, 3656119; 486936, 3656106; 486947, 3656093; 486957, 3656079; 486966, 3656065; 486972, 3656054; 486983, 3656031; 486985, 3656027; 486992, 3656012; 486998, 3656002; 486998, 3655997; 486999, 3655993; 487001, 3655988; 487004, 3655982; 487003, 3655980; 487007, 3655963; 487009, 3655953; 487013, 3655929; 487014, 3655922; 487015, 3655905; 487016, 3655888; 487015, 3655871; 487015, 3655865; 487000, 3655865; 486984, 3655864; 486962, 3655863; 486950, 3655864; 486936, 3655865; 486922, 3655866; 486905, 3655866; 486896, 3655866; 486884, 3655865; 486874, 3655866; 486862, 3655867; 486853, 3655867; 486839, 3655870; 486825, 3655871; 486808, 3655874; 486793, 3655877; 486782, 3655879; 486766, 3655884; 486756, 3655887; 486746, 3655890; 486736, 3655893; 486726, 3655896; 486719, 3655898; 486710, 3655901; 486698,

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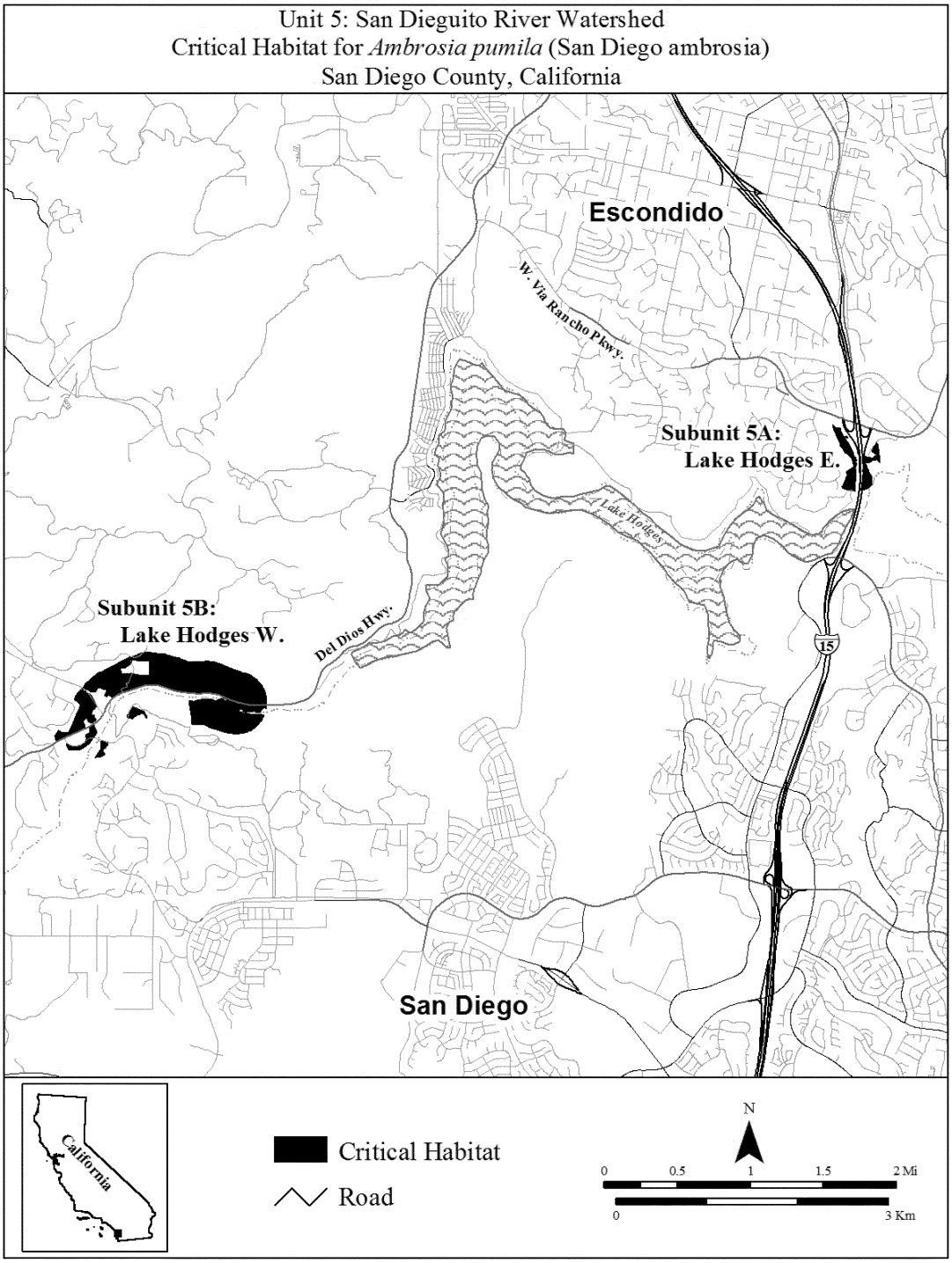
(iii) **Note:** Map of Unit 5, San Dieguito River Watershed (Map 5) follows:



(10) Unit 6: San Diego River Watershed (Mission Trails Regional Park), San Diego County, California.

(i) From USGS 1:24,000 quadrangle La Mesa. Land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 497416, 3633563; 497433, 3633542; 497440, 3633534; 497486, 3633525; 497490, 3633524; 497564, 3633515; 497623, 3633447; 497653, 3633437; 497667, 3633426; 497667, 3633425; 497665, 3633424; 497664, 3633423; 497663, 3633421; 497661, 3633420; 497660, 3633419; 497659, 3633418; 497658, 3633417; 497657, 3633415; 497656, 3633415; 497653, 3633416; 497641, 3633406; 497622, 3633389; 497502, 3633282; 497501, 3633282; 497500, 3633281; 497499, 3633280; 497498, 3633279; 497496, 3633277; 497494, 3633275; 497493, 3633272; 497492, 3633270; 497491, 3633268; 497490, 3633266; 497490, 3633265; 497489, 3633263; 497488, 3633261; 497487, 3633259; 497486, 3633257; 497486, 3633255; 497485, 3633253; 497484, 3633251; 497483, 3633250; 497483, 3633248; 497482, 3633247; 497482, 3633246; 497481, 3633244; 497480, 3633243; 497480, 3633241; 497478, 3633241; 497476, 3633242; 497474, 3633242; 497436, 3633248; 497321, 3633266; 497291, 3633271; 497255, 3633277; 497253, 3633277; 497251, 3633278; 497250, 3633279; 497248, 3633279; 497247, 3633279;

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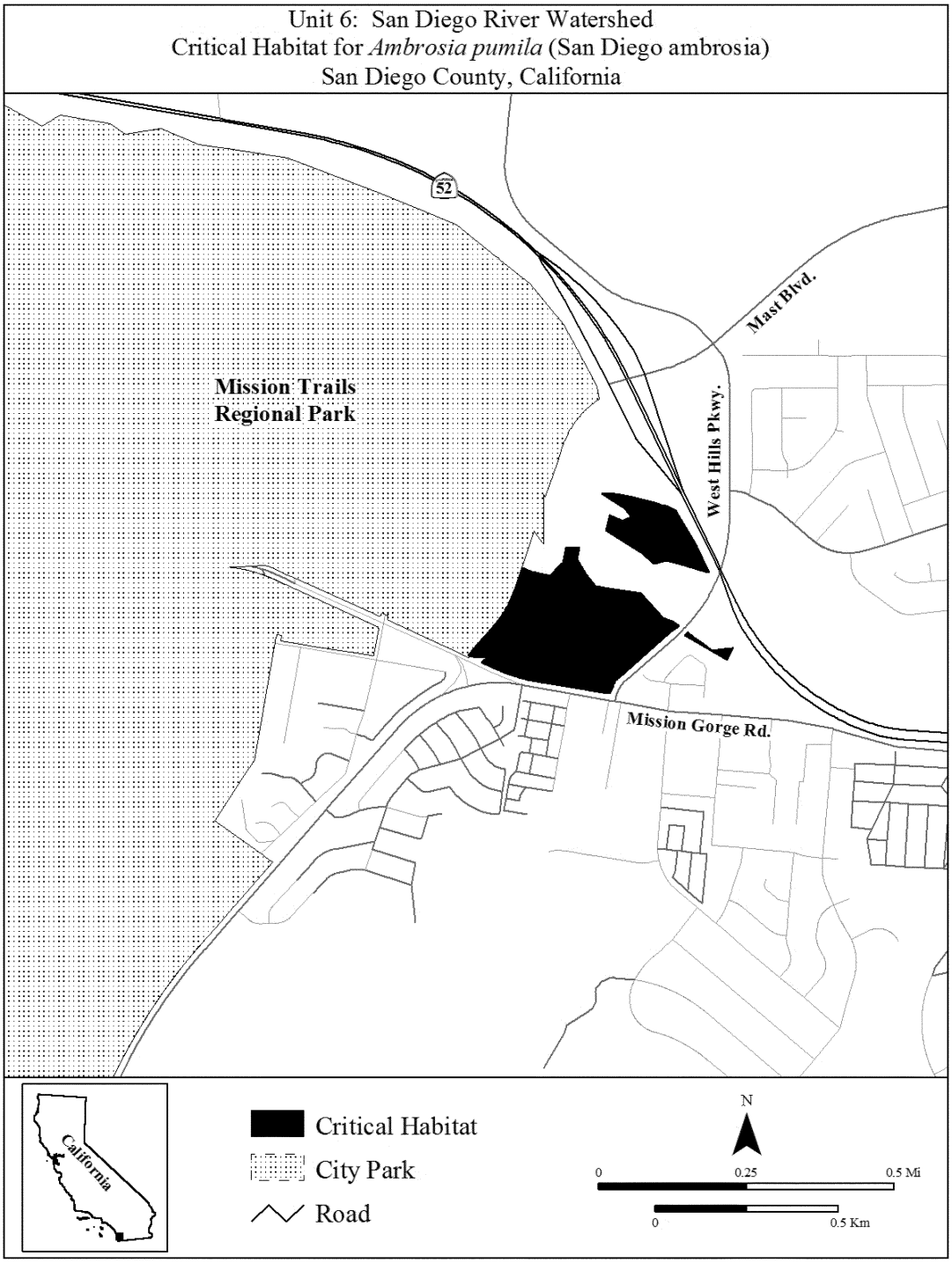
(ii) **Note:** Map of Unit 6, San Diego River Watershed (Map 6) follows:



(11) Unit 7: Sweetwater River Watershed. From USGS 1:24,000 quadrangle Jamul Mountains, San Diego County, California.

(i) Subunit 7A: Jamul Drive, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 508257, 3622795; 508265, 3622710; 508240, 3622721; 508243, 3622534; 508294, 3622538; 508280, 3622534; 508265, 3622522; 508263, 3622516; 508252, 3622510; 508248, 3622507; 508235, 3622498; 508230, 3622497; 508186, 3622467; 508145, 3622409; 508096, 3622372; 508090, 3622382; 508083, 3622382; 508075, 3622386; 508071, 3622393; 508069, 3622400; 508066, 3622405; 508059, 3622409; 508055, 3622415; 508055, 3622423; 508060, 3622431; 508034, 3622474; 508071, 3622495; 508095, 3622462; 508148, 3622529; 508173, 3622590; 508168, 3622714; 508145, 3622769; 508138, 3622783; 508090, 3622755; 508081, 3622750; 508081, 3622720; 508081, 3622701; 508032, 3622672; 508025, 3622712; 508024, 3622721; 508014, 3622716; 508003, 3622710; 508014, 3622722; 508026, 3622734; 508040, 3622745; 508053, 3622755; 508068, 3622764; 508076, 3622768; 508089, 3622775; 508105, 3622782; 508121, 3622788; 508137, 3622793; 508153, 3622797; 508170, 3622800; 508182, 3622801; 508188, 3622802; 508196, 3622802; 508229, 3622802; 508246,

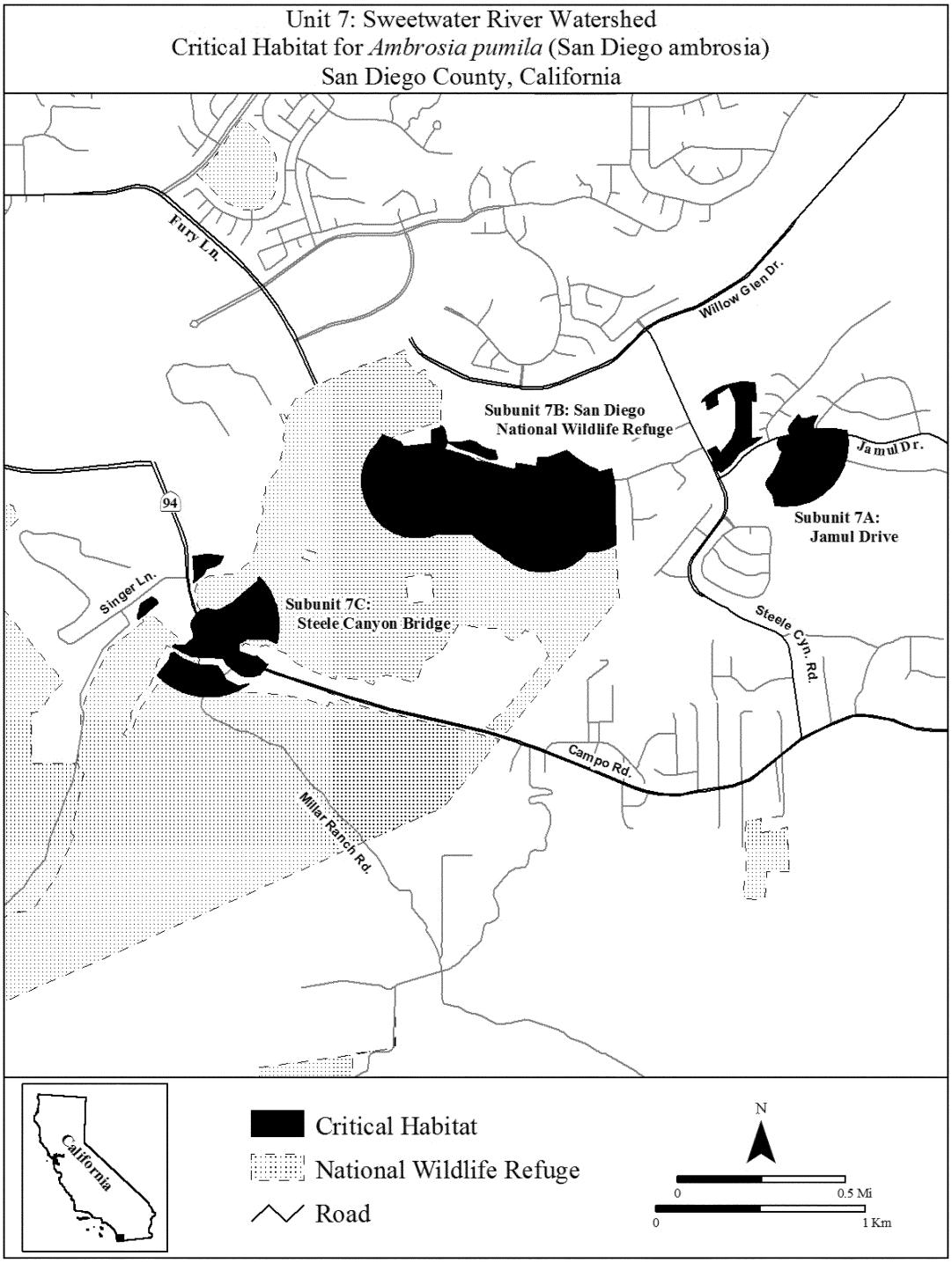
3622800; 508259, 3622798; thence returning to 508257, 3622795. Continue to 508468, 3622646; 508485, 3622630; 508517, 3622630; 508534, 3622638; 508542, 3622640; 508558, 3622642; 508542, 3622609; 508536, 3622576; 508559, 3622577; 508651, 3622578; 508673, 3622575; 508700, 3622571; 508702, 3622561; 508702, 3622558; 508705, 3622544; 508705, 3622536; 508706, 3622527; 508707, 3622510; 508706, 3622494; 508705, 3622476; 508702, 3622460; 508699, 3622448; 508697, 3622439; 508696, 3622434; 508694, 3622427; 508691, 3622417; 508688, 3622409; 508682, 3622392; 508675, 3622377; 508667, 3622362; 508658, 3622348; 508654, 3622341; 508647, 3622332; 508642, 3622325; 508634, 3622316; 508631, 3622312; 508619, 3622299; 508607, 3622288; 508594, 3622277; 508581, 3622267; 508567, 3622257; 508553, 3622248; 508538, 3622240; 508522, 3622233; 508506, 3622227; 508490, 3622222; 508478, 3622220; 508469, 3622218; 508464, 3622216; 508448, 3622214; 508439, 3622213; 508427, 3622212; 508419, 3622211; 508402, 3622210; 508385, 3622211; 508382, 3622211; 508368, 3622213; 508355, 3622215; 508356, 3622218; 508355, 3622222; 508348, 3622263; 508314, 3622305; 508310, 3622320; 508322, 3622341; 508344, 3622369; 508355, 3622382; 508379, 3622440; 508382, 3622447; 508385, 3622455; 508391, 3622474; 508385, 3622478; 508381, 3622480; 508369, 3622497; 508367, 3622516; 508373, 3622533; 508379, 3622539; 508392, 3622541; 508423, 3622547; 508428, 3622548; 508424, 3622568; 508421, 3622582; 508427, 3622592; 508448, 3622625; thence returning to 508468, 3622646.

(ii) Subunit 7B: San Diego National Wildlife Refuge, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 506785, 3622518; 506776, 3622486; 506773, 3622483; 506782, 3622480; 506803, 3622474; 506850, 3622458; 506889, 3622450; 506892, 3622450; 506929, 3622425; 506979, 3622418; 506982, 3622418; 507036, 3622402; 507095, 3622387; 507102, 3622386; 507118, 3622390; 507118, 3622415; 507212, 3622399; 507220, 3622440; 507278, 3622444; 507298, 3622453; 507360, 3622474; 507401, 3622441; 507434, 3622417; 507474, 3622397; 507478, 3622395; 507513, 3622372; 507520, 3622374; 507527, 3622376; 507574, 3622389; 507587, 3622323; 507587, 3622311; 507593, 3622117; 507596, 3622028; 507593, 3622026; 507580, 3622020; 507575, 3622017; 507560, 3622010; 507544, 3622004; 507527, 3621999; 507511, 3621995; 507494, 3621992; 507477, 3621991; 507460, 3621990; 507454, 3621990; 507450, 3621985; 507438, 3621973; 507426, 3621961; 507413, 3621950; 507399, 3621940; 507385, 3621932; 507370, 3621924; 507354, 3621917; 507338, 3621911; 507322, 3621906; 507306, 3621902; 507289, 3621899; 507280, 3621898; 507266, 3621897; 507259, 3621896; 507242, 3621896; 507225, 3621896; 507208, 3621898; 507191, 3621901; 507175, 3621904; 507159, 3621909; 507143, 3621916; 507127, 3621923; 507112, 3621930; 507109, 3621932; 507088, 3621945; 507077, 3621952; 507063, 3621962; 507050, 3621973; 507039, 3621983; 507011, 3621999; 507008, 3622000; 506993, 3622009; 506979, 3622020; 506925, 3622061; 506917, 3622068; 506908, 3622075; 506901, 3622078; 506855, 3622075; 506838, 3622074; 506832, 3622074; 506783, 3622076; 506771, 3622076; 506755, 3622078; 506744, 3622079; 506729, 3622075; 506708, 3622069; 506692, 3622065; 506675, 3622062; 506658, 3622061; 506641, 3622060; 506624, 3622061; 506608, 3622062; 506591, 3622065; 506574, 3622069; 506558, 3622074; 506542, 3622080; 506527, 3622087; 506512, 3622095; 506498, 3622104; 506484, 3622114; 506471, 3622124; 506458, 3622136; 506447, 3622149; 506436, 3622162; 506426, 3622175; 506417, 3622190; 506409, 3622205; 506402, 3622220; 506399, 3622229; 506394, 3622241; 506392, 3622248; 506387, 3622264; 506383, 3622281; 506380, 3622297; 506379, 3622314; 506378, 3622331; 506379, 3622348; 506380, 3622365; 506383, 3622382; 506387, 3622398; 506392, 3622414; 506398, 3622430; 506405, 3622446; 506413, 3622461; 506422, 3622475; 506427, 3622482; 506432, 3622488; 506440, 3622498; 506447, 3622508; 506460, 3622526; 506470, 3622541; 506479, 3622551; 506488, 3622546; 506494, 3622543; 506515, 3622535; 506552, 3622521; 506562, 3622517; 506579, 3622493; 506649, 3622502; 506714, 3622510; 506714, 3622576; 506758, 3622587; 506759, 3622593; 506764, 3622590; 506771, 3622582; 506773, 3622578; 506775, 3622574; 506776, 3622571; 506779, 3622557; 506780, 3622551; 506783, 3622529; thence returning to 506785, 3622518. Continue to 506785, 3622517; 506850, 3622515; 506895, 3622524; 506928, 3622512; 506953, 3622496; 506982, 3622483; 507015, 3622475; 507026, 3622438; 506994, 3622434; 506908, 3622466; 506838, 3622491; thence returning to 506785, 3622517.

(iii) Subunit 7C: Steele Canyon Bridge, land bounded by the following UTM Zone 11, NAD83 coordinates (E, N): 505615, 3621882; 505571, 3621844; 505579, 3621869; 505578, 3621878; 505576, 3621904; 505573, 3621960; 505572, 3621967; 505583, 3621969; 505599, 3621972; 505618, 3621974; 505622, 3621974; 505635, 3621975; 505647, 3621975; 505664, 3621974; 505679, 3621973; 505695, 3621971; 505712, 3621968; 505716, 3621967; 505701, 3621940; 505673, 3621923; 505636, 3621910; 505620, 3621886; thence returning to 505615, 3621882. Continue to 505971, 3621723; 505975, 3621707; 505976, 3621702; 505978, 3621690; 505980, 3621678; 505981, 3621666; 505982, 3621661; 505982, 3621650; 505983, 3621637; 505982, 3621615; 505980, 3621597; 505979, 3621584; 505976, 3621569; 505974, 3621561; 505973, 3621554; 505962, 3621558; 505932, 3621570; 505832, 3621575; 505808, 3621562; 505797, 3621556; 505794, 3621554; 505794, 3621549; 505794, 3621533; 505792, 3621514; 505797, 3621512; 505860, 3621488; 505867, 3621487; 505877, 3621491; 505918, 3621454; 505928, 3621452; 505927, 3621449; 505919, 3621439; 505917, 3621435; 505912, 3621428; 505901, 3621415; 505894, 3621408; 505890, 3621404; 505855, 3621395; 505851, 3621395; 505827, 3621394; 505802, 3621402; 505756, 3621431; 505732, 3621455; 505715, 3621480; 505674, 3621484; 505616, 3621483; 505592, 3621487; 505589, 3621487; 505563, 3621491; 505522, 3621511; 505472, 3621540; 505484, 3621544; 505529, 3621540; 505534, 3621540; 505550, 3621556; 505571, 3621577; 505574, 3621598; 505571, 3621603; 505567, 3621615; 505565, 3621627; 505564, 3621634; 505564, 3621639; 505566, 3621652; 505569, 3621664; 505574, 3621675; 505581, 3621686; 505590, 3621694; 505599, 3621702; 505609, 3621708; 505622, 3621713; 505634, 3621716; 505647, 3621716; 505662, 3621714; 505673, 3621710; 505677, 3621709; 505705, 3621718; 505762, 3621747; 505805, 3621785; 505882, 3621851; 505883, 3621858; 505885, 3621867; 505888, 3621871; 505899, 3621860; 505910, 3621846; 505914, 3621840; 505918, 3621835; 505927, 3621823; 505936, 3621808; 505940, 3621801; 505946, 3621790; 505949, 3621782; 505956, 3621767; 505962, 3621753; 505966, 3621740; thence returning to 505971, 3621723. Continue to 505319, 3621677; 505307, 3621669; 505309, 3621682; 505309, 3621686; 505310, 3621694; 505312, 3621702; 505315, 3621718; 505316, 3621722; 505320, 3621734;

505321, 3621737; 505323, 3621745; 505374, 3621776; 505397, 3621757; 505403, 3621748; 505355, 3621707; 505342, 3621694; 505338, 3621692; 505321, 3621679; thence returning to 505319, 3621677. Continue to 505603, 3621450; 505617, 3621446; 505666, 3621446; 505691, 3621443; 505707, 3621414; 505716, 3621406; 505721, 3621394; 505728, 3621377; 505790, 3621349; 505839, 3621359; 505831, 3621354; 505817, 3621344; 505812, 3621342; 505801, 3621336; 505791, 3621331; 505787, 3621329; 505776, 3621324; 505764, 3621319; 505752, 3621315; 505748, 3621314; 505732, 3621308; 505714, 3621305; 505701, 3621302; 505686, 3621300; 505670, 3621298; 505660, 3621298; 505648, 3621297; 505633, 3621298; 505623, 3621298; 505607, 3621299; 505595, 3621301; 505577, 3621304; 505561, 3621308; 505555, 3621309; 505543, 3621312; 505533, 3621316; 505517, 3621322; 505506, 3621327; 505494, 3621332; 505490, 3621334; 505475, 3621342; 505460, 3621352; 505449, 3621359; 505437, 3621368; 505423, 3621379; 505418, 3621384; 505412, 3621389; 505408, 3621393; 505402, 3621399; 505403, 3621404; 505428, 3621436; 505456, 3621474; 505464, 3621503; 505478, 3621505; 505485, 3621507; 505488, 3621505; 505518, 3621482; 505571, 3621458; 505597, 3621452; thence returning to 505603, 3621450.

(iv) **Note:** Map of Unit 7, Sweetwater River Watershed (Map 7) follows:



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Dated: November 17, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–29692 Filed 11–29–10; 8:45 am]

BILLING CODE 4310–55–C