Intergovernmental relations, Aggregation.

Dated: March 29, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–7534 Filed 4–14–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0038] [92210–1117–0000–B4]

RIN 1018–AW22

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Navarretia fossalis* (Spreading Navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our June 10, 2009, proposed revised designation of critical habitat for *Navarretia fossalis* (spreading navarretia). We also announce the availability of a draft economic analysis (DEA); revisions to proposed critical habitat, including proposed revisions to eight subunits based on the previous public comment period; and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on all of the above. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in our final determination.

DATES: We will consider public comments received on or before May 17, 2010. Any comments that are received after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2009-0038.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–R8–ES–2009–0038; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

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. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule is based on the best scientific data available and will be accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested parties during this reopened comment period on our proposed rule to revise critical habitat for *Navarretia fossalis* (spreading navarretia), which we published in the **Federal Register** on June 10, 2009 (74 FR 27588), including the changes to proposed critical habitat in Subunits 1A, 1B, 3B, 5C, 5I, 6A, 6B, and 6C, the DEA of the proposed revised designation, and the amended required determinations provided in this document. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the critical habitat under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to *Navarretia fossalis* from human activity, the type of human activity causing these threats, and whether the benefit of designation would outweigh any threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

• The current amount and distribution of *Navarretia fossalis* habitat.

• Areas that provide habitat for *N. fossalis* that we did not discuss in our original proposed revised critical habitat rule or in this reopening of the comment period.

• Areas containing the physical and biological features essential to the conservation of *N. fossalis* that we should include in the revised critical habitat designation and why. Include information on the distribution of these essential features and what special management considerations or protections may be required to maintain or enhance them.

• Areas proposed as critical habitat that do not contain the physical and biological features essential for the conservation of the species that should not be designated as critical habitat.

• Areas not occupied at the time of listing that are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species, and their possible impacts on proposed critical habitat;

(4) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe landscapes identified as containing the physical and biological features essential to the conservation of the species.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating particular areas as critical habitat, and, in particular, any impacts to small entities (e.g., small businesses or small governments), and the benefits of including or excluding areas from the proposed revised designation that exhibit these impacts.

(6) Special management considerations or protections that the essential physical and biological features identified in the proposed critical habitat may require.

(7) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(8) Whether any specific subunits being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area as critical habitat.

(9) Our consideration to exclude the portion of Subunit 4E that we are proposing as critical habitat within the Ramona Grasslands Preserve under section 4(b)(2) of the Act, and whether such exclusion is appropriate and why;

(10) The likelihood of adverse social reactions to the designation of critical habitat, and how the consequences of such reactions, if they occur, would relate to the conservation of the species and regulatory benefits of the proposed revised critical habitat designation.

(11) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate, and specifically:

• Whether there are incremental costs of critical habitat designation (e.g., costs attributable solely to the designation of critical habitat for *Navarretia fossalis*) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act;

• Whether there are incremental economic benefits of critical habitat designation that have not been appropriately identified or considered in our economic analysis.

(12) The potential effects of climate change on this species and its habitat and whether the critical habitat may adequately account for these potential effects.

If you submitted comments or information on the proposed revised rule (74 FR 27588) during the initial comment period from June 10, 2009, to August 10, 2009, please do not resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. Our final determination concerning the revised critical habitat for *Navarretia fossalis* will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed revised critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning our proposed rule, the associated DEA, our changes to subunits and considered exclusions as identified in this document, and our amended required determinations section by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revision of critical habitat (74 FR 27588) and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS-R8-ES-2009-0038, or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Navarretia fossalis* in this notice. For more information on previous Federal actions concerning *N. fossalis*, see the 2005 final designation of critical habitat published in the **Federal Register** on October 18, 2005 (70 FR 60658), or the 2009 proposed revised designation of critical habitat published in the **Federal Register** on June 10, 2009 (74 FR 27588), or contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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 our designation of critical habitat for *Navarretia fossalis* and *Brodiaea filifolia* (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.*, Case No. 07–CV–2379–W–NLS). This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *N. fossalis*. We reached a settlement agreement on July 25, 2008, in which we agreed to reconsider critical habitat designation for *N. fossalis*. The settlement stipulated that we submit a proposed revised critical habitat designation for *N. fossalis* to the **Federal Register** for publication by May 29, 2009, and submit a final revised critical habitat designation to the **Federal Register** for publication by May 28, 2010. On June 10, 2009, we published the revised proposed critical habitat designation in the **Federal Register** (74 FR 27588). On January 20, 2010, we were granted an extension to submit a final revised critical habitat designation to the **Federal Register** for publication by September 30, 2010.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat.

We prepared a DEA (Entrix, Inc. 2010), which identifies and analyzes the potential impacts associated with the proposed revised designation of critical habitat for *Navarretia fossalis* that we published in the **Federal Register** on June 10, 2009 (74 FR 27588). The DEA looks retrospectively at costs incurred since the October 13, 1998 (63 FR 54975), listing of *N. fossalis* as threatened. The DEA quantifies the economic impacts of all potential conservation efforts for *N. fossalis*; some of these costs will likely be incurred regardless of whether or not we finalize the revised critical habitat rule. The economic impact of the proposed revised critical habitat designation is analyzed by comparing a "with critical habitat" scenario with a "without critical habitat" scenario. The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, 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 critical

habitat designation for *N. fossalis*. 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 may consider in the final designation of critical habitat relative to areas that may be excluded under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat.

The 2010 DEA (made available with the publication of this notice and referred to as the DEA throughout this document unless otherwise noted) estimates the foreseeable economic impacts of the proposed revised critical habitat designation for *Navarretia fossalis*. The economic analysis identifies potential incremental costs as a result of the proposed revised critical habitat designation, which are those costs attributed to critical habitat over and above those baseline costs coextensive with listing. It also discusses the benefits of critical habitat designation. These benefits are primarily presented in a qualitative manner. The DEA describes economic impacts of *N. fossalis* conservation efforts associated with the following categories of activity: (1) Development, (2) conservation lands management, (3) transportation, (4) pipeline projects, (5) flood control, (6) agriculture, and (7) fire management.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for *Navarretia fossalis*. Conservation efforts related to flood control and development activities constitute the majority of total baseline costs (approximately 84 percent of post-designation, upper-bound, baseline impacts when a 7 percent discount rate is used) in areas of proposed revised critical habitat. Impacts to conservation lands management, transportation, and pipeline projects compose the remaining approximately 16 percent of post-designation, upper-bound, baseline impacts when a 7 percent discount rate is used. Total future baseline impacts are estimated to be $30.1 to $123.5 million ($2.9 to $11.7 million annualized) in present value terms using a 7 percent discount rate, over the next 20 years (2010–2029) in areas proposed as revised critical habitat (Entrix, Inc. 2010, pp. ES-3–ES-4).

Conservation costs associated with section 7 consultations for development, transportation, and flood control projects comprise the quantified incremental impacts for the proposed revised critical habitat rule. Impacts associated with transportation constituted the largest portion of post-designation, upper-bound incremental impacts, accounting for almost 47 percent of the forecast incremental impacts applying a 7 percent discount rate. Conservation efforts related to development and flood control activities constitute the remainder of incremental impacts (37 percent and 16 percent, respectively, of post-designation upper-bound baseline impacts when a 7 percent discount rate is used) in areas of proposed revised critical habitat. The DEA estimated total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2010–2029) to be $846,000 to $1.2 million ($80,000 to $100,000 annualized) in present value terms applying a 7 percent discount rate (Entrix, Inc. 2010, pp. ES-3–ES-4).

The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The DEA 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 DEA 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 revised designation might unduly burden a particular group or economic sector.

Changes to Proposed Revised Critical Habitat

In this document we are proposing revisions to Subunits 1A, 1B, 3B, 5I, 6A, 6B, and 6C, as identified and described in the revised proposed rule that published in the **Federal Register** on June 10, 2009 (74 FR 27588), and adding a new Subunit 5C. We received comments from the public and from one peer reviewer during the open comment period indicating that we should reevaluate the proposed boundaries of Subunits 1A, 1B, 3B, 5I, 6A, 6B, and 6C and that we should include subunit 5C in the proposed critical habitat. The purpose of the revisions described below is to better delineate the areas that meet the definition of critical habitat for *Navarretia fossalis*. All areas added to the units proposed in the June 10, 2009 (74 FR 27588), proposed rule are within the geographic range occupied by the species at the time it was listed and contain the features essential for the conservation of the species. These areas contain the primary constituent elements (PCEs), which are the physical or biological features essential to the conservation of a species, and which the species' proposed or designated critical habitat is based on, such as space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the species' historic geographic and ecological distribution.

The revisions consist of both additions and removals of land that we proposed as critical habitat (74 FR 27588). The changes made in Subunits 1A, 1B, 3B, 5I, 6A, 6B, and 6C do not alter the description of these subunits in the June 10, 2009, proposed rule (74 FR 27588); however, we include revised maps with this publication. We briefly describe the changes made for each of these subunits below. We did not include Subunit 5C in the proposed rule (74 FR 27588, June 10, 2009), so this notice includes the full description and map for Subunit 5C below. As a result of these revisions, the overall area proposed for critical habitat is 7,609 acres (ac) (3,079 hectares (ha)), an increase of 737 ac (298 ha) from the 6,872 ac (2,781 ha) that we proposed as critical habitat in the June 10, 2009, proposed rule (74 FR 27588). A summary of the total acreage of each proposed subunit is presented in Table 1.

TABLE 1. SUMMARY OF SUBUNITS PROPOSED AS CRITICAL HABITAT.

Location	Total Subunit Area
Unit 1: Los Angeles Basin-Orange Management Area	
1A. Cruzan Mesa	156 ac (63 ha)
1B. Plum Canyon	20 ac (8 ha)
Unit 2: San Diego: Northern Coastal Mesa Management Area	
2. Poinsettia Lane Commuter Station	9 ac (4 ha)
Unit 3: San Diego: Central Coastal Mesa Management Area	
3A. Santa Fe Valley (Crosby Estates)	5 ac (2 ha)
3B. Carroll Canyon	18 ac (7 ha)
3C. Nobel Drive	37 ac (15 ha)
3D. Montgomery Field	48 ac (20 ha)
Unit 4: San Diego: Inland Management Area	
4C1. San Marcos (Upham)	34 ac (14 ha)
4C2. San Marcos (Universal Boot)	32 ac (13 ha)
4D. San Marcos (Bent Avenue)	5 ac (2 ha)
4E. Ramona	135 ac (55 ha)
Unit 5: San Diego: Southern Coastal Mesa Management Area	
5A. Sweetwater Vernal Pools (S1-3)	95 ac (38 ha)
5B. Otay River Valley (M2)	24 ac (10 ha)
5C. Otay Mesa (J26)	42 ac (17 ha)
5F. Proctor Valley (R1-2)	88 ac (36 ha)
5G. Otay Lakes (K3-5)	140 ac (57 ha)
5H. Western Otay Mesa vernal pool complexes	143 ac (58 ha)
5I. Eastern Otay Mesa vernal pool complexes	221 ac (89 ha)
Unit 6: Riverside Management Area	
6A. San Jacinto River	4,312 ac (1,745 ha)
6B. Salt Creek Seasonally Flooded Alkali Plain	943 ac (382 ha)
6C. Wickerd Road and Scott Road Pools	235 ac (95 ha)
6D. Skunk Hollow	158 ac (64 ha)
6E. Mesa de Burro	708 ac (287 ha)
Total	**7,609 ac (3,079 ha)**

Subunit 1A: Cruzan Mesa

We received comments indicating that we did not capture the entire watershed area necessary to fill the vernal pools supporting *Navarretia fossalis* in Subunit 1A. We reviewed aerial imagery and topographic maps for this area and verified that the subunit needed revision to adequately capture areas that meet the definition of critical habitat and include the watershed for the ponding areas on Cruzan Mesa (PCE 2). The revised subunit consists of 156 ac (63 ha) of private land, an increase of 27 ac (11 ha) from what we proposed as critical habitat in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 1B: Plum Canyon

We received information indicating that the placement of our proposed critical habitat for Subunit 1B did not capture the vernal pool where *Navarretia fossalis* occurs in the Plum Canyon area. Due to a publication error, the incorrect map was published in the June 10, 2009, proposed rule (74 FR 27588). In reviewing this subunit, we

became aware of more accurate data describing this area (Glenn Lukos Associates 2009, Exhibit 3 (Appendix D-3 of PCR 2009)). As a result of our evaluation of this new information, we remapped the boundaries of Subunit 1B. Our remapping corrects our publication error and incorporates the new information. Subunit 1B contains physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The revised subunit consists of 20 ac (8 ha) of private land, a decrease of 12 ac (5 ha) from what we proposed in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 3B: Carroll Canyon

We received information indicating that the western portion of Subunit 3B had been graded and does not likely contain the physical and biological features essential to the conservation of *Navarretia fossalis*. We reviewed aerial imagery and found this information to be correct; therefore, we removed 2 ac (1 ha) of land that no longer meets the definition of critical habitat for this species. The revised subunit consists of 18 ac (7 ha) (16 ac (6 ha) of land owned by the City of San Diego and 2 ac (1 ha) of private land), a decrease of 2 ac (1 ha) from what we proposed in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 5C: J26 Vernal Pool Complex

We received information from the public that we should propose Subunit 5C, a subunit that was designated as critical habitat in our October 18, 2005, final rule (70 FR 60658), as revised critical habitat in this rule. We did not include Subunit 5C in the proposed rule (74 FR 27588, June 10, 2009) because we did not have data in our GIS database indicating this area was occupied by *Navarretia fossalis*. We subsequently reviewed the data in our files on *N. fossalis* in Subunit 5C (the J26 vernal pool complex) and found records of *N. fossalis* occupancy (The Environmental Trust 2001, p. 1; 2000, p. 1). Based on this new information and because this vernal pool complex is also considered one of the best examples of vernal pool habitat on Otay Mesa (The Environmental Trust 2002, p. 2), we are proposing Subunit 5C as revised critical habitat. We have mapped the boundary of this subunit to conform to our current mapping methodology.

Subunit 5C is located on eastern Otay Mesa in San Diego County, California. This subunit is on the far eastern side of Otay Mesa north of Alta Road and south of Lower Otay Reservoir. Subunit 5C consists of 42 ac (17 ha), including 26 ac (11 ha) of State and local government-owned land and 16 ac (6 ha) private land. This subunit meets our criteria for satellite habitat; it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5G and 5I. Subunit 5C contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). 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, altered hydrology, and human disturbance activities (e.g., unauthorized grazing activity) that occur in the vernal pool basins and associated watershed. Please see the "Special Management Considerations or Protection" section of the proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations (74 FR 27588, June 10, 2009).

Subunit 5I: Eastern Otay Mesa Vernal Pool Complex

We are not proposing to revise the boundaries of Subunit 5I; however, due to a publication error, we are providing the correct map for Subunit 5I in this document. For clarification, we reiterate that Subunit 5I consists of 221 ac (89 ha) of private land as described in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 6A: San Jacinto River

We received information from the public that we had not included some additional areas that meet the definition of critical habitat for *Navarretia fossalis* in Subunit 6A. We reviewed the new information provided, including a 2005 map that provided better survey data along the San Jacinto River (Helix Environmental, Inc. 2005, map). Based on the new information, we included additional areas in this subunit that meet the definition of critical habitat for *N. fossalis*. We expanded the critical habitat designation boundary for Subunit 6A in the following areas: (1) Around 13th Street to the east of the San Jacinto River, (2) east to Dawson Road and north to Ellis Road near Simpson Road, (3) around the Case Road vernal pool, and (4) north of the Green Valley Parkway. The revised subunit consists of 4,312 ac (1,745 ha) of private land, an increase of 762 ac (308 ha) from what we proposed in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain

A peer reviewer recommended that we revise the boundaries of the proposed critical habitat in three areas of Subunit 6B, because we had included areas that were disturbed by past activities and no longer meet the definition of critical habitat and had not included some areas that meet the definition of critical habitat for *Navarretia fossalis*. Following evaluation of this area in greater detail, we agreed with the peer reviewer and made changes to this subunit in the central portion on the east side, on the north end, and near the Hemet Airport. We are no longer proposing an area near the center on the east side that was developed and disturbed many years ago, has not supported *N. fossalis* since 1990, and therefore no longer meets the definition of critical habitat. Also, we are no longer proposing some land in the northern portion of the proposed subunit because it is dry, disturbed, and does not meet the definition of critical habitat for *N. fossalis*. Finally, we included vernal pool habitat on the eastern edge of our proposed subunit near the Hemet Airport that meets the definition of critical habitat for *N. fossalis*. The revised subunit consists of 943 ac (382 ha) of private land, a decrease of 111 ac (45 ha) from what we proposed in the June 10, 2009, proposed rule (74 FR 27588).

Subunit 6C: Wickerd Road and Scott Road Pools

We received information that we had not adequately captured the physical and biological features essential to the conservation of *Navarretia fossalis* in Subunit 6C. We received new information describing the Wickerd Road vernal pool (Roberts 2009, p. 1). We reviewed the new information, including the information about the vernal pool and newer aerial imagery for this area. As a result, we revised the subunit to include the upward sloping area between the Wickerd Road vernal pool and Scott Road that meets the definition of critical habitat for *N. fossalis* and contributes to the watershed of this vernal pool. The revised subunit consists of 235 ac (95 ha) of private land, an increase of 30 ac (12 ha) from what we proposed in the June 10, 2009, proposed rule (74 FR 27588).

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act– The Ramona Grasslands Preserve

In the proposed revised critical habitat designation published on June 10, 2009 (74 FR 27588), we identified lands in Subunit 4E as meeting the definition of critical habitat for *Navarretia fossalis*. Based on comments submitted during the initial public comment period from June 10, 2009, to August 10, 2009, we are also considering for exclusion from critical habitat under section 4(b)(2) of the Act the portion of Subunit 4E within the Ramona Grasslands Preserve. Of the 135 ac (55 ha) proposed in Subunit 4E, 51 ac (21 ha) are part of the Ramona Grasslands Preserve, which is owned by the Nature Conservancy and San Diego County, and managed by San Diego County Department of Parks and Recreation. The Ramona Grasslands Preserve is covered by a conservation easement and being managed and monitored according to the "Area Specific Management Directives for the Ramona Grasslands Preserve" drafted by San Diego County (2007). The management plan for the Ramona Grasslands Preserve provides for the conservation of *N. fossalis* and its habitat through vernal pool management goals, including: managing nonnative invasive plant species, maintaining the vernal pool hydrology, and managing grazing activities to benefit vernal pool habitat (Conservation Biology Institute 2007, pp. 26–27, 31–34). This area will be incorporated into the North County Multiple Species Conservation Plan (North County MSCP) upon completion of that plan (San Diego County 2009).

As we stated earlier, we request data and comments from the public on the DEA, on all aspects of the proposed revised critical habitat rule (including the changes to proposed critical habitat in Subunits 1A, 1B, 3B, 5C, 5I, 6A, 6B, and 6C), and our amended required determinations. The final revised rule may differ from the proposed revised rule based on new information we receive during the public comment periods. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations——Amended

In our proposed rule published in the **Federal Register** on June 10, 2009 (74 FR 27588), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations.

In this document, we affirm the information in our June 10, 2009, proposed rule (74 FR 27588) concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. 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. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

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; and small businesses (13 CFR 121.201). 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 considered the types of activities that might trigger regulatory impacts under this designation as well as 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 proposed revised designation of critical habitat for *Navarretia fossalis* would 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. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed revised critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process because *Navarretia fossalis* is listed as a threatened species under the Act. In the 2010 DEA, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for *Navarretia fossalis*. The analysis was based on the estimated incremental impacts associated with the proposed rulemaking as described in sections 3 through 10 of the DEA. The SBREFA analysis evaluated the potential for economic impacts related to several categories, including: (1) Residential, commercial and industrial

development; (2) conservation lands management; (3) transportation; (4) pipeline projects; (5) flood control; (6) agriculture; and (7) fire management (Entrix, Inc. 2010, p. A-1). The DEA found that the only category of activity where the designation may impact small businesses is residential, commercial, and industrial development (Entrix, Inc. 2010, pp. A-1–A-4). For residential, commercial, and industrial development, the DEA estimated that there will be approximately 38 development projects in the areas proposed as critical habitat over the next 20 years. The total incremental impact to residential, commercial, and industrial development was estimated to be between $112,000 and $431,000 at a 7 percent discount rate over the next 20 years. On an annual basis this affects approximately two development related small businesses with a total annual impact ranging from $10,565 to $40,646 (Entrix, Inc. 2010, pp. A-3–A-4). In a regional context, there are approximately 500 small development related businesses in San Diego County and 303 in Riverside County. The 38 development related small businesses that may be impacted represent approximately 5 percent of the total number of development related small businesses in San Diego and Riverside Counties. We do not believe that this represents a substantial number of development-related small businesses or that an annual impact ranging from $10,565 to $40,646 is a significant economic impact; therefore, we do not find that the designation of critical habitat for *N. fossalis* will have a significant economic impact on a substantial number of small entities.

In summary, we considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat for *Navarretia fossalis* would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Appendix A, the DEA finds that none of these criteria are relevant to this analysis. The DEA concludes that no incremental impacts on the production, distribution, or use of energy are forecast associated specifically with this rulemaking. All forecast impacts are expected to occur associated with the listing of *Navarretia fossalis*, regardless of the designation of critical habitat. Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act, the Service makes 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 DEA of the proposed revised designation of critical habitat for *Navarretia fossalis*, 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 DEA concludes that incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects activities; however, these are not expected to affect small governments. Incremental impacts associated with these activities [jsc8]are expected to be borne by the Federal Government, California Department of Transportation, California Department of Fish and Game, Riverside County, Riverside County Flood Control and Water Conservation District, and City of Perris, which are not considered small governments. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630 — Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we analyzed the potential takings implications of proposing revised critical habitat for *Navarretia fossalis* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits. The

proposed revised critical habitat for *N. fossalis* does not pose significant takings implications for the above reasons.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 74 FR 27588, June 10, 2009, 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. Critical habitat for *Navarretia fossalis* (spreading navarretia) in § 17.96(a), which was proposed for revision on June 10, 2009, at 74 FR 27620, is proposed to be further amended by:

a. Revising paragraph (5), including the index map of critical habitat units for *Navarretia fossalis* (spreading navarretia);

b. Revising paragraph (7)(ii), including the map of Subunits 1A (Cruzan Mesa) and 1B (Plum Canyon);

c. Revising paragraph (10)(ii), including the map of Subunit 3B (Carroll Canyon);

d. Redesignating paragraphs (19) through (27) as paragraphs (20) through (28);

e. Adding a new paragraph (19);

f. Revising newly designated paragraph (23)(ii), including the map of Subunit 5I (Eastern Otay Mesa Vernal Pool Complexes);

g. Revising newly designated paragraph (24)(ii), including the map of Subunit 6A (San Jacinto River);

h. Revising newly designated paragraph (25)(ii), including the map of Subunit 6B (Salt Creek Seasonally Flooded Alkali Plain); and

i. Revising newly designated paragraph (26)(ii), including the map of Subunit 6C (Wickerd and Scott Road Pools), to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

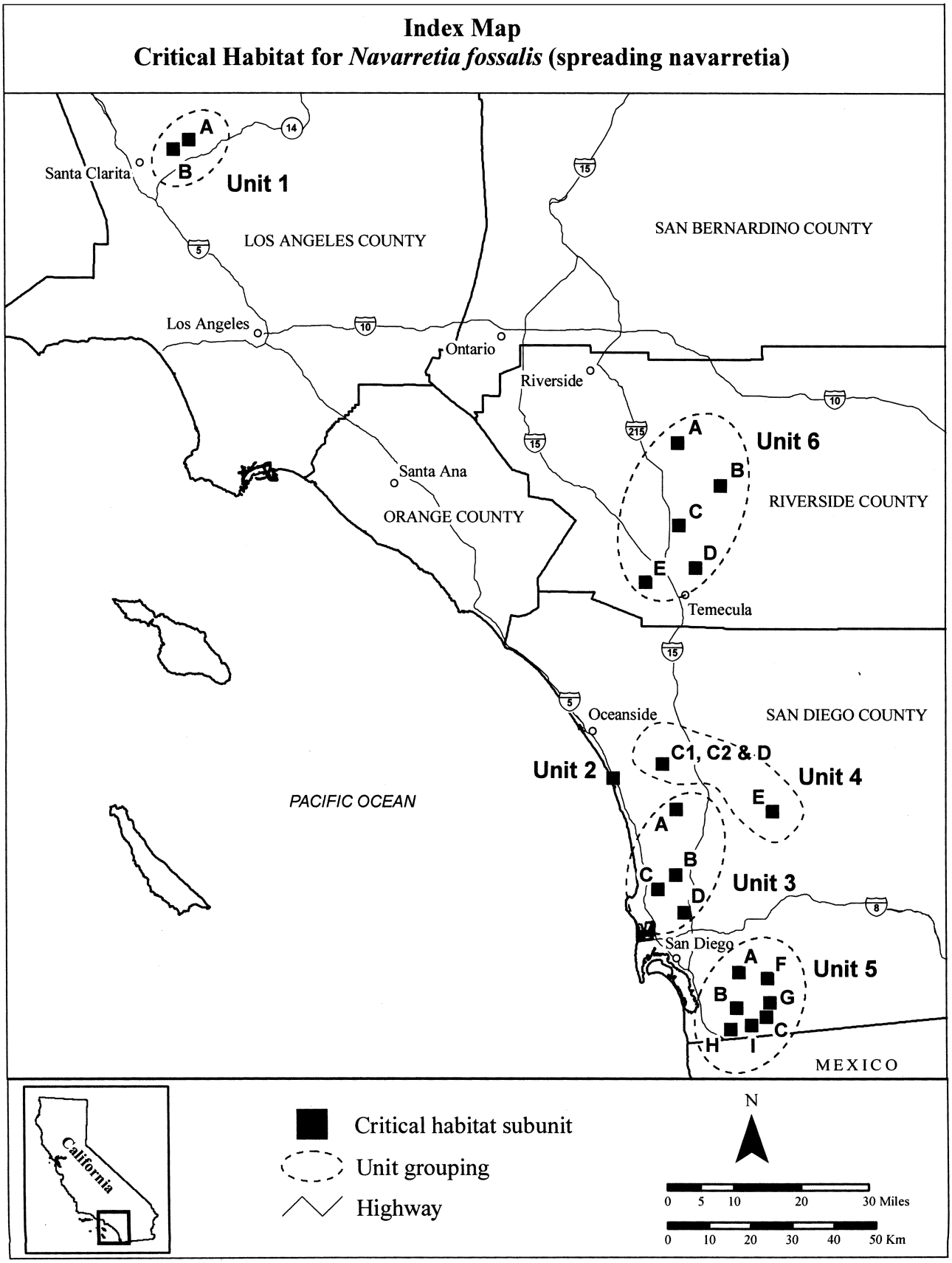
* * * * *

Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia)

* * * * *

(5) *Note:* Index Map of critical habitat units for *Navarretia fossalis* (spreading navarretia) follows:

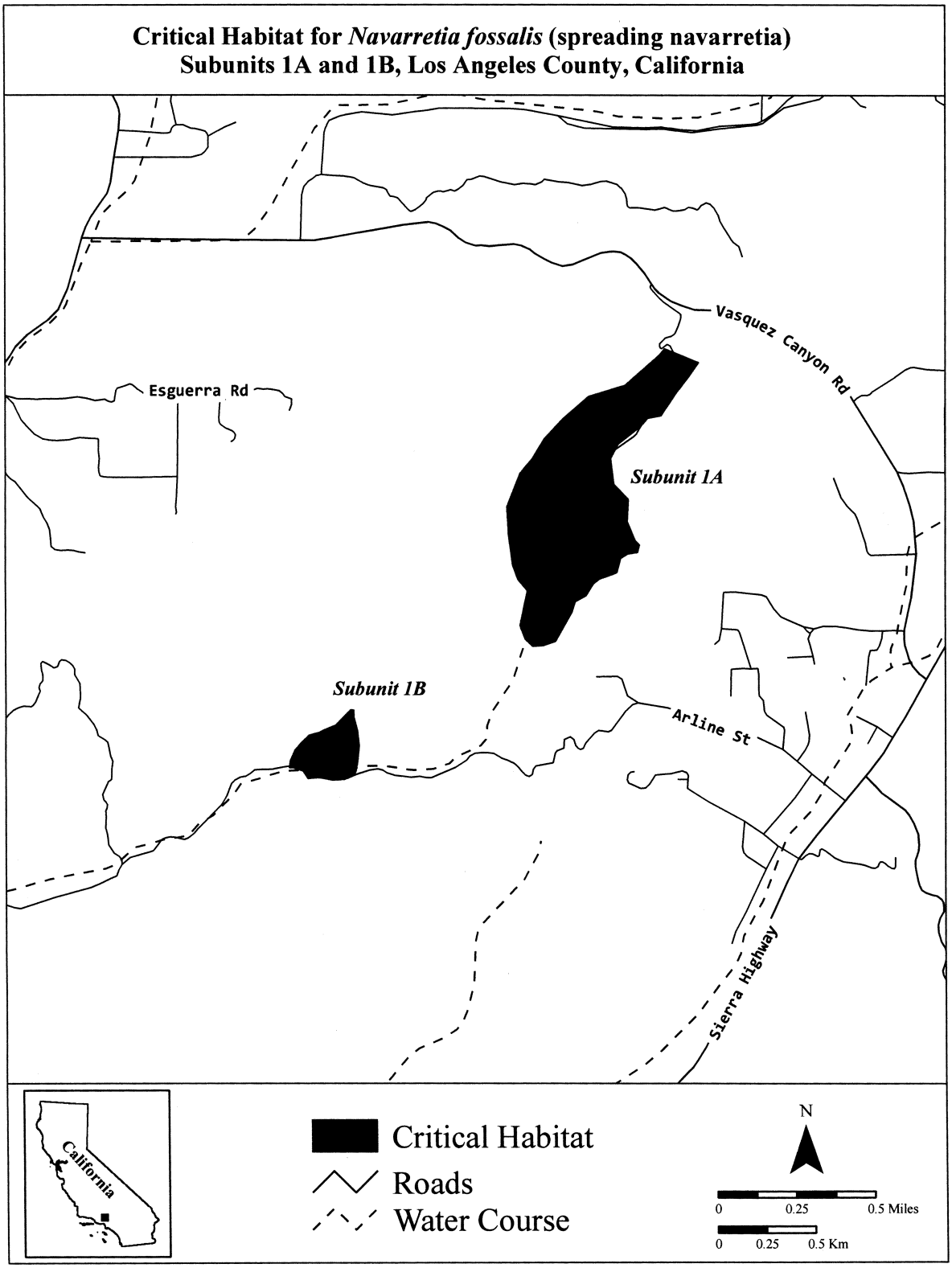
BILLING CODE 4310–55–S


Index Map
Critical Habitat for *Navarretia fossalis* (spreading navarretia)
Unit 1
A
B
Santa Clarita
LOS ANGELES COUNTY
SAN BERNARDINO COUNTY
Los Angeles
Ontario
Riverside
Unit 6
A
B
C
D
E
RIVERSIDE COUNTY
Temecula
Santa Ana
ORANGE COUNTY
Oceanside
SAN DIEGO COUNTY
Unit 2
C1, C2 & D
Unit 4
E
PACIFIC OCEAN
A
B
C
D
Unit 3
San Diego
Unit 5
A
F
B
G
C
H
I
MEXICO
California
Critical habitat subunit
Unit grouping
Highway
N
0 5 10 20 30 Miles
0 10 20 30 40 50 Km

* * * * *

(7) * * *

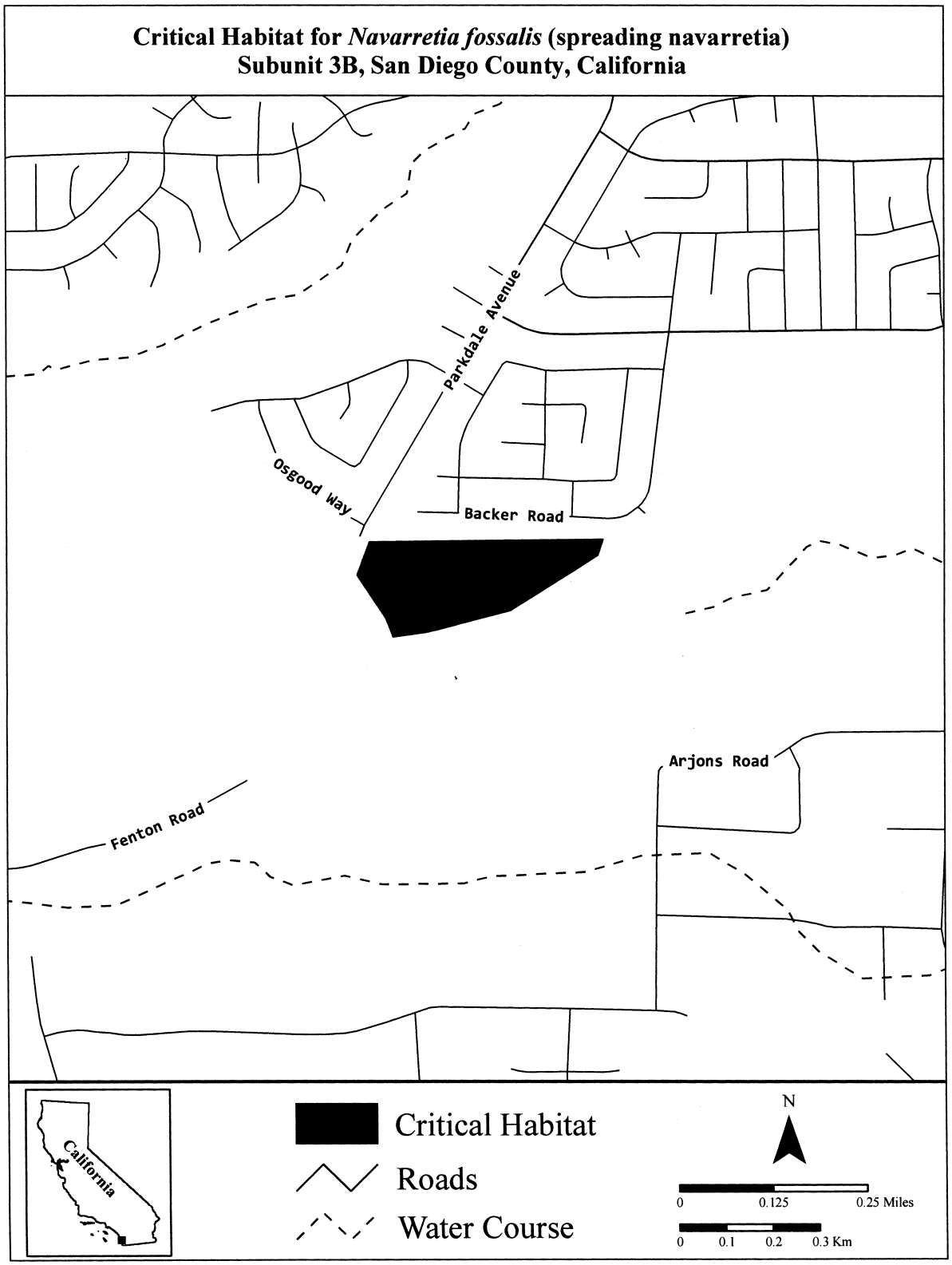
(ii) *Note*: Map of Los Angeles Basin–Orange Management Area Subunits 1A (Cruzan Mesa) and 1B (Plum Canyon) follows:



* * * * *

(10) * * *

(ii) *Note*: Map of Unit 3, Subunit 3B (Carroll Canyon) follows:

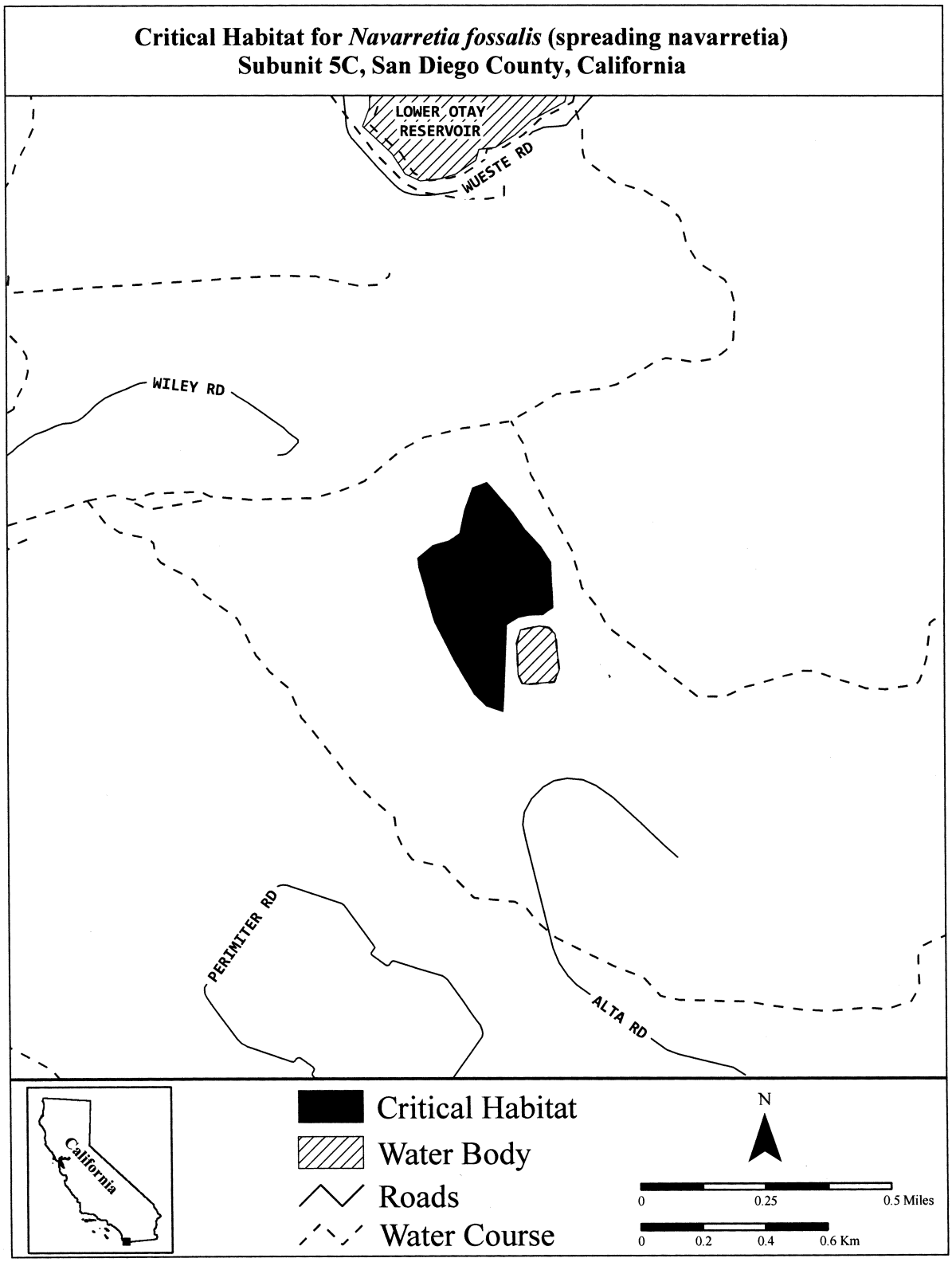


* * * * *

(19) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5C: J26 Vernal Pool Complex.

(i) [Reserved for textual description of Subunit 5C.]

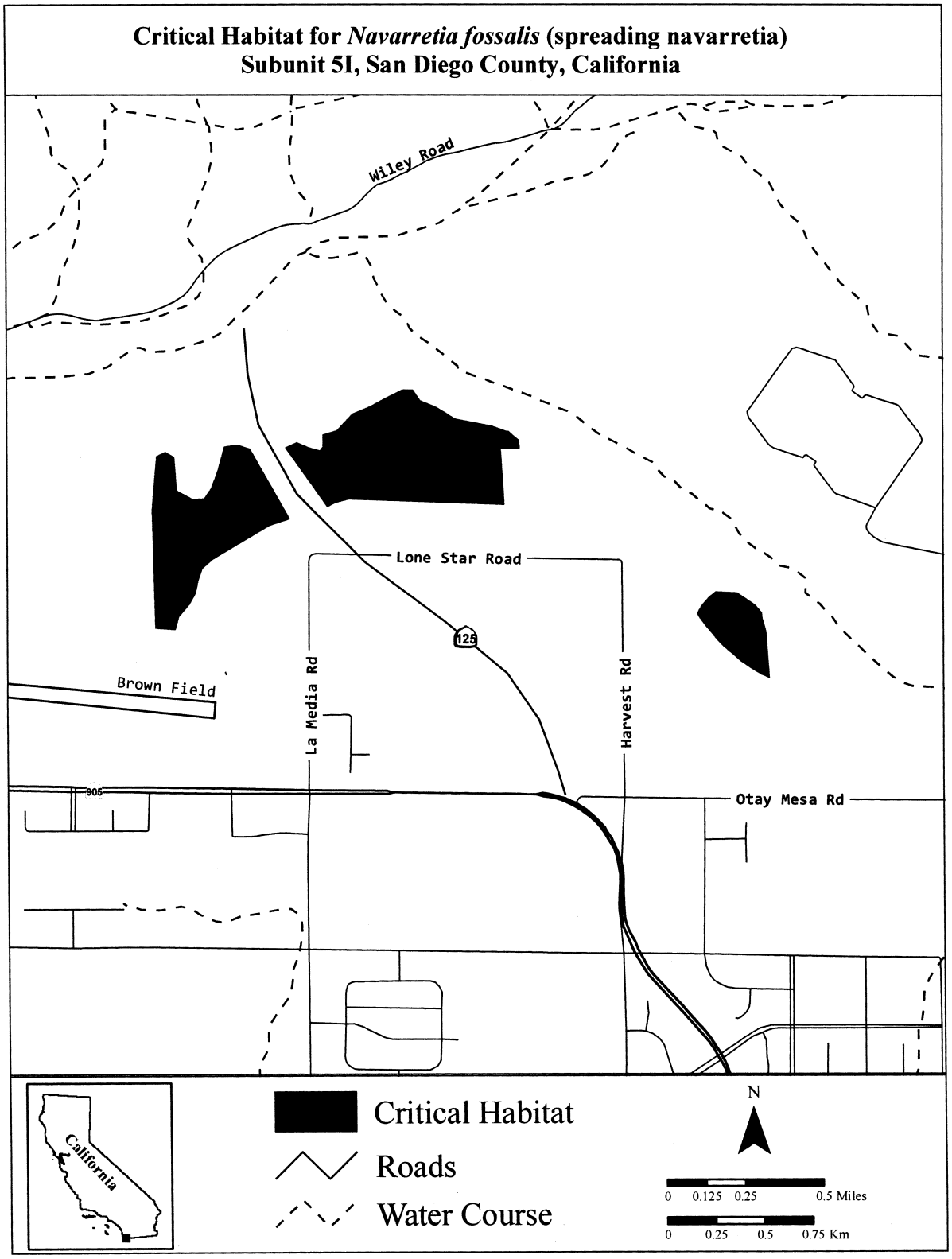
(ii) *Note*: Map of Unit 5, Subunit 5C (J26 Vernal Pool Complex) follows:



* * * * *

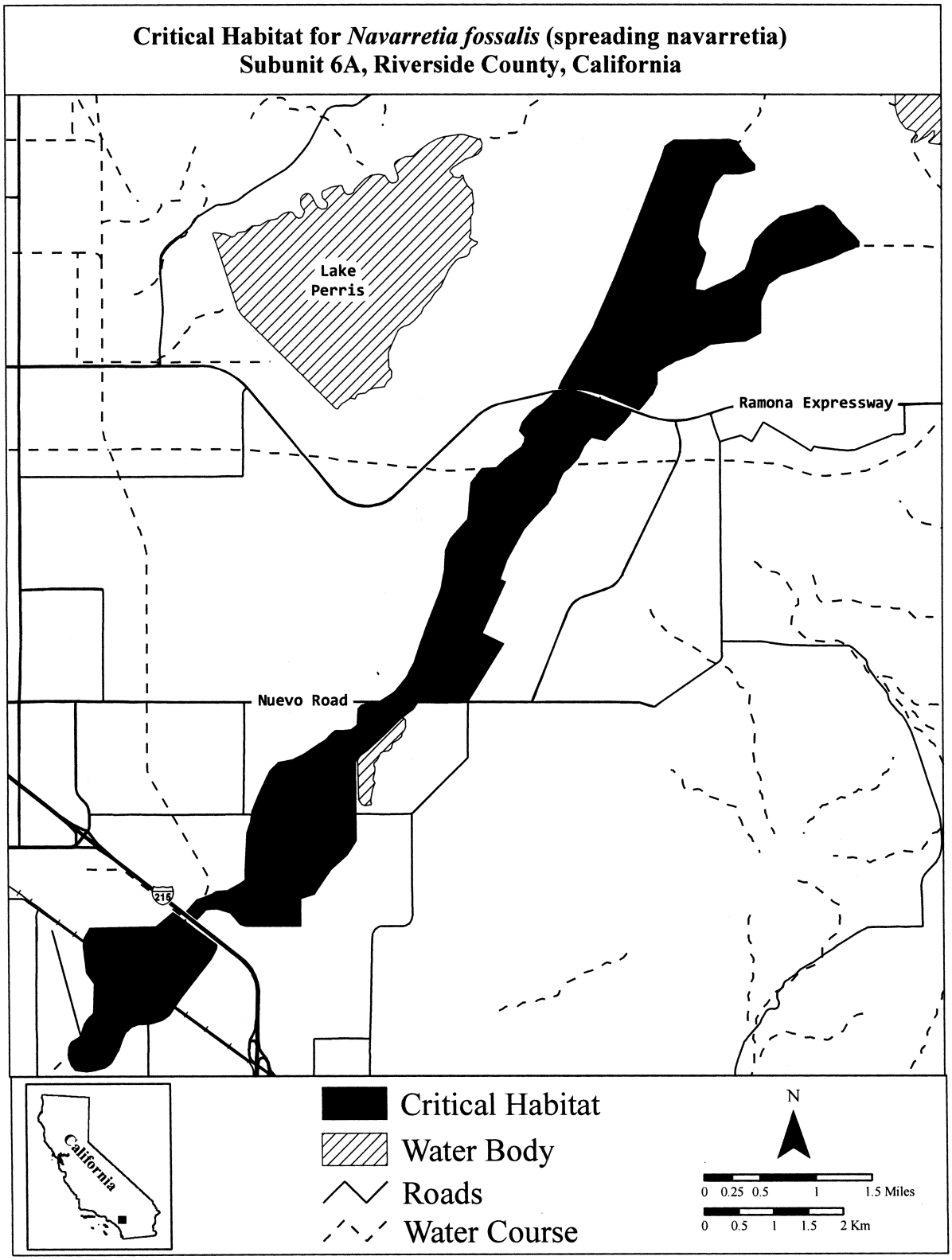
(23) * * *

(ii) *Note*: Map of Unit 5, Subunit 5I (Eastern Otay Mesa Vernal Pool Complexes) follows:



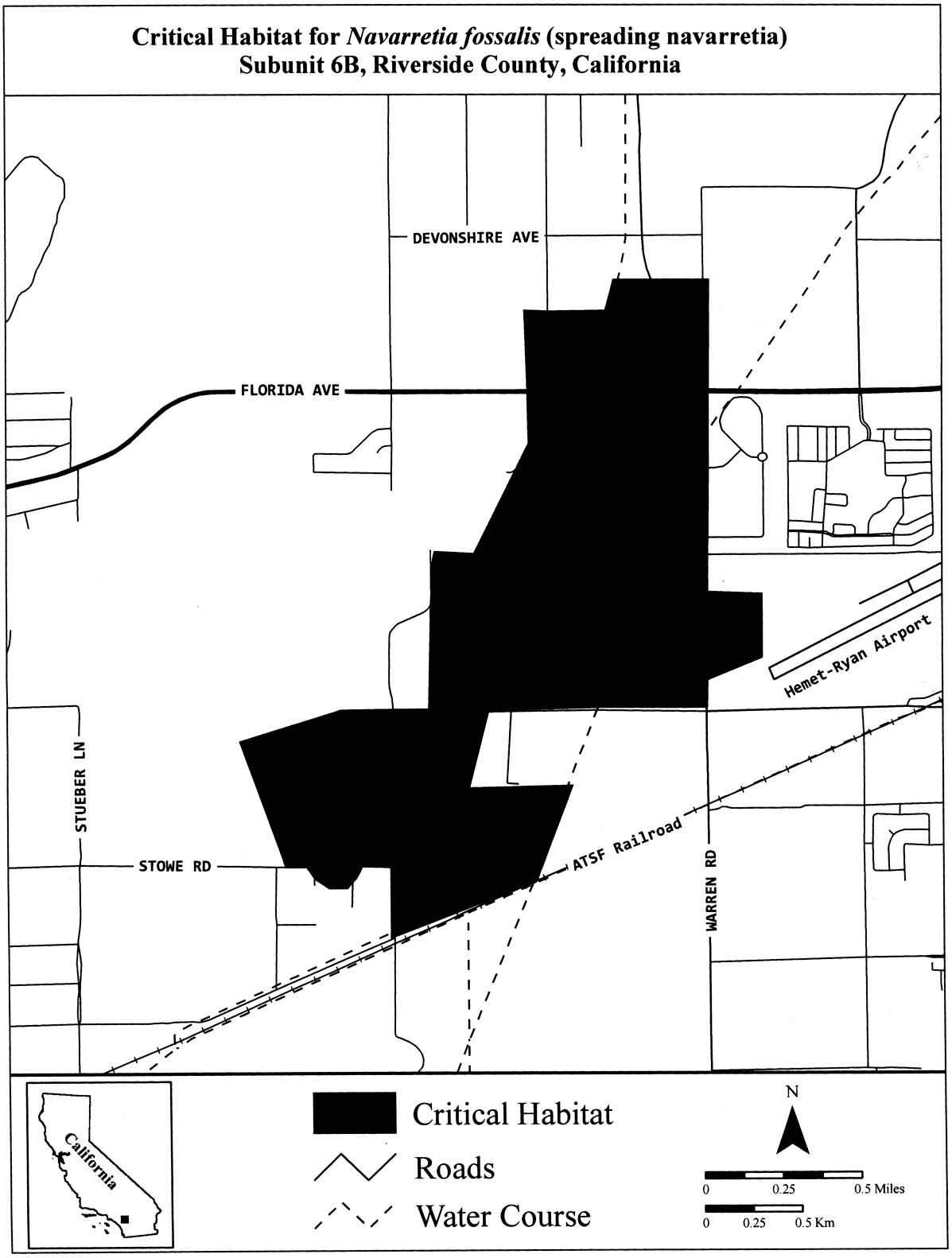
(24) * * *

(ii) *Note*: Map of Unit 6, Subunit 6A (San Jacinto River) follows:



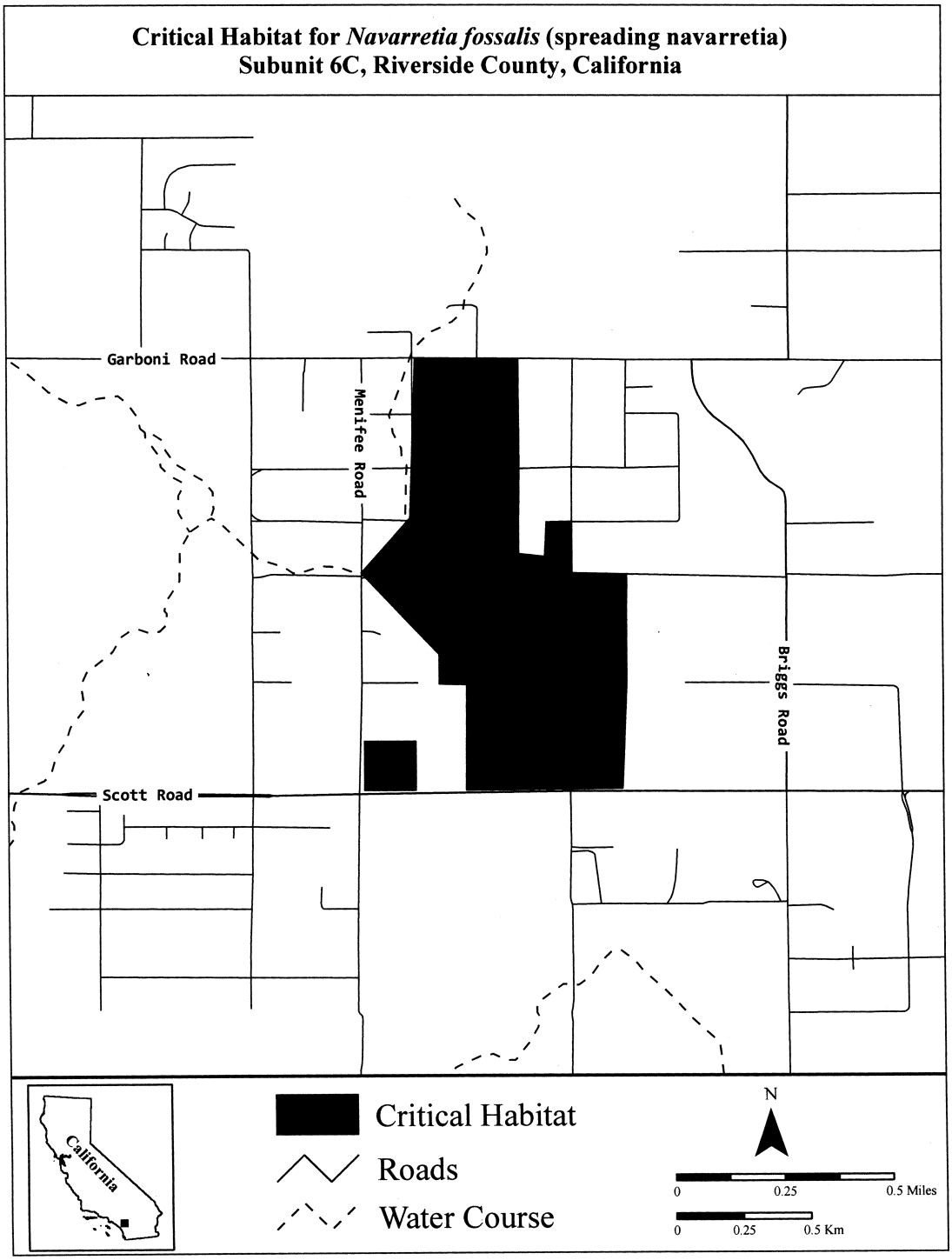
(25) * * *

(ii) *Note*: Map of Unit 6, Subunit 6B (Salt Creek Seasonally Flooded Alkali Plain) follows:



(26) * * *

(ii) *Note*: Map of Unit 6, Subunit 6C (Wickerd and Scott Road Pools) follows:



* * * * *

Dated: April 6, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–8453 Filed 4–14–10; 8:45 am]

BILLING CODE 4310–55–C