continue to be in effect although the train movement, switching operation, or other activity is temporarily suspended.

Issued in Washington, DC, on May 7, 2010.

Karen Rae,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 2010–11484 Filed 5–17–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

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

RIN 1018–AW20

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ambrosia pumila (San Diego ambrosia)

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 comment period on our August 27, 2009, proposed rule to designate critical habitat for *Ambrosia pumila* (San Diego ambrosia). We also announce the availability of the draft economic analysis (DEA), revisions to proposed critical habitat, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed critical habitat, the associated DEA, the proposed addition of three subunits based on new information, and the amended required determinations section. 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 preparation of the final rule.

DATES: The comment period for the proposed rule published August 27, 2009, at 74 FR 44238, is reopened. We will consider comments from all interested parties received or postmarked on or before June 17, 2010. Please note that if you use the *Federal eRulemaking Portal* (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. Any comments that we receive 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 number FWS–R8–ES–2009–0054.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–R8–ES–2009–0054; 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, and any other interested party during this reopened comment period on the proposed rule to designate critical habitat for *Ambrosia pumila* (San Diego ambrosia) that was published in the **Federal Register** on August 27, 2009 (74 FR 44238), including comments on the addition of subunits 3B, 4D, and 5B to the proposed critical habitat; the DEA of the revised proposed 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 designate habitat as "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 the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation is not prudent.

(2) Specific information that may assist us in clarifying or identifying more specific primary constituent elements (PCEs). Available information does not identify a consistent pattern in specific life-history requirements and habitat types where this species is found. For these reasons, the PCEs in the proposed rule are broad and based on our assessment of the ecosystem settings in which the species has most frequently been detected and our best assessment regarding its life-history requisites. We specifically seek information that may assist us in defining those physical and biological features essential to the conservation of the species which may require special management considerations or protection, or in identifying specific areas outside the geographical area occupied by the species at the time it was listed that may be essential for the conservation of the species. In particular, answers to the following questions may be helpful to clarify or identify more specific PCEs of *A. pumila* habitat:

• Does the species reproduce via seed? If so, does the species rely on some aspect of its environment to trigger seed germination?

• What are the key factors determining why the species occupies the particular areas it occupies (but not other areas with the same habitat type)? For example, what role does proximity to waterways or vernal pools play?

(3) Specific information on:

• The amount and distribution of areas proposed as critical habitat for *Ambrosia pumila*;

• Areas occupied at the time of listing that contain features essential to the conservation of the species and why we should include or exclude these areas in the designation; and

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

(4) How the proposed critical habitat boundaries could be refined to more closely circumscribe the areas identified as essential. We also seek recommendations to improve the methodology used to delineate the areas proposed as critical habitat; we especially seek comments regarding how we might more accurately determine how much area beyond the surface covered by above-ground stems that we need to include for each occurrence of *Ambrosia pumila* in the critical habitat designation to ensure that habitat areas include unseen underground portions (rhizomes) of *A. pumila* plants (see step number 4 in the **Methods** section of the proposed critical habitat rule (74 FR 44246, August 27, 2009)).

(5) Land use designations and current or planned activities in the areas proposed as critical habitat and their possible impacts on the species and the proposed critical habitat.

(6) Any special management considerations or protections that the physical and biological features essential to the conservation of *Ambrosia pumila* may require.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(9) Whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those areas covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), and Subarea Plans (City of San Diego and County of San Diego) under the San Diego Multiple Species Conservation Program (MSCP), and specific reasons why.

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

If you submitted comments or information on the proposed rule (74 FR 44238) during the initial comment period from August 27, 2009, to October 26, 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 critical habitat for *Ambrosia pumila* 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 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, the additional subunits we are proposing in this document, and our amended required determinations 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 submissions 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 original proposed designation of critical habitat (74 FR 44238) and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0054, 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 designation of critical habitat for *Ambrosia pumila* in this notice. For more information on previous Federal actions concerning *A. pumila*, refer to the 2009 proposed designation of critical habitat published in the **Federal Register** on August 27, 2009 (74 FR 44238), or contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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 we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if any activity they fund, authorize, or carry out may affect designated critical habitat.

Draft Economic Analysis

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

We prepared a DEA (Industrial Economics, Inc. 2010) that identifies and analyzes the potential, probable economic impacts associated with the proposed designation of critical habitat. Additionally, the DEA looks retrospectively at costs incurred since the July 2, 2002 (67 FR 44372), listing of *A. pumila* as an endangered species. The DEA quantifies the probable economic impacts of all potential conservation efforts for *A. pumila*; some of these costs will likely be incurred regardless of whether we finalize the critical habitat rule, as they are attributable to the listing of the species under the Act. The economic impact of the proposed 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 economic analysis and considers protections already in place for the species (for example, protections resulting from the Federal listing, and protections provided by other Federal, State, and local regulations). The baseline costs, therefore, represent 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 *A. pumila*. 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 critical habitat.

The DEA (made available with the publication of this document and referred to throughout this document

unless otherwise noted) estimates the foreseeable economic impacts of the proposed critical habitat designation for *Ambrosia pumila*. The economic analysis identifies potential incremental costs as a result of the proposed critical habitat designation, which are those costs attributed to critical habitat over and above those baseline costs coextensive with listing. It also discusses potential benefits that may be derived from the designation in a qualitative manner.

Baseline economic impacts are those that result from listing and other conservation efforts for *Ambrosia pumila*. Future baseline impacts in the areas proposed as critical habitat are entirely attributed to development activities; no future baseline impacts were attributed to transportation construction and maintenance. Total future baseline impacts are estimated to be $20.6 million ($1.9 million annualized using a 7 percent discount rate over the next 20 years (2010-2029)) in areas proposed as critical habitat (Industrial Economics, Inc. 2010, p. ES-6).

All incremental impacts attributed to the proposed critical habitat designation are expected to be related to development; no future incremental impacts were attributed to transportation construction and maintenance. The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years (2010-2029) to be $118,750 ($11,203 annualized using a 7 percent discount rate) (Industrial Economics, Inc. 2010, p. ES-7).

In this notice, we propose to add 338 acres (ac) (137 hectares (ha)) (Subunits 3B, 4D, and 5B) to the 802 ac (324 ha) that we proposed as critical habitat on August 27, 2009 (74 FR 44238), bringing the total to 1,140 ac (461 ha) of proposed critical habitat for *Ambrosia pumila* (see **Changes to Proposed Critical Habitat** below). The additional acreage in Subunits 3B, 4D, and 5B have not been assessed in the DEA announced in this notice. However, all incremental costs estimated in the DEA for all properties within the originally proposed critical habitat are attributed to the minor administrative costs of conducting adverse modification analyses during jeopardy analyses ($448 annualized using a 7 percent discount rate per property). Because the three newly proposed subunits are all occupied by the species, we only anticipate minor incremental costs associated with adverse modification analyses conducted during jeopardy analyses. For this reason, we do not expect the incremental costs for the newly proposed areas to exceed those estimated for properties included in the DEA. The final economic analysis will reflect the baseline and incremental economic impacts of critical habitat designation for the entire 1,140 ac (461 ha).

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 (for example, 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 describes economic impacts of *Ambrosia pumila* conservation efforts associated with residential and commercial development, and transportation-related construction and maintenance. The DEA also analyzes the economic impact on 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 (see *Regulatory Flexibility Act (5 U.S.C. 601 et seq.*).

Changes to Proposed Critical Habitat

In this document, we are proposing additional subunits to *Ambrosia pumila* critical habitat in Units 3, 4, and 5, which were initially identified and described in the proposed rule that was published in the **Federal Register** on August 27, 2009 (74 FR 44238). We obtained data after the publication of the proposed rule informing us of the existence of one occurrence not previously known to us (Subunit 3B), and confirming the continued existence of an occurrence thought to be extirpated (Subunit 5B). Based on a public comment received during the public comment period, we re-evaluated all available data for *A. pumila* occurrences throughout the range of the species. As a result of our re-evaluation, we determined an additional area in San Diego County (Subunit 4D) meets the definition of critical habitat for *A. pumila* because, although it is small in size (approximately 20 ac (8 ha)), it is occupied, and otherwise meets the definition of critical habitat and the criteria for inclusion in critical habitat as set forth in our proposal (see *Subunit 4D: Gird Road/Monserate Hill* below). The purpose of the revisions described below is to better delineate the areas that meet the definition of critical habitat for *A. pumila.* These three additional subunits were within the geographic range occupied by the species at the time it was listed and contain the physical and biological features essential to the conservation of the species. Subunits 3B, 4D, and 5B were not included in the proposed rule (74 FR 44238, August 27, 2009); therefore, this document includes the full descriptions and maps for these subunits. As a result of these proposed additions, the overall area proposed as critical habitat for *A. pumila* is 1,140 ac (461 ha), an increase of 338 ac (137 ha) from the 802 ac (324 ha) that we proposed as critical habitat on August 27, 2009 (74 FR 44238).

Subunit 3B: Murrieta Creek

We were not aware of the Murrieta Creek occurrence (Subunit 3B) of *Ambrosia pumila* when we developed the proposed rule to designate critical habitat for the species (74 FR 44238; August 27, 2009); therefore, this occurrence was not included in the proposed rule. Based on new information obtained from the California Natural Diversity Database (CNDDB 2010), we are proposing Subunit 3B as critical habitat because this area is within the geographical area occupied by the species at the time of listing, contains the physical and biological features that are essential to the conservation of the species, and meets our criteria for inclusion in critical habitat. We have concluded that this area was 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). To our knowledge, the area had not been surveyed for *A. pumila* previously, and we have no reason to believe the plant was imported or had dispersed into these areas from other areas after *A. pumila* was listed. Occurrences identified since listing were likely in existence for many years and were only recently detected due to increased awareness of this species. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009). Unit 3 as described in the proposed rule (74 FR 44248–44249) is now Subunit 3A.

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. 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)). 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 the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 4D: Gird Road/Monserate Hill

We re-evaluated all information available for *Ambrosia pumila* occurrences and determined that the Gird Road/Monserate Hill area (Subunit 4D) meets the definition of critical habitat, despite its small size relative to other proposed units. We are proposing Subunit 4D as critical habitat because this area is within the geographical area occupied by the species at the time of listing, contains the physical and biological features essential to the conservation of the species, and meets the criteria for inclusion in critical habitat. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009).

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 the same distance from both Gird Road (to the west) and Monserate Hill Road (to the east). Subunit 4D consists of approximately 20 ac (8 ha) of privately owned land and 1 ac (0.5 ha) of State-owned land for a total of approximately 21 ac (9 ha). This subunit meets the definition of critical habitat for the 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)). Subunit 4D 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 foot and vehicle traffic in the area, and from development and road maintenance. Please see the "*Special Management Considerations or Protection*" section of the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Subunit 5B: Lake Hodges West – Crosby Estates

We were unaware that the Crosby Estates occurrence (Subunit 5B) of *Ambrosia pumila* is extant when we developed the proposed rule to designate critical habitat for the species (74 FR 44238, August 27, 2009); therefore, this area was not included in the proposed rule. This occurrence was extant at the time of listing, but was thought to have been extirpated. We have since obtained information (The Crosby at Rancho Santa Fe Habitat Management Plan Annual Report 2008 (Rincon Consultants, Inc. 2008)) confirming this occurrence is extant and viable. Based on this information, we are proposing Subunit 5B as critical habitat because it is currently occupied, is within the geographical area occupied by the species at the time of listing, contains the physical and biological features that are essential to the conservation of the species, and meets the criteria for inclusion in critical habitat. We mapped the boundary of this subunit using our current mapping methodology as described in the **Methods** section of the proposed rule (74 FR 44245–44247, August 27, 2009). Unit 5 as described in the proposed rule (74 FR 44249–44250) is now Subunit 5A.

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 116 ac (47 ha) of privately owned land, 2 ac (1 ha) of local government owned land, and 155 ac (63 ha) of County-owned land for a total of approximately 273 ac (111 ha). This subunit is 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)). 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, including features within the approximately 155 ac (63 ha) portion of Subunit 5B that is conserved (57 percent), 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 the proposed rule (74 FR 44244–44245, August 27, 2009) for a discussion of the threats to *A. pumila* habitat and potential management considerations.

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act –Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

Under section 4(b)(2) of the Act, the proposed rule discusses approximately 263 ac (106 ha) proposed as critical habitat in Unit 1 (Subunits 1A and 1B), Unit 2, and Subunit 3A (formerly Unit 3 in the proposed rule) that we are considering whether or not to exercise our discretion to exclude from critical habitat designation. We are also considering exclusion of approximately 44 ac (18 ha) of *Ambrosia pumila*

habitat on permittee-owned or controlled lands in Subunit 3B that meet the definition of critical habitat for *A. pumila* within the Western Riverside County MSHCP plan area. We are considering exercising our discretion to exclude this subunit because the implementation of the Western Riverside County MSHCP addresses threats to *A. pumila* and features essential to its conservation through a regional planning effort and outlines species-specific objectives and criteria for the conservation of *A. pumila* and its habitat. No land in Subunit 3B is currently conserved by the MSHCP; however, all of the subunit falls within the Criteria Area where conservation under the habitat conservation plan (HCP) may occur (any projects in this area should be implemented through the Joint Project Review Process to ensure that the requirements of the MSHCP permit and the Implementing Agreement are properly met (Western Riverside County MSHCP, Volume 1, section 6.6.2 in Dudek 2003, p. 6–82)). Additionally, all 44 ac (18 ha) fall within our Conceptual Reserve Design where conservation is likely to occur. Please see "Exclusions Based on Habitat Conservation Plans (HCPs)" in the proposed rule (74 FR 44253–44257, August 27, 2009) for a more detailed discussion of the protections afforded to *A. pumila* by the Western Riverside County MSHCP. We will analyze the benefits of inclusion in and exclusion from critical habitat of this area under section 4(b)(2) of the Act in the final rule.

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act –San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego Subarea Plans

Under section 4(b)(2) of the Act, the proposed rule discusses 278 ac (113 ha) proposed as critical habitat in Subunit 5A (formerly Unit 5 in the proposed rule), Unit 6, and Subunits 7A, 7B, and 7C that we are considering exercising our discretion to exclude from critical habitat designation. We are also considering excluding approximately 273 ac (111 ha) of non-Federal lands in Subunit 5B that meet the definition of critical habitat for *Ambrosia pumila* within the County of San Diego MSCP Subarea Plan under section 4(b)(2) of the Act. Implementation of the County of San Diego MSCP Subarea Plan helps to address threats to the species and the features essential to its conservation through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of *A. pumila* and its habitat. Approximately 184 ac (74 ha) of Subunit 5B is within the MSCP Multi-Habitat Planning Area. Please see "Exclusions Based on Habitat Conservation Plans (HCPs)" in the proposed rule (74 FR 44253–44257, August 27, 2009) for a more detailed discussion of the protections afforded to *A. pumila* by the County of San Diego MSCP Subarea Plan. We will analyze the benefits of inclusion in and exclusion from critical habitat of this area under section 4(b)(2) of the Act.

As we stated earlier, we are soliciting data and comments from the public on the DEA, all aspects of the proposed critical habitat rule (including the additions of Subunits 3B, 4D, and 5B to proposed critical habitat, and the additional areas considered for exclusion from critical habitat designation), and our amended required determinations. The final rule may differ from the proposed rule based on 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 August 27, 2009 (74 FR 44238), 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 proposed rule concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 12630 (Takings), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information in the DEA, 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), 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 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 designation of critical habitat for *Ambrosia pumila* 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 the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where *Ambrosia pumila* is present, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process because *A. pumila* is listed as an endangered species under the Act.

Appendix A.1 of the DEA evaluates the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed critical habitat for *Ambrosia pumila*. The analysis is based on the estimated incremental impacts associated with the proposed rule as described in sections 1 through 3 of the DEA. The SBREFA analysis evaluates the potential for economic impacts related to project modifications on privately held developable land (Industrial Economics, Inc. p. A-3). The incremental impacts considered for the SBREFA analysis are the impacts that will affect development companies considered to be small businesses. The DEA indicates that 3 out of a total of a possible 9,222 land development companies in the counties where critical habitat is proposed would be affected by the designation of critical habitat (Industrial Economics, Inc. 2010, Appendix A, ES-8). Due to the designation of critical habitat the annual incremental impacts to these 3 small businesses will be approximately $448 each at a 7 percent discount rate (Industrial Economics, Inc. 2010, Appendix A, 3-14). We do not believe these 3 small businesses represent a substantial number of the total number of development companies or that an annual impact of $448 per company is a significant economic impact. Therefore, we do not find that the designation of critical habitat for *A. pumila* will have a significant economic impact on a substantial number of small entities.

In summary, we considered whether the proposed 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 critical habitat for *Ambrosia pumila* 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 are forecast associated specifically with this rulemaking on the production, distribution, or use of energy. Therefore, designation of critical habitat for *A. pumila* 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). 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 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 DEA 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. Incremental impacts stemming from species conservation and development-control activities associated with this critical habitat designation are not expected to significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

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**).

Author(s)

The primary authors of this notice are the 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 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. Critical habitat for *Ambrosia pumila* (San Diego ambrosia), which was proposed for addition to § 17.96(a) on August 27, 2009, at 74 FR 44237, is proposed to be amended by:

a. Removing the index map at paragraph (5) and adding in its place a new index map as set forth below;

b. Revising paragraph (7)(ii);

c. Revising paragraph (8); and

d. Revising paragraph (9), to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

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

* * * * *

(5) * * *

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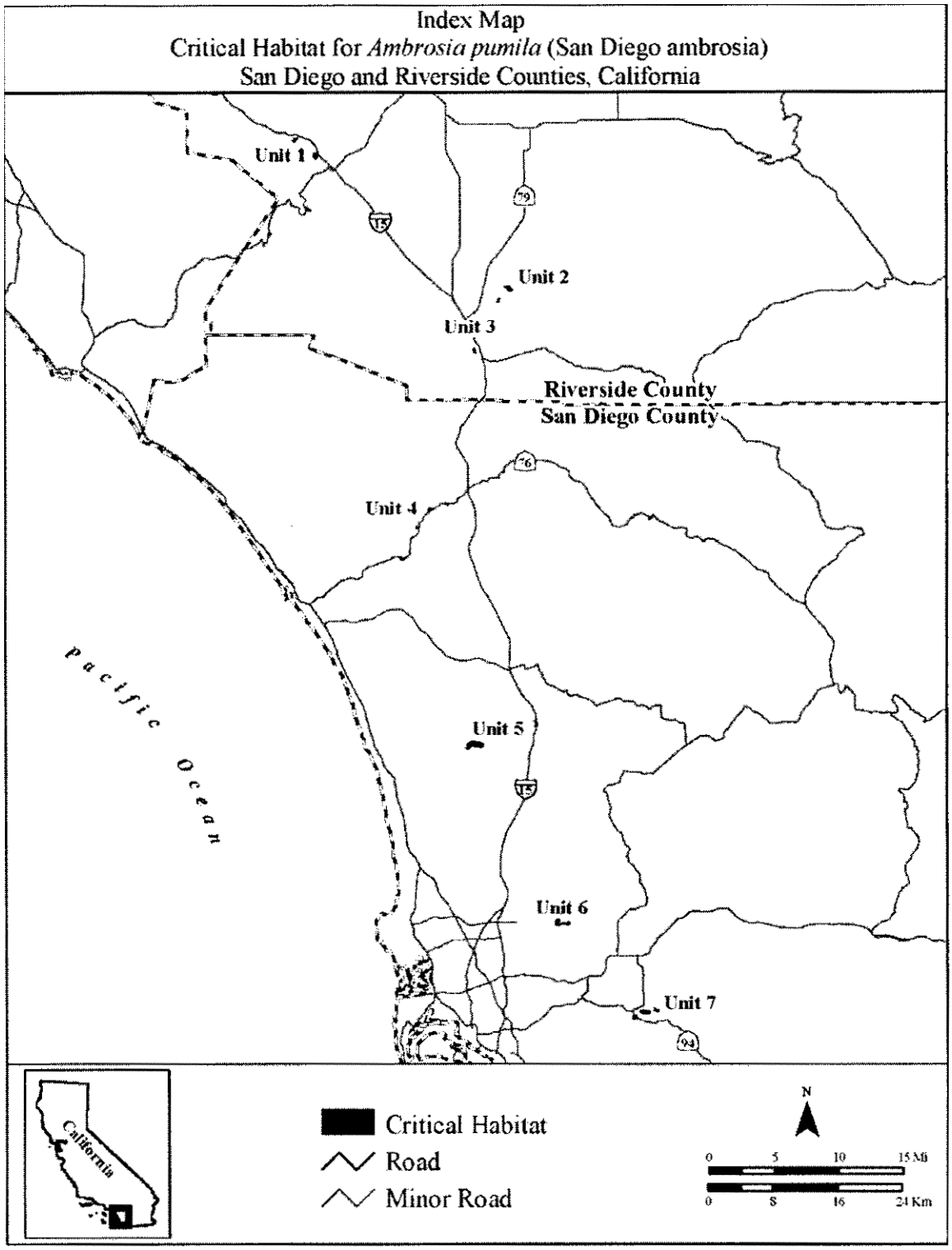
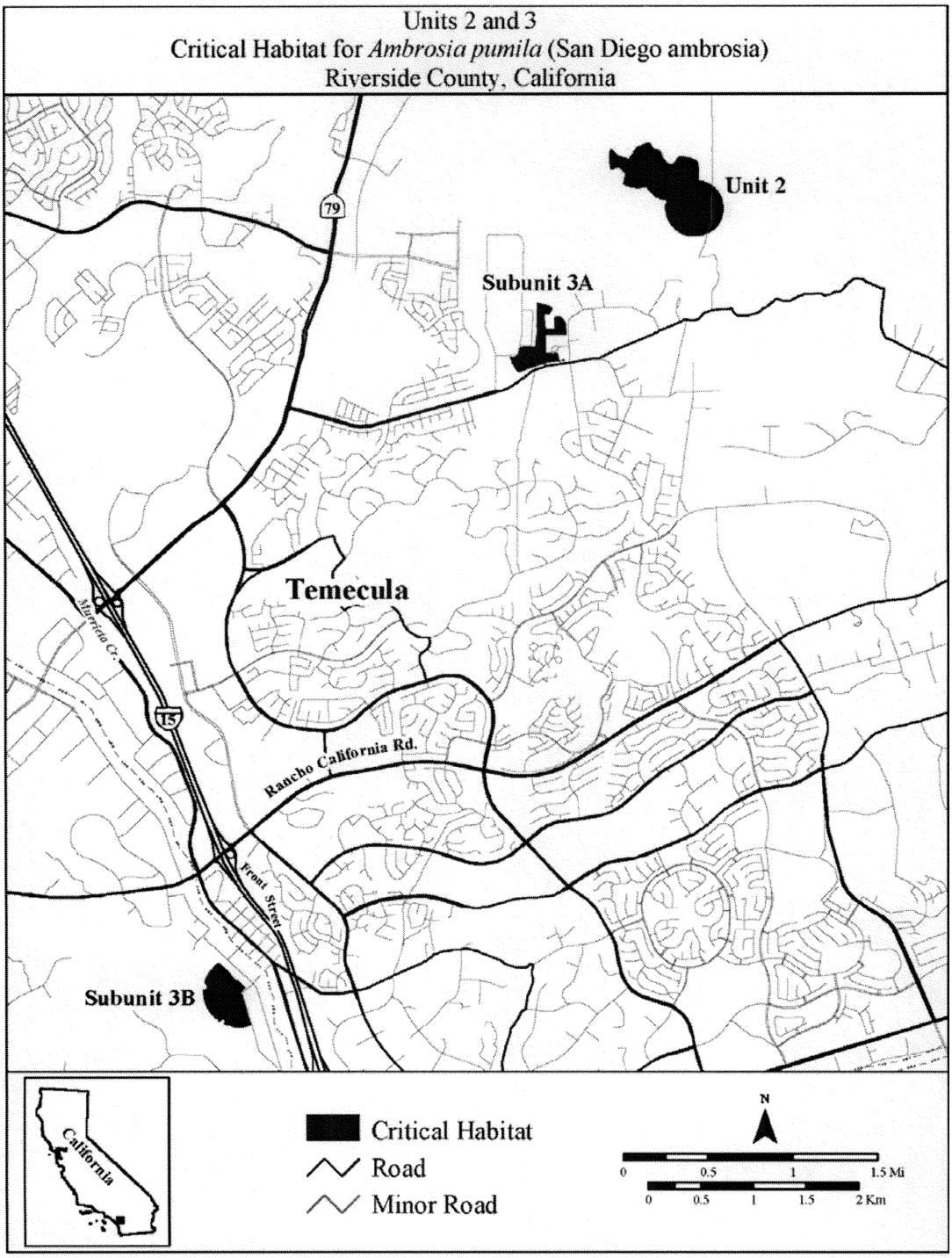

Index Map
Critical Habitat for *Ambrosia pumila* (San Diego ambrosia)
San Diego and Riverside Counties, California
Unit 1
Unit 2
Unit 3
Riverside County
San Diego County
Unit 4
Pacific Ocean
Unit 5
Unit 6
Unit 7
California
Critical Habitat
Road
Minor Road
N
0 5 10 15 Mi
0 8 16 24 Km

(7) * * *

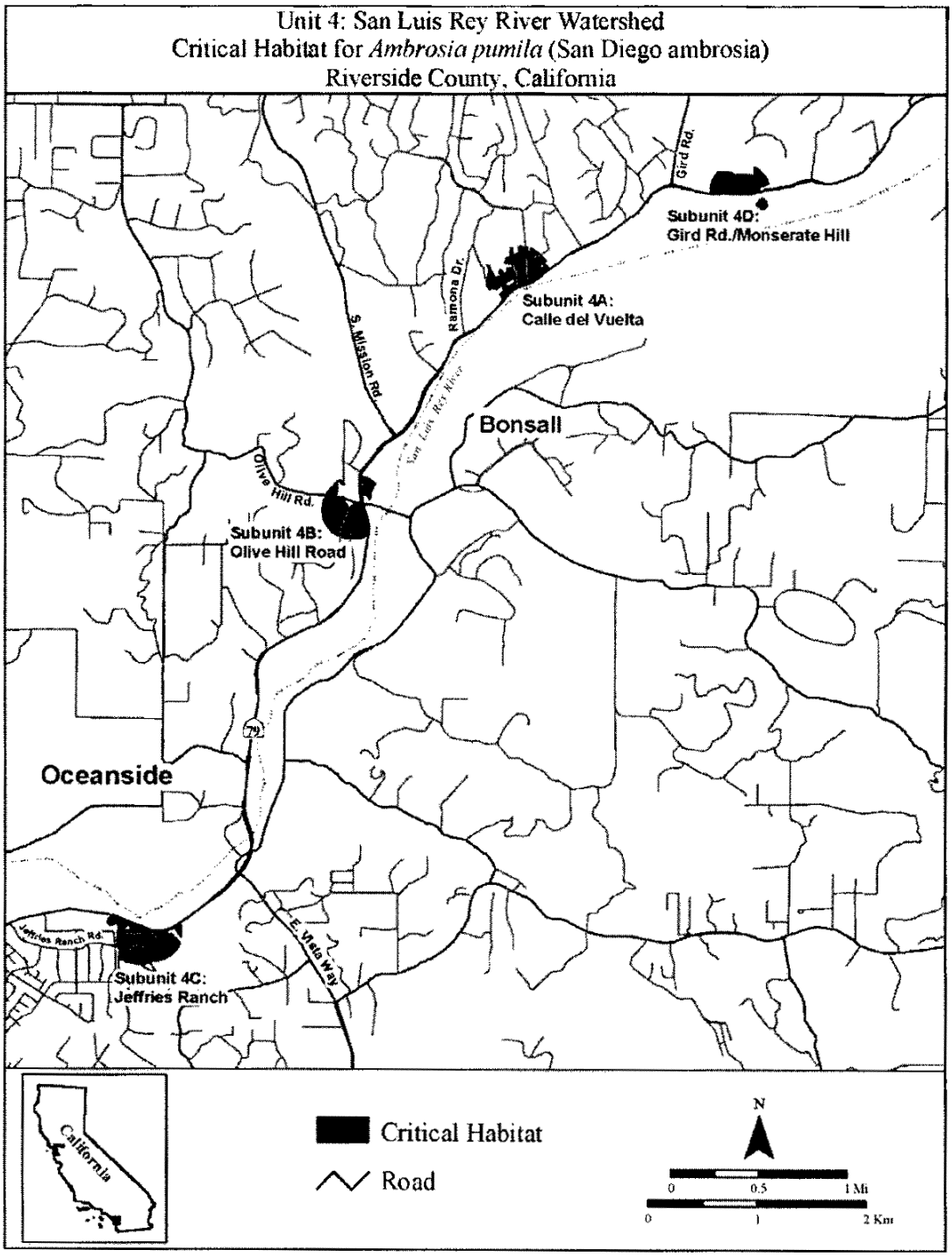
(ii) Note: Map of Units 2 and 3, with Subunits 3A and 3B, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), Riverside County, California, follows:



(8) Unit 4, Subunits 4A, 4B, 4C, and 4D, San Diego County, California.

(i) [Reserved for textual description of unit.]

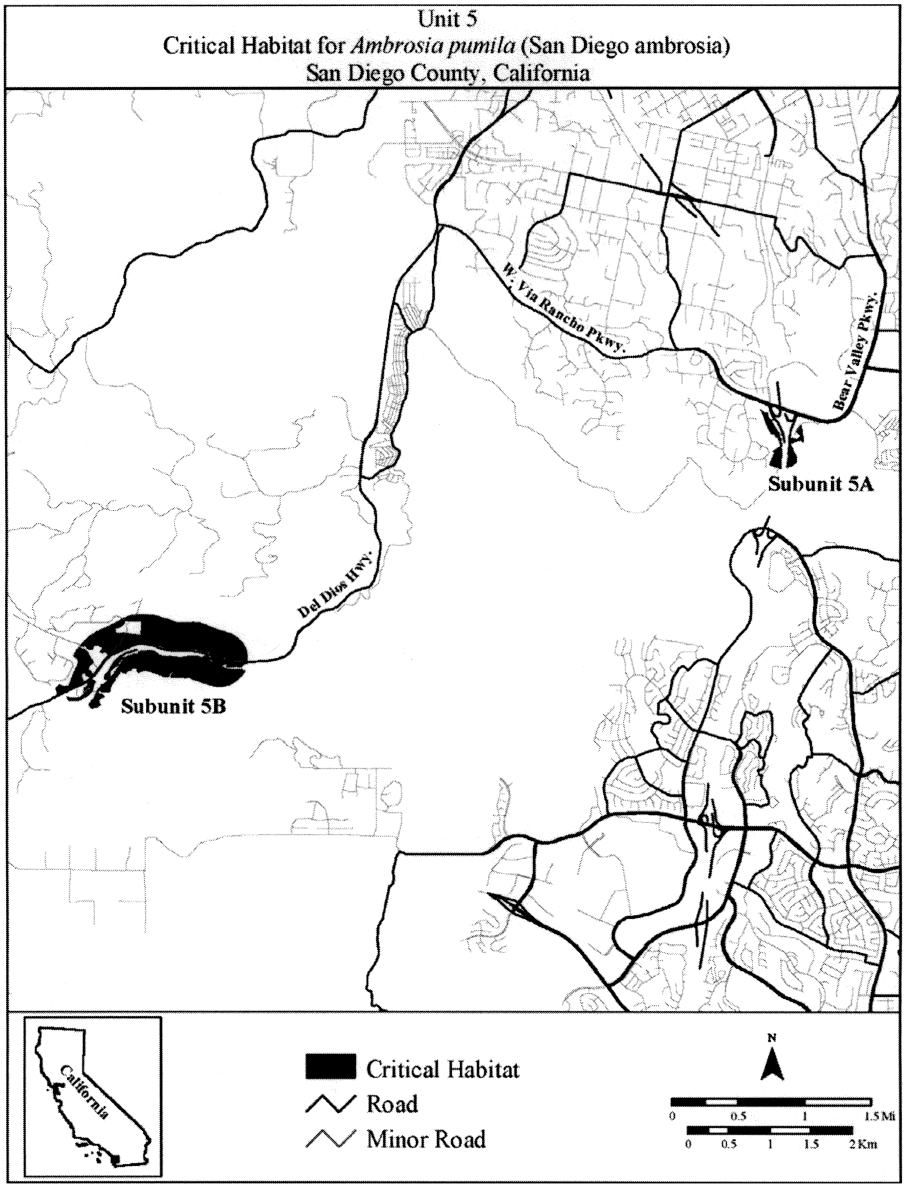
(ii) Note: Map of Unit 4, with Subunits 4A, 4B, 4C, and 4D, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), San Diego County, California, follows:



(9) Unit 5, Subunits 5A and 5B, San Diego County, California.

(i) [Reserved for textual description of unit.]

(ii) Note: Map of Unit 5, with Subunits 5A and 5B, of critical habitat for *Ambrosia pumila* (San Diego ambrosia), San Diego County, California, follows:



* * * * *

Dated: May 7, 2010

Will Shafroth,

Acting Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–11674 Filed 5–17–10; 8:45 am]

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