

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2013-0080;
4500030114]

RIN 1018-AZ57

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ivesia webberi* (Webber's Ivesia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our August 2, 2013, proposed rule to designate critical habitat for *Ivesia webberi* (Webber's ivesia). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for *I. webberi* and an amended required determinations section of the proposal. In addition, in this document, we are proposing revised unit boundaries and acreages for five units described in our August 2, 2013, proposal (78 FR 46862) based on comments we received on the proposal. These revisions result in an increase of approximately 159 acres (65 hectares) in the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the amended required determinations section, and the unit revisions described in this document. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before March 17, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the associated documents of the DEA on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2013-0080 or by mail from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R8-ES-2013-0080 (the docket number for the proposed critical habitat rule).

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R8-ES-2013-0080; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. 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: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; by telephone 775-861-6300; or by facsimile 775-861-6301. 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 will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for *Ivesia webberi* that was published in the **Federal Register** on August 2, 2013 (78 FR 46862), our DEA of the proposed designation, the amended required determinations provided in this document, and the revisions to five of the proposed units as described in this document. We will consider information and recommendations from all interested parties. 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 Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree those threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of *Ivesia webberi* habitat;

(b) The areas that are currently occupied and contain features essential to the conservation of the species that we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) The areas not occupied at the time of listing that are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on the benefits of including or excluding areas that exhibit these impacts.

(5) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(6) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(7) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) 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.

If you submitted comments or information on the proposed rule (78 FR 46862) during the initial comment period from August 2, 2013, to October 1, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods.

Accordingly, the final decision may differ from the proposed rule, as revised by this document.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, proposed critical habitat, and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket Number FWS–R8–ES–2013–0080, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule to designate critical habitat and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS–R8–ES–2013–0080, or by mail from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Ivesia webberi* (78 FR 46862) in this document. For more information on previous

Federal actions concerning the *I. webberi*, refer to the proposed listing rule (78 FR 46889) that published in the **Federal Register** on August 2, 2013. Both proposed rules are available online at <http://www.regulations.gov> (at Docket No. FWS–R8–ES–2013–0079 for the proposed listing and Docket No. FWS–R8–ES–2013–0080 for the proposed critical habitat designation) or from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On August 2, 2013, we published a proposed rule to designate critical habitat for *Ivesia webberi* (78 FR 46862). We proposed to designate approximately 2,011 acres (ac) (814 hectares (ha)) as critical habitat for *I. webberi* in Plumas, Lassen, and Sierra Counties in northeastern California and in Washoe and Douglas Counties in northwestern Nevada. That proposal had an initial 60-day comment period ending October 1, 2013. This document announces a proposed revision of the boundaries and acreages of five units (Units 9, 10, 12, 13, and 14) described in the August 2, 2013, proposed rule to designate critical habitat. We anticipate submitting for publication in the **Federal Register** a final critical habitat designation for *I. webberi* on or before August 2014, if we finalize our proposed rule to list the species under the Act.

Critical Habitat

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.

Revisions to Proposed Critical Habitat Designation

On August 2, 2013, we proposed as critical habitat for *Ivesia webberi* 16 units (2 with subunits), consisting of approximately 2,011 ac (814 ha) in Plumas, Lassen, and Sierra Counties in northeastern California and in Washoe and Douglas Counties in northwestern Nevada (78 FR 46862).

We are now proposing to increase the designation by approximately 159 ac (65 ha) to a total of approximately 2,170 ac (879 ha). We propose this increase based on new information received from the U.S. Forest Service (Forest Service) that better defines the physical and biological features along the boundaries of these five proposed units, resulting in changes to the acreages for those units. The revised units include: Unit 9 (Stateline Road 1), Unit 10 (Stateline Road 2), Unit 12 (Black Springs), Unit 13 (Raleigh Heights), and Unit 14 (Dutch Louie Flat) (see Table 1). Apart from the acreages and ownership percentages provided in the unit descriptions in the August 2, 2013, proposed rule, the information in the unit descriptions in that proposal remains unchanged.

TABLE 1—REVISIONS TO PROPOSED CRITICAL HABITAT UNITS FOR IVESIA WEBBERI

[Area estimates reflect all land within critical habitat boundaries]

Proposed critical habitat unit	Land ownership by type	Revised acres (hectares)	Change from 8/2/2013 proposal (acres (hectares))
9. Stateline Road 1	Federal	186 (75)	+61 (+25)
	State or Local Government	0 (0)	0 (0)
	Private	7 (3)	0 (0)
10. Stateline Road 2	Federal	66 (27)	+1 (+1)
	State or Local Government	0 (0)	0 (0)
	Private	0 (0)	0 (0)
12. Black Springs	Federal	133 (54)	+17 (+7)
	State or Local Government	0 (0)	0 (0)
	Private	30 (12)	+6 (+2)
13. Raleigh Heights	Federal	229 (93)	+66 (+27)
	State or Local Government	0 (0)	0 (0)
	Private	24 (10)	+10 (+4)
14. Dutch Louie Flat	Federal	13 (5)	+2 (+1)
	State or Local Government	0 (0)	0 (0)
	Private	41 (17)	–5 (–2)

TABLE 1—REVISIONS TO PROPOSED CRITICAL HABITAT UNITS FOR *IVESIA WEBBERI*—Continued

[Area estimates reflect all land within critical habitat boundaries]

Proposed critical habitat unit	Land ownership by type	Revised acres (hectares)	Change from 8/2/2013 proposal (acres (hectares))
Totals for Critical Habitat Units 9, 10, 12, 13, and 14.	Federal	627 (254)	+148 (+61)
	State or Local Government	0 (0)	0 (0)
	Private	102 (42)	+11 (+4)
Revised Totals for All 16 Units	Federal	1,513 (612)
	State or Local Government	214 (86)
	Private	444 (180)
	TOTAL	2,170 (879)

Note: Area sizes may not sum due to rounding.**Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific 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 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 such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; and the implementation of a management plan. In the case of *Ivesia webberi*, the benefits of critical habitat include public awareness of the presence of the species, the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *I. webberi*. In practice, situations with a Federal nexus exist

primarily on Federal lands or for projects undertaken by Federal agencies. We have not proposed to exclude any areas from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat 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 would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat (Service 2013). The information contained in our IEM was then used to develop a screening analysis (Industrial Economics, Incorporated (IEC) 2013, 2014) of the probable effects of the designation of critical habitat for *Ivesia webberi*. We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are,

therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis (IEc 2013, 2014) combined with the information contained in our IEM (Service 2013) are what we consider our DEA of the proposed critical habitat designation for *I. webberi*, and the DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O.s' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for *Ivesia webberi*, first we identified, in the IEM dated October 31, 2013, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (Forest Service and U.S. Bureau of Land Management (BLM)); (2) commercial or residential development; (3) livestock grazing; (4) off-highway vehicle (OHV) and other recreational activities; (5) wildfire; (6) vegetation management, including fuels reduction activities and management for invasive species; and (7) vegetation or ground-disturbing activities associated with construction, maintenance or use of roads, trails, transmission lines, or other infrastructure corridors (Service 2013, pp. 3–10). We considered each industry or category individually. Additionally, we 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 only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *Ivesia webberi* is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species.

If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for *Ivesia webberi*'s critical habitat (Service 2013, pp. 12–22). Because the designation of critical habitat for *I. webberi* was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would constitute jeopardy to *I. webberi* would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species (Service 2013, pp. 12–22). This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for *Ivesia webberi* (as proposed on August 2, 2013 (78 FR 46862)) totals approximately 2,011 ac (814 ha), all of which are considered occupied by the species. Of the 2,011 ac (814 ha), approximately 68 percent of the total proposed designation is located on Federal lands, 11 percent on State land, and 21 percent on private lands. Additionally, 53 percent (or 1,072 ac (434 ha)) of the 2,011 ac (814 ha) are actively managed for *I. webberi* conservation through the Forest Service's *Conservation Assessment and Strategy for Ivesia Webberi* (Bergstrom 2009, entire). In this notice we are proposing revised unit boundaries and acreages for five units described in our August 2, 2013, proposal (78 FR 46862) based on comments we received on the

proposal. These revisions, which were not available at the time the DEA was developed, result in an increase of approximately 159 ac (65 ha) in the proposed designation of critical habitat (see Table 1 above). After considering the economic impacts for the proposed areas and assessing the minimal changes to the boundaries of the proposed areas, we expect that economic impacts will not increase substantially. These changes will be fully analyzed and reported in the final economic analysis. As discussed above, the following economic activities are identified as having the potential to impact proposed critical habitat (as well as the additional 159 ac (65 ha) that we are proposing for the revised unit boundaries): Federal lands management (Forest Service and BLM); commercial or residential development; livestock grazing, off-highway vehicle use, and other recreational activities; wildfire; vegetation management, including fuels reduction activities and management for invasive species; and vegetation or ground-disturbing activities associated with construction, maintenance or use of roads, trails, transmission lines, or other infrastructure corridors.

Our DEA determined that the section 7-related costs of designating critical habitat for *Ivesia webberi* are likely to be limited to the additional administrative effort required to consider adverse modification in a small number of consultations. This finding is based on:

(1) All proposed units are considered occupied, providing baseline protection resulting from the listing of the species as threatened under the Act.

(2) Activities occurring within designated critical habitat with a potential to affect the species' habitat are also likely to adversely affect the species, either directly or indirectly.

(3) Project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy in occupied habitat.

(4) Federal agencies operating in proposed critical habitat areas are already aware of the presence of *Ivesia webberi* and also are experienced consulting with us under section 7 of the Act on other federally listed species. Thus, in the baseline, they are likely to consult even in buffer areas surrounding the species included in the designation to ensure protection of pollinator habitat.

The incremental administrative burden resulting from the designation is unlikely to reach \$100 million in a given year based on the small number of anticipated consultations (i.e., less than two consultations per year) and per-consultation costs. Furthermore, it

is unlikely that the designation of critical habitat will trigger additional requirements under State or local regulations. Costs resulting from public perception of the effect of critical habitat, if they occur, are unlikely to reach \$100 million in a given year, based on the small number of acres possibly affected and average land values in the vicinity of those acres.

The results of our analysis also suggest approximately 114 ac (46 ha) of private, vacant land is available for future development in the proposed critical habitat area (specifically, the Reno/Sparks metropolitan area in Washoe County); however, we note that after our analysis was completed and based on comments during the first open comment period, our revised proposed critical habitat has resulted in a total of approximately 138 ac (55 ha) of private, vacant land that may be available for future development. If public perception causes the value of critical habitat acres to be diminished, these acres are those most likely to be affected. Due to existing data limitations regarding the probability that such effects will occur, and the likely degree to which property values will be affected, we are unable to estimate the magnitude of perception-related costs that could result from the designation if finalized. However, the cost cannot exceed the total value of affected properties. Based on our analysis, the value of potentially affected parcels is unlikely to exceed \$100 million.

Additional information and discussion regarding our economic analysis is available in our DEA available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2013-0080.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. 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, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our August 2, 2013, proposed rule (78 FR 46862), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable

economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for *Ivesia webberi*, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (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). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for *I. webberi*, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

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

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

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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have 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 designation would not have a significant economic impact on a substantial number of small business

entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Ivesia webberi* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for *I. webberi*. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result

from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for *I. webberi* does not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this notice are the staff members of the Pacific Southwest Regional Office (Region 8), with assistance from staff of the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service.

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 on August 2, 2013, at 78 FR 46862, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) by revising paragraphs (5), (10), (12), and (13) in the entry proposed for “Family Rosaceae: *ivesia webberi* (Webber’s ivesia)” at 78 FR 46862, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

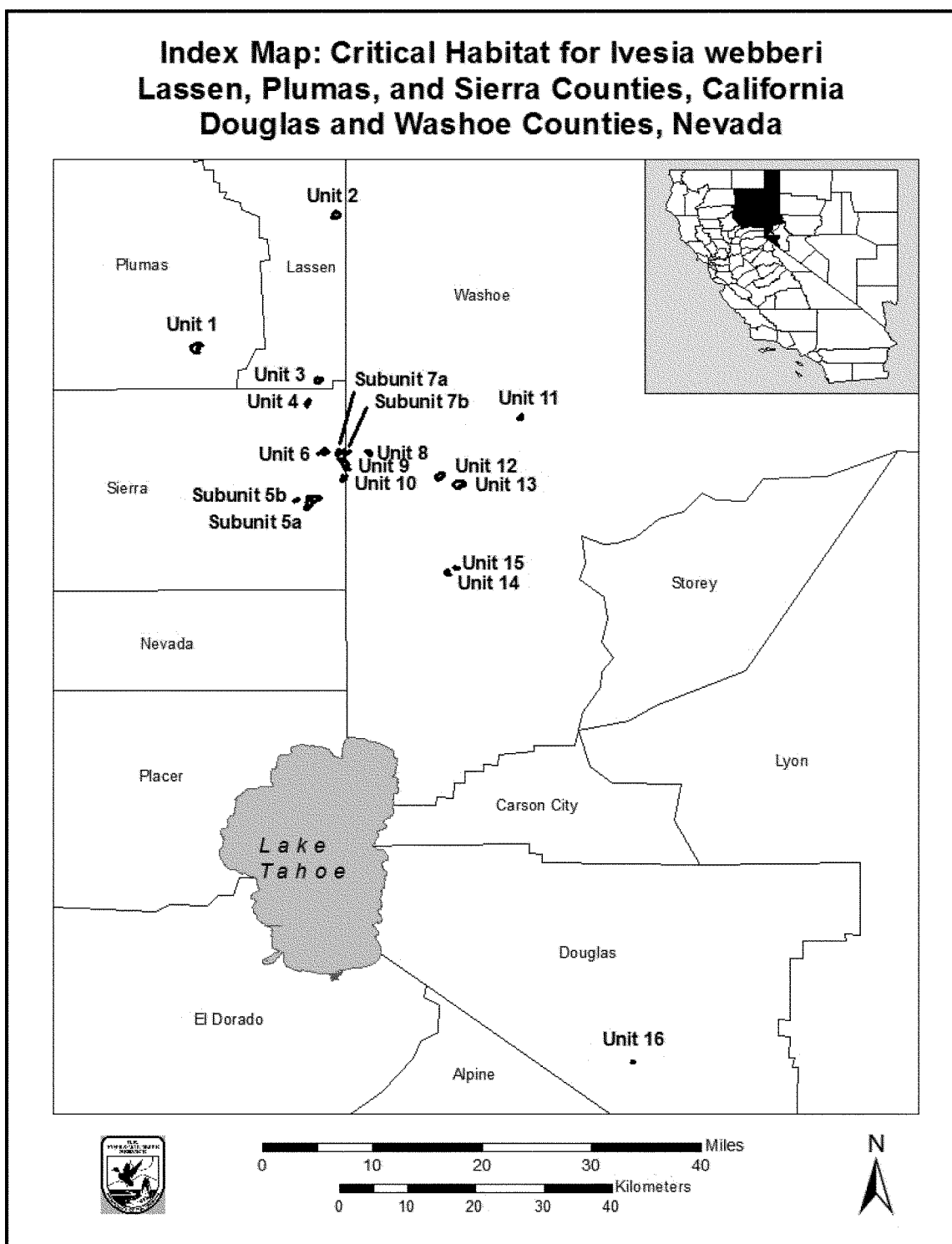
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Family Rosaceae: *Ivesia webberi*
(Webber’s ivesia)

* * * * *

(5) Index map follows:

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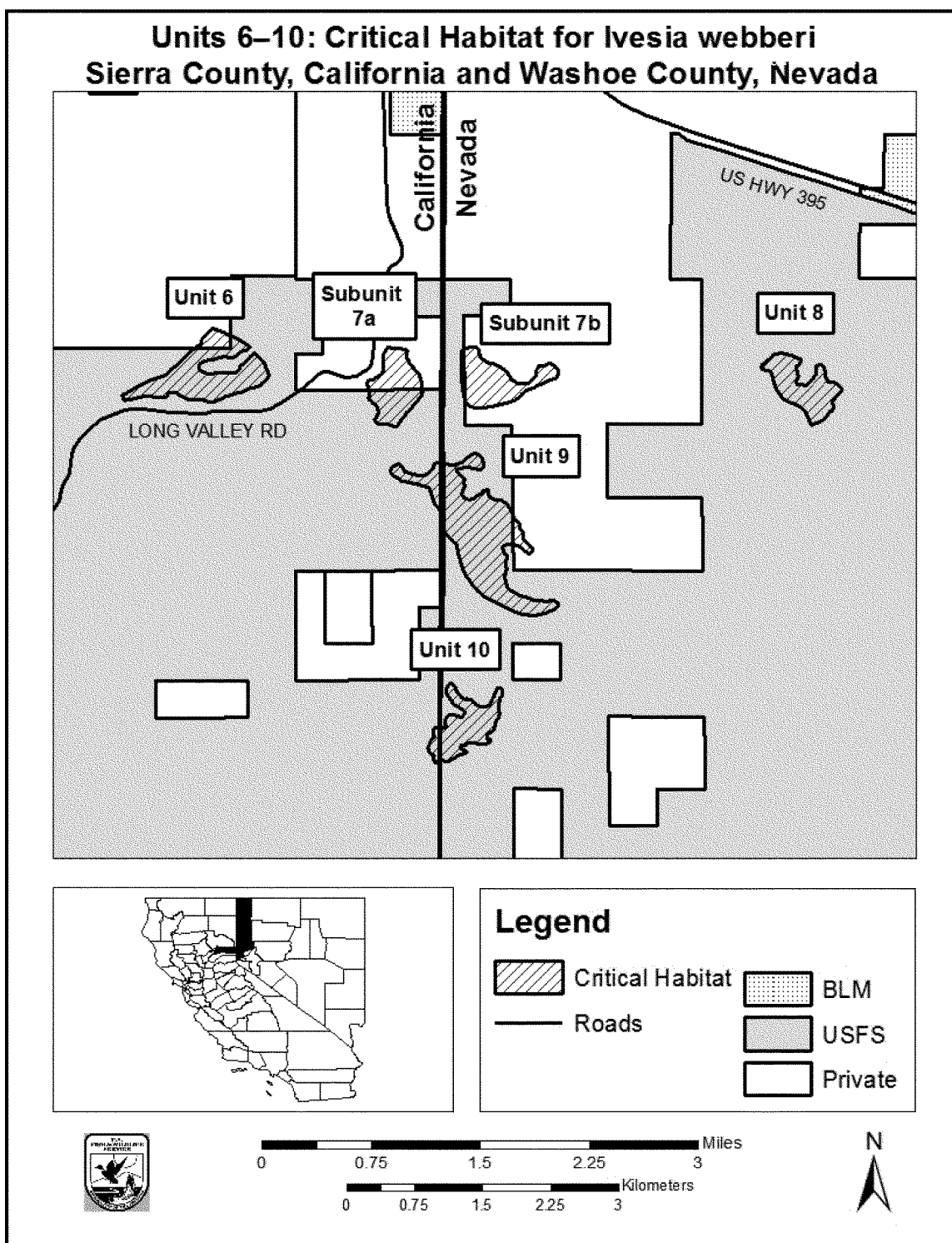
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(10) Unit 6, White Lake Overlook, Sierra County, California; Unit 7, Subunit 7a, Mules Ear Flat, Sierra County, California; Unit 7, Subunit 7b, Three Pine Flat and Jeffery Pine Saddle, Washoe County, Nevada; Unit 8, Ivesia

Flat, Washoe County, Nevada; Unit 9, Stateline Road 1, Washoe County, Nevada; and Unit 10, Stateline Road 2, Washoe County, Nevada: Critical habitat for *Ivesia webberi*, Sierra County, California, and Washoe County, Nevada.

(i) Unit 6 includes 109 ac (44 ha), Subunit 7a includes 65 ac (27 ha), Subunit 7b includes 68 ac (27 ha), Unit 8 includes 62 ac (25 ha), Unit 9 includes 193 ac (78 ha), and Unit 10 includes 66 ac (27 ha).

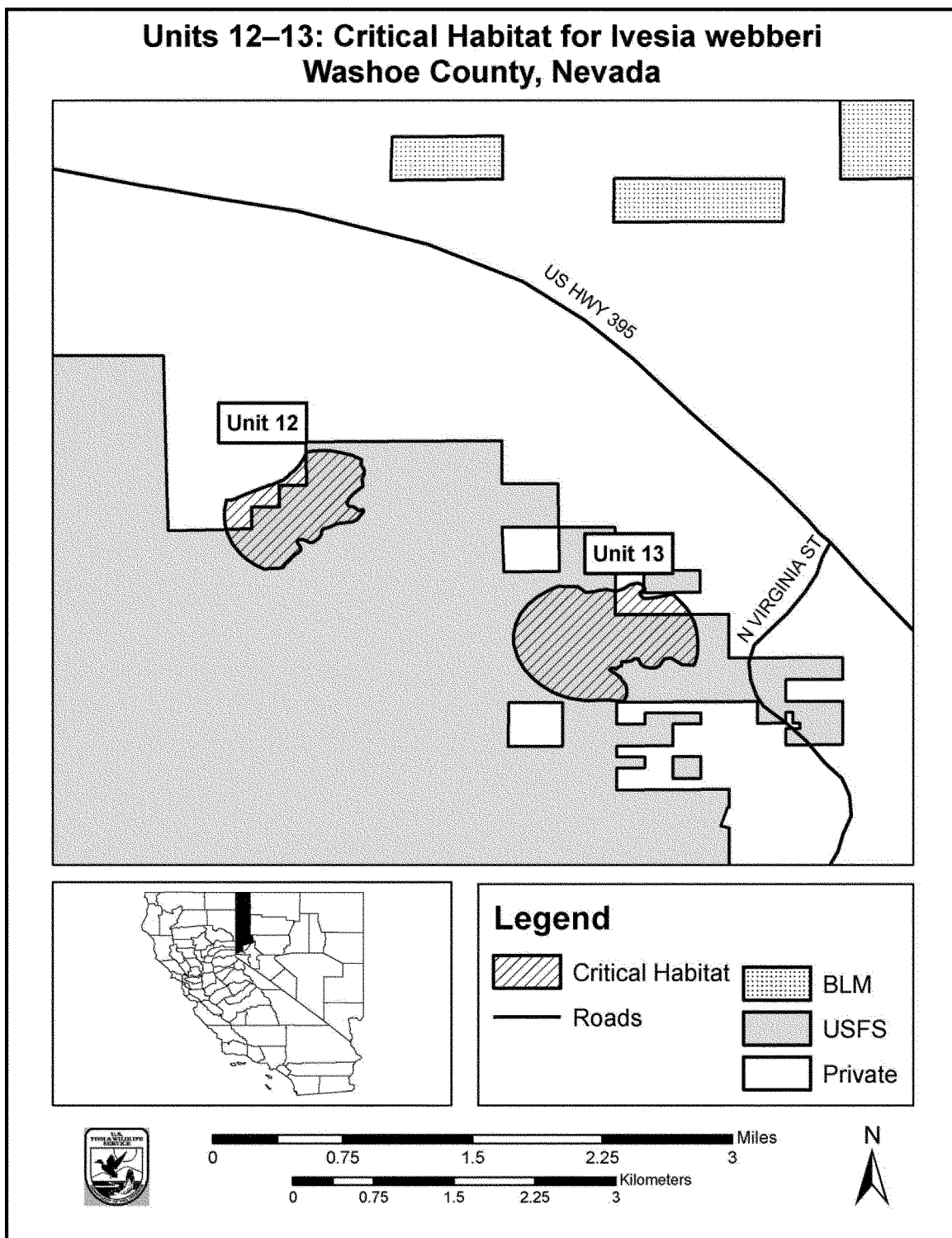
(ii) Map of Units 6 through 10 follows:



* * * * *

(12) Unit 12, Black Springs and Unit 13, Raleigh Heights: Critical habitat for *Ivesia webberi*, Washoe County, Nevada.

(i) Unit 12 includes 163 ac (66 ha), and Unit 13 includes 253 ac (103 ha).
 (ii) Map of Units 12 and 13 follows:



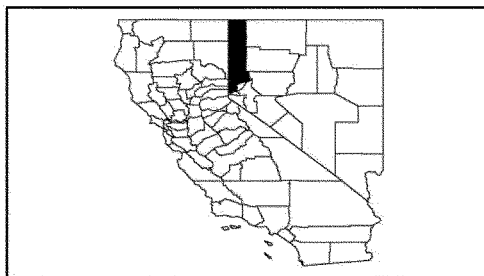
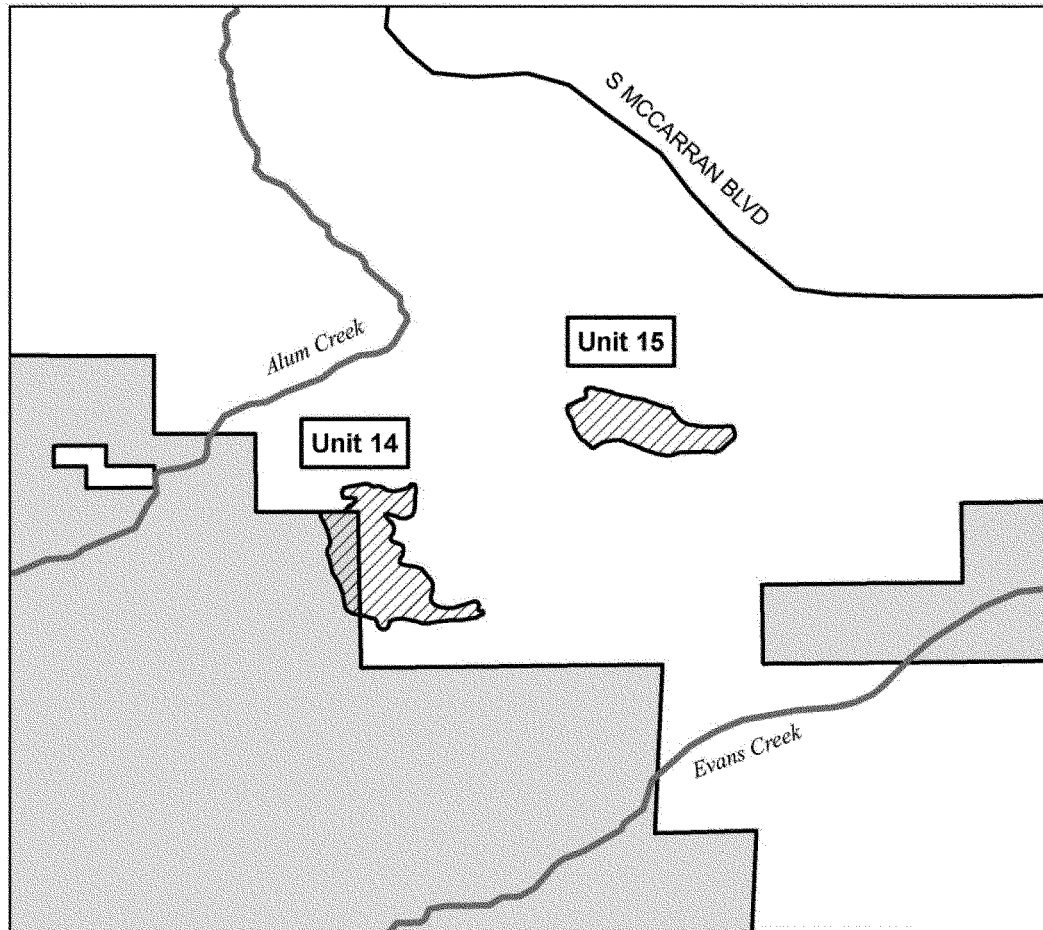
(13) Unit 14, Dutch Louie Flat and Unit 15, The Pines Powerline: Critical

habitat for *Ivesia webberi*, Washoe County, Nevada.

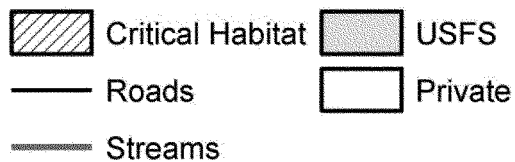
(i) Unit 14 includes 54 ac (22 ha), and Unit 15 includes 32 ac (13 ha).

(ii) Map of Units 14 and 15 follows:

Units 14–15: Critical Habitat for *Ivesia webberi* Washoe County, Nevada



Legend



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Dated: February 5, 2014.

Rachel Jacobson,

*Principal Deputy Assistant Secretary for Fish
and Wildlife and Parks.*

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