

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS-R8-ES-2007-0010; 92210-1117-0000-B4]

RIN 1018-AV04

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California taraxacum)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Poa atropurpurea* and *Taraxacum californicum* under the Endangered Species Act of 1973, as amended (Act). Approximately 2,489 acres (ac) (1,009 hectares (ha)) of land in San Bernardino and San Diego Counties, California, fall within the boundaries of the critical habitat designation for *P. atropurpurea*, and approximately 1,914 ac (775 ha) of land in San Bernardino County, California, fall within the boundaries of the critical habitat designation for *T. californicum*.

DATES: This rule becomes effective on September 15, 2008.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at <http://www.regulations.gov>. Supporting documentation we used in preparing this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760-431-9440; facsimile 760-431-5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

It is our intent to discuss only those topics directly relevant to the designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* in this final rule. For more information on the taxonomy, biology,

and ecology of *P. atropurpurea* and *T. californicum*, refer to the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006), the proposed critical habitat rule published in the **Federal Register** on August 7, 2007 (72 FR 44232), and the notice of availability (NOA) of the draft economic analysis (EA) published in the **Federal Register** on April 16, 2008 (73 FR 20600).

Previous Federal Actions

As discussed in the proposed rule (72 FR 44232, August 7, 2007), the Service agreed, as part of an April 20, 2007, settlement agreement, to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before July 27, 2007, and a final rule by July 25, 2008. The proposed critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum* were signed on July 25, 2007 and published in the **Federal Register** on August 7, 2007 (72 FR 44232). We also published a reopening of the public comment period and notice of public hearings, which were held in San Bernardino, California on January 10, 2008, on December 11, 2007 (72 FR 70284), and we published a NOA of the draft EA (dated April 9, 2008) of the proposed rule on April 16, 2008 (73 FR 20600).

For a discussion of additional Federal actions that occurred prior to the proposed designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum*, please refer to the "Previous Federal Actions" section of the proposed critical habitat rule (72 FR 44232, August 7, 2007) and the final listing rule (63 FR 49006, September 14, 1998).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* during three comment periods. The first comment period, associated with the publication of the proposed rule for these two species, opened August 7, 2007, and closed October 9, 2007 (72 FR 44232). We received two requests for a public hearing during this comment period. The second comment period associated with the publication of a notice of public hearings, which were held in San Bernardino, California on January 10, 2008, opened December 11, 2007, and closed to January 25, 2008 (72 FR 70284). The third comment period, associated with the publication of the notice of availability of the draft EA (dated April 9, 2008) of the proposed

designations, opened April 16, 2008, and closed May 16, 2008 (73 FR 20600). During these three public comment periods, we contacted appropriate Tribal governments; Federal, State, and local agencies and jurisdictions; scientific organizations; and other interested parties and invited them to comment on the proposed critical habitat designations for these two species and the associated draft EA.

During the first comment period, we received seven comments directly addressing the proposed critical habitat designations: one from a Federal agency; three from peer reviewers; and three from individual members of the public. During the second comment period and the January 10, 2008, public hearings, we received eight comments directly addressing the proposed critical habitat designations: five from local governments, two from organizations, and one from an individual member of the public. During the third comment period, we received four comments directly addressing the proposed critical habitat designations: one from a Federal agency, one from a Tribal government, one from a local government, and one from an individual member of the public. We received two comments directly addressing the draft EA, including one from a Federal agency and one from an individual member of the public.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region where the species occurs, and conservation biology principles. As noted above, we received responses from three of the peer reviewers.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Poa atropurpurea* and *Taraxacum californicum*. All comments received were grouped into general issue categories relating to the proposed critical habitat rule and draft EA for *P. atropurpurea* and *T. californicum* and are addressed in the following summary and incorporated into this final rule as appropriate.

Peer Reviewer Comments

Comment 1: The peer reviewers' comments were generally supportive of the proposed designations of critical habitat. The peer reviewers provided specific comments on each unit of

critical habitat. One peer reviewer provided comments primarily on *Poa atropurpurea*, one peer reviewer provided comments primarily on *Taraxacum californicum*, and the third peer reviewer provided comments on both species. Unit 3, Belleville Meadow, was cited as the most important site for *P. atropurpurea* by one peer reviewer and as the site containing the most vigorous population of *T. californicum* by another. Two commenters stressed the importance of understanding the threat caused to *T. californicum* by hybridization with the nonnative *T. officinale* and urged the development of a plan to remove *T. officinale* and hybrids from meadows where the two species co-occur. One peer reviewer indicated that the Service should investigate the viability and fitness of hybrid offspring as well as their breeding system so that appropriate management could be developed. Another peer reviewer stated that even when habitat for *T. californicum* is fenced or otherwise protected from disturbances, there would be a perpetual need to remove nonnative plants to protect *T. californicum* to provide for its recovery.

Our Response: The peer reviewers confirmed the importance of the areas that we identified as containing features essential to the conservation of each species and consequently delineated as critical habitat. Additionally, we added details about special management needs provided by the peer reviewers on topics such as hybridization in the "Special Management Considerations or Protection" section and the "Final Critical Habitat Designations" section of this rule.

Comment 2: Two peer reviewers provided comments on the size of the critical habitat units. One peer reviewer indicated we should consider using a buffer distance between 328 ft (100 m) and 3,280 ft (1,000 m) around known populations to delineate critical habitat. The peer reviewer stated that use of a buffer around the known populations would help protect the habitat of these two species and provide for their life history functions. The peer reviewer indicated that a larger buffer would: (1) Allow room for populations of these two plants to expand; (2) incorporate areas in which pollination and gene transfer could occur; and (3) allow a larger area in which the species could be protected from nonnative species by limiting nearby disturbance of habitat. Another peer reviewer stated that the extent of habitat included in critical habitat for Units 4 and 5 for *Poa atropurpurea* seemed too large when considering the

population sizes reported for these units.

Our Response: We believe that we captured in the proposed rule the appropriate extent of habitat in the units to be designated as critical habitat. Each critical habitat unit designated contains the physical and biological features essential to the conservation of each species and supports the primary constituent elements (PCEs) for these two species, including the known populations, montane meadow habitat, and the hydrologic features within montane meadows. The hydrologic features create the wet or mesic conditions that support these two species. As discussed in the "Criteria Used to Identify Critical Habitat" section, we delineated proposed critical habitat for *Poa atropurpurea* and *Taraxacum californicum* using the following criteria: (1) Areas occupied by individuals at the time of listing and areas currently occupied by these species; (2) areas containing one or more of the PCEs for these species (for example, montane meadow habitat); and (3) areas currently occupied by more than 10 individuals of either species. To capture the physical and biological features essential to the conservation of each species, we included meadow habitat within 328 ft (100 m) of known occurrences, and in most cases the entire montane meadow associated with designated occurrences. However, the mapping process we used does not include non-meadow habitat, such as Great Basin sage scrub or Jeffrey pine forest vegetation communities. We believe our criteria capture the physical and biological features essential to the conservation of *P. atropurpurea* and *T. californicum* and appropriately identify the areas that meet the definition of critical habitat. The peer reviewer suggested that designating additional land as buffers would allow for population expansion, pollination and gene flow, and management for nonnative species. However, we determined that our designation of the areas containing the physical and biological features fulfills these biological needs and is adequate to conserve these species (for a more detailed discussion see the "Criteria Used To Identify Critical Habitat" section).

In response to the peer review comment that some areas appear large in relationship to the size of the population, please refer to the "Criteria Used To Identify Critical Habitat" section of the rule for the explanation of how we identified those areas that contain the physical and biological features essential to the conservation of

Poa atropurpurea and *Taraxacum californicum* within the geographical area occupied by the species at the time of listing (which includes the wet meadow habitat that supports the populations). Applying the criterion to delineate the wet meadow habitat using the USFS-modeled potential habitat specific to each species (Volgarino *et al.* 2000a, pp. 1–2; 2000b, pp. 1–2) and aerial or satellite imagery resulted in differing sizes of critical habitat units based on the extent of wet meadow habitat in each unit.

Comment 3: One peer reviewer stated that he visited Unit 1, Pan Springs Meadow, several times since 1985 and observed dozens of *Taraxacum californicum* plants during some years. While the peer reviewer indicated that he had not extensively surveyed the area, he believes there are between 15 and 20 *T. californicum* plants in the area (Krantz 2008a, p. 1). The peer reviewer indicated that this unit has biogeographical significance to *T. californicum* because it represents one of the three largest remaining sites at the northeast end of Big Bear Valley. Within the northeast portion of Big Bear Valley are occurrences at Pan Hot Springs Meadow, Arrastre Flats, and North Baldwin Lake. The peer reviewer stated that the Arrastre Flats occurrence has not been observed for a number of years, despite several recent surveys in the area, and that the North Baldwin Lake occurrence has diminished to about 15 individuals. For these reasons, the reviewer believes we should designate Unit 1, Pan Hot Springs Meadow, as critical habitat for *T. californicum* as well as for *Poa atropurpurea*.

Our Response: We acknowledged in the proposed rule that the Pan Hot Springs Meadow contains occurrences of *Taraxacum californicum*; however, the data we had did not include the information provided by the peer reviewer. At the time of the proposed rule, we believed that our proposal adequately represented the habitat needed for the conservation of *T. californicum* throughout its range. We proposed critical habitat in Unit 2, which captures the montane meadow referred to by the peer reviewer as North Baldwin Lake. We did not include the habitat at Pan Hot Springs or Arrastre Flat because we did not have data to show that large populations (greater than 10 individuals) of *T. californicum* occupied these areas. Upon receipt of these peer reviewer comments, we reviewed the available information regarding *T. californicum* and determined that the montane meadow habitat in Pan Hot Springs Meadow does support a large population of *T.*

californicum and meets the definition of critical habitat for *T. californicum* (see “Summary of Changes from the Proposed Rule” and the “Final Critical Habitat Designations” sections below). In our NOA for the draft EA (73 FR 20600; April 16, 2008), we notified the public that we were considering the inclusion of Unit 1 as critical habitat for *T. californicum* and requested comment on the data that we received from the peer reviewer. We received information from the peer reviewer indicating that Pan Hot Springs Meadow supported 12 *T. californicum* plants this year. Therefore, we determined that Pan Hot Springs Meadow met our criteria for designating critical habitat, and we included this location within Big Bear Valley because it is believed to be the historical core area for both of these species (Soreng 2007, p. 1–2). The areas we included represent the largest populations that still occur for these two species. Although we concluded that Pan Hot Springs Meadow contains the features essential to the conservation of both *Poa atropurpurea* and *T. californicum*, we excluded Unit 1 from the designations of critical habitat under section 4(b)(2) of the Act (16 U.S.C. 1531 *et seq.*) because the benefits of excluding this area outweigh the benefits of including this area in critical habitat (see Comment 9 below and see “Exclusions Under Section 4(b)(2) of the Act” section).

Comment 4: Two peer reviewers commented on locations not included in the proposed rule that may be important to the long-term conservation of *Poa atropurpurea* and *Taraxacum californicum*. One peer reviewer indicated that montane meadow habitat southeast of Baldwin Lake in and around Shay Meadows and Lake Erwin may “harbor substantial stands of *P. atropurpurea*.” The reviewer indicated that this area may not have been surveyed because it is primarily privately owned land. The peer reviewer stated that we should pursue the possibility of surveying this area and consider ways to protect any substantial stands of *P. atropurpurea* that are found. Another peer reviewer expressed concerns that critical habitat was not proposed in the western portion of Big Bear Valley that was historically the core portion of the range for both of these species. The peer reviewer identified three privately owned parcels (China Gardens Meadow, Eagle Point Meadow, and Metcalf Meadow) containing small, extant populations of *P. atropurpurea* and *T. californicum* that were not included in the proposed critical habitat rule and stated that these

areas are significant to the overall distribution of both species.

Our Response: We believe that these final designations for each species accurately contain all specific areas meeting the definition of critical habitat for *Poa atropurpurea* and *Taraxacum californicum*.

As discussed in the “Criteria Used to Identify Critical Habitat” section of the proposed rule and this final rule, we delineated proposed critical habitat for *Poa atropurpurea* and *Taraxacum californicum* using the following criteria: (1) Areas occupied by individuals at the time of listing and areas currently occupied by these species; (2) areas containing one or more of the PCEs for these species (for example, montane meadow habitat); and (3) areas currently occupied by more than 10 individuals of either species. Application of these criteria captures the physical and biological features that are essential to the conservation of these species, identified as the species’ PCEs laid out in the appropriate quantity and spatial arrangement. Thus, not all areas supporting the identified PCEs will meet the definition of critical habitat.

The criteria we used resulted in a critical habitat designation that is representative of the diversity in each species’ range. The small populations of *Poa atropurpurea* and *Taraxacum californicum* at China Gardens Meadow, Eagle Point Meadow, and Metcalf Meadow are in the developed portions of Big Bear Valley. These areas may have once represented the core populations for these two species, but these populations are reduced, degraded, and fragmented to a point where we no longer believe they substantially contribute to the conservation of these two species. Populations in these meadows did not meet our criteria because no more than 10 plants are documented in each of these meadows. In the areas with no more than 10 plants, we believe it is unlikely that reproduction will occur with enough success for these populations to contribute to the long-term conservation of these species. We included the best representative habitat that remains in Big Bear Valley as critical habitat in these designations (Units 1 (excluded), 2 (designated), and 6 (designated)).

We did not designate critical habitat southeast of Baldwin Lake in and around Shay Meadows and Lake Erwin because we do not have data indicating that *Poa atropurpurea* or *Taraxacum californicum* occur in these areas or that these areas are otherwise essential for the conservation of the species. We believe that the lands we have identified

in this rule can adequately support the recovery of *P. atropurpurea* and *T. californicum* through appropriate conservation measures (see the “Special Management Considerations or Protection” section for details about the type of management needed for these species).

Comment 5: One peer reviewer stated that voucher specimens should be collected to verify the presence of *Poa atropurpurea* because, in the past, this species has been confused with other *Poa* species (see Curto 1992). Specifically, the peer reviewer did not believe there was adequate documentation of *P. atropurpurea* in Unit 13, Mendenhall Valley, from data provided in the proposed rule. The peer reviewer stated that a voucher specimen has not been collected from Mendenhall Valley since 1981.

Our Response: In general, we agree with the peer reviewers’ statement that the collection of voucher specimens is important to verify the presence of *Poa atropurpurea* in areas where the identification is not certain. We encourage repeated visits to confirm continued occupancy, but recommend that populations are vouchered approximately once every 10 years to reduce impacts to the populations. In cases where there are fewer than 20 individuals present, we recommend that no voucher is taken, and instead document the occurrences with photographs, field notes, and a data form. Collections should occur in accordance with all State and Federal regulations and according to standard herbarium practices described in Ross (1996, p. 19). Collections on Federal land require a permit under section 10(a)(1)(A) of the Act and would include sampling restrictions in accordance with the permit. Voucher specimens for this species should include portions of both male and female plants.

Although the last voucher of this population was collected in 1981, we have concluded that that Unit 13, Mendenhall Valley, was occupied by *Poa atropurpurea* at the time of listing as well as at the present time. In 1994, U.S. Forest Service (USFS) botanists documented the presence of 100 *P. atropurpurea* plants in Mendenhall Valley (Volgarino and Winter 1994, pp. 1–2; CNDDDB 2006a). Due to the peer reviewer’s comment, we contacted the Cleveland National Forest (CNF) and requested additional documentation on this population. They provided monitoring reports from 2001 and 2002 (Davis 2001, pp. 1–2; Davis 2002, p. 1; Winter 2002, pp. 1–5). In 2002, USFS botanists documented 175 *P.*

atropurpurea individuals in Mendenhall Valley (Davis 2002, p. 1; Winter 2002, pp. 1–5). Based on this information, we believe the population of *P. atropurpurea* is robust and conclude that the area that supports it meets our definition of critical habitat. We acknowledge the peer reviewers' suggestion that this occurrence should again be vouchered. We discussed this suggestion with the forest botanist at the CNF (Young 2008, p. 1) who recommended we obtain a voucher specimen of *P. atropurpurea* from Mendenhall Valley from USFS land in a year when the *P. atropurpurea* population in this area is relatively abundant.

Comment 6: Two peer reviewers expressed concern for the long-term persistence of *Taraxacum californicum* due to hybridization with the nonnative *T. officinale*. The peer reviewers expressed concern that hybrid individuals threaten the listed species through genetic introgression and possibly direct competition with the listed species. The peer reviewers urged the Service to address this issue. One peer reviewer indicated that he observed hybrid individuals in Unit 1 that displayed intermediate characteristics of *T. californicum* and *T. officinale*. Additionally, the peer reviewer stated that *T. officinale* is present in Units 1, 2, 3, and 12, and an active management program should be implemented to remove the nonnative species in these units.

Our Response: We agree that *Taraxacum californicum* is threatened by hybridization. The listing rule identified hybridization with the nonnative *T. officinale* as a threat to *T. californicum* at Cienega Seca Meadow (Unit 11) (63 FR 49006, pp. 49016–49017). Further, we discussed hybridization in the proposed rule in the “Background,” “Primary Constituent Elements,” and “Final Critical Habitat Designations” sections of the proposed rule (72 FR 44232, August 7, 2007) and specifically identified hybridization as a threat in units 5, 6, 7, 8, 9, 10, 11, and 12.

As discussed in the “Primary Constituent Elements” section of this rule and according to the San Bernardino National Forest's (SBNF) Meadow Habitat Management Guide, habitat invaded by *Taraxacum officinale* may result in hybridization with *T. californicum* and prevent population growth (SBNF 2002a, p. 113). Although *T. officinale* reproduces apomictically (production of viable seeds is not dependent on fertilization), it does produce fertile pollen that can fertilize *T. californicum* (SBNF 2002a,

pp. 24, 113). Moreover, the SBNF reported that *T. officinale* is present at all *T. californicum* occurrence locations, and plants that appear to be hybrids between the two species were observed by USFS botanists and others (SBNF 2002a, p. 113; Eliason 2007a, p. 4; Krantz 2007, pp. 1–2, 2008a, p. 1). However, individuals that appear as hybrids could be a result of morphological variation within *T. californicum*. Some scientists believe that observations of hybridization are not conclusive and could use further study (Ellstrand 2007, p. 1). We support further investigation of the hybridization between *T. californicum* and *T. officinale*. Although a formal study documenting that hybridization is occurring between *T. californicum* and *T. officinale* is lacking, we believe that field observations indicate that hybridization may be occurring between these two species (SBNF 2002a, p. 113; CNDDDB 2007, pp. 34, 36, 37; Krantz 2007, pp. 1–2, 2008a, p. 1). Therefore, we support the removal of *T. officinale* from montane meadows. This management action will benefit *T. californicum* by reducing direct competition from *T. officinale* and the potential threats of hybridization.

Comment 7: One peer reviewer requested that we clarify the contradiction between the statement that under section 7(a)(2) of the Act, critical habitat is purely a protective measure and does not require implementation of restoration, recovery, or enhancement measures (72 FR 44236) and the text stating that each unit may require special management considerations or protection to restore, protect, and maintain the primary constituent elements (72 FR 44237–44243).

Our Response: The latter statement relates to the definition of critical habitat under section 3(5)(A) of the Act and the former statement relates to how critical habitat is addressed under section 7(a)(2) of the Act. These two sections of the Act and the discussion on each in the proposed rule do not contradict each other. The Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon

a determination by the Secretary that such areas are essential for the conservation of the species. To support our determinations that specific areas meet the definition of critical habitat, we identify in this rule the types of special management considerations or protection the physical and biological features may require (see “Special Management Considerations or Protection” section). In this way, critical habitat can assist public agencies and private landowners in identifying management actions that will contribute to the conservation of federally listed species on those lands.

Section 7(a)(2) of the Act applies once critical habitat is identified and designated and requires Federal agencies to ensure that any action they fund, authorize, or carry out is not likely to destroy or adversely modify such designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, and the consultation requirement under section 7(a)(2) does not mandate that areas designated as critical habitat be affirmatively managed or protected.

Public Comments

Comment 8: Several commenters stated that the western portion of Unit 1, Pan Hot Springs Meadow, is above the high water line for Lake Baldwin and that this area does not regularly flood. Therefore, the commenters concluded that the area above the high water line for Baldwin Lake does not support the PCEs for *Poa atropurpurea* and they requested that this area be removed from critical habitat. During the third comment period, the Big Bear City Community Service District (BBCCSD) submitted a draft of the Pan Hot Springs Meadow Habitat Management Plan (HMP) for the areas that support *P. atropurpurea* and *Taraxacum californicum*. The HMP included data from a survey the BBCCSD initiated for *P. atropurpurea* and *T. californicum*, as well as three other federally listed plant species that occur in the Pan Hot Springs Meadow. The survey, which was conducted by Dr. Timothy Krantz, showed that the areas supporting *P. atropurpurea* and *T. californicum* in the Pan Hot Springs Meadow are limited to approximately 40 ac (16 ha) in the northwest and central portions of the area that was proposed as critical habitat Unit 1 (Krantz 2008b, pp. 3–8, 12, map). Additionally, we received information during the third comment period from the USFS indicating that no meadow habitat or known occurrences of *P.*

atropurpurea or *T. californicum* exist in the area proposed as critical habitat Unit 1 north of State Route 18, and that this area is not part of the hydrologic system supporting the meadow south of State Route 18 (Holtrop 2008, p. 1–2). One commenter stated that we could remove Unit 1 from critical habitat because recovery for *P. atropurpurea* can be achieved with the conservation measures that are in place at other areas where this species occurs. This commenter specifically indicated that other areas (Wildhorse Meadow, Holcomb Valley, and other non-specific locations) outside of Unit 1 provide adequate conservation for *P. atropurpurea*, and therefore Unit 1 is not essential to the conservation of the species.

Our Response: We appreciate the information provided by the commenters. Based on the information provided, we reanalyzed the boundaries for proposed critical habitat Unit 1 and found that the majority of the area that we proposed as Unit 1 lacks the physical and biological features essential for the conservation of *Poa atropurpurea* and *Taraxacum californicum*. We removed three locations from the area proposed as Unit 1 that do not contain the PCEs: (1) 24 ac (10 ha) that are elevated above the montane meadow and have species such as *Artemisia tridentata* (Great Basin Sage) that are too dry to support *P. atropurpurea* and *T. californicum* and do not contain the PCEs; (2) 19 ac (8 ha) north of State Route 18 where wet meadow habitat does not exist; and (3) 12 ac (5 ha) of drier meadow habitat where surveys confirmed that *P. atropurpurea* and *T. californicum* do not occur. Additionally, we removed 47 ac (19 ha) of extremely wet meadow habitat in the east portion of the area proposed as Unit 1 that regularly floods from Baldwin Lake because the area does not meet the criteria used to identify critical habitat, occurs outside of the potential dispersal distance from known occurrences, and therefore is not likely to contribute to the conservation of *P. atropurpurea* and *T. californicum*. We concluded that these lands are unlikely to support recovery or contribute to the long-term conservation for *P. atropurpurea* or *T. californicum*. Finally, we determined that 40 ac (16 ha) in Unit 1 meet the definition of critical habitat for *P. atropurpurea* and *T. californicum*; we refer to this area as “essential lands.” In our NOA for the draft EA (73 FR 20600; April 16, 2008), we notified the public that we received input during the public comment process on Unit 1 and that we would

possibly modify the critical habitat boundary of this unit to reflect the best scientific and commercial data available.

We believe the 40 ac (16 ha) of Unit 1 meet the definition of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* because this unit provides the physical and biological features essential to the conservation of these species in Big Bear Valley, an area that historically represented the core of both species’ distributions. Additionally, Pan Hot Springs Meadow is unique as it supports one of the few *P. atropurpurea* occurrences in Big Bear Valley that has not been severely degraded by development or other human impacts. However, the BBCCSD initiated long-term conservation of Unit 1 by drafting, adopting, and implementing the Pan Hot Springs Meadow HMP (discussed detail below, in response to Comment 9). Furthermore, the economic analysis indicates that there are disproportionate and potentially significant costs to the BBCCSD attributable to the designation of critical habitat. We balanced the benefits of including the remaining portion of Unit 1 in the designation for each species against the benefits of excluding it under section 4(b)(2) of the Act and determined that the benefits of exclusion outweigh the benefits of inclusion. Therefore, we excluded the 40 ac (16 ha) of essential lands now identified in Unit 1 from critical habitat (see also response to Comment 9 and “Exclusions Under Section 4(b)(2) of the Act” section).

Finally, in response to the commenter who indicated that Unit 1 might not meet the definition of critical habitat for *Poa atropurpurea* because other areas are already conserved for this species, we provide the following response. Although historical occurrences of *P. atropurpurea* are known from one location (Wildhorse Meadow) identified by the commenter, we did not include this area in our proposed designation because this species has not been observed at Wildhorse Meadow for several years, despite recent survey efforts. We do not have additional information regarding conservation for *P. atropurpurea* for the other areas identified by the commenter. Holcomb Valley supports *P. atropurpurea*, and we designated this area as critical habitat (referred to in this document as Unit 4: Hitchcock Meadow). We do not have data on the non-specific areas provided by the commenter to indicate that those areas are occupied by *P. atropurpurea* or contain the physical and biological features essential to the conservation of the species. A limited number of sites where *P. atropurpurea* occurs (for

example, on Forest Service and or Wildlands Conservancy lands) have minimal conservation measures in place (for example, limited grazing and control over public access). However, too few locations, including those under Federal ownership, receive the type of conservation protections needed to ensure the survival and recovery of *P. atropurpurea* and *Taraxacum californicum* (see “Special Management Considerations or Protection” section). Unauthorized and uncontrolled human access continues to threaten most montane meadows where these species occur, and in many meadows the hydrology has been altered to further threaten the survival of these species. Therefore, the existing conservation for *P. atropurpurea*, as highlighted by the commenter, does not affect our conclusion that the 40 ac (16 ha) of essential lands identified in Unit 1 meet the definition of critical habitat for *P. atropurpurea*.

Comment 9: Several commenters stated that the western portion of the area proposed as Unit 1, Pan Hot Springs Meadow, is the site of a future recreational park for the Big Bear community. The community park is planned in two phases: Phase One is located outside of the area proposed as Unit 1, and Phase Two is located within the area proposed as Unit 1. The commenters indicated that the development of Phase Two of the park would not impact the sensitive resources (for example, the habitat for *Poa atropurpurea*) in this area, but because the area proposed as critical habitat in Unit 1 was poorly delineated the designation of critical habitat would impact the ability of the BBCCSD to develop Phase Two of the proposed park. The commenters explained that the designation of critical habitat could, therefore, limit the recreational opportunities for the residents of and visitors to the Big Bear area. One commenter stated that the park may include a museum or interpretive signs to describe the traditions and history of Native Americans who historically inhabited the area and therefore may benefit the Native American community and others.

The commenters requested that we exclude the western portion of Unit 1 (or make accommodations in the final decision), so that the plans for the recreational park and cultural interpretation of the site are not impacted. One commenter stated that Unit 1 should be excluded from critical habitat because the benefits of exclusion outweigh the benefits of inclusion. As mentioned above in Comment 8, the BBCCSD submitted a draft HMP for the

areas in Unit 1 that support occurrences of *Poa atropurpurea* and *Taraxacum californicum* as well as three other federally listed plant species. The HMP outlines the preservation and management of the federally listed plants in Unit 1 (Pan Hot Springs Meadow) and the areas that are essential to the maintenance of the existing hydrological conditions (Krantz 2008b, p. 12). The commenter indicated that the HMP will provide for the long-term management and conservation of *P. atropurpurea* and *T. californicum* within the areas essential to these species. The commenter stated that exclusion of critical habitat would benefit this new partnership between the BBCCSD, the adjacent landowner, and several other stakeholders, including the Service, USFS, University of Redlands, and the San Manuel Band of Serrano Mission Indians. Additionally, the commenter believes that designation of critical habitat may impede the development of these partnership opportunities. Finally, the commenter indicated that in addition to the implementation of the HMP, the BBCCSD may pursue the creation of a Natural Community Conservation Plan or a mitigation bank to further protect this area.

Our Response: Under Section 4(b)(2) of the Act, designations of critical habitat are made on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact. The Secretary may exclude any area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

After determining all areas that meet the definition of critical habitat under section 3(5)(A) of the Act, we took into consideration the economic impact, the impact on national security, and other relevant impacts, of specifying any particular area as critical habitat. This analysis included the areas in Unit 1, which some commenters requested that we exclude from critical habitat. We worked cooperatively with the BBCCSD and the adjacent landowner in development of the HMP and long-term management of the entire Pan Hot Springs Meadow area. We provided comments on the HMP that the BBCCSD incorporated into the plan. This voluntary preservation and management plan on private lands addresses recovery needs for the two federally endangered plants addressed in these

critical habitat designations as well as three other federally-listed plant species that occur in Pan Hot Springs Meadow. The BBCCSD has also initiated discussions with the San Manuel Band of Serrano Mission Indians to include them as a partner and participant in the planning process, including development of an educational program for this area. We continue to work closely with the landowners in Pan Hot Springs Meadow through the development and implementation of the HMP and coordination on implementation of other conservation measures throughout the meadow area. We believe the partnership with the landowners and adjacent landowners will provide for the long-term conservation of *P. atropurpurea* and *T. californicum* in Pan Hot Springs Meadow. As a result, we evaluated the commitment to implementing the HMP and our partnership with the private landowners during our analysis for exclusion under section 4(b)(2) of the Act. Except to prohibit certain actions that occur in knowing violation of State law, the Act does not provide protections for federally-listed plants on private land, such as Pan Hot Springs Meadow, unless the actions on private land that may adversely affect listed plants involve a Federal nexus, and it is unlikely there would be a Federal nexus to trigger a section 7 consultation on the lands within Pan Hot Springs Meadow. As fully explained later in this rule, we excluded Unit 1 from the critical habitat designations under section 4(b)(2) of the Act (see "Exclusions Under Section 4(b)(2) of the Act" section for details).

Comment 10: One commenter stated that he owns land within Unit 1, Pan Hot Springs Meadow, which contains wells producing water from geothermal sources. This landowner stated that he also owns the water rights associated with the wells. The commenter indicated during the public hearing and in an additional comment letter submitted during the third comment period that he would dedicate water from his private source to maintain the hydrology that is critical to supporting *Poa atropurpurea* and *Taraxacum californicum* in Pan Hot Springs Meadow. The commenter indicated that he would like to participate and contribute his support to the HMP that the BBCCSD has developed. The landowner also provided us with information about some of his future development plans for his land adjacent to Pan Hot Springs Meadow, indicating that his plans would proceed in a way that protects the meadow habitat and associated flora and fauna, as well as

maintain the current hydrology of Pan Hot Springs Meadow.

Our Response: The Service is committed to working with landowners in Unit 1 to conserve *Poa atropurpurea* and *Taraxacum californicum* and the PCEs within this unit and applauds the initiative taken by both the BBCCSD and this private landowner to conserve the Pan Hot Springs Meadow. We excluded Unit 1 from critical habitat as discussed above in the response to Comments 8 and 9. We believe that development projects near the Pan Hot Springs Meadow will incorporate conservation measures to maintain meadow habitat and the hydrology of the meadow. In the process of finalizing the Pan Hot Springs Habitat Management Plan, the landowner who made the above comments actively participated in the review of the HMP, is committed to implementing of the HMP, and is committed to conservation of the Pan Hot Springs Meadow. The BBCCSD and this landowner plan to work with other partners in the adaptive management of Pan Hot Springs Meadow for the benefit of *P. atropurpurea* and *T. californicum*. The landowner's commitment made in his public comments on this rule indicate that the use or development of his geothermal wells (otherwise known as Pan Hot Spring) will help maintain the hydrological conditions within the range of what is considered natural for this meadow. By returning clean water to the meadow ecosystem, this action will help ensure that the hydrological processes that help maintain the meadow will be preserved. As stated above, in the response to Comment 9, we balanced the benefits of inclusion against the benefits of exclusion and determined that the benefits of exclusion outweigh the benefits of inclusion for those areas within the Pan Hot Springs Meadow. Therefore, we have excluded Unit 1 from critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section).

Comment 11: One commenter stated that the designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* were flawed because some known occurrences of these two species were not proposed as critical habitat. The commenter requested that we include all occupied occurrences in the critical habitat, or provide scientific reasons for not including specific areas. Additionally, the commenter cited Leppig and White (2006) to demonstrate that peripheral populations are generally small in size, but still considered important for conservation purposes.

Our Response: The commenter did not provide any new data to indicate

that the information we provided in the proposed critical habitat designations was incorrect or incomplete. The commenter listed all areas historically occupied by these species that we had not included in the proposed critical habitat and requested that we include these areas. We are unaware of any data on population size for most historical occurrences. Without recent information about the status and size of a population, we are unable to determine that these lands satisfy the criteria we identify in this rule for critical habitat or to discern the importance of these particular locations to the overall conservation of these species. We are required to use the best scientific and commercial data available to designate critical habitat. Thus, we developed this critical habitat based on verifiable field observations and documentation of the condition of occupied habitat (CNDDDB 2005a, 2005b, 2006a, 2006b; USFS 2002a). Additionally, we included peripheral populations in these designations as described in Leppig and White (2006, p. 264). For both species we included occupied meadow habitat at the edges of the range and at the highest and lowest occurrences. For additional information about why we did not include all occupied habitat in these designations, see our response to Comment 4 and the discussion in the rule below under "Criteria Used To Identify Critical Habitat."

Comment 12: One commenter stated that the proposed designations are flawed because they do not include unoccupied habitat for recovery, and that without including some suitable, but unoccupied, habitat (areas with one or more of the PCEs) in the critical habitat designations to promote the recovery of *Poa atropurpurea* and *Taraxacum californicum*, the Service will not be able to meet the Act's recovery goals and mandate.

Our Response: We identified areas within the geographical range of *Poa atropurpurea* and *Taraxacum californicum* that were occupied at the time of listing and contain the physical and biological features essential to the conservation of these species that may require special management considerations or protection. We designate critical habitat in areas outside the geographical area presently occupied by the species only when such a designation would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). Accordingly, when the best scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we cannot

designate critical habitat in areas outside the geographical area occupied by the species. The critical habitat that we identified for *P. atropurpurea* and *T. californicum* represents areas currently occupied by for these species. The species are also well represented in the occupied habitat designated as critical habitat (see the responses to Comment 2 and 3, above). Therefore, consistent with the Act and its implementing regulations, we are not designating any lands outside the area currently occupied by *P. atropurpurea* and *T. californicum* because at this time we believe that the occupied areas we have designated are adequate to ensure the conservation of the species. Therefore, we have determined that there are no unoccupied areas that are essential for the conservation of the species.

Comments from Other Federal Agencies

Comment 13: The USFS provided specific information regarding areas in Unit 14 and Unit 15 that do not support the PCEs for *Poa atropurpurea*. The USFS stated that Unit 14 (as proposed) included areas that are developed as campgrounds and recreational residences. They also stated that portions of Unit 14 are dense Jeffery Pine forest rather than meadow habitat. The USFS indicated that Unit 15 (as proposed) included red shank, chamise, and oak woodland vegetation types in addition to meadow habitat. The USFS requested that we remove areas from the proposed designations that do not support the PCEs for *P. atropurpurea* and requested that the areas outside of the meadow habitat not be designated as critical habitat.

Our Response: We received additional data from the USFS in response to their comment, including maps of the vegetation in and around the proposed critical habitat units. We also conducted site visits with staff from the CNF on January 24, 2008, and March 28, 2008. We are in agreement with the USFS and found that some areas in proposed Units 14 and 15 do not contain the features essential to the conservation of *Poa atropurpurea*. Therefore, we removed approximately 301 ac (122 ha) of forested habitat in Unit 14 and approximately 66 ac (26 ha) of oak woodland, sage brush scrub, chaparral, and dry meadow habitat from Unit 15 and revised our mapping accordingly to reflect the revised unit boundaries. As a result of these revisions, Unit 14 decreased by 301 ac (122 ha) and now totals 788 ac (319 ha), and Unit 15 decreased by 66 ac (26 ha) and now totals 36 ac (15 ha).

Comment 14: The USFS commented that laws, regulations, policies, and

Land Management Plan (LMP) direction currently in place provide protection at least equivalent to the protection that a critical habitat designation would provide. The USFS requested that lands proposed as critical habitat for *Poa atropurpurea* and *Taraxacum californicum* in the SBNF and the CNF be excluded from the final designations of critical habitat. They stated that their LMP incorporates management direction that provides sufficient protection and management for *P. atropurpurea* and *T. californicum* and the habitat for these two species, and that the section 7 consultation on the LMP resulted in the Service coming to a similar conclusion, which resulted in the issuance of a non-jeopardy biological opinion (Service 2005, pp. 203–207, 213–219). Additionally, Appendix H of the LMP includes the "Meadow Habitat Management Guide" for the SBNF (SBNF 2002a) and the "Habitat Management Guide for the Sensitive Plant Species: *Delphinium hesperium* ssp. *cuyamaca*, *Lilium parryi*, *Limnanthes gracilis* var. *parishii*, and *P. atropurpurea*, in Riparian Montane Meadows" for the CNF (CNF 1991). The USFS commented that designation of critical habitat on SBNF and CNF lands would not provide any additional benefit to the conservation of the species or their habitat because all site-specific projects proposed by the SBNF and CNF are subject to section 7(a)(2) consultation with the Service. The USFS stated that the designations would unnecessarily add to their analysis burden by requiring SBNF and CNF to make a determination of effect regarding critical habitat when consulting under section 7 of the Act. The USFS acknowledged their responsibility to conserve listed species and stated that they will continue to provide necessary management, regardless of the outcome of the final critical habitat rule.

Our Response: We determined that National Forest lands contain the physical and biological features essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum*, and meet the definition of critical habitat (see "Criteria Used to Identify Critical Habitat" section below). We acknowledge that the revised LMP will benefit *P. atropurpurea* and *T. californicum* and their habitat. The LMP contains general provisions for species conservation and suggests specific management and conservation actions that will benefit these species and the physical and biological features essential to their conservation. Implementation of the LMP should

address known threats to these species on National Forest lands. However, the LMP is a guidance document and does not require or assure funding for management actions for those measures outlined in the plan. Additionally, the LMP does not preclude projects from occurring outside of the framework of the plan that could negatively impact areas proposed as critical habitat. We appreciate and commend the efforts of the USFS to conserve federally listed species on their lands.

The Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. We have considered the request from the SBNF and the CNF that we exclude their lands because it would unnecessarily add work in the future to determine the effect regarding critical habitat for actions on their lands and the fact that they had already completed consultation under section 7(a)(2) of the Act on their revised LMP.

As part of our section 7 consultation with the USFS on the LMP for the SBNF and the CNF, the USFS has already consulted on various activities carried out on National Forest lands including: Roads and trail management; recreation management; special use permit administration; administrative infrastructure; fire and fuels management; livestock grazing and range management; minerals management; and law enforcement. In our 2005 biological opinion on the LMP, we determined that implementation of the plan was not likely to jeopardize the continued existence of *Poa atropurpurea* or *Taraxacum californicum* (Service 2005, pp. 202–207, 213–219). Since critical habitat has not been previously proposed or designated for these species, it is anticipated that the consultation with the USFS regarding their current LMP will be reinitiated. However, because the USFS has already consulted with us on potential impacts to these species related to the activities outlined in the LMP, the USFS can supplement its analysis for those activities already analyzed in the LMP with the additional analysis required for critical habitat areas. We do not believe that this additional analysis would place an undue burden on the USFS in this case.

Based on the record before us, we have elected not to exclude these lands

and are designating National Forest lands that meet the definition of critical habitat for *Poa atropurpurea* and *Taraxacum californicum*. We will continue to consider on a case-by-case basis in future critical habitat rules whether to exclude specific lands from such designation when we determine that the benefits of such exclusion outweigh the benefits of their inclusion.

Comments from the San Manuel Band of Serrano Mission Indians

Comment 15: The San Manuel Band of Serrano Mission Indians expressed opposition to the proposed rule because: (1) we misidentified the San Manuel Band of Serrano Mission Indians as the “San Miguel Band of Mission Indians” in the NOA for the draft EA that published in the **Federal Register** on April 16, 2008 (73 FR 20600); (2) we did not adequately recognize the traditional legal rights of the San Manuel Band of Serrano Mission Indians by failing to recognize the San Manuel Band of Serrano Mission Indians’ consistent historical and traditional use of the area identified as proposed Unit 1 and surrounding areas, which have not been relinquished or abandoned; (3) we did not incorporate the policy directive of Executive Order (E.O.) 13007 by taking into account the unique and specific issues of the San Manuel Band of Serrano Mission Indians, which include traditional, religious, and cultural rights identified in proposed Unit 1 and surrounding areas; and (4) the proposed rule does not sufficiently incorporate our responsibility to maintain the government-to-government consultation policy as described in the Secretarial Order No. 3206, dated June 28, 2004.

Our Response: With regard to the inadvertent misidentification of the San Manuel Band of Serrano Mission Indians in the April 2008 NOA for the draft EA, although we became aware of this error just prior to the publication of the NOA, we were unable to correct the name in the published document; however, we did correctly identify the San Manuel Band of Serrano Mission Indians in the media bulletin and other public outreach materials that accompanied publication of the NOA. Although we certainly regret the accidental misidentification of the San Manuel Band of Serrano Mission Indians in the NOA, it did not materially affect the biological rationale behind the initial proposal of critical habitat. In this final rule we correctly identify the San Manuel Band of Serrano Mission Indians.

It was not our intent to disregard the presence of the Tribal resources that occur in the vicinity of Unit 1 of the

proposed critical habitat. Following publication of the August 7, 2007, proposed rule (72 FR 44232), a private citizen presented us with information identifying historical, religious, and cultural resources important to the San Manuel Band of Serrano Mission Indians in proposed Unit 1, although these lands are not specifically part of the Tribal Trust lands of the San Manuel Band of Serrano Mission Indians. In the April 16, 2008, NOA for the draft EA (73 FR 20600), we specifically solicited comments from the San Manuel Band of Serrano Mission Indians regarding the potential impacts of the proposed rule on the San Manuel Band of Serrano Mission Indians. We requested this input from the San Manuel Band of Serrano Mission Indians in accordance with Secretarial Order 3206 section 3(B)(4) and E.O. 13007. On April 15, 2008, we transmitted a letter to the San Manuel Band of Serrano Mission Indians indicating our interest in discussing the proposed designations of critical habitat and requested information from the San Manuel Band of Serrano Mission Indians that would contribute to the decision process. On May 12, 2008, we received an electronic mail response to our letter indicating that the San Manuel Band of Serrano Mission Indians would like to coordinate with us to discuss the critical habitat designations. We subsequently met with representatives of the San Manuel Band of Serrano Mission Indians. Through this coordination, we believe we addressed the concerns of the San Manuel Band of Serrano Mission Indians in this final rule. As a result of our coordination and analysis of all information available, we concluded that the designation of critical habitat would not adversely impact the San Manuel Band of Serrano Mission Indians. We recognize that the San Manuel Band of Serrano Mission Indians’ ancestral lands include the San Bernardino Mountains, including areas that we have designated as critical habitat. From our discussion with the representatives of the San Manuel Band of Serrano Mission Indians, we do not believe that activities that the San Manuel Band of Serrano Mission Indians regularly conducts on federally owned lands included in these designations will negatively impact the PCEs or adversely modify critical habitat. We do not believe that these activities will require a section 7 consultation due to the designation of critical habitat. The designation of critical habitat will not impose any regulatory or restrictive authority over the San Manuel Band of Serrano

Mission Indians nor change access to or restrict Tribal activities on designated lands. Additionally, we determined that the benefits of exclusion outweigh the benefits of inclusion for the essential lands within Unit 1 identified in this rule and covered by the HMP, which includes historical, religious, and cultural resources important to the San Manuel Band of Serrano Mission Indians, and we excluded Unit 1 from critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section).

Comments Related to the Draft Economic Analysis

Comment 16: One comment from the USFS stated that while the draft EA quantified one formal section 7 consultation on a revision of the LMP for both the SBNF and CNF, the two national forests will conduct these consultations separately, and that the CNF portion of the ongoing effects consultation will be combined with the informal consultation on the CNF's livestock grazing program in Units 13, 14, and 15. The comment further stated that the formal section 7 consultation on a revision of the LMP in the SBNF will cover existing ongoing effects from mining related activities in the national forest, and any future consultations would be driven by proposed plans of operations. Therefore, the formal consultation on active mining claims in the SBNF quantified in the draft EA should be combined with the consultation on a revision of the LMP in the SBNF.

Our Response: Discussions with relevant USFS personnel clarified that the SBNF and the CNF will consult separately on a revision of the LMP. However, the consultation involving the CNF will also be a formal consultation and separate from the consultation on its livestock grazing program. It was further clarified that both consultations involving the CNF are likely to occur in 2009. The discussions also indicated that the formal consultation on a revision of the LMP will cover existing ongoing effects from mining related activities in the SBNF. Sections A.4 and ES.1.3 in the revised EA have been modified to reflect these changes along with relevant changes to administrative costs in the various tables and figures.

Comment 17: One commenter stated that the draft EA does not address the potential impact of designating Unit 1 as a critical habitat on plans for developing the property (Pan Hot Springs). The commenter indicated that these plans include building a new hotel on the property in which the geothermal-water-supplied pools would be a major attraction. The commenter further

indicated that a water sales business has been in operation since 1997, selling as much as one million gallons a day from the springs on the property.

Our Response: Sections 3.1.4 and 8.1 in the draft EA acknowledge the recreational and commercial development plans of the owner of Pan Hot Springs in Unit 1 as communicated by personnel from agencies in the area. During the research and drafting period of the draft EA, despite repeated attempts to contact the landowner, ENTRIX was not able to directly speak with him and confirm the cited plans. Based on the information provided by the landowner in the comment letter, it appears that the planned developments by the landowner would be on the portion of the property that was not included in the proposed critical habitat designation, and it is not clear how development plans and the continued sale of water for commercial purposes will be impacted by the designations of critical habitat, if at all. Therefore, while relevant text in the revised EA has been modified to add the additional information, no changes to anticipated impacts from the designations of critical habitat have been made based on the comment.

The final EA indicates that there are disproportionate and potentially significant costs to the BBCCSD attributable to the designation of critical habitat. In light of these costs, the partnership between the Service, the BBCCSD, and this landowner, and the BBCCSD's commitment to manage and conserve the physical and biological features essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum* as discussed in response to comment 9, we evaluated the area within Unit 1 (as defined in this final rule) for exclusion under Section 4(b)(2) of the Act. We balanced the benefits of inclusion against the benefits of exclusion and determined that the benefits of exclusion outweigh the benefits of inclusion. Therefore, we excluded the area within Unit 1 from critical habitat (see response to Comment 9 and "Exclusions Under Section 4(b)(2) of the Act" section) and any economic impact associated with the designations of critical habitat in Unit 1 should be alleviated.

Summary of Changes From Proposed Rule

On August 7, 2007, we proposed to designate approximately 3,014 ac (1,221 ha) of land for *Poa atropurpurea* within San Bernardino and San Diego counties, California, and approximately 1,930 ac (782 ha) of land for *Taraxacum californicum* within San Bernardino

County, California (72 FR 44232). In this final rule, we concluded that 2,529 ac (1,025 ha) meet the definition of critical habitat for *P. atropurpurea* and that 1,954 ac (791 ha) meet the definition of critical habitat for *T. californicum*. We excluded all essential habitat in Unit 1 under section 4(b)(2) of the Act. Therefore, we are designating approximately 2,489 ac (1,009 ha) of critical habitat for *P. atropurpurea* and approximately 1,914 ac (775 ha) of critical habitat for *T. californicum*. This section presents the differences between what was proposed as critical habitat and what is included in these final designations.

(1) In light of comments received, we re-evaluated the area proposed as critical habitat Unit 1. We reviewed data in our files and conferred with botanists familiar with the species and montane meadow habitat.

(A) New information received indicated that this unit meets our criteria for designating critical habitat for *Taraxacum californicum*. Prior to the publication of the proposed rule, we did not believe that more than 10 *T. californicum* individuals were present in Unit 1. We received information from one peer reviewer that more than a dozen *T. californicum* had been observed in Unit 1 on several occasions. In recent surveys, 12 *T. californicum* plants were documented in Unit 1 (Krantz 2008b, p. 7). This new information indicated that the area is occupied by a successfully reproducing occurrence of *T. californicum* that is essential to the conservation of this species. Therefore, Unit 1 meets the criteria for critical habitat as discussed for *T. californicum*.

(B) We concluded that some areas mapped in the proposed critical habitat designation for Unit 1 do not contain the PCEs (see "Primary Constituent Elements" section) or otherwise did not meet our criteria for designating critical habitat for either species (see "Criteria Used to Identify Critical Habitat" section below). We removed three areas from the proposed critical habitat Unit 1 that do not contain the PCEs: (1) 24 ac (10 ha) that are elevated above the montane meadow and contain species such as *Artemisia tridentata* (Great Basin Sage) that are too dry to support *P. atropurpurea* and *T. californicum* and do not contain the PCEs; (2) 19 ac (8 ha) north of State Route 18 where wet meadow habitat does not exist; and (3) 12 ac (5 ha) of drier meadow habitat where surveys confirmed that *P. atropurpurea* and *T. californicum* do not occur and PCEs were absent. Additionally, we removed 47 ac (19 ha) of extremely wet meadow habitat in the

eastern portion of the area proposed as Unit 1 that regularly floods from Baldwin Lake. This area is too wet to support *P. atropurpurea* or *T. californicum*; therefore, the area does not meet the criteria used to identify critical habitat. Although this area may contain the physical and biological features essential to the conservation of the species, this area is unoccupied and recent surveys by species experts confirm that this area occurs outside of the potential dispersal distance from known occurrences. Therefore, we concluded that these lands are unlikely to support recovery or contribute to the long-term conservation for *P.*

atropurpurea or *T. californicum*. We determined that 40 ac (16 ha) in Unit 1 meet the definition of critical habitat for *P. atropurpurea* and *T. californicum*; we refer to this area as “essential lands.”

(C) The BBCCSD drafted a HMP for Unit 1, which covers the approximately 40 ac (16 ha) of essential lands identified in this rule within Unit 1. The HMP was approved by the Board of Directors of the BBCCSD on July 7, 2008, and we received assurances that the HMP will be implemented as outlined. Other private landowners coordinated with the BBCCSD and are committed to managing the lands essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum* for the long-term benefit of these species. As a result of our partnership with the BBCCSD; the development of the HMP; the partnership between BBCCSD and the landowner of the main spring in Unit 1; and the economic impacts to BBCCSD attributed to the designation of critical habitat as analyzed in the final EA, we are excluding the 40 ac (16 ha) of essential lands covered by the HMP from Unit 1. We determined that the benefit of excluding these lands from critical habitat outweighs the benefit of including them in critical habitat and that excluding these lands will not result in the extinction of either *P. atropurpurea* or *T. californicum* (see “Exclusions Under Section 4(b)(2) of the Act” section).

(2) We removed 17 ac (7 ha) of forested terrain along the eastern portion of Unit 11. Forested habitat cannot support *Poa atropurpurea* or *Taraxacum californicum* and does not contain the physical and biological features essential to the conservation of the species. We are designating 81 ac (33 ha) in Unit 11 for *P. atropurpurea* and *T. californicum*.

(3) In light of comments made during the public comment period, we re-evaluated the areas proposed as critical habitat in Units 14 and 15 (see comment

13 and response above). We reviewed maps and other material provided by the USFS, conducted a site visit at these two areas with staff from the CNF, and concluded that some areas proposed as critical habitat for *Poa atropurpurea* do not contain the physical and biological features, could not support *P.*

atropurpurea occurrences, and do not meet the definition of critical habitat. Therefore, we revised our mapping to more accurately capture the PCEs in these two units. We removed 301 ac (122 ha) of densely forested habitat from Unit 14 and 66 ac (26 ha) of oak woodland, sage brush scrub, chaparral, and dry meadow habitat from Unit 15. As a result of these revisions, we are designating 788 ac (319 ha) in Unit 14 and 36 ac (15 ha) in Unit 15 for *P. atropurpurea*. These revisions constitute a total reduction of 367 ac (148 ha) from the proposed critical habitat for *P. atropurpurea*.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) 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

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(ii) 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.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing actions that are likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by

private landowners. Where a landowner requests Federal agency funding or authorization for a discretionary action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species. These areas contain the PCEs, which are laid out in the appropriate quantity and spatial arrangement for the conservation of the species. Under the Act, we can designate as critical habitat areas outside the geographical area occupied by the species at the time it was listed only when we determine that the best available scientific data demonstrate that such areas are essential for the conservation of the species.

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

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed

journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not contribute to the recovery of the species.

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

Methods

As required by section 4(b) of the Act, we use the best scientific data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum* respectively, and areas outside the geographical area occupied at the time of listing that are essential for the conservation of *P. atropurpurea* and *T. californicum* individually. We have also reviewed available information that pertains to the habitat requirements of these species. These sources of information included, but were not limited to, the proposed (60 FR 39337; August 2, 1995) and final (63 FR 49006; September 14, 1998) rules to list these species; data and information published in peer-reviewed articles; data and information contained in reports prepared for or by the USFS;

discussions with species experts including USFS personnel; data and information presented in academic research theses; data provided by the California Natural Diversity Database (CNDDDB); herbarium records; data submitted during section 7 consultations; and regional Geographic Information Systems (GIS) data.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, and rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements (PCEs) required for *Poa atropurpurea* and *Taraxacum californicum* from the biological needs of each species as described in the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006), the proposed critical habitat rule published in the **Federal Register** on August 7, 2007 (72 FR 44232), and information below.

Space for Individual and Population Growth, and Nutritional Requirements

Open-canopy forested areas supporting relatively undisturbed, wet meadows subject to flooding during wet years support growth, reproduction, and pollination (by wind for *Poa atropurpurea*, by insects for *Taraxacum californicum*) for both species (SBNF 2002a, p. 109; Curto 1992, p. 12). Additionally, *T. californicum* occurs in smaller forest openings with seeps, springs, or creeks. Due to the relatively small size of these forest openings, these areas are not generally mapped or named as meadows. We have referred to these areas as “un-named meadow areas” (see Tables 1 and 2 in the August

7, 2007, proposed rule (72 FR 44232)). Both species require non-compacted or non-eroded soils for reproduction, growth, and survival (Curto 1997, p. 12). Invasive, nonnative species may compete for open, bare ground and reduce space available for growth (Curto 1992, p. 10). Invasive, nonnative species can also alter the habitat for these two species by creating thatch that covers the bare ground and by using water resources that *P. atropurpurea* and *T. californicum* need for survival. Therefore, these species require micro-habitats free of nonnative, invasive competitors. *Poa atropurpurea* is *dioecious*, meaning that individual plants of this species are either male or female. Individual male and female plants require an occupied meadow for successful, sexual reproduction to occur. Habitat invaded by nonnative species may not provide ideal growing conditions for *P. atropurpurea* or *T. californicum* due to competition for resources, and areas populated by *T. officinale* may result in hybridization with *T. californicum* (SBNF 2000, p. 40; SBNF 2002a, p. 114). Both species require a perennial water source, which exists in relatively intact, wet meadow systems (Service GIS database; Eliason 2007b, p. 1).

Soils occupied by *Poa atropurpurea* have been characterized as loamy alluvial to sandy loam (CNDDDB 2006a, pp. 1–21) that experience periodic saturation by water (Volgarino *et al.* 2000a, p. 1; Hirshberg 1994, p. 1). In a distribution study of *P. atropurpurea*, Krantz (1981, p. 8) noted that in San Bernardino County the species usually occurs in open (50 percent bare ground) soils with some clay content in the A horizon (0 to 12 inches (in) (0 to 30 centimeters (cm))). However, Krantz (1981, p. 8) also stated that the Laguna Meadow population in San Diego County had somewhat different habitat parameters than the populations in San Bernardino County. Volgarino *et al.* (2000a, p. 1) listed United States Department of Agriculture (USDA) soil series for a partial list of meadows in which *P. atropurpurea* occurs in San Diego County as Lu (loamy alluvial land) (Bowman 1973, p. 64), Rieff (Bowman 1973, pp. 72–73), and Crouch (Bowman 1973, pp. 41–42). Volgarino *et al.* (2000a, p. 1) listed USDA soil series for a partial list of meadows in which *P. atropurpurea* occurs in San Bernardino County as Morical (USDA 2004, p. 1), Hodgson (USDA 2005a, p. 1), Hecker (USDA 1997a, p. 1), Avawatz (USDA 1978, p. 1), Oak Glen (USDA 2003, p. 1), Olete (USDA 1999a, p. 1), Goulding (USDA 1999b, p. 1), Pacifico

(USDA 2000b, p. 1), and Preston (USDA 1998, p. 1). The soil series descriptions cited above support the general "loamy alluvial to sandy loam" characterization of *P. atropurpurea* habitat soils (CNDDDB 2006a, pp. 1-21).

Soils occupied by *Taraxacum californicum* appear similar to those occupied by *Poa atropurpurea*. Volgarino *et al.* (2000b, p. 1) listed USDA soil series for a partial list of meadows in which *T. californicum* occurs as Morical (USDA 2004, p. 1), Hodgson (USDA 2005a, p. 1), Hecker (USDA 1997a, p. 1), Pacifico (USDA 2000b, p. 1), Preston (USDA 1998, p. 1), Merkel (USDA 2005b), and Wapal (USDA 2005c, p. 1). Similar to *P. atropurpurea*, the soil series descriptions cited above also support a general "loamy alluvial to sandy loam" characterization of *T. californicum* habitat soils.

Both species appear to differ in their ability to colonize steeper slopes. Volgarino *et al.* (2000a, p. 2; 2000b, p. 2) described slopes on which *Poa atropurpurea* occurs as 0 to 16 percent (with potential for occurrence on steeper slopes), and slopes on which *Taraxacum californicum* occurs as 0 to 46 percent. This difference in maximum slope may be due to *P. atropurpurea* occurring farther from the banks of meadow water courses than *T. californicum*.

Primary Constituent Elements for *Poa atropurpurea* and *Taraxacum californicum*

Within the geographical area occupied by *Poa atropurpurea* and *Taraxacum californicum* at the time of listing, we must identify the physical and biological features that may require special management considerations or protection. All areas designated as critical habitat for these two species are occupied, within the species' respective historical geographic ranges, and contain the PCEs in the appropriate quantity and spatial arrangement required to support at least one life history function. The range of parameters and information provided in the PCEs identified below has been generalized from existing scientific data. There may be cases where *P. atropurpurea* or *T. californicum* persist in conditions outside the ranges expressed in the PCEs. It is also important to note that the variable amounts and timing of precipitation in southern California do not result in favorable conditions for *P. atropurpurea* and *T. californicum* in every year.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and

the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs for *Poa atropurpurea* are:

(1) Wet meadows subject to flooding during wet years in the San Bernardino Mountains in San Bernardino County at elevations of 6,700 to 8,100 feet (2,000 to 2,469 meters), and in the Laguna and Palomar Mountains of San Diego County at elevations of 6,000 to 7,500 feet (1,800 to 2,300 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(2) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system, with a 0 to 16 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs for *Taraxacum californicum* are:

(1) Wet meadows subject to flooding during wet years and forest openings with seeps, springs, or creeks in the San Bernardino Mountains in San Bernardino County located at elevations of 6,700 to 9,000 feet (2,000 to 2,800 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(2) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system or forest openings with seeps, springs, or creeks, with a 0 to 46 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

These designations are designed for the conservation of those areas containing the PCEs laid out in the appropriate quantity and spatial arrangement (the physical and biological features) necessary to support one or more of these species' life history functions. All units in these designations contain the physical and biological features and support multiple life processes.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas occupied at the time of listing contain the features essential to the conservation of the species that may require special management considerations or protection. Major threats to *Poa atropurpurea* and *Taraxacum californicum*, and, therefore, to the

features essential to their conservation, include development on private lands, grazing, off-highway vehicle (OHV) use, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, habitat fragmentation, and the invasion of nonnative herbaceous plants. Please refer to the unit descriptions in the "Final Critical Habitat Designations" section for further discussion of special management considerations or protection of the physical and biological features related to geographically specific threats to *P. atropurpurea* and *T. californicum*.

Special management considerations or protection of the wet meadows may be needed to address concerns such as reducing nonnative plant invasions and maintaining populations. Control and monitoring of nonnative, invasive plant species may be required to maintain wet meadows and or forest openings such that they can continue to support populations of *Poa atropurpurea* and or *Taraxacum californicum*. Nonnative species alter the meadow habitat by creating mats of thatch which cover bare ground needed for *P. atropurpurea* and *T. californicum* to become established, and also use water resources that could be used by *P. atropurpurea* and *T. californicum*. The growth of nonnative species may adversely impact and change the physical and biological features of the meadow habitat. Implementing management actions that support fertilization and seed set of *P. atropurpurea* (Curto 1992, p. 11; Soreng 2000, pp. 1-4), and provide monitoring and protection of male *P. atropurpurea* clones may be required to maintain populations of *P. atropurpurea*.

Special management considerations or protections for wet meadow habitat may need to be implemented to control the impacts associated with direct competition and hybridization caused by the nonnative *Taraxacum officinale*. This nonnative species occupies open niches, which can reduce the bare ground needed for *T. californicum* to become established, and may alter the physical and biological features of the meadow habitat. Management may include the removal of *T. officinale* from montane meadows where this species co-occurs with *T. californicum*. Additionally, it may be appropriate to remove hybridized individuals; however, we believe this course of action warrants further investigation.

There are two USFS management guides that address conservation of *Poa atropurpurea* and *Taraxacum californicum*: (1) The CNF Habitat Management Guide for the Sensitive

Plant Species: *Delphinium hesperium* ssp. *cuyamaca*, *Lilium parryi*, *Limnanthes gracilis* var. *parishii*, and *P. atropurpurea*, in Riparian Montane Meadows (CNF 1991, pp. 1–36) addresses conservation of *P. atropurpurea*; and (2) the SBNF Meadow Habitat Management Guide (SBNF 2002a pp. 1–155) addresses conservation of both species. In some cases, significant management actions have been implemented by the USFS (for example, cattle exclosures in Laguna Meadow (CNF 1991, p. 17), recreational trail closures in Belleville Meadow near Big Bear Lake (SBNF 2002a, p. 5)).

Criteria Used To Identify Critical Habitat

We are designating critical habitat in areas that we determined were occupied at the time of listing and that contain sufficient primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement (the physical and biological features) to support life history functions essential for the conservation of *Poa atropurpurea* and *Taraxacum californicum*. We did not designate unoccupied areas for these two species because we believe that the areas designated are adequate to ensure the conservation of these species through appropriate conservation measures, such as the removal of invasive species, the protection and restoration of the hydrology in occupied meadows, and the reduction of negative human impacts in occupied habitat (for details on management actions see the “Special Management Considerations and Protection” section). To delineate critical habitat, we identified habitat that contains features essential to the conservation of *P. atropurpurea* and *T. californicum*, was occupied at the time of listing, and is currently occupied. Occupancy status was determined using occurrence data from the SBNF (SBNF 2000, pp. 5–137; SBNF 2002a, pp. 1–133; SBNF GIS database), the CNDDDB (2005a, pp. 1–21; 2005b, pp. 1–39), and the Rancho Santa Ana Botanical Gardens (Denslow *et al.* 2002, pp. 12 and 13). We determined occupancy at the time of listing by comparing survey and collection information to descriptions of occupied areas in the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006). Using the occurrence data listed above, we identified montane meadows that were occupied by one or both species. Areas containing a large number of individual plants (relative to all known occupied locations) recorded

within at least 2 years of listing were considered to be occupied at the time of listing as the presence of a large number of individual plants within an area indicates that such area has likely been occupied for more than 2 years. Although occupied, we did not consider any meadows containing 10 or fewer reported individuals of either species for critical habitat, as these populations are likely to become extirpated and we believe these populations are not likely to contribute to the long-term conservation of either species.

Subsequently, we used the following rule set to identify areas for inclusion in the final critical habitat designation for each species: (1) we identified meadows with populations of 10 plants or greater (as discussed above) and delineated the meadow habitat using the USFS-modeled potential habitat specific to each species (Volgarino *et al.* 2000a, pp. 1–2; 2000b, pp. 1–2) and aerial or satellite imagery; (2) we delineated the meadow areas that appeared to appropriately capture features essential to the conservation of each species (PCEs); (3) we limited the delineation of critical habitat for each unit to areas within 328 ft (100 meters) of the occupied meadow habitat, a distance viewed as the limit for short-distance, wind-driven dispersal of seeds in *Taraxacum* spp. (Tackenberg *et al.* 2003, p. 451), and a likely distance for potential dispersal distance for *Poa atropurpurea*; and (4) as a final step, we removed any meadow habitat that was developed or degraded that is not likely to contain PCEs, or elements of them, to ensure critical habitat contains features essential to the conservation of each of the species.

Although we are not designating all known occurrences of either of these two plants, we believe that our criteria, and therefore the designations, are adequate to ensure the conservation of both species throughout their extant ranges and the essential features of their habitat, based on the best available information at this time. Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soulé and Simberloff 1986, pp. 32–35; Scott *et al.* 2001, pp. 1297–1300); our criteria identified multiple locations across the entire range of each species as essential habitat to prevent range collapse. Genetic variation in plants can result from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt, pp. 291–295). Our critical habitat contains areas that

represent the biogeographical diversity for each of these species. For *Poa atropurpurea*, we captured habitat in the northern portion of the species range, where the species occurs at high altitudes, and at the southern portion of the species range, where the species occurs at lower altitudes. For *Taraxacum californicum*, we captured areas that represent the entire range of this species. We included areas specifically in Big Bear Valley because this location is believed to be the historic core area for both of these species (Soreng 2007, p. 1–2). The areas we included represent the largest populations that still occur for these two species. We did not include areas where we do not have data on occupancy or where populations smaller than 10 plants occur.

When determining critical habitat boundaries for each species within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for *Poa atropurpurea* and *Taraxacum californicum*. The scale of maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in this rule and are not designated as critical habitat. Therefore, Federal actions involving these textually excluded lands would not trigger section 7 consultations, with respect to critical habitat and the requirement of no adverse modification, unless the specific action may affect the primary constituent elements in adjacent critical habitat.

Final Critical Habitat Designations

We are designating approximately 2,489 ac (1,009 ha) of critical habitat for *Poa atropurpurea* in 8 units (see Table 1 below) and approximately 1,914 ac (775 ha) of critical habitat for *Taraxacum californicum* in 11 units (see Table 2 below). Five of these units overlap and are designated as critical habitat for both species (Units 2, 3, 4, 5, and 11; see Table 3 and unit descriptions below). The critical habitat areas described below constitute our best current assessment of areas that meet the definition of critical habitat for *P. atropurpurea* and *T. californicum*. We determined that all areas designated as critical habitat for *P. atropurpurea* and *T. californicum* were occupied at the time of listing and are currently occupied.

TABLE 1—CRITICAL HABITAT UNITS EXCLUDED AND DESIGNATED FOR *Poa atropurpurea*. (AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.)

Critical Habitat Unit	Land Ownership ¹	Area Excluded (Acres (Hectares))	Area Designated (Acres (Hectares))
1 Pan Hot Springs Meadow	SBNF Private (BBCCSD, others)	0 (0) 40 (16)	0 (0) 0 (0)
2 North Baldwin Meadow	SBNF CDFG Private	0 (0) 0 (0) 0 (0)	79 (33) 98 (40) 1 (<1)
3 Belleville Meadow	SBNF Private (LSA)	0 (0) 0 (0)	409 (166) 5 (2)
4 Hitchcock Meadow	SBNF Private (BSA, others)	0 (0) 0 (0)	166 (67) 330 (134)
5 Bluff Meadow	SBNF Private (WC)	0 (0) 0 (0)	135 (55) 70 (28)
11 Cienega Seca Meadow	SBNF Private (LACEF)	0 (0) 0 (0)	15 (6) 66 (27)
13 Mendenhall Valley	CNF Private	0 (0) 0 (0)	160 (65) 131 (53)
14 Laguna Meadow	CNF	0 (0)	788 (319)
15 Bear Valley	CNF	0 (0)	36 (15)
Total area (acres (hectares)) ²		40 (16)	2,489 (1,009)

¹ BBCCSD = Big Bear City Community Services District, BSA = Boy Scouts of America, CDFG = California Department of Fish and Game, CNF = U.S. Forest Service (lands in the Cleveland National Forest), LACEF = Los Angeles County Education Foundation, LSA = Lithuanian Scouts Association, SBNF = U.S. Forest Service (lands in the San Bernardino National Forest), WC = Wildlands Conservancy.

² Values may not sum exactly due to rounding.

TABLE 2—CRITICAL HABITAT UNITS EXCLUDED AND DESIGNATED FOR *Taraxacum californicum*. (AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.)

Critical Habitat Unit	Land Ownership ¹	Area Excluded (Acres (Hectares))	Area Designated (Acres (Hectares))
1 Pan Hot Springs Meadow	SBNF Private (BBCCSD, others)	0 (0) 40 (16)	0 (0) 0 (0)
2 North Baldwin Meadow	SBNF CDFG Private	0 (0) 0 (0) 0 (0)	79 (33) 98 (40) 1 (<1)
3 Belleville Meadow	SBNF Private (LSA)	0 (0) 0 (0)	409 (166) 5 (2)
4 Hitchcock Meadow	SBNF Private (BSA, others)	0 (0) 0 (0)	166 (67) 330 (134)
5 Bluff Meadow	SBNF Private (WC)	0 (0) 0 (0)	135 (55) 70 (28)
6 North Shay Meadow	SBNF	0 (0)	21 (8)
7 Horse Meadow	SBNF	0 (0)	74 (30)
8 Fish Creek Meadow	SBNF	0 (0)	89 (36)
9 Broom Flat Meadow	SBNF	0 (0)	188 (76)
10 Wildhorse Meadow	SBNF	0 (0)	52 (21)
11 Cienega Seca Meadow	SBNF Private (LACEF)	0 (0) 0 (0)	15 (6) 66 (27)

TABLE 2—CRITICAL HABITAT UNITS EXCLUDED AND DESIGNATED FOR *Taraxacum californicum*. (AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.)—Continued

Critical Habitat Unit	Land Ownership ¹	Area Excluded (Acres (Hectares))	Area Designated (Acres (Hectares))
12 South Fork Meadow	SBNF	0 (0)	116 (47)
Total area (acres (hectares)) ²		40 (16)	1,914 (775)

¹ BSA = Boy Scouts of America, CDFG = California Department of Fish and Game, LACEF = Los Angeles County Education Foundation, LSA = Lithuanian Scouts Association, SBNF = U.S. Forest Service (lands in the SBNF), WC = Wildlands Conservancy.

² Values may not sum exactly due to rounding.

TABLE 3—LIST OF CRITICAL HABITAT UNITS AND THE SPECIES FOR WHICH EACH UNIT IS DESIGNATED AND THE SIZE OF EACH CRITICAL HABITAT UNIT.

Critical Habitat Unit	<i>Poa atropurpurea</i>	<i>Taraxacum californicum</i>	Acres (Hectares)
2 North Baldwin Meadow	X	X	177 (72)
3 Belleville Meadow	X	X	414 (168)
4 Hitchcock Meadow	X	X	497 (201)
5 Bluff Meadow	X	X	205 (83)
6 North Shay Meadow		X	21 (8)
7 Horse Meadow		X	74 (30)
8 Fish Creek Meadow		X	89 (36)
9 Broom Flat Meadow		X	188 (76)
10 Wildhorse Meadow		X	52 (21)
11 Cienega Seca Meadow	X	X	81 (33)
12 South Fork Meadow		X	116 (47)
13 Mendenhall Valley	X		291 (118)
14 Laguna Meadow	X		788 (319)
15 Bear Valley	X		36 (15)
Total area (acres (hectares)) ¹	2,489 (1,009)	1,914 (775)	3,029 (1,226)

¹Values may not sum exactly due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Poa atropurpurea* and or *Taraxacum californicum*, below. The PCEs for these two species and their occupancy patterns may not always overlap. For example, steeper slopes near a watercourse at the center of a meadow are more likely to support *T. californicum*. However, such micro-habitat components cannot be differentiated within a meadow based on information we have available for unit mapping. If critical habitat for these two species was designated separately, the units for each species would be mapped the same. Therefore, the boundaries for Units 2, 3, 4, 5, and 11 are the same for both species, and these units are designated for each species individually (see Table 3).

Unit 1: Pan Hot Springs Meadow

We removed 102 ac (41 ha) from Unit 1 because we determined: (1) those areas consisted of upland habitat not containing the PCEs; and (2) those areas contained non-occupied habitat, a portion of which occurs outside of potential dispersal from occurrence locations (see “Summary of Changes from Proposed Rule” and “Criteria Used to Identify Critical Habitat” sections). We balanced the benefits of including the remaining portion of Unit 1 in the designation for each species against the benefits of excluding it under section 4(b)(2) of the Act and determined that the benefits of exclusion outweigh the benefits of inclusion. Therefore, we excluded the remainder of Unit 1 (40 ac (16 ha) from critical habitat (see “Exclusions Under Section 4(b)(2) of the Act” section).

Unit 2: North Baldwin Meadow

We are designating Unit 2 as critical habitat for both *Poa atropurpurea* and *Taraxacum californicum*. Unit 2 consists of approximately 177 ac (72 ha) of non-degraded meadow occupied by both species at the time of listing; both species continue to occur within this unit. Unit 2 contains all of the features essential to the conservation of both species. It is located within the SBNF, on the north shore of Baldwin Lake, and northeast of Big Bear Lake. Approximately half of Unit 2 is federally owned and half is owned by CDFG.

Habitat in Unit 2 was historically impacted by authorized and unauthorized vehicle use, mining activity, residential development, and grazing by burros (CNDDDB 2006a, p. 1; SBNF 2002a, p. 33; SBNF 2002b, p. 57).

The meadow is protected, but it is adjacent to State Route 18 and accessible to the public (SBNF 2000, p. 57). Disruption of the hydrologic regime by upstream development, trampling during illegal woodcutting, and quartzite theft activities were identified as past threats in this unit (CNDDDB 2006b, p. 16). Additionally, *Poa atropurpurea* and *Taraxacum californicum* and their essential features are threatened in this unit by competition from invasion of nonnative, herbaceous annuals, and *T. officinale* has been reported to occur in this meadow (Krantz 2007, p. 2). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 2 due to the threats from upstream development, nonnative species invasion, hybridization, and human disturbance.

Unit 3: Belleville Meadow

We are designating Unit 3 as critical habitat for both *Poa atropurpurea* and *Taraxacum californicum*. Unit 3 consists of an approximately 414-ac (168-ha) meadow occupied by both species at the time of listing; both species continue to occur within this unit. Unit 3 (also referred to as Upper Holcomb Valley) contains all of the features essential to the conservation of both species. Although most individuals of *P. atropurpurea* observed were reported to be male, both sexes are present (SBNF 2000, p. 47). In 1999, the *T. californicum* population in Unit 3 was reported to be "large" and "healthy" with no apparent *T. officinale* hybrids (SBNF 2000, p. 56). Although no hybrid individuals are reported from this meadow, recent reports indicate that *T. officinale* is present at this location and the two species could hybridize (Krantz 2007, p. 2). Unit 3 is located within the SBNF, north of Big Bear Lake, and east of Hitchcock Meadow (Unit 4). The majority of lands within this unit are federally owned (409 ac (166 ha)), with only 5 ac (2 ha) of meadow habitat privately owned by the Lithuanian Scouts Association.

Meadow habitat in this Unit 3 may be impacted by recreational activities and nearby diffuse mining operations (CNDDDB 2006a, p. 6; Eliason 2007b); and placement of USFS roads has resulted in habitat loss and effects to meadow hydrology. Several areas of Belleville Meadow are currently heavily utilized for dispersed recreation, including vehicle use along the classified roads through the site, hiking and mountain biking along the Gold Fever Trail, and use of Holcomb Valley Campground near the western portion of

the meadow. Additionally, several mining claims also exist in the meadow. Unauthorized vehicle activity and mountain biking off of classified roads and trails have caused revegetation and alteration of surface hydrology in some areas (SBNF 2002a, p. 36). Finally, *Poa atropurpurea* and *Taraxacum californicum* and their physical and biological features are threatened in this unit by invasion of nonnative, herbaceous annuals, and *T. officinale* has been reported to occur in this meadow (Krantz 2007, p. 2).

The USFS erected signs and fencing and conducted outreach to protect occurrences in Unit 3 (SBNF 2002a, p. 37). For example, to reduce impacts to *Poa atropurpurea*, trails within Holcomb Valley Campground were disguised and rehabilitated, and the area was protected through barricading and signing (SBNF 2002a, p. 5). Nearby trails that did not pass through listed plant habitat were delineated and signed to encourage visitors to use those trails (SBNF 2002a, p. 5). However, special management considerations or protection may still be required to restore, protect, and maintain the essential features in Unit 3 due to the threats from human disturbance; current nearby mining activities; hybridization; and invasive, nonnative plant species.

Unit 4: Hitchcock Meadow

We are designating Unit 4 as critical habitat for both *Poa atropurpurea* and *Taraxacum californicum*. Unit 4 consists of an approximately 497-ac (201-ha) meadow occupied by both species at the time of listing; both species continue to occur within this unit. Although *T. officinale* is present, no apparent hybrids have been reported (SBNF 2000, p. 56). We do not have any information about the ratio of male to female *P. atropurpurea* plants in this meadow. Unit 4 contains all of the features essential to the conservation of both species and is located within the SBNF, north of Big Bear Lake, and west of Belleville Meadow (Unit 3). The majority of Unit 4 (also referred to as Holcomb Valley) is privately owned by the Boy Scouts of America (BSA) and used as a recreational and educational activity camp (BSA 2007, p. 1).

Unit 4 has been historically impacted by OHV use, horse grazing, and other human disturbance (CNDDDB 2006b, p. 18). It is currently impacted by recreational and educational activities and horse grazing (SBNF 2000, p. 56; SBNF 2002a, p. 51). Additionally, *Poa atropurpurea* and *Taraxacum californicum* and their physical and biological features are threatened in this unit by invasion of nonnative,

herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 4 due to the threats from past human disturbance; current camp activities; and invasive, nonnative plant species.

Unit 5: Bluff Meadow

We are designating Unit 5 as critical habitat for both *Poa atropurpurea* and *Taraxacum californicum*. Unit 5 consists of an approximately 205-ac (83-ha) meadow occupied by both species at the time of listing; both species continue to occur within this unit. Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). We do not have any information about the ratio of male to female *P. atropurpurea* plants in this meadow. Unit 5 contains all of the features essential to the conservation of both species. It is located within the SBNF, south of the west end of Big Bear Lake. The majority of Unit 5 is privately owned by the Wildlands Conservancy, and currently leased to the San Bernardino County Regional Parks Division as an outdoor science education camp (Wildlands Conservancy 2005).

Unit 5 has been historically impacted by recreational activities, cattle grazing, and other human disturbance (CNDDDB 2006b, p. 12), although impacts are limited to recreational and educational activities (Eliason 2007b; SBNF 2000, p. 57; SBNF 2002a, p. 42). *Poa atropurpurea* and *Taraxacum californicum* and their physical and biological features are also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization of *T. californicum* with *T. officinale* (SBNF 2000, p. 57; SBNF 2002a, p. 42). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 5 due to the potential impacts of past human disturbance; current camp activities; hybridization; and invasive, nonnative plant species.

Unit 6: North Shay Meadow

We are designating Unit 6 as critical habitat for *Taraxacum californicum* only. Unit 6 consists of an approximately 21-ac (8-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Although occupancy of Unit 6 was documented one year after listing, we consider Unit 6 to be occupied at the time of listing because it contains approximately 12 percent of the total number of individuals reported since 1999 and has the second highest

number of total individuals reported from any one unit, and therefore, we believe this area has been occupied for several years despite having been discovered in 1999 (see "Criteria Used to Identify Critical Habitat" section). Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). This unit contains all of the features essential to the conservation of the species. It is located within the SBNF, east of Big Bear Lake, on the southern shore of Baldwin Lake, and north of Shay Road. The land in this unit is federally owned.

This northern portion of Shay Meadow has been isolated by development from the southern meadow adjacent to East Big Bear Boulevard. Lakeshore habitat within Unit 6 is currently impacted by recreational activities due to the use of trails connecting private land to the lakeshore for OHV use, hiking, mountain biking, and horseback riding (SBNF 2000, p. 57; SBNF 2002a, p. 23). Additionally, *Taraxacum californicum* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (CNDDDB 2006b, p. 36; SBNF 2000, p. 57). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 6 due to the impacts of human disturbance; hybridization; and invasive, nonnative plant species.

Unit 7: Horse Meadow

We are designating Unit 7 as critical habitat for *Taraxacum californicum* only. Unit 7 consists of an approximately 74-ac (30-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Occupancy throughout the meadow was confirmed as recently as 2002 (Denslow *et al.* 2002, pp. 12 and 13). Although *T. officinale* is present, no hybrids have been reported (SBNF 2000, p. 56). Unit 7 contains all of the features essential to the conservation of the species. It is located within the SBNF, southwest of Big Bear Lake, and northwest of San Geronio Mountain. Unit 7 is federally owned and located in the San Geronio Wilderness Area of the SBNF.

Recreational impacts from foot-traffic are reported in Unit 7 (Denslow *et al.* 2002, pp. 12 and 13; CNDDDB 2006b, p. 5; SBNF 2000, p. 57; SBNF 2002a, p. 54). Additionally, *Taraxacum californicum* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals, including potential

hybridization with *T. officinale* (SBNF 2000, p. 57). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 7 due to threats from human disturbance; hybridization; and invasive, nonnative plant species.

Unit 8: Fish Creek Meadow

We are designating Unit 8 as critical habitat for *Taraxacum californicum* only. Unit 8 consists of an approximately 89-ac (36-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). Unit 8 contains all of the features essential to the conservation of the species. It is located within the SBNF, southwest of Big Bear Lake, and northeast of San Geronio Mountain. Unit 8 is federally owned and occurs within the San Geronio Wilderness Area of the SBNF.

Habitat conditions in Unit 8 are reported to be undisturbed, although diffuse recreational use impacts are likely due to trails around meadow in forested area (CNDDDB 2006b, p. 6; SBNF 2002a, p. 52). Additionally, *Taraxacum californicum* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (SBNF 2000, p. 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 8 due to the threats from human disturbance; hybridization and invasive; nonnative plant species.

Unit 9: Broom Flat Meadow

We are designating Unit 9 as critical habitat for *Taraxacum californicum* only. Unit 9 consists of an approximately 188-ac (76-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). Although occupancy of Unit 9 was documented 2 years after listing, we consider it to have been occupied at the time of listing because Unit 9 supports approximately 9 percent of the total number of *T. californicum* individuals reported since 1999, which is the fifth largest recorded population out of 35 and more than double the average recorded population size. This unit contains all of the features essential to the conservation of the species. Unit 9 is federally owned and located within the SBNF southeast of Big Bear Lake.

Unit 9 is historically impacted by OHV activity, cattle and burro grazing, and other human disturbance (CNDDDB 2006b, p. 28; SBNF 2002b, p. 64). This unit and essential features therein are currently impacted by diffuse recreational activities and cattle grazing (SBNF 2000, p. 58; SBNF 2002a, p. 46) and by invading, nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (CNDDDB 2006b, p. 28; SBNF 2002a, p. 45). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 9 due to the potential impacts of human disturbance; hybridization; and invasive, nonnative plant species.

Unit 10: Wildhorse Meadow

We are designating Unit 10 as critical habitat for *Taraxacum californicum* only. Unit 10 consists of an approximately 52-ac (21-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). Although occupancy of Unit 10 was documented 1 year after listing, we consider Unit 10 to have been occupied at the time of listing because Unit 10 has the highest number of total documented individuals since the time of listing among all the units (SBNF 2000, p. 56; CNDDDB 2006b, pp. 30 and 31) and hosts approximately 20 percent of the total number of individuals reported since 1999, and therefore, we believe that this area was occupied for several years despite having been discovered in 1999 (see "Criteria Used to Identify Critical Habitat" section). Unit 10 was also reported to be occupied by *Poa atropurpurea* in 1981, although surveys in 1999 and 2000 did not locate any individuals (SBNF 2000, p. 47). Therefore, this unit is designated as critical habitat for *T. californicum* only. This unit contains all of the features essential to the conservation of the species. The land in this unit is federally owned and is located within the SBNF southeast of Big Bear Lake.

Habitat in Unit 10 is reported to be of "excellent" quality and well protected, although some diffuse recreation impacts have been reported (SBNF 2000, pp. 56 and 58; SBNF 2002a, p. 69). *Taraxacum californicum* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (CNDDDB 2006b, p. 31; SBNF 2000, p. 56 and 58). Therefore, special management considerations or

protection may be required to restore, protect, and maintain the essential features in Unit 10 due to the potential impacts of invasive, nonnative plant species; hybridization; and diffuse recreation impacts.

Unit 11: Cienega Seca Meadow

We are designating Unit 11 as critical habitat for both *Poa atropurpurea* and *Taraxacum californicum*. Unit 11 consists of an approximately 81-ac (33-ha) meadow occupied by both species at the time of listing; both species continue to occur within this unit. Although *T. officinale* is present, no hybrids are reported (SBNF 2000, p. 56). We do not have any information about the ratio of male to female *P. atropurpurea* plants in this meadow. Unit 11 contains all of the features essential to the conservation of both species. It is located within the SBNF adjacent to State Route 38, southeast of Big Bear Lake, and northeast of San Geronio Mountain. The majority of Unit 11 (also referred to Blue Sky Meadow) is privately owned by the Los Angeles County Education Foundation (LACEF), and currently used as an outdoor science education camp (Wildlands Conservancy 2007; LACEF 2007).

Unit 11 has been historically impacted by changes in the hydrologic regime due to recreational activities, cattle grazing, and other human disturbance (CNDDDB 2006a, p. 2, 2006b, p. 2). Water usage from a well and vehicle use on some access roads are current threats to meadow habitat (SBNF 2002a, p. 77). *Poa atropurpurea* and *Taraxacum californicum* and their essential features are also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization of *T. californicum* with *T. officinale* (CNDDDB 2006b, p. 2; SBNF 2000, p. 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 11 due to the threats from past human disturbance; current camp activities; hybridization; and invasive, nonnative plant species.

Unit 12: South Fork Meadow

We are designating Unit 12 as critical habitat for *Taraxacum californicum* only. Unit 12 consists of approximately 116-ac (47-ha) of meadows occupied by the species at the time of listing; the species continues to occur within this unit. Although *T. officinale* is present, no hybrids have been reported (SBNF 2000, p. 56). Unit 12 contains all of the features essential to the conservation of the species. It is located on Federal lands within the San Geronio

Wilderness Area of SBNF, southwest of Big Bear Lake on the northern slope of San Geronio Mountain.

Habitat in Unit 12 is reported to be virtually undisturbed, but possibly impacted by irregular and recreational use (CNDDDB 2006b, p. 1; Krantz 2007, p. 2; SBNF 2000, pp. 56 and 58). Threats include impacts of hikers, horseback riding, and camping; however, the meadows are minimally disturbed (SBNF 2002a, p. 66). Additionally, *Taraxacum californicum* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (SBNF 2000, pp. 56 and 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 12 due to the threats from human disturbance; hybridization; and invasive, nonnative plant species.

Unit 13: Mendenhall Valley

We are designating Unit 13 as critical habitat for *Poa atropurpurea* only. Unit 13 consists of an approximately 291-ac (118-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. This unit contains all of the features essential to the conservation of the species. It is located within the CNF on Palomar Mountain in San Diego County; 160 ac (65 ha) of the unit are federally owned, and the remaining portion (131 ac (53 ha)) is privately owned. We are not including a large portion of the meadow on the northwest end as critical habitat because a field survey determined that the habitat was degraded and of a different vegetative type (Anderson 2007, p. 1). The Mendenhall Valley meadow contains a geographically mid-range population of *P. atropurpurea*, separated from the southern populations in Laguna Meadow and Bear Valley by at least 36 miles (58 km), and separated from the northern populations in the Big Bear Lake area by at least 60 miles (109 km).

Habitat in Unit 13 has been impacted by cattle grazing (CNDDDB 2006a, p. 4; CNF 1991, pp. 13-17), land-use changes, and recreational activities (2006 GIS satellite imagery). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, p. 5), annual surveys are to be conducted in this unit for *Poa atropurpurea*, and cattle are to be excluded from grazing on CNF land until mature seed has developed (set seed) on *P. atropurpurea*. Annual phenology monitoring is currently being conducted to ensure that *P.*

atropurpurea has set seed prior to the start of grazing, which generally is permitted after May 1 in Mendenhall Valley (Winter 2007, p. 1). The USFS has also conducted ongoing gully repair work in this unit to benefit endangered meadow plants (Winter 2007, p. 3). Finally, *P. atropurpurea* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 13 due to threats from grazing and from invasive, nonnative plant species.

Unit 14: Laguna Meadow

We are designating Unit 14 as critical habitat for *Poa atropurpurea* only. Unit 14 consists of an approximately 788-ac (319-ha) meadow occupied by the species at the time of listing; the species continues to occur within this unit. Although all five herbarium specimens collected in this unit and reviewed by Curto (1992, p. 3) were female (one from 1978, three from 1981, and one from 1991), Hirshberg (1994, p. 2) reported a 1:250 female to male ratio during field surveys. This unit contains all of the features essential to the conservation of the species. It is located on federally owned lands on Laguna Mountain within the CNF in San Diego County.

Habitat in Unit 14 has been impacted by grazing and recreational activities (CNF 1991, pp. 13-17; CNDDDB 2006a, pp. 4 and 20). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, p. 5), annual surveys are to be conducted in this unit for *Poa atropurpurea*, and cattle are to be excluded from grazing until completion of seed set is documented. The CNF does not permit grazing activities in Laguna Meadow until July 1; however, no annual surveys are currently being conducted because the grazing in this meadow starts several months after seed set occurs (Winter 2007, p. 1). Additionally, *P. atropurpurea* and features essential to its conservation are threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 14 due to the threats from grazing and from invasive, nonnative plant species.

Unit 15: Bear Valley

We are designating Unit 15 as critical habitat for *Poa atropurpurea* only. Unit 15 consists of an approximately 36-ac (15-ha) meadow occupied by the species

at the time of listing; the species continues to occur within this unit. We do not have any information about the ratio of male to female *P. atropurpurea* plants in this meadow. This unit contains all of the features essential to the conservation of the species. Unit 15 is federally owned and located within the CNF southwest of Laguna Mountain and south of the town of Pine Valley, San Diego County.

Habitat in Unit 15 has been impacted by cattle grazing (CNDDDB 2006a, p. 21) and scattered irregular and diffuse recreational activities (2006 GIS satellite imagery). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, pp. 3 and 4), annual surveys would be conducted in this unit for *Poa atropurpurea*, and cattle are to be excluded from grazing until mature seed has developed on *P. atropurpurea*. The CNF does not permit grazing activities in Bear Valley until August 1; however, no annual surveys are currently being conducted because the grazing in this meadow starts several months after seed set occurs in late April (Winter 2007, p. 1). *Poa atropurpurea* and features essential to its conservation are also threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the essential features in Unit 15 due to the threats from grazing; human disturbance associated with recreation; and invasive, nonnative plant species.

Effects of Critical Habitat Designation

Section 7 Consultation

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

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

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

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a

listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

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

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

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

Federal activities that may affect *Poa atropurpurea*, *Taraxacum californicum*, or the designated critical habitat for either of these two species will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not

federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the "Adverse Modification" Standard

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter PCEs to an extent that appreciably reduces the conservation value of critical habitat for *Poa atropurpurea* or *Taraxacum californicum*. Generally, the conservation role of the critical habitat units designated for these species is to support native occurrences of *P. atropurpurea* and *T. californicum* that comprise viable core area populations.

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

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Poa atropurpurea* or *Taraxacum californicum* include, but are not limited to (please see the "Special Management Considerations or Protection" section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that result in ground disturbance to meadows. Such activities could include (but are not limited to) residential or recreational development, OHV activity, dispersed recreation, new road construction or widening, existing road maintenance, and grazing. These activities could cause direct mortality of *Poa atropurpurea* or *Taraxacum californicum* and impact meadows by damaging or eliminating habitat, altering soil composition due to

increased erosion, and increasing densities of nonnative plant species. Additionally, changes in soil composition may lead to cascading changes in the vegetation composition, such as growth of shrub cover that decreases density of or eliminates *P. atropurpurea* or *T. californicum*.

(2) Actions that result in alteration of the hydrological regime of the wet meadow habitat. Such activities could include residential or recreational development adjacent to meadows, OHV activity, dispersed recreation, new road construction or widening, and existing road maintenance. These activities could alter surface layers and hydrological regime in a manner that promotes loss of soil matrix components and moisture necessary to support the growth and reproduction of *Poa atropurpurea* or *Taraxacum californicum*.

(3) Actions that would disturb the existing vegetation communities within the meadow habitat prior to annual pollination and seed set (reproduction). Such activities could include (but are not limited to) grazing, mowing, grading, or disking habitat in the spring and early summer months. These activities could alter the habitat for *Poa atropurpurea* and *Taraxacum californicum* and result in decreased reproduction.

Exclusions

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

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

Additionally, we conducted an economic analysis of the impacts of the proposed critical habitat designations and related factors (referred to here as the draft EA). The draft EA (April 9,

2008) was made available for public review and comment from April 16, 2008, to May 16, 2008 (73 FR 20600). The draft EA was finalized to incorporate the revisions made to the proposed critical habitat designations (see "Summary of Changes from the Proposed Rule" section). Based on the draft EA, the proposed critical habitat designations, and the information in this final rule, we excluded the area within Unit 1 (as defined in this final rule) from the critical habitat designations under the provisions of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The designation of critical habitat can be beneficial because it identifies lands to be managed for the recovery of a species. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical or biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying

critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of the species. Thus, the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency), if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake affirmative actions to promote the recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that reaches a "no destruction or adverse modification" determination may contain discretionary conservation recommendations to minimize adverse

effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the purpose of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans generally institute proactive actions to remove or reduce known threats to a species or its habitat. We believe that in many instances the benefit to a species or its habitat realized through the designation of critical habitat is low when compared to the conservation benefit that can be achieved through voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the proposed action only, and not to providing conservation or long-term benefits to areas not affected by the proposed action. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the listed species. In general, critical habitat designation always has educational benefits;

however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can

through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). We believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation in those areas.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by effective partnerships or other voluntary conservation commitments can often be high.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans

The benefits of excluding lands with HCPs or other approved long-term management plans from critical habitat

designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans provide conservation benefits to unlisted sensitive species as well as to listed species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and discourage partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within approved HCPs and management plans from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat (such as the HMP as described in the "Summary of Changes From Proposed Rule" section) would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCPs and Natural Communities Conservation Plan (NCCP)-HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Economic Analysis

Following the publication of the proposed critical habitat designations, we conducted an economic analysis to estimate the potential economic effect of the designations. The draft analysis (dated April 9, 2008) was made available for public review on April 16, 2008 (73 FR 20600). We accepted comments on the draft analysis until May 16, 2008. The final analysis (final EA) of the potential economic effects of the designations was developed by considering the public comments and the revisions to the proposed critical habitat designations (see "Summary of Changes from the Proposed Rule" section).

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The analysis looks retrospectively at baseline impacts incurred since the species were listed (63 FR 49006, September 14, 1998), and forecasts both baseline and incremental impacts likely to occur after the designation of critical habitat. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designations might unduly burden a particular group or economic sector.

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis examines activities taking place both within and adjacent to the designations. It estimates impacts based on activities that are "reasonably foreseeable" including, but

not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public.

Accordingly, the analysis bases estimates on activities that are likely to occur within a 20-year time frame, from when the proposed rule became available to the public (August 7, 2007, 72 FR 44232). The 20-year time frame was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects become increasingly speculative.

Based on our analysis, we concluded that the designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* would not result in significant economic impacts. The total future potential economic impact is estimated to be \$129,000 to \$4.3 million (\$11,000 to \$403,000 annualized) over the next 20 years in present value terms applying a 7 percent discount rate. The present value of these impacts, applying a 3 percent discount rate, is \$135,000 to \$5.0 million (\$9,000 to \$336,000 annualized). Impacts associated with recreation represent the largest proportion of post-designation incremental impacts (solely attributable to the designations of critical habitat), accounting for over 86 percent of forecast incremental impacts in the areas being designated as critical habitat when a 7 percent discount rate is used. Transportation-related incremental impacts account for approximately 14 percent of forecast incremental impacts when a 7 percent discount rate is used. The BBCCSD is expected to account for over 86 percent of the total anticipated upper-bound incremental impacts, while Caltrans is forecast to bear approximately 14 percent of these impacts when a 7 percent discount rate is used. The remaining incremental impacts are shared between the USFS, the Federal Highway Administration), and the Service, in order of magnitude. Unit 1, Pan Hot Springs Meadow, primarily owned by Big Bear City Community Services District (BBCCSD), is anticipated to account for approximately 88 percent of total upper-bound incremental impacts of the designation for both species, followed by Unit 2 bearing almost 12 percent of these impacts when a 7 percent discount rate is used. We have excluded Unit 1, the unit with a disproportionate amount of the possible economic impacts; therefore, we do not find the economic costs to be significant as they relate to the designated critical habitat

(see “Exclusions Under Section 4(b)(2) of the Act” section).

The final economic analysis is available at <http://www.regulations.gov> and <http://www.fws.gov/carlsbad> or upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

At the request of the USFS, we evaluated the appropriateness of excluding Forest Service lands from the final designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* under section 4(b)(2) of the Act based on management provided for federally listed species, including *P. atropurpurea* and *T. californicum*, under the USFS Land Management Plan and associated 2002 Meadow Habitat Management Guide (SBNF 2002a), and the 1991 Habitat Management Guide for the Sensitive Plant Species in Riparian Montane Meadows (CNF 1991). As indicated in our response to Comment 14 in the “Public Comments” section above, we have concluded based on the record before us not to exclude the Forest Service lands in this instance. Therefore, as previously discussed, we are designating approximately 1,788 ac (724 ha) of Forest Service lands in Units 2, 3, 4, 5, 11, 13, 14, and 15 as critical habitat for *P. atropurpurea* and 1,344 ac (544 ha) of Forest Service lands in Units 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 as critical habitat for *T. californicum*.

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

We have considered and are excluding approximately 40 ac (16 ha) of non-Federal lands in Unit 1 (Pan Hot Springs) that are owned by the BBCCSD and the adjacent Pan Hot Spring landowner from the critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum* under section 4(b)(2) of the Act. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs below.

Benefits of Inclusion—Pan Hot Springs Meadow

The inclusion of the approximately 40 ac (16 ha) of Unit 1 could be beneficial because it identifies lands to be managed for the recovery of the two species. As discussed previously in this rule, the process of proposing and finalizing a critical habitat designation is valuable to landowners and managers for use in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been

included in the Service’s determination of essential habitat. However, plant conservation efforts with the landowners in Unit 1 have already been ongoing for many years before the critical habitat was proposed. The BBCCSD has been actively involved in listed plant conservation.

The educational benefits of designation are small and largely redundant to those derived through conservation efforts currently being planned and implemented in Unit 1. The process of developing the HMP has involved several partners including the public and local government representatives, the University of Redlands, the San Manuel Band of Serrano Mission Indians, Federal agencies, and private landowners. Additionally, the HMP includes implementation of an environmental education program to promote public understanding and appreciation of the natural and cultural resources in Pan Hot Springs Meadow. Therefore, the educational benefits of designating the private lands in Unit 1 (Pan Hot Springs Meadow) as critical habitat are minimal.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of inclusion for critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. However, the 40 ac (16 ha) being excluded are on private property, with no expected Federal nexus for activities that may affect *Poa atropurpurea* and *Taraxacum californicum*. Therefore, including this area in the critical habitat designations is unlikely to result in any benefits to the species that may be derived through consultation under section 7(a)(2) of the Act.

Benefits of Exclusion—Pan Hot Springs Meadow

The BBCCSD has worked cooperatively as a partner with the Service for more than 18 years. In 1990, the BBCCSD worked with the Service and California Department of Fish and Game (CDFG) to plan and place an approximate 10-ac (4-ha) deed restriction over part of their property in Pan Hot Springs Meadow to protect federally listed plants. In January 2008, BBCCSD and the adjacent private landowner, who owns less than 1 ac (<1 ha) within Unit 1 and the water rights to the Pan Hot Springs, one of the hydrological features of the meadow, approached us with the idea of creating a partnership to conserve the sensitive areas of Pan Hot Springs Meadow and to expand the plant conservation area to

include areas that meet the definition of critical habitat for *Poa atropurpurea* and *Taraxacum californicum*. Further, the BBCCSD asked for our help in developing a habitat management plan to manage its lands in Pan Hot Springs Meadow for listed plant conservation, including the approximate 10-ac (4-ha) area previously conserved.

The HMP covers approximately 135 ac (55 ha) of land within the Pan Hot Springs Meadow at the southwest shore of Baldwin Lake (Krantz 2008b, p. 3). The HMP describes the BBCCSD commitment to conserve approximately 40 ac (16 ha) of sensitive habitat and focuses on active management and conservation in perpetuity of this habitat, including specific measures for habitat restoration and monitoring (for example, nonnative weed control, restoration and enhancement of ponds) for four federally listed endangered plants (*P. atropurpurea*, *T. californicum*, *Sidalcea pedata* (pedate checker-mallow), and *Thelypodium stenopetalum* (slender-petaled mustard)) and one federally listed threatened plant (*Castilleja cinerea* (ash-gray Indian paintbrush)). The HMP was adopted by the BBCCSD Board of Directors on July 7, 2008, and as it is implemented, will provide substantial benefits to the species.

Under the HMP, the 40-ac (16-ha) owned by BBCCSD will be protected by a restrictive covenant (similar to a conservation easement). The specific management responsibilities for *Poa atropurpurea* and *Taraxacum californicum* outlined in the HMP provide assurance to us that the features essential to the conservation of these two species will be maintained in the quantity and spatial distribution needed for the conservation of *P. atropurpurea* and *T. californicum* in perpetuity. The HMP and commitment by the BBCCSD includes plans to fund an endowment for the long-term management, monitoring, and conservation of the area in perpetuity. The expenditure of \$25,000 for initial management of this area under the HMP is already funded in BBCCSD’s 2008-2009 budget. The BBCCSD has also spent approximately \$10,000 to hire a species expert as a consultant and draft the HMP. These are sizeable expenditures for a small government and show their good faith in the conservation of *Poa atropurpurea* and *Taraxacum californicum*. Their previous conservation actions include: placing a deed restriction over 10 ac (4 ha) of their lands; limiting grazing on their lands; conducting extensive plant surveys throughout their property at Pan Hot Springs Meadow; drafting the HMP and revising the HMP per Service

comments, addressing the management of all five federally listed species on their property within the HMP; meeting and partnering with the adjacent private landowner who owns the water rights to Pan Hot Spring; and meeting with the San Manuel Band of Serrano Mission Indians to identify and address their cultural interest in the area. All of these actions support their commitment to conserving *P. atropurpurea* and *T. californicum*.

The creation and implementation of the HMP brought together multiple stakeholders in a partnership to conserve the unique cultural, biological, and hydrological aspects of Pan Hot Springs Meadow. This partnership was initiated by the BBCCSD and includes other private landowners in the area as well as the San Manuel Band of Serrano Mission Indians, the USFS, the CDFG, and the Service. This partnership is important for the successful management of this meadow. Survey efforts conducted by species experts demonstrate that all known occurrences of *Poa atropurpurea* and *Taraxacum californicum* within the Pan Hot Springs Meadow are limited to the approximately 40 ac (16 ha) identified as Unit 1. The HMP addresses the need for baseline surveys of the meadow and restoration activities that are necessary to support the long-term preservation of this meadow. The HMP outlines management activities to address the four main threats to the features essential to the conservation of *P. atropurpurea* and *T. californicum*: development activities, livestock grazing, introduced species, and hydrological alteration. The HMP also includes an environmental education program to promote public understanding and appreciation of the natural and cultural resources in Pan Hot Springs Meadow. Finally, the HMP includes an implementation schedule, funding plan, and an advisory team (with Service participation) that will further develop measurable management objectives that assure the success of this plan.

We have also identified economic impacts to the BBCCSD that could result from the designations. The final economic analysis estimates that over the next 20 years, the critical habitat designations could affect up to 2.9 percent of BBCCSD's current budget (Appendix B, table B-1 of the Economic Analysis). This upper bound could be considered a significant impact to a small entity under the Small Business Regulatory Enforcement Fairness Act. The economic analysis also estimates that a disproportionate impact, 88 percent of the total anticipated upper-

bound incremental impacts at 7 percent discounted rate, will be attributed to Unit 1; BBCCSD is expected to account for over 86 percent of the total anticipated upper-bound incremental impacts. Excluding Unit 1 from the critical habitat designations would remove these disproportionate and potentially significant economic impacts to the BBCCSD and is a further benefit of exclusion.

Benefits of Exclusion Outweigh the Benefits of Inclusion

The educational benefits of designation are small and largely redundant to those derived through conservation efforts underway, which include the implementation of the HMP. The regulatory benefits of designating the private lands in Unit 1 (Pan Hot Springs Meadow) as critical habitat are minimal, as a Federal nexus for activities that may occur within Unit 1 are unlikely, and critical habitat designation on these lands may actually impede the conservation of this unique and sensitive habitat. Thus, we believe the implementation of the HMP and the continuing conservation partnership with the landowners within Unit 1 will provide more conservation benefit to the species than any benefits the species may receive as a result of consultation under section 7(a)(2) of the Act conducted under the standards required by the Ninth Circuit Court of Appeals in the Gifford Pinchot decision.

The exclusion of the private lands in Pan Hot Springs Meadow will help us to strengthen and preserve the partnerships created with the stakeholders and neighboring private landowners involved in the creation and implementation of the HMP. As described above in the "Conservation Partnerships on Non-Federal Lands" section and as specifically noted by the BBCCSD and the adjacent private landowner in their comments on the proposed rule, designation of critical habitat on these lands may impede our partnership with the BBCCSD and private landowners in Unit 1 and may act as a disincentive for other private landowners to partner with us on conservation partnerships in the future. In contrast to the minimal regulatory benefits of inclusion, these voluntary commitments to implement conservation projects to protect and manage these species' habitat (for example, removal of nonnative, invasive plants) will result in substantial conservation benefits for *Poa atropurpurea* and *Taraxacum californicum*. A significant amount of effort has been exhibited by the BBCCSD (the owner of the majority of

land in this area) regarding the creation of the HMP. Under the HMP, no projects that would damage the sensitive habitat or hydrology within Pan Hot Springs Meadow would be allowed by the BBCCSD (Krantz 2008b, p. 10). Excluding Pan Hot Springs Meadow from the final designations sends a clear signal to the private landowners in Unit 1 that the Service actively recognizes and supports their sustained commitment to restore and protect the sensitive habitat in this area. We will continue working in partnership with these landowners to implement the HMP and other conservation actions in this area.

The economic analysis estimates that over the next 20 years, the critical habitat designations could affect up to 2.9 percent of BBCCSD's current budget (Appendix B, table B-1 of the Economic Analysis). The economic analysis also estimates that a disproportionate impact, 88 percent of the total anticipated upper-bound incremental impacts at 7 percent discounted rate, will be attributed to Unit 1; impacts to BBCCSD are expected to account for over 86 percent of the total anticipated upper-bound incremental impacts. Excluding Unit 1 from the critical habitat designations would remove these disproportionate and potentially significant economic impacts to the BBCCSD and is a further benefit of exclusion.

We reviewed and evaluated the proposed delineation of essential habitat in the Pan Hot Springs Meadow and have determined that the significant partnership and economic benefits of excluding these 40 ac (16 ha) of lands in Unit 1 as identified in this section and above under the "Economic Analysis" section outweigh the minor benefits of designating these lands as critical habitat. Therefore, we are excluding Unit 1 from the designations of critical habitat based on: (1) long-term conservation benefits for *Poa atropurpurea* and *Taraxacum californicum* due to the approval and implementation of the HMP; (2) new partnership opportunities resulting in greater conservation for these species and other listed plant species and features essential to their conservation; (3) future educational opportunities at this site as provided for in the HMP; and (4) removal of the disproportionate and potentially significant costs to the BBCCSD attributable to the designation of critical habitat.

Exclusion Will Not Result in Extinction of the Species

We find that the exclusion of 40 ac (16 ha) of private lands in the Pan Hot

Springs Meadow from the final critical habitat designations will not result in the extinction of *Poa atropurpurea* or *Taraxacum californicum* because these lands, determined to contain the features essential to the conservation of this species, will be conserved and managed for the benefit of these species. The approximately 40 ac (16 ha) owned by the BBCCSD will be permanently protected and managed under the agreements in the HMP. The management activities to be implemented in the Pan Hot Springs Meadow will provide for the enhancement and preservation of the features essential to the conservation of *P. atropurpurea* and *T. californicum*. Additionally, because the 40 ac (16 ha) are occupied by *P. atropurpurea* and *T. californicum*, any future consultations under section 7(a)(2) of the Act that involve these lands will occur even in the absence of their designation as critical habitat. Application of the jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct.

Required Determinations

A. Regulatory Planning and Review

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

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

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

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

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

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA of 1996) 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 (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.

Further, Executive Order 12866, as well as the Regulatory Flexibility Act as amended by SBREFA (Office of Management and Budget, Circular A-4, September 17, 2003) directs Federal agencies issuing regulations to evaluate regulatory alternatives. Under Circular A-4 and the Regulatory Flexibility Act as amended by SBREFA, once an agency determines that a regulatory action is appropriate, the agency needs to consider alternative regulatory approaches. Because the designation of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our critical habitat designations, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the critical habitat designations providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, including consideration of whether areas resulting in disproportionate impacts to small entities should be designated or not, or combination of both, constitutes our regulatory alternative analysis for critical habitat designations.

Based on our final EA of the proposed designations, we provide our analysis for determining whether the rule will result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), 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 these designations 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 final designations of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential development and dispersed recreation activities). 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. Federal agencies must consult with us under section 7 of the Act if activities they conduct, fund, permit, or authorize may affect designated critical habitat. The designation of critical habitat will not affect activities that do not have any Federal involvement.

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.

The EA analyzes whether a particular group or economic sector is expected to bear an undue proportion of the impacts. Appendix B of the final EA describes potential impacts of the proposed designations to small entities. Appendix B considers the extent to which the incremental impacts results presented in the previous sections reflect potential future impacts to small entities and the energy industry. The screening analysis is based on the estimated impacts associated with the proposed rulemaking as described in chapters 3 through 8 of the final EA. The analysis evaluates the potential for economic impacts related to several categories, including: (1) recreation; (2) transportation; (3) mining; (4) grazing; (5) invasive, non-native species management; and (6) development and hydrological regime. As summarized

below and presented in more detail in Section B.1.2 of the final EA, the BBCCSD is the only small entity expected to be affected by this rulemaking.

Post-designation incremental impacts associated with critical habitat designation-related conservation activities are not expected for mining (Chapter 5); grazing (Chapter 6); invasive, nonnative species management (Chapter 7); and development and water source alteration activities (Chapter 8). The incremental administrative costs of post-designation section 7 consultations and technical assistance requests (Appendix A) associated with the critical habitat designations, as well as incremental impacts associated with transportation projects (Chapter 4), will be borne by State and Federal government agencies. These agencies are Caltrans, the USFS, and the Service. The State and Federal governments are not considered small entities by the SBA. As described in Chapter 3 of the final EA, post-designation incremental impacts of critical habitat associated with recreation are related to Phase Two of the proposed community park in Unit 1 by BBCCSD. BBCCSD provides fire, water, sanitation, and refuse services for approximately 10,000 residents in unincorporated areas of Big Bear Valley and is considered a small entity by the SBA.

This screening analysis focuses on small entities that may bear the regulatory costs quantified in chapters 3 through 8 of the final EA. Of the affected activities discussed in the economic analysis, only impacts related to the development of recreation facilities (see Chapter 3 of the final EA) are forecast to be borne by small entities (BBCCSD, a small governmental jurisdiction). As described in section B.1 of the final EA, the screening analysis focuses on economic impacts resulting from modifications to recreation facility development activities in the designations by BBCCSD.

The incremental impact consists of a percentage of costs of conducting the Environmental Review (ER) for Phase two of a proposed park under the California Environmental Quality Act (CEQA) that is attributable to the critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum* and implementation of the anticipated mitigation or conservation measures stemming from the ER. The total cost of the CEQA process is expected to range between \$150,000 and \$300,000, of which approximately \$100,000 to \$200,000 is considered incremental impact as this is the

additional cost of the ER anticipated to stem from the designation of critical habitat.

The likely mitigation or conservation measures under CEQA to protect the habitat following the final designations of critical habitat is anticipated to vary from a minimal modification of the park design such that the occurrences of *Poa atropurpurea* (or areas close to the occurrences) are well-protected and are located in the more passive portions of the park to a possible relocation of the park to a more suitable location outside of Unit 1 (or to provide land elsewhere for the protection of the species in lieu of this habitat). The design modification of the proposed park is expected to cost approximately \$20,000. In the extreme case that the 25-ac (10-ha) park must be relocated, BBCCSD could potentially need to locate and purchase a 25-ac (10-ha) tract of land outside the proposed critical habitat. Because regional land values are high, a 25-ac (10-ha) parcel with development potential is expected to cost between \$3.0 and \$4.0 million. In total, BBCCSD is expected to experience an annualized impact that ranges from a low of \$10,000 to a high of \$347,000. The annualized impacts are equivalent to 0.1 to 2.9 percent of BBCCSD's annual operating budget (approximately \$12.1 million).

The upper bound of the annualized impact of 2.9 percent of BBCCSD's annual operating budget may be considered a potential significant economic impact. We considered this potentially significant economic impact and the disproportionate impact to the BBCCSD (a small entity) as part of our analysis under section 4(b)(2) of the Act, and ultimately decided to exclude Unit 1 from the critical habitat designations. Consequently, we have determined and, therefore, certify that, based on the exclusion of Unit 1 and the fact that only one small entity would be impacted, the designations will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C.

658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." 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 [T]ribal 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. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "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."

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

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the final EA, approximately 85 percent of the lands proposed as critical habitat are owned or managed by Federal, State, or

local governments, only one of which, the BBCCSD, qualifies as a small government. The annualized impacts are equivalent to 0.1 to 2.9 percent of BBCCSD's annual operating budget (approximately \$12.1 million). However, we have excluded the lands owned by the BBCCSD from these critical habitat designations under section 4(b)(2) of the Act, in part because the potential economic impact to BBCCSD as a small entity may be disproportionate. Consequently, we do not believe that these critical habitat designations would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

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 *Poa atropurpurea* and *Taraxacum californicum* in a takings implications assessment. The takings implications assessment concludes that these designations of critical habitat for *P. atropurpurea* and *T. californicum* do not pose significant takings implications for lands within or affected by the designations.

Federalism

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, these final critical habitat designations with appropriate State resource agencies in California. The designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur). During the three public comment periods, we contacted appropriate State and local agencies and jurisdictions, and invited them to comment on the proposed critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum*. In total, we responded to six letters received during these

comment periods (see "Summary of Comments and Recommendations" section).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum* within the designated areas to assist the public in understanding the habitat needs of these species.

Paperwork Reduction Act of 1995

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

National Environmental Policy Act (NEPA)

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

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a

government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Following publication of the August 7, 2007, proposed rule (72 FR 44232), a private citizen presented us with information identifying historical, religious, and cultural resources important to the San Manuel Band of Serrano Mission Indians in proposed Unit 1, although these lands are not specifically part of the Tribal Trust lands of the San Manuel Band of Serrano Mission Indians. In the April 16, 2008, NOA for the draft EA (73 FR 20600), we specifically solicited comments from the San Manuel Band of Serrano Mission Indians regarding the potential impacts of the proposed rule on the San Manuel Band of Serrano Mission Indians. We requested this input from the San Manuel Band of Serrano Mission Indians in accordance with Secretarial Order 3206 section 3(B)(4) and E.O. 13007. On April 15, 2008, we transmitted a letter to the San Manuel Band of Serrano Mission Indians indicating our interest in discussing the proposed designations of critical habitat and requested information from the San Manuel Band of Serrano Mission Indians that would contribute to the decision process. On May 12, 2008, we received an electronic mail response to our letter indicating that the San Manuel Band of Serrano Mission Indians would like to coordinate with us to discuss the critical habitat designations. We subsequently met with representatives of the San Manuel Band of Serrano Mission Indians. Through this coordination, we believe we addressed the concerns of the San Manuel Band of Serrano Mission Indians in this final rule. As a result of our coordination and analysis of all information available, we concluded that the designation of critical habitat would not adversely impact the San Manuel Band of Serrano Mission Indians. We recognize that the San Manuel Band of Serrano Mission Indians' ancestral lands include the San Bernardino Mountains, including areas that we have designated as critical habitat. From our discussion with the representatives of the San Manuel Band of Serrano Mission Indians, we do not

believe that activities that the San Manuel Band of Serrano Mission Indians regularly conducts on federally owned lands included in these designations will negatively impact the PCEs or adversely modify critical habitat. We do not believe that these activities will require a section 7 consultation due to the designation of critical habitat. The designation of critical habitat will not impose any regulatory or restrictive authority over the San Manuel Band of Serrano Mission Indians nor change access to or restrict Tribal activities on designated lands. Additionally, we determined that the benefits of exclusion outweigh the benefits of inclusion for those areas of Unit 1 covered by the HMP, which includes historical, religious, and cultural resources important to the San Manuel Band of Serrano Mission Indians, and we have excluded Unit 1 from critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section).

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use") on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *Poa atropurpurea* and *Taraxacum californicum* conservation activities within the final critical habitat designations are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/carlsbad/>.

Author(s)

The primary author of this package is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.12(h), revise the entries for "*Poa atropurpurea*" and "*Taraxacum californicum*" under "FLOWERING PLANTS" in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.
(h) * * *

Species Name		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							

<i>Poa atropurpurea</i>	San Bernardino bluegrass	U.S.A. (CA)	Poaceae	E	644	17.96(a)	NA

<i>Taraxacum californicum</i>	California taraxacum	U.S.A. (CA)	Asteraceae	E	644	17.96(a)	NA

■ 3. Amend § 17.96(a) by adding an entry for "*Taraxacum californicum*" in alphabetical order under Family *Asteraceae* and by adding an entry for "*Poa atropurpurea*" in alphabetical order under Family *Poaceae*, to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family *Asteraceae*: *Taraxacum californicum* (California taraxacum)

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Taraxacum californicum* are:

(i) Wet meadows subject to flooding during wet years and forest openings with seeps, springs, or creeks in the San Bernardino Mountains in San Bernardino County located at elevations of 6,700 to 9,000 feet (2,000 to 2,800 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system or forest openings with seeps, springs, or creeks, with a 0 to 46 percent slope, to provide water, air,

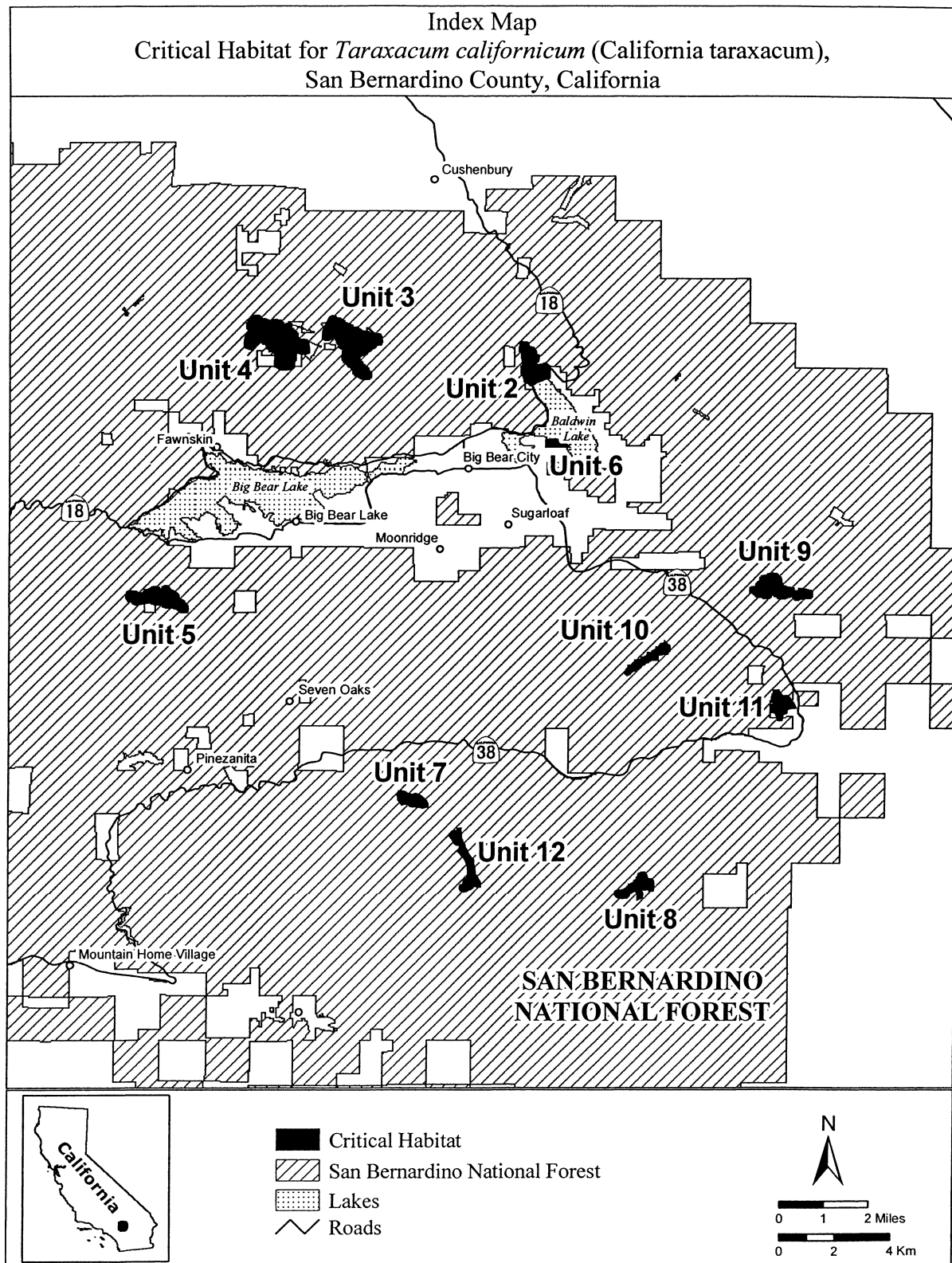
minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for *Taraxacum californicum* (California taraxacum) follows:

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BILLING CODE 4310-55-C

(6) Unit 2: North Baldwin Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City, land bounded by the following UTM NAD27 coordinates (E,N): 516578, 3795213; 516595,

3795205; 516597, 3795204; 516602, 3795201; 516608, 3795198; 516613, 3795194; 516618, 3795190; 516623, 3795185; 516628, 3795181; 516632, 3795176; 516632, 3795175; 516639, 3795166; 516642, 3795161; 516646, 3795156; 516649, 3795150; 516652, 3795144; 516654, 3795138; 516656, 3795132; 516656, 3795131; 516659, 3795122; 516660, 3795116; 516661, 3795109; 516661, 3795108; 516662, 3795107; 516668, 3795104; 516674, 3795101; 516680, 3795098; 516685, 3795094; 516690, 3795090; 516695, 3795085; 516699, 3795081; 516703, 3795076; 516707, 3795070; 516711, 3795065; 516714, 3795059; 516716, 3795053; 516719, 3795047; 516721, 3795041; 516722, 3795034; 516723, 3795028; 516724, 3795021; 516724, 3795015; 516724, 3795008; 516723, 3795002; 516723, 3795000; 516725, 3794999; 516731, 3794997; 516736, 3794994; 516742, 3794990; 516747, 3794986; 516752, 3794982; 516756, 3794979; 516759, 3794976; 516760, 3794975; 516765, 3794970; 516769, 3794965; 516773, 3794960; 516773, 3794958; 516776, 3794956; 516781, 3794952; 516786, 3794947; 516791, 3794943; 516795, 3794938; 516799, 3794932; 516802, 3794927; 516805, 3794921; 516808, 3794915; 516810, 3794909; 516812, 3794903; 516813, 3794896; 516815, 3794890; 516815, 3794883; 516815, 3794877; 516815, 3794870; 516815, 3794864; 516813, 3794857; 516812, 3794851; 516810, 3794845; 516808, 3794838; 516805, 3794833; 516802, 3794827; 516799, 3794821; 516795, 3794816; 516791, 3794811; 516786, 3794806; 516783, 3794803; 516761, 3794782; 516759, 3794781; 516754, 3794777; 516748, 3794773; 516743, 3794769; 516737, 3794766; 516734, 3794765; 516730, 3794762; 516725, 3794757; 516721, 3794754; 516704, 3794743; 516703, 3794742; 516698, 3794739; 516692, 3794736; 516686, 3794733; 516680, 3794731; 516674, 3794729; 516667, 3794727; 516663, 3794727; 516657, 3794723; 516657, 3794722; 516657, 3794721; 516655, 3794711; 516655, 3794697; 516660, 3794678; 516661, 3794675; 516661, 3794675; 516663, 3794674; 516669, 3794670; 516674, 3794667; 516678, 3794663; 516684, 3794658; 516686, 3794652; 516687, 3794646; 516701, 3794616; 516703, 3794615; 516719, 3794610; 516737, 3794603; 516746, 3794589; 516746,

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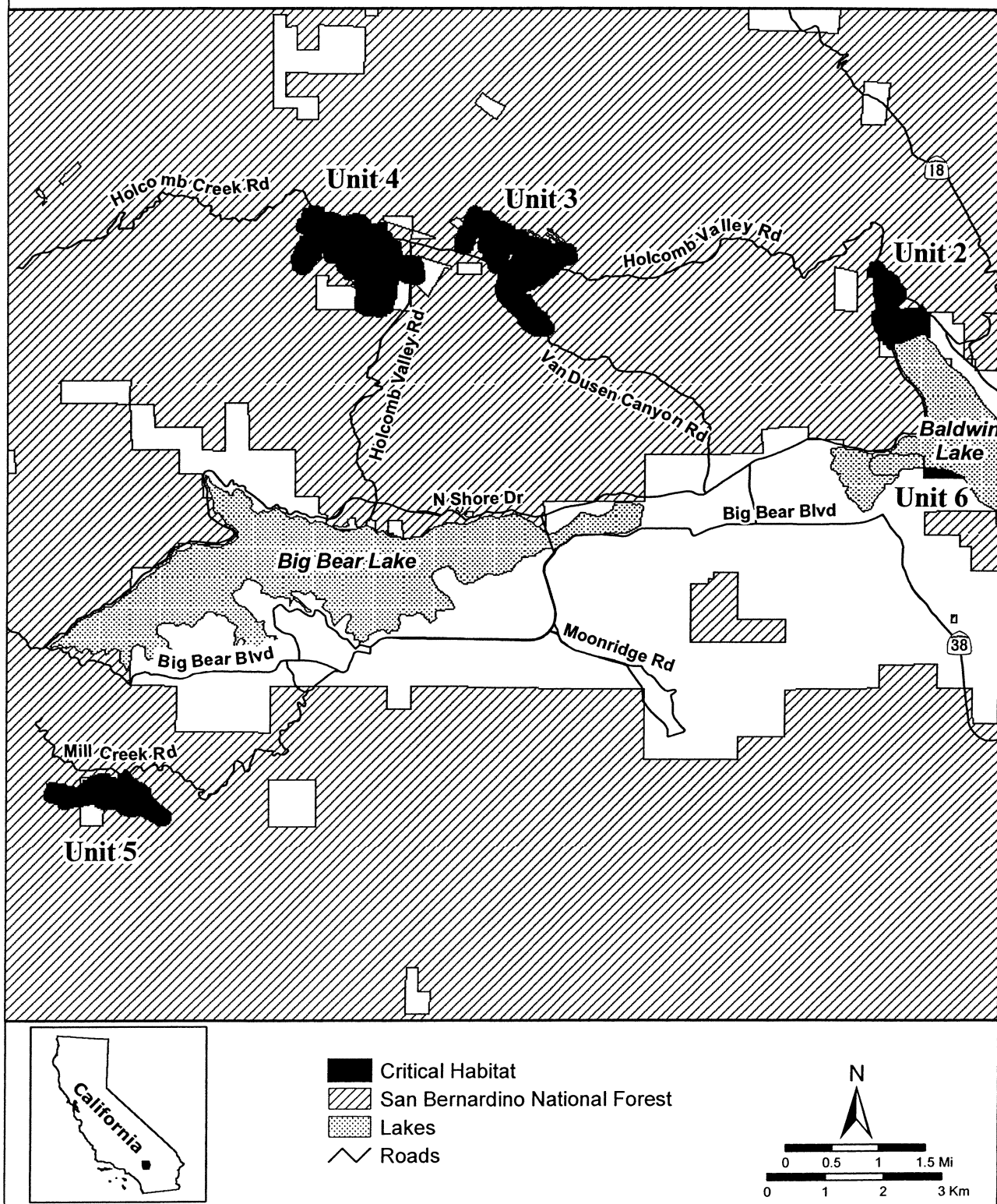
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3795226; 516538, 3795226; 516545,
3795224; 516548, 3795223; 516565,
3795218; 516568, 3795217; 516574,
3795215; returning to 516578, 3795213.

(ii) Note: Map of Units 2, 3, 4, 5, and
6 for *Taraxacum californicum* follows:

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Critical Habitat for *Taraxacum californicum* (California taraxacum),
Units 2, 3, 4, 5 and 6, San Bernardino County, California



(7) Unit 3: Belleville Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin, land bounded by the following UTM NAD27 coordinates (E,N): 509560, 3796268; 509577, 3796255; 509585, 3796255; 509587, 3796256; 509594, 3796255; 509600, 3796255; 509604, 3796254; 509609, 3796253; 509637, 3796250; 509637, 3796250; 509644, 3796249; 509650, 3796247; 509657, 3796245; 509659, 3796244; 509672, 3796239; 509687, 3796236; 509693, 3796235; 509699, 3796233; 509705, 3796231; 509711, 3796228; 509717, 3796225; 509722, 3796222; 509728, 3796218; 509732, 3796215; 509748, 3796201; 509749, 3796200; 509751, 3796198; 509768, 3796182; 509772, 3796179; 509773, 3796178; 509776, 3796175; 509796, 3796156; 509797, 3796155; 509802, 3796150; 509806, 3796145; 509809, 3796140; 509813, 3796134; 509816, 3796128; 509819, 3796122; 509821, 3796116; 509823, 3796110; 509824, 3796104; 509825, 3796102; 509826, 3796096; 509828, 3796096; 509835, 3796095; 509841, 3796094; 509848, 3796093; 509854, 3796091; 509860, 3796089; 509861, 3796088; 509878, 3796081; 509884, 3796078; 509890, 3796075; 509895, 3796072; 509901, 3796068; 509906, 3796064; 509906, 3796064; 509907, 3796065; 509913, 3796068; 509919, 3796071; 509919, 3796071; 509919, 3796050; 509949, 3796050; 509949, 3796020; 509979, 3796020; 510009, 3796020; 510039, 3796020; 510039, 3795990; 510069, 3795990; 510099, 3795990; 510099, 3795960; 510099, 3795944; 510102, 3795942; 510108, 3795938; 510108, 3795937; 510118, 3795930; 510118, 3795930; 510118, 3795930; 510123, 3795926; 510128, 3795922; 510131, 3795922; 510136, 3795922; 510144, 3795921; 510159, 3795925; 510163, 3795926; 510169, 3795928; 510176, 3795929; 510182, 3795930; 510187, 3795930; 510202, 3795930; 510204, 3795930; 510210, 3795930; 510211, 3795930; 510247, 3795927; 510253, 3795927; 510259, 3795926; 510266, 3795924; 510272, 3795922; 510278, 3795920; 510284, 3795917; 510290, 3795914; 510295, 3795911; 510301, 3795907; 510306, 3795903; 510311, 3795898; 510313, 3795896; 510331, 3795877; 510333, 3795874; 510337, 3795869; 510341, 3795864; 510343, 3795861; 510354, 3795843; 510367, 3795831; 510368, 3795830; 510370, 3795828; 510382, 3795815; 510388, 3795814; 510393, 3795814; 510400, 3795814; 510406, 3795813; 510412, 3795811; 510419, 3795809; 510425, 3795807; 510431, 3795804; 510433,

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(ii) Note: Unit 3 for *Taraxacum californicum* is depicted on the map in paragraph (6)(ii) of this entry.

(8) Unit 4: Hitchcock Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin, land bounded by the following UTM NAD27 coordinates (E,N): 507473, 3794979; 507468, 3794984; 507464, 3794989; 507460, 3794994; 507459, 3794996; 507457, 3794999; 507456, 3795000; 507454, 3795005; 507452, 3795007; 507444, 3795025; 507443, 3795029; 507440, 3795035; 507440, 3795037; 507438, 3795041; 507437, 3795048; 507436, 3795054; 507435, 3795061; 507435, 3795067; 507435, 3795074; 507436, 3795080; 507437, 3795087; 507437, 3795088; 507443, 3795114; 507444, 3795119; 507446, 3795126; 507448, 3795132; 507451, 3795138; 507454, 3795144; 507455, 3795144; 507455, 3795150; 507455, 3795152; 507455, 3795154; 507455, 3795155; 507449, 3795159; 507448, 3795158; 507442, 3795156; 507441, 3795156; 507438, 3795156; 507429, 3795153; 507424, 3795151; 507421, 3795149; 507420, 3795148; 507419, 3795148; 507413, 3795145; 507407, 3795143; 507400, 3795141; 507394, 3795139; 507388, 3795138; 507381, 3795138; 507375, 3795137; 507368, 3795138; 507361, 3795138; 507355, 3795139; 507349, 3795141; 507342, 3795143; 507338, 3795144; 507309, 3795156; 507307, 3795156; 507301, 3795159; 507296, 3795162; 507290, 3795166; 507285, 3795169; 507280, 3795174; 507275,

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(ii) Note: Unit 4 for *Taraxacum californicum* is depicted on the map in paragraph (6)(ii) of this entry.

(9) Unit 5: Bluff Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear Lake, land bounded by the following UTM NAD27 coordinates (E,N): 502768, 3786471; 502770,

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3786482; 502288, 3786483; 502294, 3786482; 502301, 3786482; 502306, 3786481; 502334, 3786476; 502335, 3786476; 502365, 3786470; 502367, 3786471; 502374, 3786472; 502380, 3786472; 502387, 3786473; 502393, 3786472; 502419, 3786471; 502434, 3786470; 502434, 3786470; 502441, 3786469; 502447, 3786468; 502453, 3786467; 502460, 3786465; 502466, 3786462; 502472, 3786460; 502477, 3786457; 502495, 3786447; 502495, 3786446; 502501, 3786443; 502505, 3786440; 502526, 3786425; 502531, 3786425; 502538, 3786425; 502544, 3786424; 502551, 3786423; 502557, 3786422; 502559, 3786421; 502560, 3786421; 502567, 3786420; 502573, 3786418; 502579, 3786417; 502588, 3786413; 502595, 3786412; 502601, 3786411; 502607, 3786409; 502613, 3786407; 502619, 3786404; 502625, 3786401; 502630, 3786397; 502636, 3786393; 502641, 3786389; 502646, 3786385; 502649, 3786382; 502671, 3786396; 502717, 3786426; 502745, 3786447; 502747, 3786450; 502749, 3786452; 502763, 3786466; 502764, 3786467; returning to 502768, 3786471.

(ii) Note: Unit 5 for 2, 3, 4, 5, and 6 *Taraxacum californicum* is depicted on the map in paragraph (6)(ii) of this entry.

(10) Unit 6: North Shay Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City, land bounded by the following UTM NAD27 coordinates (E,N): 517196, 3791888; 517196, 3791904; 517240, 3791919; 517315, 3791927; 517405, 3791930; 517486,

3791923; 517594, 3791902; 517674, 3791877; 517734, 3791836; 517815, 3791781; 517839, 3791756; 517766, 3791756; 517730, 3791757; 517694, 3791757; 517675, 3791757; 517619, 3791758; 517577, 3791758; 517502, 3791759; 517469, 3791759; 517422, 3791759; 517367, 3791760; 517344, 3791760; 517310, 3791760; 517280, 3791761; 517243, 3791761; 517195, 3791762; 517195, 3791777; 517195, 3791798; 517195, 3791829; 517196, 3791866; returning to 517196, 3791888.

(ii) Note: Unit 6 for *Taraxacum californicum* is depicted on the map in paragraph (6)(ii) of this entry.

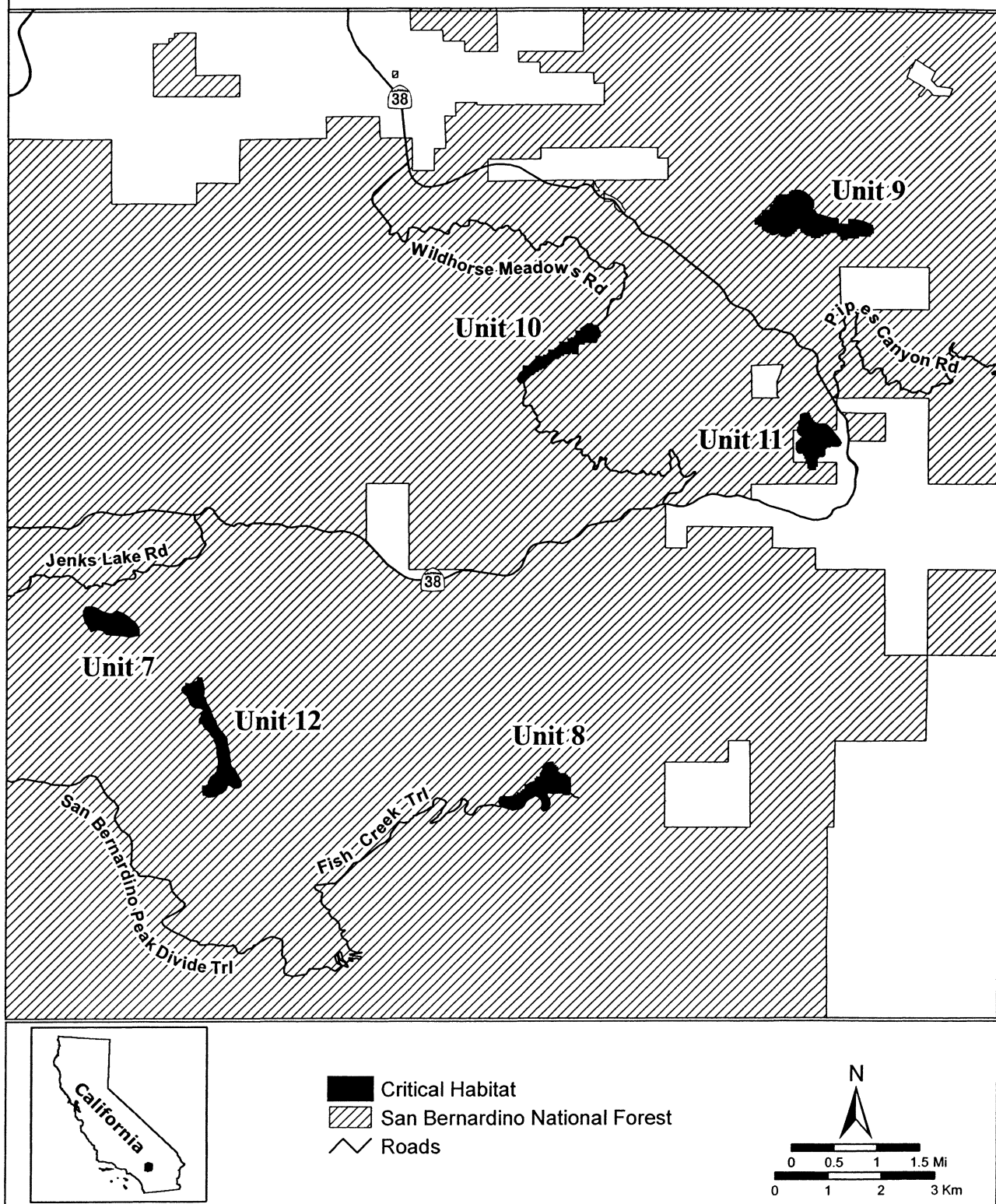
(11) Unit 7: Horse Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge, land bounded by the following UTM NAD27 coordinates (E,N): 512329, 3779237; 512402, 3779220; 512461, 3779223; 512527, 3779265; 512638, 3779227; 512725, 3779175; 512784, 3779116; 512843, 3779078; 512888, 3779019; 512919, 3778956; 512926, 3778935; 512922, 3778873; 512791, 3778848; 512659, 3778876; 512537, 3778887; 512433, 3778890; 512350, 3778900; 512284, 3778966; 512159, 3778994; 512061, 3778963; 512020, 3779039; 511975, 3779095; 511947, 3779199; 511936, 3779293; 511968, 3779345; 512051, 3779355; 512145, 3779331; 512190, 3779296; 512249, 3779265; returning to 512329, 3779237.

(ii) Note: Map of Units 7, 8, 9, 10, 11, and 12 for *Taraxacum californicum* follows:

BILLING CODE 4310-55-S

Critical Habitat for *Taraxacum californicum* (California taraxacum),
Units 7, 8, 9, 10, 11 and 12, San Bernardino County, California



(12) Unit 8: Fish Creek Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle maps Moonridge and San Gorgonio Mountain, land bounded by the following UTM NAD27 coordinates (E,N): 521043, 3776130; 521043,

3776107; 521043, 3776100; 521042, 3776094; 521041, 3776087; 521040, 3776081; 521039, 3776080; 521042, 3776075; 521042, 3776075; 521045, 3776069; 521047, 3776063; 521049, 3776056; 521051, 3776050; 521052, 3776043; 521052, 3776039; 521055, 3776005; 521056, 3776002; 521056, 3775996; 521056, 3775973; 521056, 3775967; 521055, 3775960; 521054, 3775954; 521052, 3775947; 521050, 3775941; 521048, 3775935; 521045, 3775929; 521045, 3775929; 521036, 3775910; 521033, 3775904; 521029, 3775899; 521026, 3775893; 521021, 3775888; 521019, 3775886; 521019, 3775890; 520989, 3775890; 520989, 3775920; 520959, 3775920; 520959, 3775950; 520941, 3775950; 520930, 3775942; 520899, 3775936; 520899, 3775920; 520869, 3775920; 520839, 3775920; 520811, 3775920; 520787, 3775916; 520762, 3775916; 520743, 3775916; 520737, 3775920; 520719, 3775920; 520719, 3775931; 520718, 3775932; 520699, 3775945; 520689, 3775950; 520689, 3775950; 520659, 3775950; 520634, 3775950; 520629, 3775949; 520629, 3775920; 520607, 3775920; 520600, 3775910; 520600, 3775910; 520599, 3775902; 520599, 3775892; 520605, 3775871; 520617, 3775816; 520649, 3775772; 520662, 3775739; 520668, 3775689; 520655, 3775653; 520642, 3775633; 520622, 3775612; 520584, 3775595; 520576, 3775604; 520572, 3775627; 520577, 3775666; 520577, 3775721; 520557, 3775780; 520524, 3775816; 520504, 3775848; 520488, 3775878; 520471, 3775893; 520445, 3775897; 520419, 3775875; 520410, 3775866; 520399, 3775864; 520380, 3775855; 520358, 3775837; 520271, 3775795; 520217, 3775748; 520191, 3775699; 520179, 3775662; 520164, 3775648; 520137, 3775633; 520081, 3775624; 520046, 3775620; 519990, 3775611; 519949, 3775631; 519921, 3775634; 519862, 3775646; 519823, 3775660; 519787, 3775685; 519766, 3775724; 519765, 3775743; 519769, 3775766; 519787, 3775787; 519842, 3775797; 519886, 3775793; 519933, 3775793; 519990, 3775805; 520046, 3775812; 520059, 3775814; 520059, 3775830; 520089, 3775830; 520119, 3775830; 520119, 3775860; 520149, 3775860; 520159, 3775860; 520171, 3775871; 520179, 3775877; 520179, 3775890; 520198, 3775890; 520209, 3775897; 520209,

3775920; 520236, 3775920; 520238, 3775922; 520255, 3775970; 520267, 3775992; 520267, 3775993; 520269, 3775995; 520269, 3775995; 520269, 3775995; 520269, 3776010; 520277, 3776010; 520281, 3776016; 520333, 3776059; 520380, 3776068; 520419, 3776062; 520419, 3776070; 520449, 3776070; 520449, 3776100; 520449, 3776130; 520479, 3776130; 520479, 3776130; 520479, 3776160; 520509, 3776160; 520509, 3776130; 520539, 3776130; 520539, 3776120; 520569, 3776142; 520569, 3776160; 520539, 3776160; 520539, 3776190; 520539, 3776220; 520539, 3776247; 520541, 3776249; 520546, 3776253; 520551, 3776256; 520556, 3776260; 520560, 3776262; 520564, 3776266; 520569, 3776271; 520574, 3776275; 520580, 3776279; 520585, 3776282; 520591, 3776285; 520593, 3776286; 520593, 3776289; 520592, 3776294; 520592, 3776300; 520592, 3776307; 520593, 3776311; 520596, 3776340; 520596, 3776342; 520597, 3776348; 520599, 3776355; 520601, 3776361; 520603, 3776367; 520606, 3776373; 520609, 3776379; 520612, 3776384; 520616, 3776390; 520620, 3776395; 520625, 3776400; 520629, 3776404; 520635, 3776408; 520640, 3776412; 520645, 3776415; 520651, 3776419; 520657, 3776421; 520663, 3776424; 520667, 3776425; 520698, 3776434; 520701, 3776435; 520708, 3776436; 520714, 3776438; 520719, 3776438; 520719, 3776430; 520719, 3776400; 520719, 3776370; 520749, 3776370; 520779, 3776370; 520779, 3776340; 520809, 3776340; 520809, 3776310; 520809, 3776280; 520809, 3776250; 520839, 3776250; 520839, 3776220; 520840, 3776220; 520869, 3776220; 520899, 3776220; 520929, 3776220; 520959, 3776220; 520959, 3776190; 520989, 3776190; 520989, 3776160; 521019, 3776160; 521019, 3776130; returning to 521043, 3776130.

(ii) Note: Unit 8 for *Taraxacum californicum* is depicted on the map in paragraph (12)(ii) of this entry.

(13) Unit 9: Broom Flat Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Onyx Peak, land bounded by the following UTM NAD27 coordinates (E,N): 524923, 3786493; 524917,

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3786496; returning to 524923, 3786493.

(ii) Note: Unit 9 for *Taraxacum californicum* is depicted on the map in paragraph (12)(ii) of this entry.

(14) Unit 10: Wildhorse Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge, land bounded by the following UTM NAD27 coordinates (E,N): 521409, 3784620; 521409, 3784590; 521439, 3784590; 521469, 3784590; 521469, 3784616; 521469, 3784616; 521477, 3784610; 521479, 3784609; 521484, 3784604; 521489, 3784600; 521493, 3784595; 521505, 3784582; 521505, 3784582; 521509, 3784577; 521513, 3784572; 521514, 3784571; 521521, 3784559; 521524, 3784554; 521527, 3784548; 521530, 3784543; 521532, 3784537; 521536, 3784525; 521536, 3784525; 521537, 3784524; 521539, 3784517; 521543, 3784514; 521548, 3784509; 521552, 3784504; 521556, 3784499; 521557, 3784499; 521557, 3784498; 521559, 3784496; 521559, 3784470; 521529, 3784470; 521529, 3784440; 521499, 3784440; 521499, 3784410; 521499, 3784398; 521502, 3784394; 521504, 3784377; 521494, 3784365; 521485, 3784361; 521476, 3784360; 521469, 3784360; 521469, 3784350; 521439, 3784350; 521409, 3784350; 521379, 3784350; 521379, 3784380; 521380, 3784410; 521349, 3784410; 521349, 3784380; 521319, 3784380; 521289, 3784380; 521289, 3784350; 521259, 3784350; 521259, 3784320; 521229, 3784320; 521199, 3784320; 521195, 3784320; 521185, 3784314; 521156, 3784289; 521153, 3784284; 521155, 3784280; 521152, 3784275; 521150, 3784267; 521144, 3784259; 521139, 3784249; 521124, 3784245; 521109, 3784236; 521109, 3784230; 521109, 3784200; 521139, 3784200; 521139, 3784170; 521139, 3784140; 521109,

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(ii) Note: Unit 10 for *Taraxacum californicum* is depicted on the map in paragraph (12)(ii) of this entry.

(15) Unit 11: Cienega Seca Meadow,
San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Onyx Peak, land bounded by the following UTM NAD27 coordinates (E,N): 525819, 3782744; 525865, 3782734; 525901, 3782698; 525995, 3782576; 526043, 3782518; 526081, 3782447; 526074, 3782442; 526069, 3782438; 526064, 3782435; 526058, 3782432; 526050, 3782428; 526050, 3782428; 526044, 3782425; 526038, 3782423; 526032, 3782421; 526025, 3782419; 526019, 3782418; 526012, 3782417; 526006, 3782417; 525999, 3782417; 525998, 3782418; 525972, 3782420; 525967, 3782420; 525961, 3782421; 525954, 3782423; 525948, 3782425; 525942, 3782427; 525936, 3782430; 525930, 3782433; 525925, 3782436; 525919, 3782440; 525916, 3782442; 525915, 3782443; 525914, 3782442; 525914, 3782442; 525914, 3782442; 525900, 3782421; 525897, 3782416; 525892, 3782411; 525888, 3782406; 525884, 3782403; 525881, 3782400; 525879, 3782400; 525849, 3782400; 525819, 3782400; 525819, 3782370; 525789, 3782370; 525759, 3782370; 525759, 3782340; 525737, 3782340; 525733, 3782332; 525729, 3782323; 525729, 3782310; 525729,

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3782735; 525819, 3782735; returning to 525819, 3782744.

(ii) Note: Unit 11 for *Taraxacum californicum* is depicted on the map in paragraph (12)(ii) of this entry.

(16) Unit 12: South Fork Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge, land bounded by the following UTM NAD27 coordinates

(E,N): 514285, 3775859; 514256, 3775878; 514234, 3775891; 514215, 3775891; 514206, 3775893; 514194, 3775933; 514194, 3775971; 514201, 3775992; 514203, 3775992; 514234, 3776002; 514260, 3776015; 514288, 3776030; 514301, 3776045; 514298, 3776087; 514316, 3776131; 514337, 3776179; 514377, 3776210; 514397, 3776207; 514406, 3776215; 514428, 3776246; 514447, 3776272; 514469, 3776342; 514479, 3776377; 514485, 3776392; 514494, 3776392; 514489, 3776412; 514495, 3776489; 514483, 3776577; 514469, 3776633; 514469, 3776716; 514448, 3776804; 514416, 3776866; 514410, 3776934; 514357, 3776975; 514321, 3777040; 514280, 3777087; 514261, 3777109; 514255, 3777108; 514239, 3777118; 514229, 3777134; 514214, 3777153; 514204, 3777175; 514191, 3777200; 514172, 3777216; 514147, 3777229; 514139, 3777237; 514134, 3777242; 514137, 3777270; 514163, 3777305; 514169, 3777324; 514176, 3777353; 514198, 3777381; 514204, 3777413; 514204, 3777448; 514204, 3777473; 514137, 3777515; 514090, 3777521; 514087, 3777521; 514055, 3777521; 514010, 3777531; 513975, 3777556; 513956, 3777585; 513931, 3777635; 513918, 3777674; 513883, 3777743; 513852, 3777762; 513817, 3777797; 513801, 3777820; 513810, 3777848; 513829, 3777861; 513858, 3777877; 513871, 3777902; 513877, 3777908; 513925, 3777902; 513944, 3777915; 513945, 3777913; 513947, 3777915; 513975, 3777928; 514008, 3777938; 514063, 3777951; 514076, 3777947; 514080, 3777959; 514093, 3777972; 514099, 3778013; 514112, 3778016; 514122, 3777985; 514122, 3777956; 514131, 3777934; 514137, 3777918; 514141, 3777893; 514150, 3777854; 514150, 3777823; 514150, 3777797; 514150, 3777759; 514141, 3777731; 514134, 3777702; 514139, 3777681; 514152, 3777678; 514177, 3777666; 514185, 3777630; 514190, 3777594; 514195, 3777585; 514207, 3777553; 514229, 3777518; 514255, 3777483; 514268, 3777454; 514280, 3777423; 514283, 3777388; 514306, 3777346; 514325, 3777299; 514353, 3777264; 514369, 3777239; 514379, 3777207; 514385, 3777178; 514388, 3777161; 514392, 3777152; 514439, 3777087; 514469,

3777048; 514522, 3776992; 514584, 3776910; 514589, 3776842; 514595, 3776772; 514634, 3776660; 514631, 3776574; 514642, 3776512; 514645, 3776451; 514672, 3776380; 514671, 3776375; 514731, 3776327; 514781, 3776230; 514834, 3776138; 514854, 3776094; 514853, 3776077; 514848, 3776039; 514846, 3776032; 514796, 3776029; 514772, 3776029; 514742, 3776035; 514715, 3776046; 514698, 3776065; 514681, 3776075; 514675, 3776087; 514653, 3776103; 514637, 3776106; 514616, 3776079; 514610, 3776058; 514590, 3776033; 514589, 3776018; 514580, 3776005; 514571, 3775974; 514538, 3775945; 514509, 3775926; 514476, 3775916; 514438, 3775898; 514405, 3775889; 514392, 3775878; 514372, 3775876; 514368, 3775869; 514352, 3775859; 514350, 3775858; 514287, 3775858; returning to 514285, 3775859.

(ii) Note: Unit 12 for *Taraxacum californicum* is depicted on the map in paragraph (12)(ii) of this entry.

* * * * *

Family *Poaceae*: *Poa atropurpurea* (San Bernardino bluegrass)

(1) Critical habitat units for this species are depicted for San Diego and San Bernardino Counties, California.

(2) The primary constituent elements of critical habitat for *Poa atropurpurea* are:

(i) Wet meadows subject to flooding during wet years in the San Bernardino Mountains in San Bernardino County at elevations of 6,700 to 8,100 feet (2,000 to 2,469 meters), and in the Laguna and Palomar Mountains of San Diego County at elevations of 6,000 to 7,500 feet (1,800 to 2,300 meters), that provide space for individual and population growth, reproduction, and dispersal; and

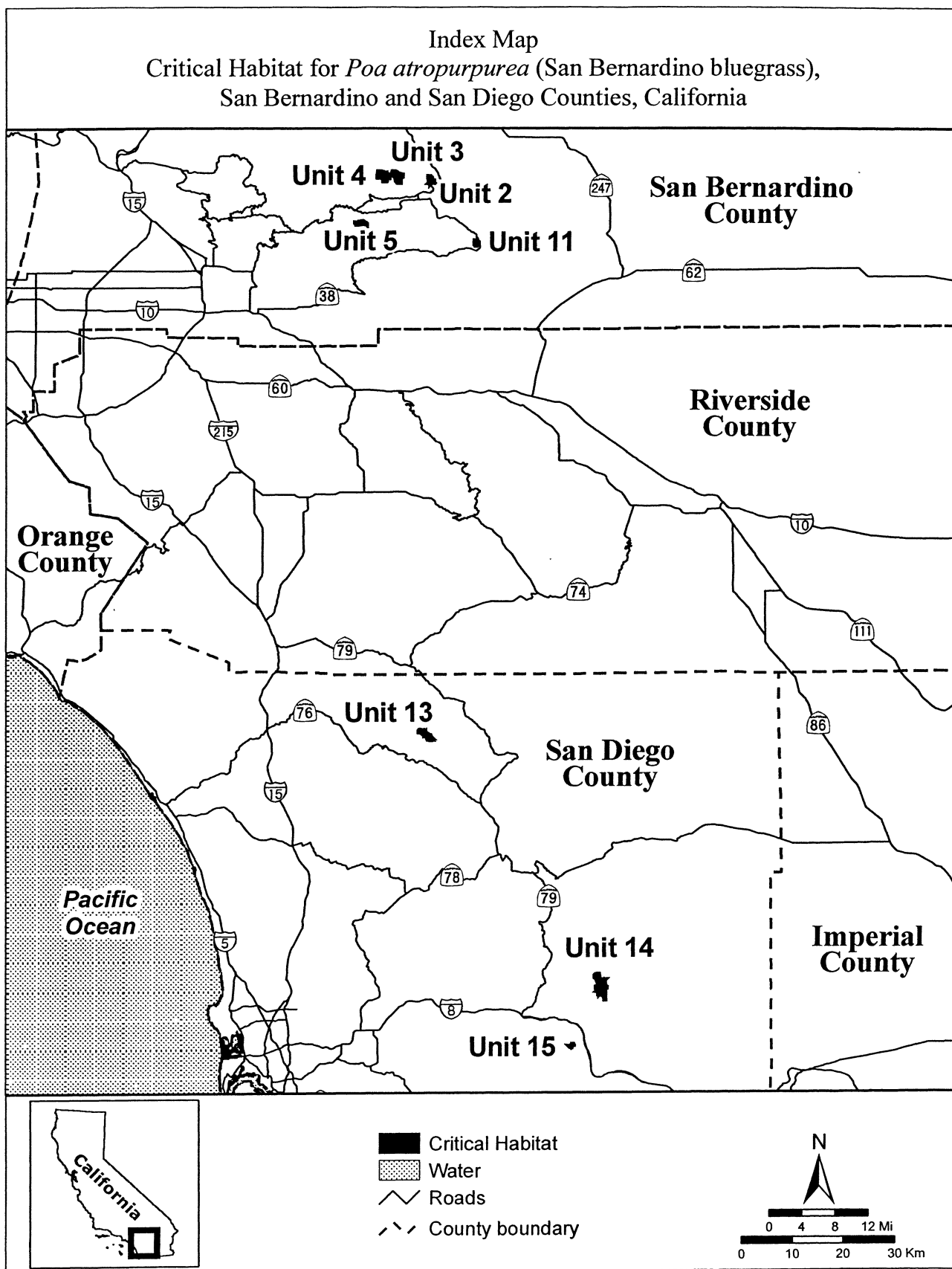
(ii) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system, with a 0 to 16 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for *Poa atropurpurea* (San Bernardino bluegrass) follows:

BILLING CODE 4310-55-S



(6) Unit 2: North Baldwin Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City, land bounded by the following UTM NAD27 coordinates (E,N): 516578, 3795213; 516595,

3795205; 516597, 3795204; 516602, 3795201; 516608, 3795198; 516613, 3795194; 516618, 3795190; 516623, 3795185; 516628, 3795181; 516632, 3795176; 516632, 3795175; 516639, 3795166; 516642, 3795161; 516646, 3795156; 516649, 3795150; 516652, 3795144; 516654, 3795138; 516656, 3795132; 516656, 3795131; 516659, 3795122; 516660, 3795116; 516661, 3795109; 516661, 3795108; 516662, 3795107; 516668, 3795104; 516674, 3795101; 516680, 3795098; 516685, 3795094; 516690, 3795090; 516695, 3795085; 516699, 3795081; 516703, 3795076; 516707, 3795070; 516711, 3795065; 516714, 3795059; 516716, 3795053; 516719, 3795047; 516721, 3795041; 516722, 3795034; 516723, 3795028; 516724, 3795021; 516724, 3795015; 516724, 3795008; 516723, 3795002; 516723, 3795000; 516725, 3794999; 516731, 3794997; 516736, 3794994; 516742, 3794990; 516747, 3794986; 516752, 3794982; 516756, 3794979; 516759, 3794976; 516760, 3794975; 516765, 3794970; 516769, 3794965; 516773, 3794960; 516773, 3794958; 516776, 3794956; 516781, 3794952; 516786, 3794947; 516791, 3794943; 516795, 3794938; 516799, 3794932; 516802, 3794927; 516805, 3794921; 516808, 3794915; 516810, 3794909; 516812, 3794903; 516813, 3794896; 516815, 3794890; 516815, 3794883; 516815, 3794877; 516815, 3794870; 516815, 3794864; 516813, 3794857; 516812, 3794851; 516810, 3794845; 516808, 3794838; 516805, 3794833; 516802, 3794827; 516799, 3794821; 516795, 3794816; 516791, 3794811; 516786, 3794806; 516783, 3794803; 516761, 3794782; 516759, 3794781; 516754, 3794777; 516748, 3794773; 516743, 3794769; 516737, 3794766; 516734, 3794765; 516730, 3794762; 516725, 3794757; 516721, 3794754; 516704, 3794743; 516703, 3794742; 516698, 3794739; 516692, 3794736; 516686, 3794733; 516680, 3794731; 516674, 3794729; 516667, 3794727; 516663, 3794727; 516657, 3794723; 516657, 3794722; 516657, 3794721; 516655, 3794711; 516655, 3794697; 516660, 3794678; 516661, 3794675; 516661, 3794675; 516663, 3794674; 516669, 3794670; 516674, 3794667; 516678, 3794663; 516684, 3794658; 516686, 3794652; 516687, 3794646; 516701, 3794616; 516703, 3794615; 516719, 3794610; 516737, 3794603; 516746, 3794589; 516746,

3794588; 516747, 3794588; 516747, 3794586; 516750, 3794581; 516753, 3794575; 516763, 3794570; 516764, 3794570; 516767, 3794572; 516770, 3794574; 516785, 3794582; 516788, 3794583; 516794, 3794586; 516795, 3794587; 516800, 3794588; 516802, 3794589; 516806, 3794590; 516812, 3794592; 516815, 3794592; 516830, 3794595; 516833, 3794595; 516840, 3794596; 516841, 3794596; 516874, 3794597; 516908, 3794601; 516910, 3794601; 516929, 3794603; 516972, 3794606; 516974, 3794607; 516981, 3794607; 516987, 3794607; 516993, 3794606; 517005, 3794604; 517018, 3794605; 517040, 3794610; 517052, 3794614; 517085, 3794629; 517087, 3794629; 517093, 3794632; 517093, 3794632; 517111, 3794638; 517163, 3794588; 517163, 3794587; 517167, 3794579; 517179, 3794553; 517186, 3794537; 517217, 3794533; 517204, 3794133; 517196, 3794146; 517184, 3794165; 517179, 3794170; 517164, 3794180; 517150, 3794188; 517128, 3794196; 517109, 3794200; 517058, 3794164; 517008, 3794154; 516957, 3794121; 516797, 3794070; 516794, 3794068; 516782, 3794061; 516763, 3794052; 516744, 3794045; 516736, 3794043; 516721, 3794037; 516701, 3794037; 516692, 3794028; 516672, 3794003; 516651, 3793976; 516635, 3793965; 516635, 3793959; 516622, 3793955; 516621, 3793954; 516619, 3793952; 516618, 3793953; 516609, 3793950; 516609, 3793968; 516609, 3793971; 516609, 3793972; 516603, 3793980; 516597, 3793980; 516579, 3793998; 516579, 3794010; 516567, 3794010; 516549, 3794010; 516549, 3794028; 516549, 3794033; 516540, 3794036; 516523, 3794038; 516518, 3794040; 516513, 3794040; 516489, 3794040; 516489, 3794047; 516489, 3794070; 516489, 3794100; 516459, 3794100; 516429, 3794100; 516411, 3794100; 516407, 3794100; 516399, 3794100; 516396, 3794100; 516396, 3794100; 516397, 3794107; 516398, 3794113; 516400, 3794119; 516401, 3794126; 516404, 3794132; 516406, 3794138; 516407, 3794138; 516410, 3794144; 516412, 3794148; 516416, 3794153; 516416, 3794154; 516417, 3794155; 516436, 3794183; 516439, 3794187; 516443, 3794192; 516448, 3794197; 516449, 3794198; 516425, 3794210; 516406, 3794220; 516405, 3794220; 516405, 3794220; 516399, 3794223; 516394, 3794226; 516388, 3794230; 516383, 3794234; 516379, 3794239; 516374, 3794244; 516370, 3794249; 516368, 3794254; 516363, 3794259; 516360, 3794265; 516357, 3794271; 516356, 3794274; 516351, 3794288; 516349,

3794291; 516348, 3794297; 516346, 3794303; 516345, 3794310; 516344, 3794316; 516344, 3794323; 516344, 3794330; 516345, 3794336; 516346, 3794343; 516346, 3794343; 516342, 3794345; 516336, 3794349; 516331, 3794352; 516326, 3794357; 516321, 3794361; 516317, 3794366; 516313, 3794371; 516309, 3794376; 516305, 3794382; 516302, 3794388; 516300, 3794393; 516297, 3794400; 516295, 3794406; 516294, 3794412; 516293, 3794419; 516292, 3794425; 516292, 3794430; 516292, 3794449; 516292, 3794450; 516292, 3794457; 516292, 3794458; 516293, 3794467; 516292, 3794468; 516291, 3794475; 516291, 3794481; 516290, 3794488; 516291, 3794495; 516291, 3794501; 516292, 3794508; 516294, 3794514; 516296, 3794520; 516298, 3794526; 516301, 3794532; 516303, 3794537; 516306, 3794541; 516306, 3794542; 516310, 3794548; 516314, 3794553; 516318, 3794558; 516322, 3794563; 516327, 3794567; 516332, 3794572; 516337, 3794575; 516343, 3794579; 516349, 3794582; 516353, 3794584; 516373, 3794593; 516373, 3794594; 516375, 3794601; 516376, 3794607; 516378, 3794613; 516380, 3794619; 516383, 3794625; 516386, 3794631; 516389, 3794637; 516393, 3794641; 516392, 3794641; 516387, 3794645; 516381, 3794649; 516376, 3794653; 516371, 3794657; 516367, 3794662; 516363, 3794667; 516361, 3794670; 516369, 3794670; 516369, 3794700; 516369, 3794730; 516369, 3794760; 516339, 3794762; 516339, 3794790; 516339, 3794808; 516339, 3794809; 516343, 3794830; 516339, 3794837; 516338, 3794839; 516335, 3794845; 516334, 3794847; 516326, 3794865; 516324, 3794868; 516311, 3794899; 516311, 3794900; 516309, 3794905; 516309, 3794910; 516309, 3794940; 516309, 3794970; 516309, 3795000; 516309, 3795030; 516309, 3795060; 516334, 3795060; 516330, 3795101; 516325, 3795131; 516322, 3795150; 516309, 3795150; 516309, 3795180; 516309, 3795210; 516279, 3795210; 516279, 3795180; 516249, 3795180; 516219, 3795180; 516220, 3795202; 516219, 3795225; 516219, 3795226; 516219, 3795233; 516220, 3795239; 516221, 3795246; 516223, 3795252; 516224, 3795258; 516226, 3795262; 516237, 3795293; 516239, 3795296; 516240, 3795299; 516244, 3795309; 516248, 3795320; 516249, 3795326; 516252, 3795332; 516254, 3795338; 516257, 3795344; 516261, 3795349; 516265, 3795355; 516269, 3795360; 516273, 3795364; 516278, 3795369; 516283, 3795373; 516289, 3795377; 516294, 3795380; 516300,

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3795383; 516394, 3795380; 516400,
3795377; 516405, 3795373; 516408,

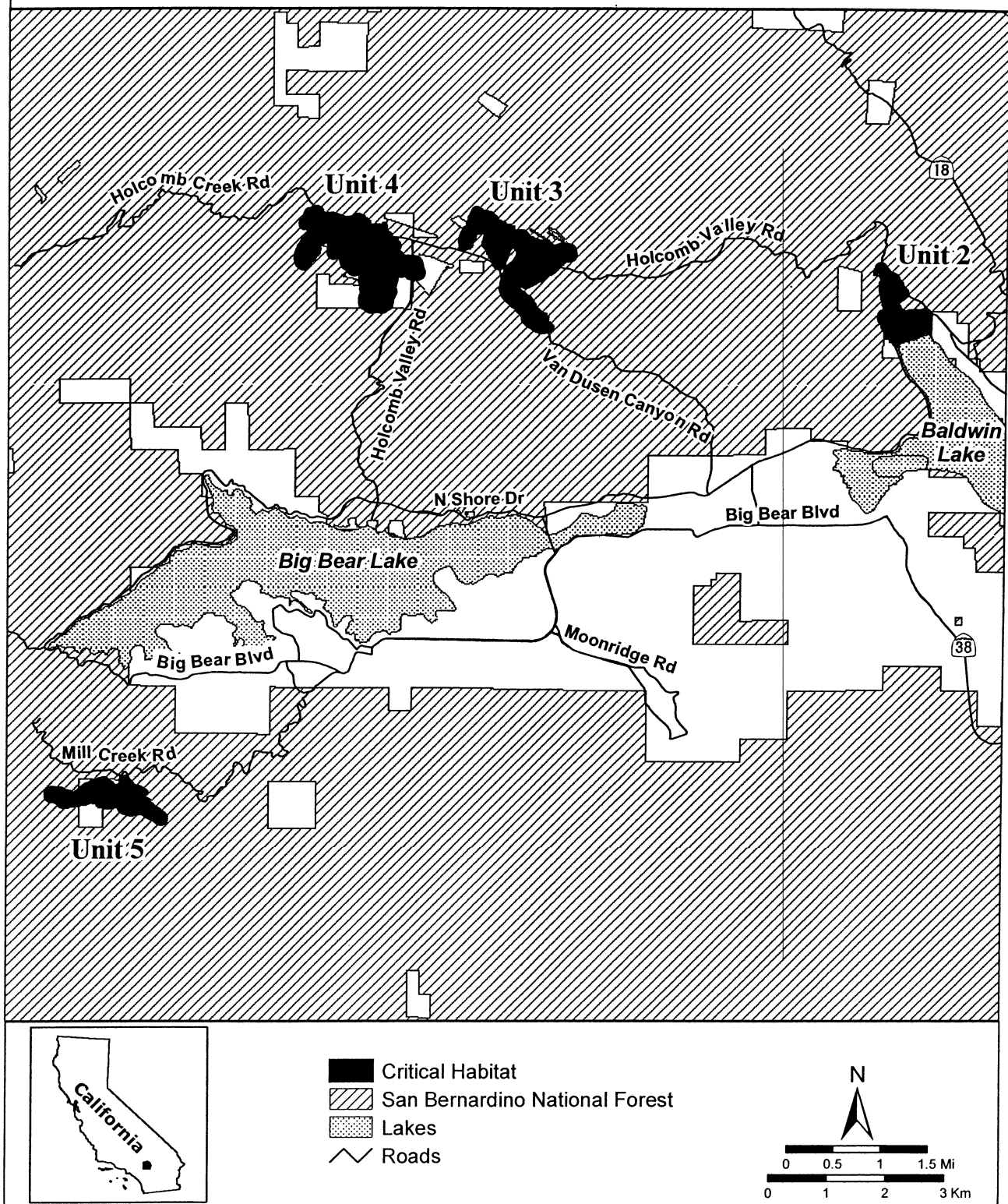
3795370; 516408, 3795370; 516410,
3795369; 516415, 3795364; 516419,
3795360; 516423, 3795355; 516427,
3795349; 516462, 3795298; 516483,
3795273; 516487, 3795268; 516488,
3795267; 516506, 3795243; 516509,
3795239; 516510, 3795237; 516515,
3795230; 516521, 3795229; 516521,
3795229; 516525, 3795228; 516535,

3795226; 516538, 3795226; 516545,
3795224; 516548, 3795223; 516565,
3795218; 516568, 3795217; 516574,
3795215; returning to 516578, 3795213.

(ii) Note: Map of Units 2, 3, 4, and 5
for *Poa atropurpurea* follows:

BILLING CODE 4310-55-S

Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Units 2, 3, 4, and 5, San Bernardino County, California



(7) Unit 3: Belleville Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin, land bounded by the following UTM NAD27 coordinates (E,N): 509560, 3796268; 509577, 3796255; 509585, 3796255; 509587, 3796256; 509594, 3796255; 509600, 3796255; 509604, 3796254; 509609, 3796253; 509637, 3796250; 509637, 3796250; 509644, 3796249; 509650, 3796247; 509657, 3796245; 509659, 3796244; 509672, 3796239; 509687, 3796236; 509693, 3796235; 509699, 3796233; 509705, 3796231; 509711, 3796228; 509717, 3796225; 509722, 3796222; 509728, 3796218; 509732, 3796215; 509748, 3796201; 509749, 3796200; 509751, 3796198; 509768, 3796182; 509772, 3796179; 509773, 3796178; 509776, 3796175; 509796, 3796156; 509797, 3796155; 509802, 3796150; 509806, 3796145; 509809, 3796140; 509813, 3796134; 509816, 3796128; 509819, 3796122; 509821, 3796116; 509823, 3796110; 509824, 3796104; 509825, 3796102; 509826, 3796096; 509828, 3796096; 509835, 3796095; 509841, 3796094; 509848, 3796093; 509854, 3796091; 509860, 3796089; 509861, 3796088; 509878, 3796081; 509884, 3796078; 509890, 3796075; 509895, 3796072; 509901, 3796068; 509906, 3796064; 509906, 3796064; 509907, 3796065; 509913, 3796068; 509919, 3796071; 509919, 3796071; 509919, 3796050; 509949, 3796050; 509949, 3796020; 509979, 3796020; 510009, 3796020; 510039, 3796020; 510039, 3795990; 510069, 3795990; 510099, 3795990; 510099, 3795960; 510099, 3795944; 510102, 3795942; 510108, 3795938; 510108, 3795937; 510118, 3795930; 510118, 3795930; 510118, 3795930; 510123, 3795926; 510128, 3795922; 510131, 3795922; 510136, 3795922; 510144, 3795921; 510159, 3795925; 510163, 3795926; 510169, 3795928; 510176, 3795929; 510182, 3795930; 510187, 3795930; 510202, 3795930; 510204, 3795930; 510210, 3795930; 510211, 3795930; 510247, 3795927; 510253, 3795927; 510259, 3795926; 510266, 3795924; 510272, 3795922; 510278, 3795920; 510284, 3795917; 510290, 3795914; 510295, 3795911; 510301, 3795907; 510306, 3795903; 510311, 3795898; 510313, 3795896; 510331, 3795877; 510333, 3795874; 510337, 3795869; 510341, 3795864; 510343, 3795861; 510354, 3795843; 510367, 3795831; 510368, 3795830; 510370, 3795828; 510382, 3795815; 510388, 3795814; 510393, 3795814; 510400, 3795814; 510406, 3795813; 510412, 3795811; 510419, 3795809; 510425, 3795807; 510431, 3795804; 510433,

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(ii) Note: Unit 3 for *Poa atropurpurea* is depicted on the map in paragraph (6)(ii) of this entry.

(8) Unit 4: Hitchcock Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin, land bounded by the following UTM NAD27 coordinates (E,N): 507473, 3794979; 507468,

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(ii) Note: Unit 4 for *Poa atropurpurea* is depicted on the map in paragraph (6)(ii) of this entry.

(9) Unit 5: Bluff Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear Lake, land bounded by the following UTM NAD27 coordinates (E,N): 502768, 3786471; 502770, 3786472; 502816, 3786510; 502819, 3786513; 502824, 3786517; 502830,

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(ii) Note: Unit 5 for *Poa atropurpurea* is depicted on the map in paragraph (6)(ii) of this entry.

(10) Unit 11: Cienega Seca Meadow, San Bernardino County, California.

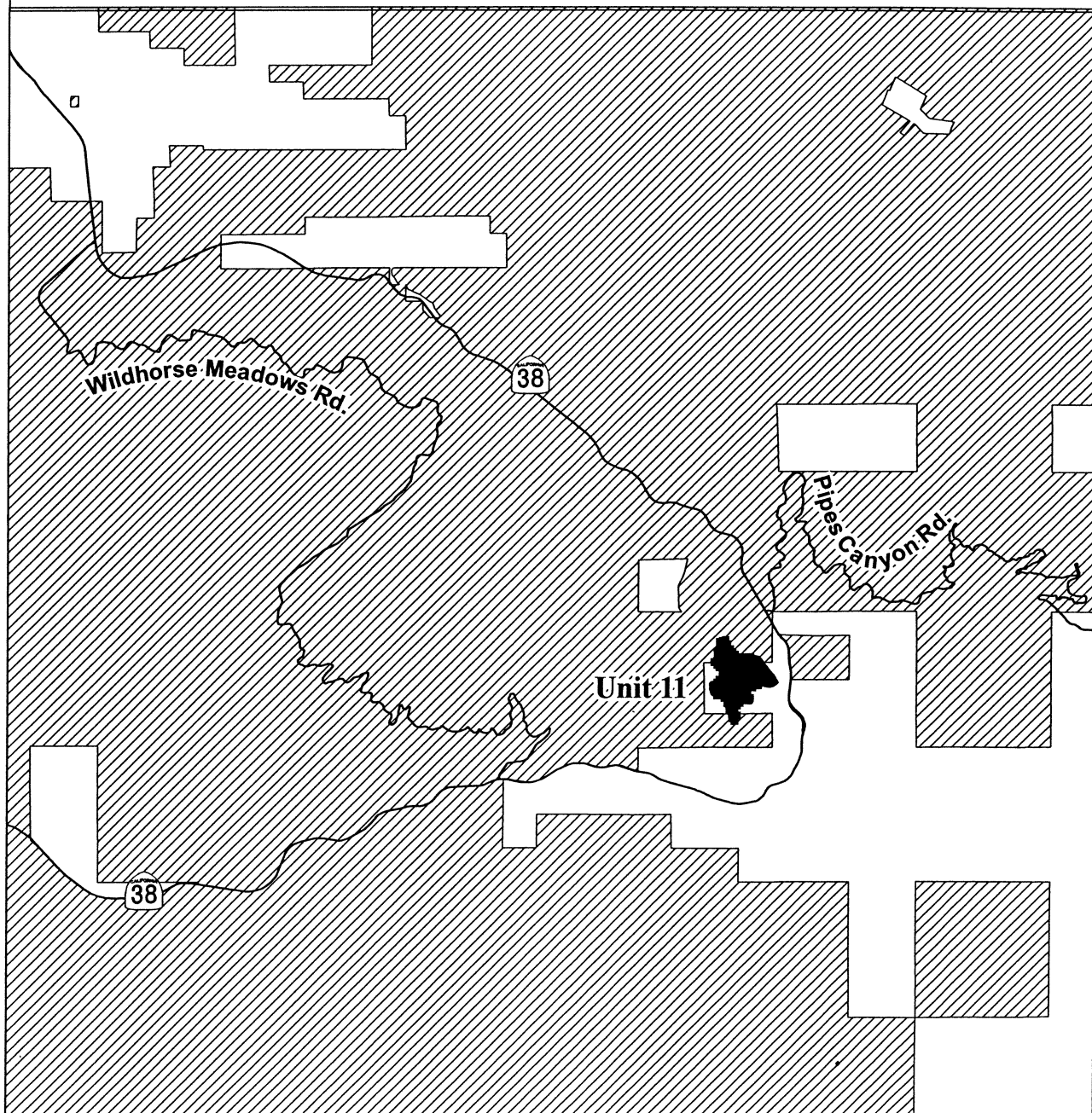
(i) From USGS 1:24:000 quadrangle map Onyx Peak, land bounded by the following UTM NAD27 coordinates (E,N): 525819, 3782744; 525865, 3782734; 525901, 3782698; 525995, 3782576; 526043, 3782518; 526081, 3782447; 526074, 3782442; 526069, 3782438; 526064, 3782435; 526058, 3782432; 526050, 3782428; 526050, 3782428; 526044, 3782425; 526038, 3782423; 526032, 3782421; 526025, 3782419; 526019, 3782418; 526012, 3782417; 526006, 3782417; 525999, 3782417; 525998, 3782418; 525972, 3782420; 525967, 3782420; 525961, 3782421; 525954, 3782423; 525948, 3782425; 525942, 3782427; 525936, 3782430; 525930, 3782433; 525925, 3782436; 525919, 3782440; 525916, 3782442; 525915, 3782443; 525914, 3782442; 525914, 3782442; 525914, 3782442; 525900, 3782421; 525897, 3782416; 525892, 3782411; 525888, 3782406; 525884, 3782403; 525881, 3782400; 525879, 3782400; 525849, 3782400; 525819, 3782400; 525819, 3782370; 525789, 3782370; 525759, 3782370; 525759, 3782340; 525737, 3782340; 525733, 3782332; 525729, 3782323; 525729, 3782310; 525729, 3782280; 525759, 3782280; 525789, 3782280; 525789, 3782250; 525789, 3782234; 525777, 3782220; 525759, 3782220; 525729, 3782220; 525699, 3782220; 525669, 3782220; 525669, 3782190; 525639, 3782190; 525639, 3782160; 525609, 3782160; 525609, 3782130; 525609, 3782104; 525609, 3782100; 525609, 3782070; 525639, 3782070; 525639, 3782040; 525609, 3782040; 525609, 3782010; 525609, 3781980; 525579, 3781980; 525579, 3782010; 525549, 3782010; 525549, 3782030; 525547, 3782031; 525545, 3782042; 525545, 3782068; 525534,




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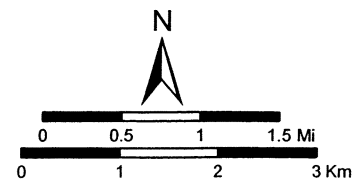
(ii) Note: Map of Unit 11 for *Poa atropurpurea* follows:

BILLING CODE 4310-55-S

Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Unit 11, San Bernardino County, California



-  Critical Habitat
-  San Bernardino National Forest
-  Roads



(11) Unit 13: Mendenhall Valley, San Diego County, California.

(i) From USGS 1:24:000 quadrangle map Palomar Observatory, land bounded by the following UTM NAD27 coordinates (E,N): 515708, 3686915; 515693, 3686929; 515679, 3686936; 515639, 3686953; 515612, 3686967; 515609, 3686974; 515604, 3686975; 515576, 3686980; 515505, 3686977; 515476, 3687012; 515443, 3687019; 515407, 3687027; 515376, 3687053; 515352, 3687060; 515331, 3687060; 515293, 3687060; 515267, 3687067; 515257, 3687100; 515229, 3687105; 515195, 3687115; 515164, 3687158; 515138, 3687170; 515097, 3687172; 515074, 3687189; 515047, 3687201; 515009, 3687210; 514971, 3687210; 514935, 3687213; 514897, 3687213; 514871, 3687232; 514850, 3687248; 514840, 3687272; 514821, 3687274; 514802, 3687298; 514783, 3687315; 514754, 3687332; 514740, 3687332; 514706, 3687365; 514699, 3687377; 514708, 3687386; 514700, 3687392; 514745, 3687446; 514869, 3687601; 514935, 3687639; 515076, 3687618; 515174, 3687549; 515245, 3687499; 515333, 3687401; 515388, 3687370; 515422, 3687353; 515498, 3687382; 515553, 3687410; 515579, 3687513; 515546, 3687582; 515593, 3687575; 515619, 3687584; 515646, 3687588; 515670, 3687594; 515709, 3687571; 515734, 3687551; 515777, 3687528; 515799, 3687502; 515799, 3687479; 515799, 3687442; 515794, 3687427; 515764, 3687423; 515743, 3687423; 515704, 3687423; 515674, 3687399; 515672, 3687367; 515672, 3687339; 515689, 3687311; 515709, 3687303; 515717, 3687281; 515728, 3687247; 515732, 3687215; 515726, 3687185;

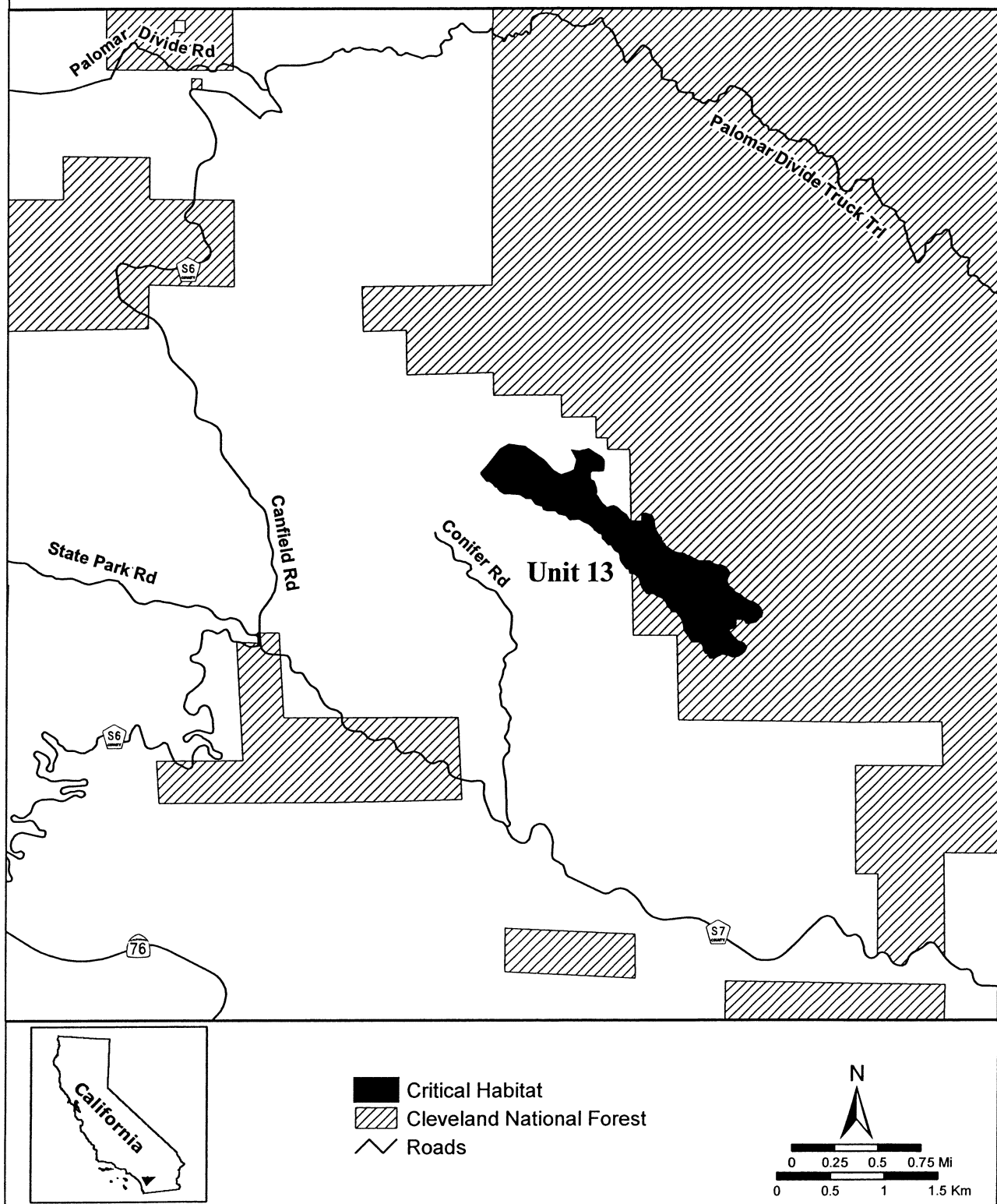
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516973, 3685933; 516995, 3685895; 517025, 3685858; 517057, 3685826; 517114, 3685806; 517133, 3685780; 517119, 3685754; 517097, 3685732; 517069, 3685713; 517021, 3685711; 516992, 3685720; 516942, 3685732; 516919, 3685732; 516902, 3685723; 516873, 3685708; 516854, 3685696; 516818, 3685699; 516804, 3685735; 516780, 3685739; 516771, 3685766; 516761, 3685804; 516737, 3685832; 516714, 3685851; 516690, 3685847; 516656, 3685849; 516637, 3685878; 516630, 3685904; 516613, 3685913; 516594, 3685940; 516587, 3685963; 516580, 3685994; 516575, 3686030; 516556, 3686066; 516530, 3686092; 516511, 3686123; 516468, 3686128; 516461, 3686147; 516435, 3686168; 516428, 3686195; 516408, 3686223; 516380, 3686250; 516327, 3686271; 516292, 3686295; 516237, 3686295; 516196, 3686340; 516182, 3686393; 516169, 3686431; 516159, 3686441; 516116, 3686473; 516079, 3686480; 516073, 3686510; 516070, 3686512; 516041, 3686523; 516020, 3686550; 515996, 3686583; 515991, 3686605; 515989, 3686630; 515977, 3686660; 515969, 3686673; 515956, 3686677; 515939, 3686687; 515917, 3686712; 515908, 3686730; 515891, 3686746; 515868, 3686747; 515849, 3686770; 515835, 3686786; 515823, 3686794; 515818, 3686831; 515808, 3686836; 515797, 3686843; 515775, 3686851; 515753, 3686870; 515742, 3686876; 515732, 3686895; 515712, 3686908; 515710, 3686915; returning to 515708, 3686915.

(ii) Note: Map of Unit 13 for *Poa atropurpurea* follows:

BILLING CODE 4310-55-S

Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Unit 13, San Diego County, California



(12) Unit 14: Laguna Meadow, San Diego County, California.

(i) From USGS 1:24:000 quadrangle maps Monument Peak and Mount Laguna, land bounded by the following UTM NAD27 coordinates (E,N): 550585,

3637916; 550626, 3637882; 550683, 3637909; 550739, 3637924; 550799, 3637969; 550859, 3637972; 550904, 3638006; 550934, 3638051; 550961, 3638115; 550938, 3638123; 550897, 3638127; 550885, 3638149; 550912, 3638190; 550934, 3638232; 550968, 3638265; 551032, 3638307; 551062, 3638363; 551084, 3638438; 551080, 3638474; 551057, 3638534; 551033, 3638590; 550998, 3638657; 550955, 3638702; 550940, 3638726; 551024, 3638739; 551056, 3638737; 551075, 3638737; 551119, 3638757; 551126, 3638779; 551144, 3638778; 551161, 3638786; 551173, 3638827; 551189, 3638850; 551199, 3638899; 551208, 3638905; 551219, 3638908; 551226, 3638938; 551260, 3638951; 551294, 3638939; 551335, 3638938; 551356, 3638934; 551383, 3638941; 551394, 3638943; 551386, 3638884; 551370, 3638874; 551362, 3638842; 551365, 3638809; 551371, 3638784; 551386, 3638767; 551400, 3638758; 551421, 3638763; 551434, 3638768; 551460, 3638720; 551460, 3638675; 551438, 3638607; 551434, 3638506; 551445, 3638416; 551456, 3638344; 551455, 3638325; 551415, 3638313; 551380, 3638309; 551344, 3638305; 551328, 3638293; 551310, 3638232; 551299, 3638183; 551280, 3638153; 551280, 3638100; 551280, 3638059; 551254, 3638018; 551231, 3637980; 551208, 3637965; 551208, 3637942; 551242, 3637871; 551269, 3637834; 551291, 3637785; 551321, 3637732; 551344, 3637672; 551374, 3637634; 551400, 3637657; 551400, 3637698; 551389, 3637717; 551366, 3637740; 551366, 3637740; 551464, 3637740; 551464, 3637740; 551490, 3637702; 551505, 3637664; 551524, 3637616; 551558, 3637578; 551584, 3637544; 551629, 3637499; 551663, 3637488; 551704, 3637488; 551730, 3637488; 551730, 3637420; 551689, 3637420; 551655, 3637420; 551603, 3637417; 551546, 3637420; 551513, 3637383; 551460, 3637334; 551419, 3637281; 551374, 3637248; 551310, 3637202; 551237, 3637195; 551137, 3637095; 551137, 3637094; 551118, 3637056; 551088, 3637018; 551081, 3636988; 551100, 3636951; 551111, 3636917; 551096, 3636891; 551107, 3636846; 551148, 3636801; 551175, 3636759; 551190, 3636695; 551197, 3636650; 551223, 3636647; 551246, 3636613; 551265, 3636571; 551287, 3636541; 551299, 3636508; 551332, 3636485; 551400,

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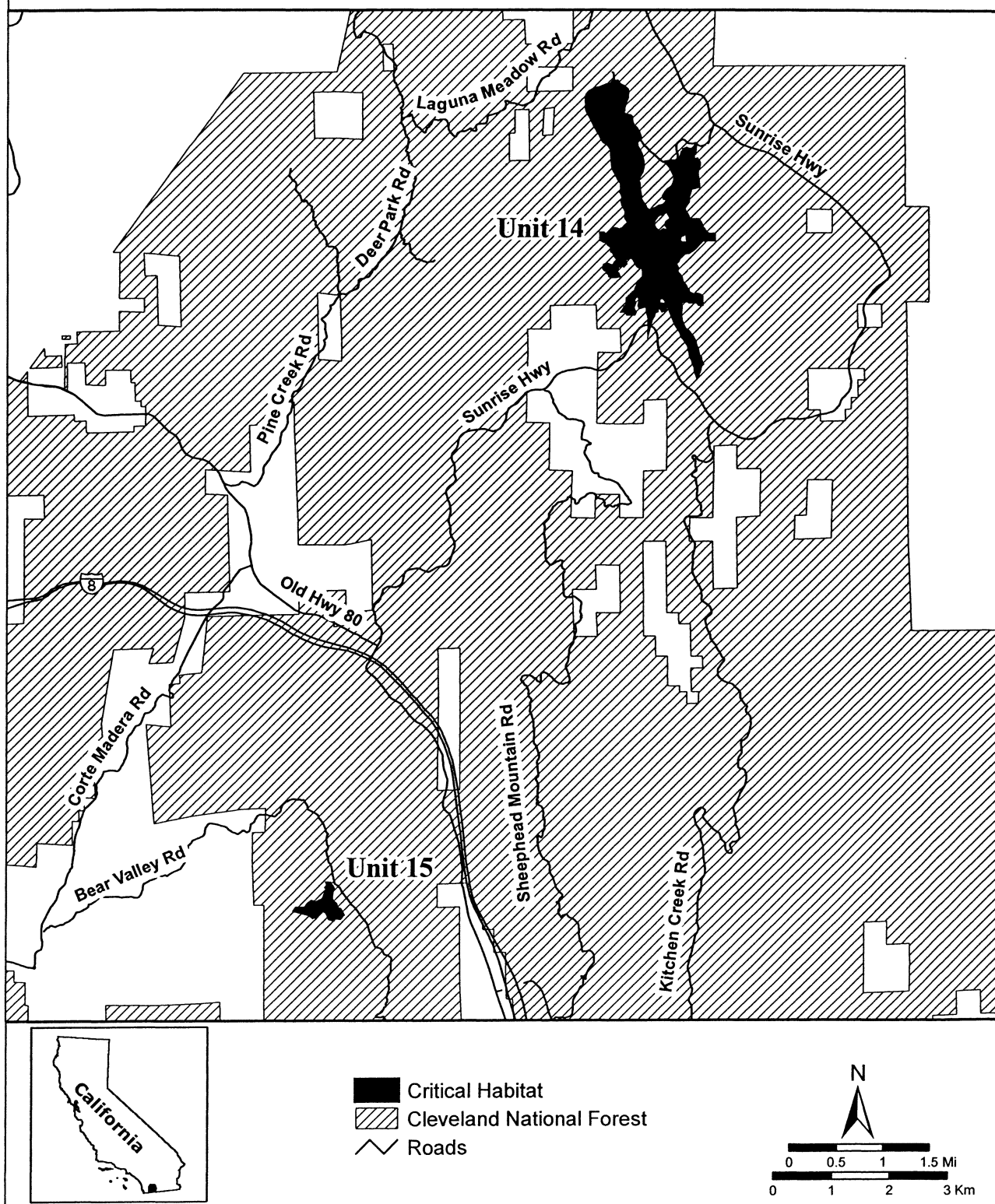
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3637865; 550845, 3637863; 550869, 3637877; and land bounded by 551248, 3637523; 551267, 3637518; 551283, 3637506; 551295, 3637484; 551295, 3637459; 551300, 3637428; 551303, 3637401; 551304, 3637378; 551291, 3637350; 551276, 3637341; 551265, 3637333; 551250, 3637339; 551231, 3637345; 551222, 3637325; 551208, 3637332; 551181, 3637346; 551166, 3637333; 551148, 3637324; 551131, 3637323; 551098, 3637329; 551080, 3637339; 551070, 3637355; 551074, 3637364; 551089, 3637352; 551111, 3637352; 551130, 3637365; 551148, 3637378; 551142, 3637405; 551144, 3637427; 551148, 3637460; 551158, 3637486; 551172, 3637492; 551194, 3637497; 551198, 3637512; 551215, 3637520; 551248, 3637523.

(ii) Note: Map of Units 14 and 15 for *Poa atropurpurea* follows:

BILLING CODE 4310-55-S

Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Units 14 and 15, San Diego County, California



(13) Unit 15: Bear Valley, San Diego County, California.

(i) From USGS 1:24:000 quadrangle map Descanso, land bounded by the following UTM NAD27 coordinates (E,N): 545418, 3625880; 545371, 3625830; 545280, 3625844; 545259, 3625803; 545210, 3625820; 545161, 3625920; 545096, 3625970; 545046, 3625966; 545005, 3625906; 544962, 3625866; 544913, 3625851; 544850, 3625899; 544717, 3625930; 544619,

3625958; 544636, 3625980; 544714, 3625980; 544779, 3625982; 544836, 3626047; 544888, 3626090; 544924, 3626087; 544936, 3626066; 544965, 3626075; 545022, 3626099; 545091, 3626130; 545179, 3626331; 545158, 3626348; 545179, 3626376; 545175, 3626404; 545192, 3626405; 545203, 3626378; 545232, 3626357; 545244, 3626326; 545232, 3626285; 545215, 3626152; 545242, 3626090; 545284, 3626066; 545297, 3626049; 545313,

3625982; 545377, 3625954; returning to 545418, 3625880.

(ii) Note: Unit 15 for *Poa atropurpurea* is depicted on the map in paragraph (13)(ii) of this entry.

Dated: July 24, 2008

David M. Verhey

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E8-17522 Filed 8-13-08; 8:45 am]

BILLING CODE 4310-55-S