

(vii) The Hybrid III Six-Year-Old Child Parts/Drawing List, dated June 1, 2009.

(2) A procedures manual entitled, "Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 6-Year-Old Child Crash Test Dummy (H-III6C), Beta Version, June 1, 2009";

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(b) The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at the Department of Transportation, Docket Operations, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366-9826, and at the National Archives and Records Administration (NARA), and in electronic format through Regulations.gov. For information on the availability and inspection of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). For information on the availability and inspection of this material at Regulations.gov, call 1-877-378-5457, or go to: <http://www.regulations.gov>.

(c) \* \* \*

(1) The drawings and specifications package, the parts list, and the PADI document referred to in paragraphs (a)(1), and (a)(2) of this section, are available in electronic format through [www.Regulations.gov](http://www.Regulations.gov) and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, (301) 670-0090.

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3. Section 572.121 is amended by revising paragraph (a)(2) introductory text (the table is not amended) to read as follows:

**§ 572.121 General description.**

(a) \* \* \*

(2) Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 6-year-old test dummy, Alpha version, dated June 1, 2009.

Issued: October 15, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E9-25241 Filed 10-20-09; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[FWS-R8-ES-2009-0062; 92210-1117-0000-B4]

[RIN 1018-AW85]

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Buena Vista Lake shrew**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise our designation of critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) under the Endangered Species Act of 1973, as amended (Act). Our proposal is the same as the proposed critical habitat we published on August 19, 2004 (69 FR 51417). In total, approximately 4,649 acres (ac) (1,881 hectares (ha)) occur within the boundaries of the proposed revised critical habitat designation. The proposed revised critical habitat is located in the Central Valley floor of Kern County, California.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before December 21, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 7, 2009.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2009-0062.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket no. FWS-R8-ES-2009-0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Daniel Russell, Acting Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825; telephone (916) 414-6600; facsimile (916) 414-6712. If

you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We intend that any final action resulting from this proposal to revise critical habitat will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- Areas that provide habitat for the Buena Vista Lake shrew (herein after referred to as the shrew) that we did not discuss in our August 19, 2004 (69 FR 51417) proposed critical habitat rule,

- Areas containing the features essential to the conservation of the shrew that we should include in the revised designation and why,

- Areas proposed that do not contain features essential for the conservation of the species and why, and

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

(3) Land-use designations and current or planned activities in the areas proposed as revised critical habitat, as well as their possible effects on proposed revised critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the physical and biological features.

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as containing the features essential to the species' conservation.

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

(7) Whether any specific areas being proposed as revised critical habitat should be excluded under section

4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) Information on any quantifiable potential economic impacts of the proposed designation of critical habitat.

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

You may submit your comments on this proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and information that we receive will be available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat in this proposed rule. There is no new information on the biology, distribution, or abundance of the shrew since the time the species was listed. For more information on the shrew, refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101).

### Previous Federal Actions

On August 19, 2004, we proposed critical habitat for the shrew on approximately 4,649 ac (1,881 ha) in Kern County, California (69 FR 51417). On January 24, 2005, we published a final rule (70 FR 3438) designating 84 ac (34 ha) of critical habitat for the shrew in Kern County, California. The decrease in acreage from the areas we proposed to the areas we designated resulted from exclusions under section 4(b)(2) of the Act and, to a small degree, refinements in our mapping of critical habitat boundaries.

On October 2, 2008, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Eastern District of California challenging the Service's designation of critical habitat for the shrew (*Center for Biological Diversity v. United States Fish and Wildlife, et al.*, Case No. 08-CV-01490-AWI-GSA). A July 9, 2009, settlement agreement stipulates the Service will, within 90 days of the signed agreement, submit to the **Federal Register** for publication a new proposal of critical habitat for the species which encompasses the same geographic area as the August 19, 2004, (69 FR 51417) proposed designation. Additionally, the Service agreed to submit to the **Federal Register** for publication, on or before March 22, 2012, a final determination on revised critical habitat for the shrew.

The current designation of critical habitat for the Buena Vista Lake shrew (70 FR 3438, January 24, 2005) remains in full force and effect until we publish a new final rule revising critical habitat for the shrew.

### Critical Habitat

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

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

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

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

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

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies

carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) 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 non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant'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 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 and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features (PBFs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure 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 determine 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 critical habitat designated at a particular point in time may not include all of the habitat areas that we may later 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 be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations 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 new information available at the time of these planning efforts calls for a different outcome.

#### *Physical and Biological Features*

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) 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 propose as critical habitat, we consider the physical and biological features essential to the conservation of the species which may require special management considerations or protection. 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, or 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 consider the specific physical and biological features (PBFs) to be the primary constituent elements of habitat laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species. We derive the physical and biological features from the primary constituent elements (PCEs) for this species as they were described in the August 19, 2004 (69 FR 51417) proposed designation of critical habitat for the Buena Vista Lake shrew. Please refer to the Proposed Regulation Promulgation Section of this document and the previous proposed designation (69 FR 51417, August 19, 2004) for a description of PCEs.

#### **Proposed Revised Critical Habitat Designation**

Under the terms of the July 9, 2009, settlement agreement, we propose revised critical habitat for the shrew that matches the proposed designation we published on August 19, 2004 (69 FR 51417). See the Proposed Regulation Promulgation section of this document, which is the same as that which we published in 2004. The proposed designation includes five units which constitute approximately 4,649 ac (1,881 ha), located in the Central Valley floor of Kern County, California. Please see the August 19, 2004 (69 FR 51417), notice for details regarding methods, criteria, critical habitat unit descriptions, and special management considerations or protection for the proposed revised critical habitat designation.

#### *Effects of Critical Habitat Designation*

##### Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service,

to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. However, decisions by the courts of appeals for the Fifth and Ninth Circuits have invalidated our regulatory 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 (9<sup>th</sup> Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5<sup>th</sup> Cir 2001)). Instead, we rely upon the statutory provisions of the Act to make that determination. Under the statutory provisions of the Act, the key factor in determining whether an action will destroy or adversely modify critical habitat is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to support the species) to serve its intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once proposed species become listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) of the Act apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause with respect to the proposed critical habitat. We typically

use formal conferences when the Federal agency or the Service believes the proposed action is likely to adversely affect a species proposed for listing or degrade proposed critical habitat in some manner.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed critical habitat was already designated. If no substantial new information or changes in the action alter the content of the opinion, we may adopt the conference opinion as the biological opinion when the critical habitat is designated (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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 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.

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. At the conclusion of this consultation, the Service will issue either:

(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 may affect, but are likely to adversely affect, listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide

reasonable and prudent alternatives to the project, if any are identifiable, to avoid these outcomes. 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 reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action. Consequently, some Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement may affect subsequently listed species or designated critical habitat.

#### **Application of the Jeopardy and Adverse Modification Standards**

##### *Jeopardy Standard*

Currently, the Service applies an analytical framework for Buena Vista Lake shrew jeopardy analyses that relies heavily on the importance of known populations to the species' survival and recovery. Section 7(a)(2) of the Act analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of Buena Vista Lake shrew in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the range-wide status of Buena Vista Lake shrew, the factors responsible for that condition, and what is necessary for this species to survive and recover. An emphasis is

also placed on characterizing the conditions of Buena Vista Lake shrew in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of the species. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination.

##### *Adverse Modification Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Generally, the conservation role of Buena Vista Lake shrew critical habitat units is to support the various life-history needs and provide for the conservation of the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for Buena Vista Lake shrew.

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

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Actions that would affect riparian or wetland areas by any Federal Agency. Such activities could include, but are not limited to, flood control or changes in water banking activities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(2) Actions that would affect the regulation of water flows by any Federal agency. Such activities could include, but are not limited to, damming, diversion, and channelization. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(3) Actions that would involve regulations funded or permitted by the Federal Highway Administration. (We

note that the Federal Highway Administration does not fund the routine operations and maintenance of the State highway system.) Such activities could include, but are not limited to, new road construction and right-of-way designation. These activities could eliminate or reduce riparian or wetland habitat along river crossings necessary for reproduction, sheltering, or growth of Buena Vista Lake shrews.

(4) Actions that would involve regulation of airport improvement activities by the Federal Aviation Administration. Such activities could include, but are not limited to, the creation or expansion of airport facilities. These activities could eliminate or reduce riparian or wetland habitat necessary for the reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(5) Actions that would involve licensing of construction of communication sites by the Federal Communications Commission. Such activities could include, but are not limited to, the installation of new radio equipment and facilities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(6) Actions that would involve funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency. Such activities could include, but are not limited to, activities associated with the cleaning up of Superfund sites, erosion control activities, and flood control activities. These activities could eliminate or reduce upland or aquatic habitat for Buena Vista Lake shrews.

(7) Actions that would affect waters of the United States authorized by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands. These activities could eliminate or reduce the habitat necessary for the reproduction, feeding, or growth of Buena Vista Lake shrews.

All lands within this proposed revised designation as critical habitat are within the historical geographic area occupied by the species, and are likely to be used by the shrew whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all lands included in this proposed revised designation to be essential to the survival of the species. Federal agencies

already consult with us on activities in areas currently occupied by the species, and also one whether the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the revised designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the revised designation of critical habitat.

### Exemptions

#### *Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a

benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the proposed revised critical habitat designation.

### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of revised critical habitat for the Buena Vista Lake shrew. 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 economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. 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 designation might unduly burden a particular group or economic sector.

The 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 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. Our economic analysis evaluated the potential future effects associated with the listing of this species as endangered under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing.

Following the publication of the previous proposed critical habitat designation (69 FR 51417), we conducted an economic analysis to estimate the potential economic effect of the designation. On November 30, 2004, we published a notice of availability for the draft economic analysis of the proposed critical habitat designation (69 FR 69578). The economic analysis included both retrospective, or pre-designation, and prospective, or post-designation, economic costs to various entities as a result of Buena Vista Lake shrew conservation activities. Retrospective costs are those costs estimated to have occurred from the time the species was listed in April 2002 until the proposal of critical habitat in August 2004. The estimated retrospective cost is \$122,237. These costs were primarily certain administrative costs associated with the preparation of a Comprehensive Conservation Plan at the Kern National Wildlife Refuge critical habitat unit (CHU) and the section 7 consultation related to the preparation of a biological opinion related to a habitat conservation plan (HCP) at the Goose Lake proposed CHU.

Values presented in the draft economic analysis are in 2004 dollars and are calculated at 3 and 7 percent discount rates. Total prospective costs range from \$6.7 to \$14.2 million under a 3 percent discount rate, and \$4.8 to \$10.1 million under a 7 percent rate. Thus, prospective average annual costs range from \$452,266 to \$955,833. These costs include effects on agricultural producers adjacent or proximate to three CHUs, biological monitoring, HCP development, and supplemental water purchases. The ranges reflect totals with and without supplemental water for Kern Lake, Coles Levee, and Kern Fan Water Recharge CHUs. Both the Kern National Wildlife Refuge and Goose Lake CHUs are assumed to require supplemental water, and thus do not contribute to this range of costs. However, the economic analysis prepared for the 2004 critical habitat designation does not accurately reflect the full range of potential economic impacts that may result from this proposed revision to Buena Vista Lake shrew critical habitat.

We are preparing a new draft economic analysis of the economic impacts of this proposed revision to critical habitat for the shrew. Upon completion of the new draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period on the proposed revised designation and the new draft economic analysis. At that

time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Sacramento Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section).

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of revised critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Required Determinations

##### Regulatory Planning and Review—Executive Order 12866

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

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

(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

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 must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the new draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. Upon completion of the new draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period on the proposed revised designation and the new draft economic analysis. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

#### 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 would 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; Aid to Families with Dependent Children 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 would significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate

### 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 revised critical habitat for the Buena Vista Lake shrew in a takings implications assessment. The takings implications assessment concludes that this designation of revised critical habitat for this species does not pose significant takings implications for lands within or affected by the designation.

### Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species 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).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

### Civil Justice Reform

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 proposed

designating revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the this 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 U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

### Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Government-to-Government  
Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we 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.

We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are essential for the conservation for the Buena Vista Lake shrew. Therefore, we have not proposed to designate revised critical habitat for this species on tribal lands.

*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. We do not expect it to significantly affect energy supplies, distribution, or use. Because this action is not a significant energy action, no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

**References Cited**

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

**Author(s)**

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

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. Amend § 17.95(a) by revising the entry for "Buena Vista Lake Shrew (*Sorex ornatus relictus*)" to read as follows:

§ 17.95 *Critical habitat—fish and wildlife.*

(a) *Mammals.*

\* \* \* \* \*

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

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

(2) The primary constituent elements of critical habitat for the Buena Vista Lake shrew are the habitat components that provide:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation;

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semi-permanent water; and

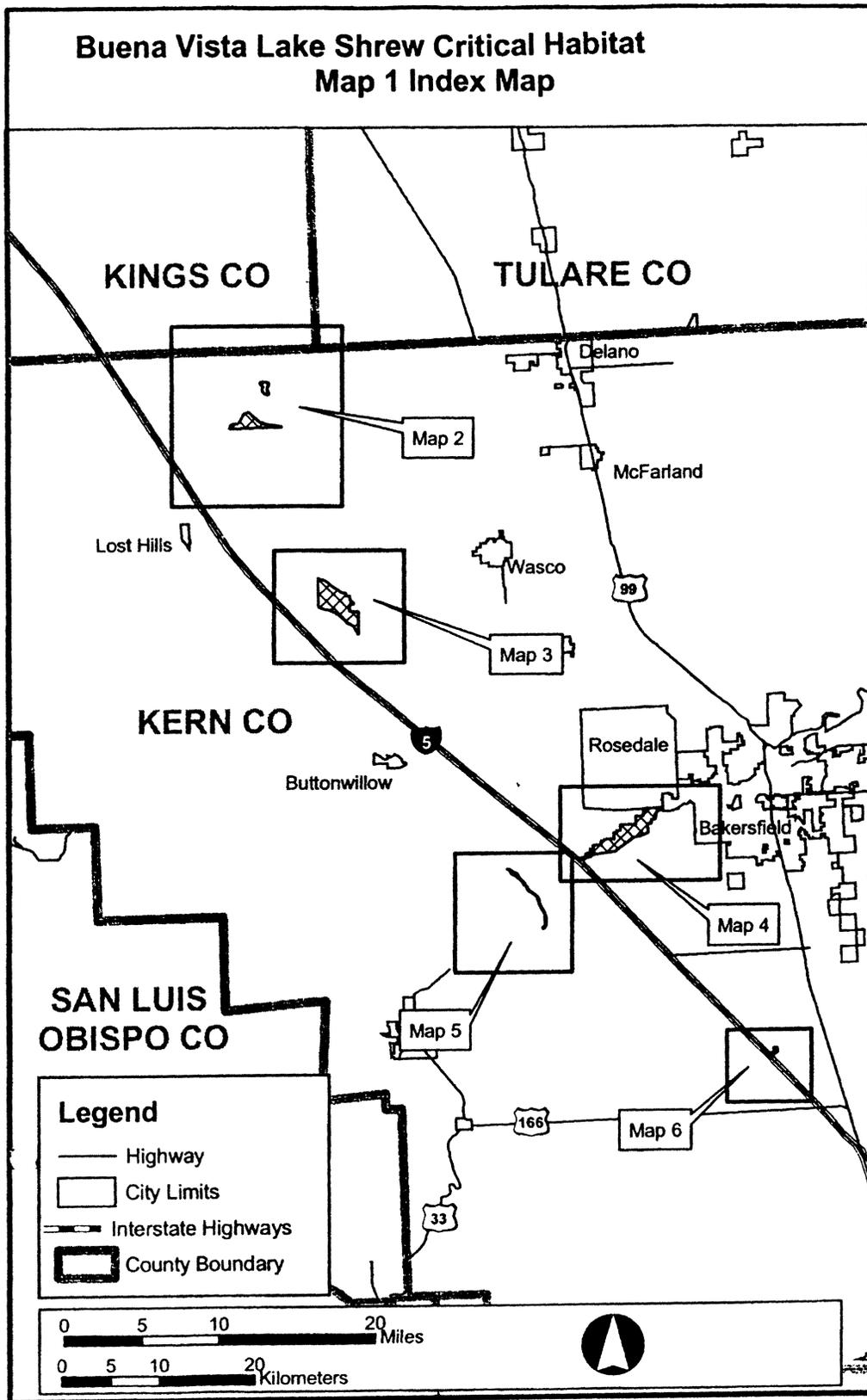
(iii) A consistent and diverse supply of prey.

(3) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

(4) Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Map 1 (index map) follows:

**BILLING CODE 4310–55–S**



(6) Unit 1a: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Hacienda Ranch, California, and

Lost Hills NE, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 261370, 3955645; 261384, 3955731; 261457, 3955912;

261502, 3955985; 261534, 3956044; 261643, 3955967; 261679, 3955949; 261775, 3955967; 261797, 3955981; 261784, 3956017; 261779, 3956062;

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 261784, 3956621; 261734, 3956675;  
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 261756, 3956784; 261788, 3956825;  
 261793, 3956862; 261797, 3957157;  
 261806, 3957170; 261825, 3957175;  
 261943, 3957120; 261993, 3957107;  
 262179, 3957093; 262297, 3957089;  
 262315, 3957071; 262424, 3956857;  
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 262479, 3956707; 262465, 3956685;  
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 262488, 3956362; 262519, 3956385;  
 262551, 3956417; 262598, 3956482;  
 262561, 3956219; 262543, 3956086;  
 262536, 3956035; 262456, 3955981;  
 262429, 3955903; 262397, 3955881;  
 262347, 3955858; 262320, 3955844;  
 262265, 3955822; 262224, 3955799;  
 262197, 3955776; 262202, 3955763;  
 262220, 3955744; 262256, 3955717;  
 262288, 3955704; 262383, 3955694;  
 262438, 3955690; 262487, 3955684;  
 262486, 3955677; 262477, 3955610;  
 261938, 3955627; 261370, 3955645;  
 returning to 261370, 3955645.

(ii) The map of Unit 1a appears at paragraph (8)(ii) of this entry.

(7) Unit 1b: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost

Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 263287, 3957189; 263287, 3957174; 263304, 3957163; 263343, 3957160; 263390, 3957139; 263399, 3957115; 263411, 3957100; 263438, 3957086; 263459, 3957050; 263464, 3957023; 263464, 3957003; 263506, 3957003; 263553, 3956997; 263589, 3956964; 263607, 3956929; 263613, 3956887; 263607, 3956834; 263613, 3956801; 263627, 3956748; 263621, 3956686; 263571, 3956638; 263547, 3956617; 263550, 3956573; 263539, 3956532; 263500, 3956505; 263453, 3956490; 263402, 3956502; 263390, 3956511; 263382, 3956463; 263364, 3956416; 263328, 3956381; 263287, 3956363; 263236, 3956360; 263207, 3956354; 263180, 3956321; 263147, 3956271; 263097, 3956241; 263053, 3956232; 262988, 3956226; 262931, 3956250; 262878, 3956283; 262822, 3956309; 262786, 3956318; 262745, 3956315; 262688, 3956318; 262662, 3956321; 262650, 3956327; 262674, 3956499; 262715, 3956472; 262748, 3956455; 262783, 3956458; 262816, 3956458; 262854, 3956443; 262899, 3956428; 262961, 3956389; 263005, 3956372; 263053, 3956386; 263091, 3956431; 263142, 3956484; 263195, 3956526; 263239, 3956520; 263254, 3956502; 263272, 3956540; 263296, 3956603; 263334, 3956647; 263384, 3956662; 263423, 3956647;

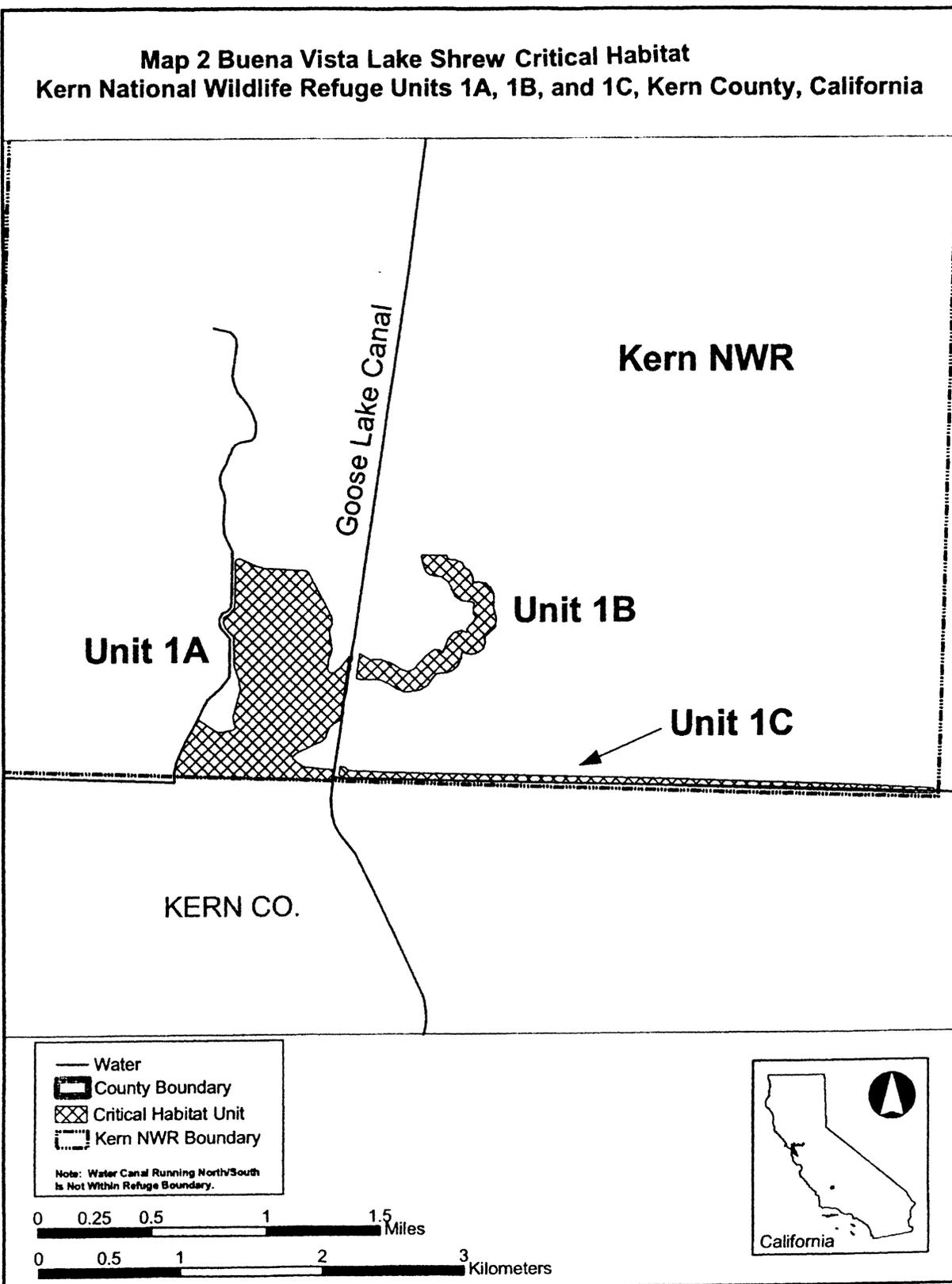
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(ii) The map of Unit 1b appears at paragraph (8)(ii) of this entry.

(8) Unit 1c: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 262564, 3955705; 262575, 3955694; 262592, 3955680; 262623, 3955677; 262864, 3955666; 263540, 3955646; 264029, 3955635; 264946, 3955607; 266049, 3955565; 266680, 3955534; 266700, 3955531; 266714, 3955523; 266714, 3955495; 266588, 3955497; 266243, 3955511; 264214, 3955584; 262687, 3955626; 262572, 3955629; 262528, 3955647; 262530, 3955660; 262533, 3955685; 262536, 3955706; 262564, 3955705; returning to 262564, 3955705.

(ii) Note: Map 2 (Units 1a, 1b, and 1c) follows:



(9) Unit 2: Goose Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Semitropic, California, land bounded by the following UTM 11 NAD

27 coordinates (E, N): 269741, 3939122;  
269841, 3939090; 269931, 3939074;  
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270185, 3938968; 270273, 3938860;

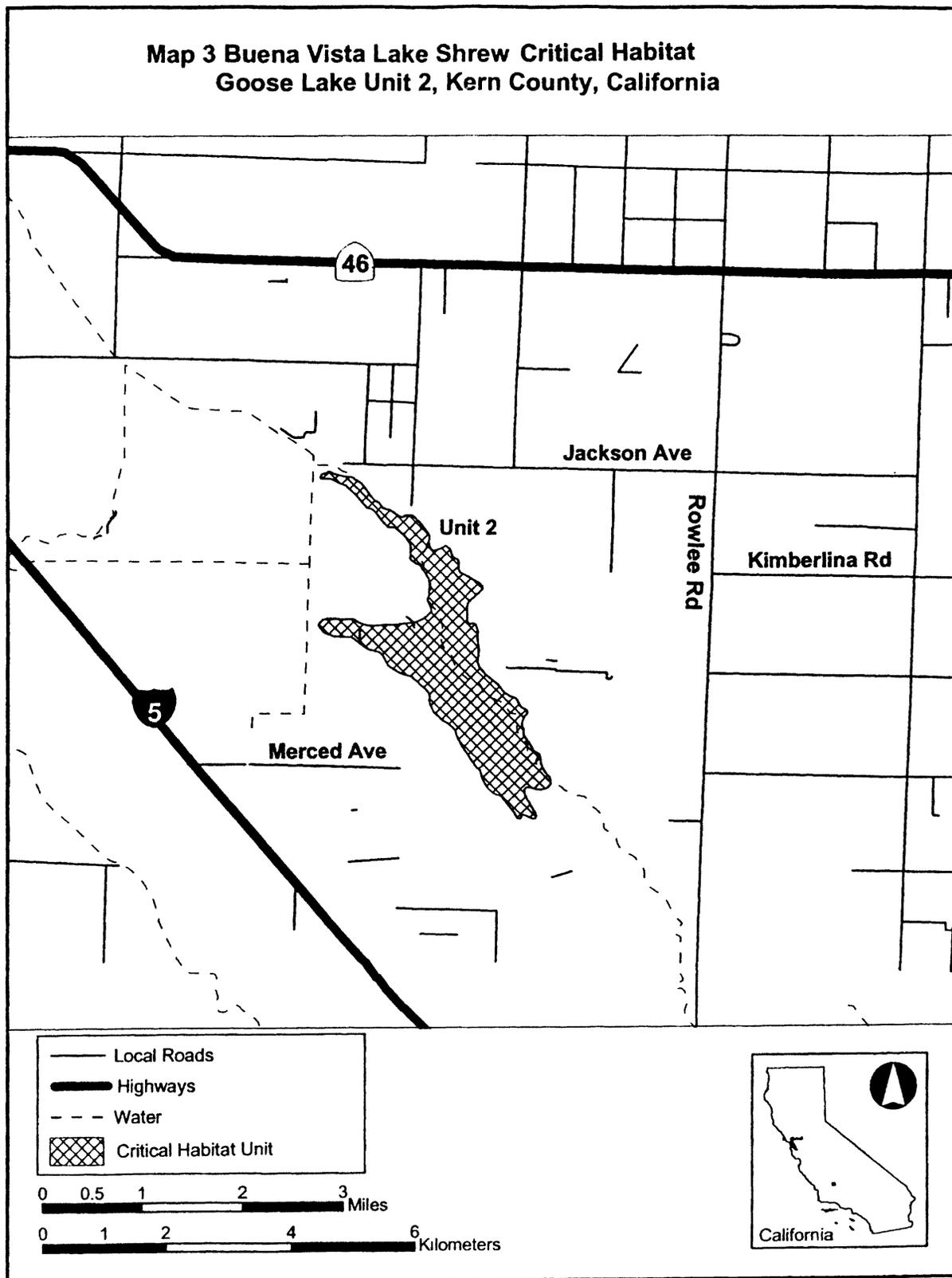
270351, 3938749; 270403, 3938691;  
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271901, 3937004; 271901, 3936914;  
271901, 3936848; 271903, 3936802;  
271907, 3936750; 271915, 3936716;  
271935, 3936700; 271969, 3936702;  
272009, 3936706; 272037, 3936694;  
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272089, 3936307; 272085, 3936191;  
272067, 3936127; 272067, 3936087;  
272101, 3936007; 272181, 3935911;  
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271254, 3935639; 271156, 3935723;  
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270435, 3938483; 270401, 3938521;  
270373, 3938543; 270315, 3938561;  
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269543, 3939096; 269567, 3939110;  
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269659, 3939144; 269685, 3939146;  
269709, 3939138; 269741, 3939122;  
returning to 269741, 3939122.

(ii) Note: Map 3 (Unit 2) follows:



(10) Unit 3: Kern Fan Water Recharge Area, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, California, and Stevens, California, land bounded by the

following UTM 11 NAD 27 coordinates (E, N): 295516, 3908835; 295279, 3908837; 295290, 3909235; 295839, 3909235; 295839, 3909605; 296123, 3909598; 296123, 3910008; 296939,

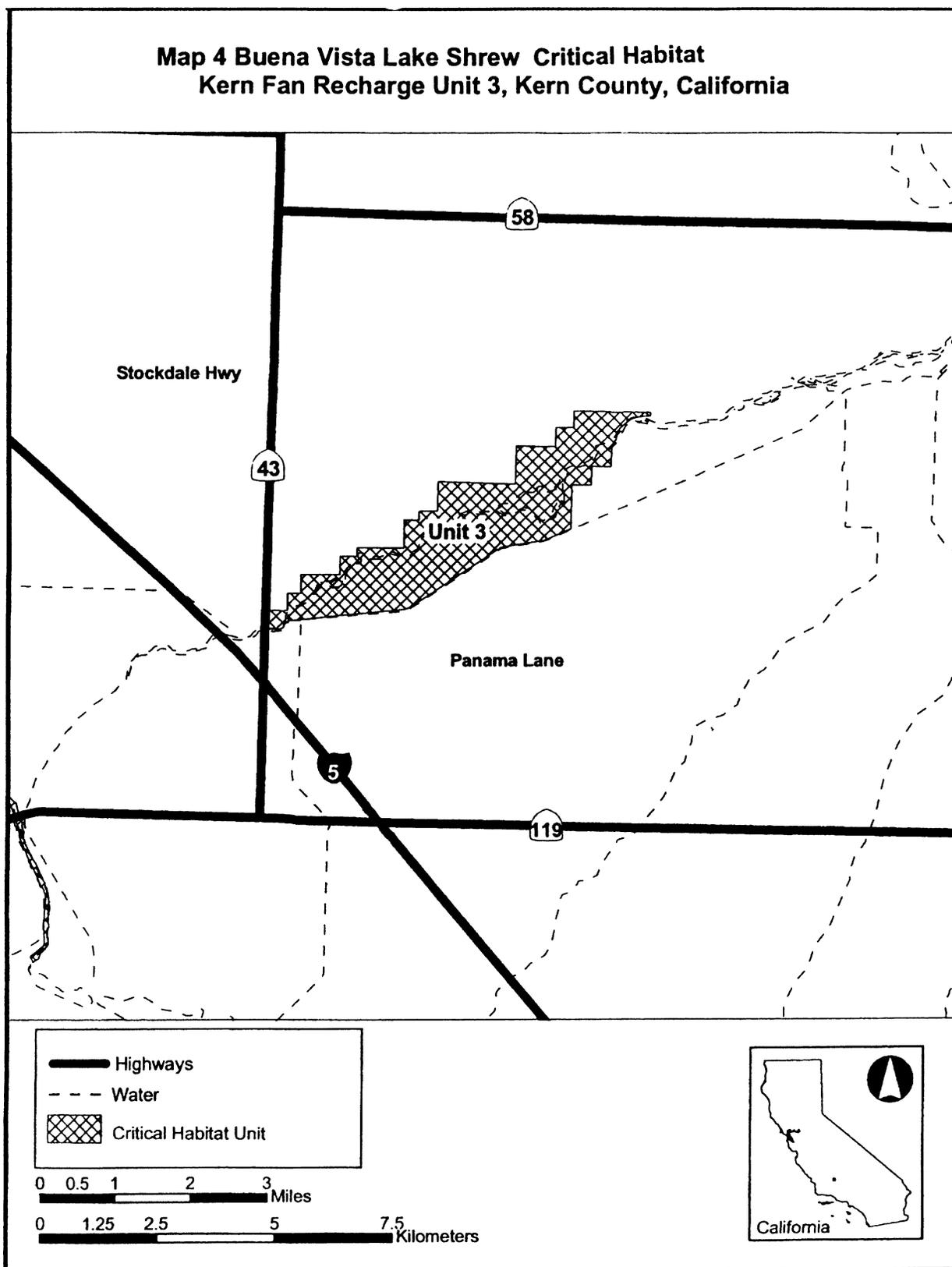
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3913456; 303499, 3913377; 303346,  
3913377; 303182, 3913345; 303096,  
3913310; 302950, 3913206; 302850,

3913113; 302800, 3913024; 302782,  
3912942; 302764, 3912860; 302686,  
3912771; 302671, 3912700; 302664,  
3912300; 302261, 3912303; 302250,  
3911900; 301850, 3911907; 301827,  
3910972; 301270, 3910731; 301149,  
3910709; 300352, 3910586; 298760,  
3909525; 298405, 3909289; 298306,

3909259; 296918, 3909128; 295881,  
3909023; 295832, 3908998; 295780,  
3908939; 295750, 3908877; 295710,  
3908847; 295653, 3908837; returning to  
295516, 3908835.

(ii) *Note:* Map 4 (Unit 3) follows:



(11) Unit 4: Coles Levee Unit, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, and Buena Vista Lakebed, California, land bounded by

the following UTM 11 NAD 27 coordinates (E, N): 287308, 3908077; 287165, 3908138; 287172, 3908222; 287285, 3908192; 287341, 3908153; 287414, 3908098; 287610, 3908020;

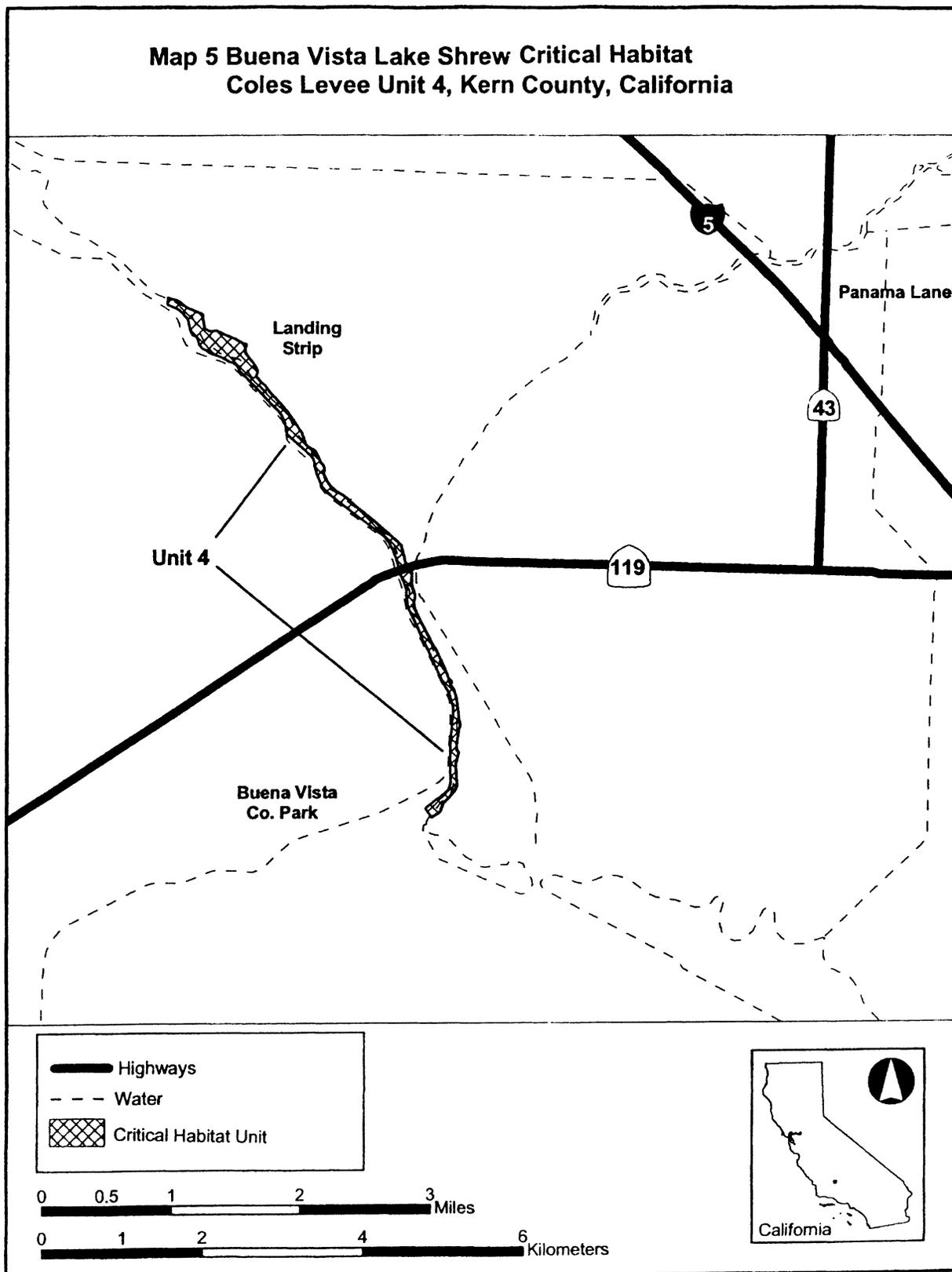
287614, 3907949; 287624, 3907898; 287631, 3907847; 287668, 3907818; 287716, 3907803; 287779, 3907811; 287843, 3907787; 287915, 3907750; 288008, 3907711; 288058, 3907689;

288114, 3907658; 288160, 3907643;  
288138, 3907573; 288150, 3907533;  
288182, 3907490; 288229, 3907431;  
288272, 3907372; 288298, 3907314;  
288284, 3907242; 288348, 3907166;  
288396, 3907126; 288453, 3907045;  
288530, 3906966; 288583, 3906909;  
288667, 3906812; 288705, 3906757;  
288744, 3906700; 288796, 3906619;  
288848, 3906542; 288901, 3906392;  
288938, 3906357; 288998, 3906330;  
289020, 3906301; 289045, 3906261;  
289081, 3906173; 289115, 3906128;  
289131, 3906076; 289119, 3906028;  
289135, 3906004; 289165, 3905928;  
289197, 3905879; 289271, 3905813;  
289358, 3905761; 289389, 3905735;  
289480, 3905654; 289597, 3905561;  
289758, 3905425; 289910, 3905291;  
290046, 3905162; 290070, 3905143;  
290115, 3904972; 290125, 3904923;  
290185, 3904904; 290200, 3904868;  
290206, 3904784; 290205, 3904694;  
290207, 3904637; 290218, 3904594;  
290234, 3904560; 290251, 3904514;  
290244, 3904477; 290234, 3904437;  
290242, 3904380; 290275, 3904275;  
290324, 3904182; 290376, 3904078;  
290418, 3903999; 290467, 3903903;  
290499, 3903856; 290545, 3903769;  
290575, 3903699; 290601, 3903641;

290624, 3903595; 290673, 3903473;  
290708, 3903444; 290705, 3903422;  
290695, 3903396; 290733, 3903335;  
290771, 3903227; 290793, 3903070;  
290795, 3903016; 290802, 3902968;  
290815, 3902899; 290812, 3902870;  
290794, 3902836; 290778, 3902637;  
290775, 3902582; 290802, 3902553;  
290785, 3902492; 290764, 3902406;  
290768, 3902275; 290782, 3902151;  
290776, 3902124; 290744, 3902068;  
290668, 3901981; 290608, 3901920;  
290572, 3901811; 290459, 3901742;  
290454, 3901756; 290386, 3901852;  
290407, 3901876; 290507, 3901957;  
290601, 3902026; 290671, 3902088;  
290699, 3902164; 290699, 3902230;  
290693, 3902301; 290694, 3902410;  
290690, 3902504; 290694, 3902638;  
290701, 3902789; 290711, 3902878;  
290722, 3903028; 290722, 3903129;  
290696, 3903214; 290677, 3903290;  
290619, 3903389; 290577, 3903475;  
290495, 3903653; 290439, 3903768;  
290401, 3903848; 290347, 3903947;  
290298, 3904071; 290224, 3904237;  
290169, 3904357; 290152, 3904432;  
290141, 3904507; 290139, 3904575;  
290113, 3904653; 290087, 3904717;  
290060, 3904773; 290050, 3904836;  
290030, 3904894; 290008, 3904975;

289979, 3905056; 289927, 3905163;  
289868, 3905242; 289805, 3905291;  
289745, 3905342; 289684, 3905386;  
289617, 3905441; 289518, 3905517;  
289397, 3905610; 289269, 3905708;  
289176, 3905781; 289124, 3905822;  
289088, 3905884; 289068, 3905932;  
289055, 3905970; 289036, 3906012;  
289029, 3906057; 289016, 3906107;  
289006, 3906162; 288994, 3906200;  
288973, 3906236; 288940, 3906273;  
288835, 3906369; 288791, 3906415;  
288729, 3906457; 288672, 3906513;  
288656, 3906561; 288651, 3906608;  
288641, 3906669; 288619, 3906723;  
288598, 3906761; 288545, 3906827;  
288415, 3906958; 288351, 3907026;  
288255, 3907123; 288204, 3907179;  
288155, 3907233; 288109, 3907278;  
288080, 3907311; 288060, 3907340;  
288028, 3907386; 287992, 3907412;  
287960, 3907420; 287893, 3907455;  
287829, 3907486; 287774, 3907509;  
287709, 3907532; 287645, 3907569;  
287613, 3907589; 287570, 3907640;  
287558, 3907682; 287537, 3907740;  
287491, 3907756; 287471, 3907781;  
287449, 3907839; 287435, 3907900;  
287419, 3907959; 287365, 3908021;  
returning to 287308, 3908077.

(ii)Note: Map 5 (Unit 4) follows:



(12) Unit 5: Kern Lake, Kern County, California.

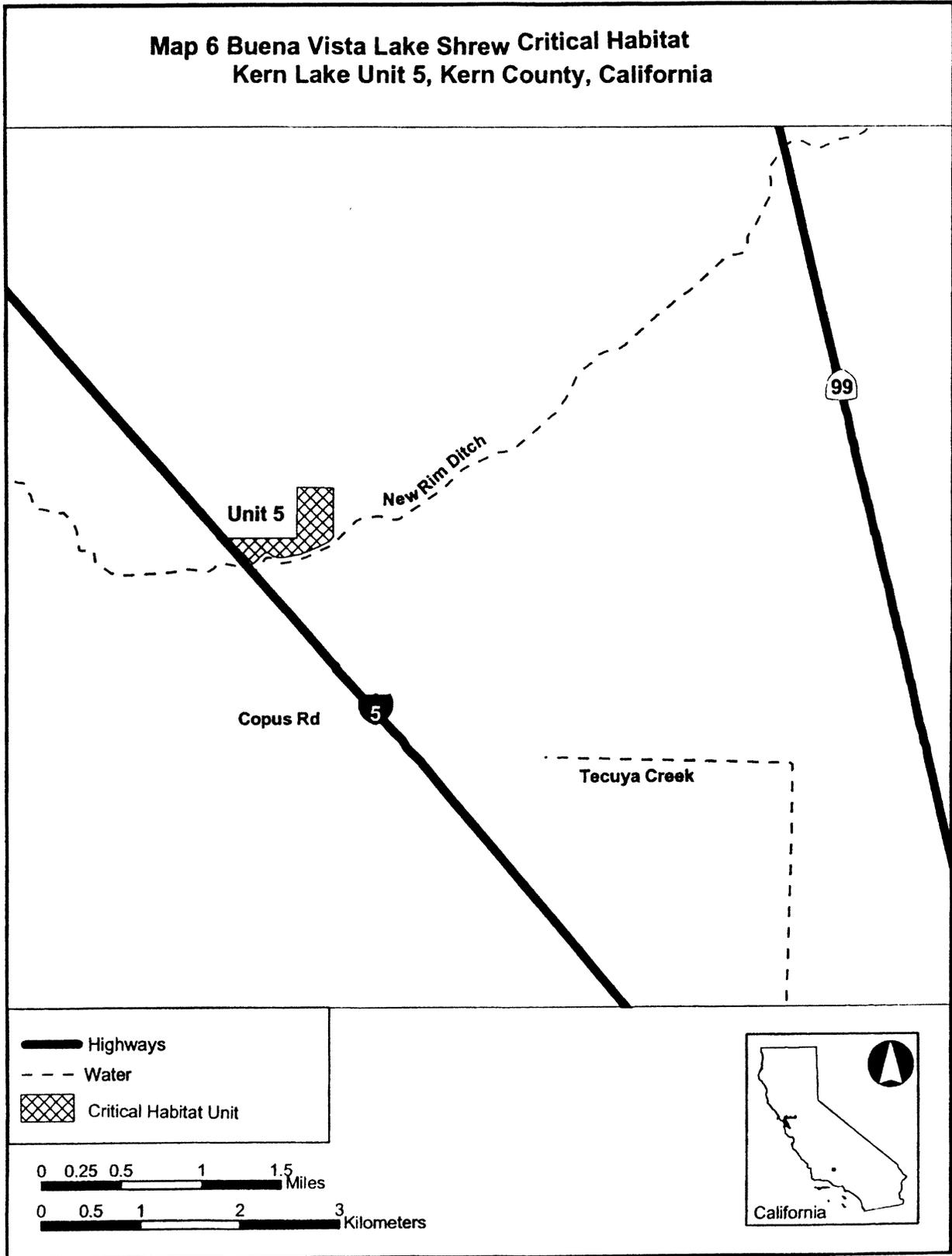
(i) From USGS 1:24,000 quadrangle map Coal Oil Canyon, California, land bounded by the following UTM 11 NAD

27 coordinates (E, N): 312996, 3887027; 312953, 3887034; 312911, 3887047; 312886, 3887054; 312657, 3887298; 313456, 3887299; 313458, 3887806; 313823, 3887799; 313823, 3887314;

313786, 3887267; 313696, 3887224; 313618, 3887189; 313491, 3887139; 313363, 3887112; 313298, 3887107; 313231, 3887112; 313193, 3887142; 313168, 3887157; 313136, 3887152;

313091, 3887112; 313056, 3887072;  
returning to 312996, 3887027.

(ii) Note: Map 6 (Unit 5) follows:



\* \* \* \* \*

Dated: October 7, 2009

**Thomas L. Strickland**

*Assistant Secretary for Fish and Wildlife and  
Parks*

[FR Doc. E9-25242 Filed 10-20-09; 8:45 am]

**BILLING CODE 4310-55-C**