

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[Docket No. FWS-R8-ES-2009-0054;  
92210-1117-0000-B4]

**50 CFR Part 17**

RIN 1018-AW20

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

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Ambrosia pumila* (San Diego ambrosia) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 802 acres (ac) (324 hectares (ha)) of land are being proposed for designation as critical habitat. The proposed critical habitat is located in Riverside and San Diego Counties, California.

**DATES:** We will consider comments we receive on or before October 26, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 13, 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 to Docket No. FWS-R8-ES-2009-0054.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2009-0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431-9440; facsimile (760) 431-5901. 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 proposed rule will be

based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

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

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

- Does the species reproduce via seed? If so, does the species rely on some aspect of its environment to trigger seed germination?
- What are the key factors determining why the species occupies the particular areas it occupies (but not other areas with the same habitat type)? For example, what role does proximity to waterways or vernal pools play?

(3) The appropriateness of designating critical habitat for this species. If the broad essential physical and biological features proposed for *Ambrosia pumila* habitat cannot be defined more

specifically, or we cannot reasonably identify essential habitat for this species based on our evaluation of information received, it may be difficult to identify specific areas as critical habitat for this species. This may be the case if specific information regarding what constitutes essential habitat for this species cannot be obtained, or if the data obtained suggest that the species can effectively carry out all necessary life functions in a range of habitat types and conditions (i.e., there may not be specific habitat features essential to the conservation of the species).

(4) Specific information on:

- The amount and distribution of *Ambrosia pumila* habitat included in this proposed rule,
- What areas occupied at the time of listing that contain features essential for the conservation of the species should we include or exclude in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(5) How the proposed critical habitat boundaries could be refined to more closely circumscribe the areas identified as essential. We also seek recommendations to improve the methodology used to delineate the areas proposed as critical habitat; especially comments regarding how we might more accurately estimate the additional surface area beyond the visible surface area covered by the aerial stems that we need to include for each occurrence of *Ambrosia pumila* in the critical habitat designation to ensure that habitat areas do not exclude unseen underground portions of *A. pumila* plants (see step number 4 in the Methods section below).

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

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

(8) Any issues with the exclusions being considered under section 4(b)(2) of the Act as part of this proposed designation, or reasons why any proposed critical habitat not considered for exclusions should be excluded.

(9) Any special management considerations or protections that the proposed critical habitat may require.

(10) 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.

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

(12) Whether the benefit of excluding the area proposed as critical habitat within the City of Oceanside in San Diego County (Subunit 4C) under section 4(b)(2) of the Act outweighs the benefit of including this area as critical habitat, and specific reasons why. The City of Oceanside is working on a Subarea Plan under the Northwestern San Diego County Multiple Habitat Conservation Plan (MHCP) in cooperation with the Service.

Our final determination concerning critical habitat for *Ambrosia pumila* will take into consideration all written comments and comments received during a public hearing, should one be requested, and any additional information we receive during the public comment period. These comments will be included in the public record for this rulemaking. Our final determination will also incorporate all comments requested of peer reviewers and received during the comment period. Finally, our final determination concerning critical habitat will consider all written comments and any additional information we receive during the comment period for the draft Economic Analysis (DEA). On the basis of peer reviewer and public comments, we may, during the development of our final determination, find that areas within those proposed do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas are not appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your

street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at <http://www.regulations.gov>.

### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. This rule incorporates new information on the biology, distribution, and abundance of *Ambrosia pumila* that we did not discuss in the 2002 final listing rule for this species (67 FR 44372). For more information on *A. pumila*, refer to that final listing rule, which was published in the **Federal Register** on July 2, 2002.

### Previous Federal Actions

*Ambrosia pumila* was listed as an endangered species on July 2, 2002 (67 FR 44372). Designation of critical habitat was found to be prudent in the proposed (64 FR 72993; December 29, 1999) and final listing rules, but was deferred due to budgetary constraints and higher listing priorities. The Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California on December 19, 2007, challenging failure of the Service to designate critical habitat for four endangered plants, including *A. pumila* (*Center for Biological Diversity v. United States Fish and Wildlife, et al.*, Case No. 07–CV–2378 NLS). The April 11, 2008, settlement agreement stipulates that the Service shall submit a determination as to whether it is prudent to designate critical habitat for *A. pumila*, and if prudent, a proposed critical habitat designation to the **Federal Register** for publication on or before August 20, 2009, and submit a final critical habitat designation to the **Federal Register** for publication on or before August 19, 2010. In this proposed critical habitat rule, we reaffirm that determination of critical habitat for *A. pumila* is prudent.

However, we may revisit our prudency determination following additional review and consideration of information we receive during the public comment period.

### Species Description

*Ambrosia* is a genus comprising 35 to 50 wind-pollinated annual and perennial plant species in the Asteraceae (sunflower) family. Members of this genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas, while some are weeds of cultivated fields or strand species of Pacific and Caribbean beaches (Payne 1976, p. 169).

*Ambrosia pumila* is a clonal herbaceous perennial. Individual stems are generally 5 to 30 centimeters (cm) (2 to 12 inches (in)) tall, but may grow to 50 cm (20 in), and are densely covered with short hairs. The leaves are two to four times pinnately divided into many small segments and are covered with short, soft, gray-white, appressed (lying flat on surface) hairs. The species has separate male and female flowers on the same plant (monoecious). The male flowers have no petals, are yellow to translucent, and are borne in clusters on terminal flower stalks. The female flowers have no petals and are yellowish-white. Female flowers are in clusters in the axils of the leaves below the male flower clusters (Nuttall 1840, pp. 344–345; Gray 1882, p. 217; Munz 1935, p. 544; Keck 1959, p. 1103; Ferris 1960, p. 148; Munz 1974, p. 112; Beauchamp 1986, p. 94; Payne 1993, p. 194). Female flowers produce a dry, single-seeded fruit called an achene. References to seeds in this document refer to the single-seeded fruits.

*Ambrosia pumila* spreads vegetatively by means of slender, branched, underground root-like rhizomes from which new aboveground stems (aerial stems or ramets) arise each year (Nuttall 1840, p. 344; Munz 1974, p. 112; Payne 1993, p. 194). This growth pattern results in numerous aerial stems interconnected by a system of rhizomes, called a clone. All aerial stems growing from the same root system are genetically identical and represent a single individual *A. pumila* plant (called a genet) (Harper 1977, p. 26). Growing rhizomes extend underground beyond the aboveground limit of the aerial stems into adjacent suitable habitat, allowing rhizomes of adjacent individuals to intermingle. The underground interconnections can break or disintegrate, resulting in aerial stems that are genetically identical but physically separate (McGlaughlin and Friar 2007, p. 319). The extent to which

rhizomes are capable of spreading has been observed only in individuals translocated to previously unoccupied sites. For example, *A. pumila* individuals transplanted on the San Diego National Wildlife Refuge in January 2008 were documented to produce new stems several inches away within 10 months (by November 2008). Additionally, *A. pumila* individuals transplanted in 1997 to an unoccupied site at Pilgrim Creek just south of Marine Corps Base Camp Pendleton in San Diego County were documented to produce new stems up to 70 in (178 cm) from the original stems within 2 years (by 1999) (Johnson *et al.* 1999, p. 3).

Because of the clonal nature of *Ambrosia pumila*'s growth, it is not possible to directly determine the number of genetically distinct plants present in an area simply by counting stems (McGlaughlin and Friar 2007, p. 320). McGlaughlin and Friar's (2007, p. 323) analysis of clonality in *A. pumila* determined that the aerial stem-to-genet ratio is roughly 10-to-1 on average (about 1 genet for every 10 aerial stems counted in a patch (cluster of stems)). A patch constitutes a spatially distinct cluster of stems within an occurrence, whereas an occurrence constitutes a group of individuals separated from the next nearest group of individuals by a distance greater than or equal to 0.25 mile (mi) (0.40 kilometer (km)).

#### Habitat

*Ambrosia pumila* occurs primarily on upper terraces of rivers and drainages (Beauchamp 1986, p. 94; Johnson *et al.* 1999, p. 1; McGlaughlin and Friar 2007, p. 321; California Natural Diversity Database data report for *A. pumila* 2008 (CNDDDB 2008)); however, several patches of the plant occur within the watershed of a large vernal (ephemeral) pool in the Skunk Hollow preserve in Riverside County (Dudek 2003, p. P-326; CNDDDB 2008). Within these areas, the species is found in open grassland of native and nonnative plant species, and openings in coastal sage scrub (Johnson *et al.* 1999, p. 1; Dudek 2000, p. 18; Dudek 2003, p. P-330; CNDDDB 2008), and primarily on sandy loam or clay soils (Johnson *et al.* 1999, p. 1; Dudek 2000, p. 18; CNDDDB 2008; USDA 2008). The species may also be found in ruderal habitat types (disturbed communities containing a mixture of native and nonnative grasses and forbs) such as fire fuel breaks and edges of dirt roadways (Beauchamp 1986, p. 94; Payne 1993, p. 194; CNDDDB 2008). Nonnative grassland and ruderal habitat types provide adequate habitat for *A. pumila*; however, nonnative plants can out-compete *A. pumila* plants for

resources in some situations if not managed. Occurrences are disjunct (generally 1 or more miles (1.6 or more km) apart) and most locations have been subjected to disturbance such as nonnative plant invasion, mining activities, development, grading, and human encroachment on foot, horses, or vehicles (CNDDDB 2008).

It is unclear why *Ambrosia pumila* consistently occurs in areas near waterways such as upper terraces of rivers or other water bodies. The areas where the species is found do not necessarily provide high levels of soil moisture, and *A. pumila* is adapted to dry conditions (Keck 1959, p. 1103; Munz 1974, p. 112; Dudek 2000, Appendix A; CNLM 2008, p. 18). Additionally, Service biologists have observed green (that is, not desiccated) aerial stem shoots of *A. pumila* after small amounts of precipitation and after other vegetation in the observed area had desiccated. *Ambrosia pumila* may require periodic flooding for dispersal of seeds and roots dislodged during flooding, seed germination, or some other segment of its life cycle. Further, areas subject to periodic flooding appear to be less amenable to competing nonnative and native plants.

#### Life History

The reproductive biology of *Ambrosia pumila* has not been studied to the same extent as the more common *Ambrosia* species, such as *A. artemisiifolia* (common ragweed) and *A. trifida* (giant ragweed) (Dudek 2000, p. 16). Thus, little is known about its pollination system, seed production, seed dispersal, and germination (Dudek 2000, p. 16; Dudek 2003, p. P-331; McGlaughlin and Friars 2007, p. 320).

Aerial stems of *Ambrosia pumila* sprout from their underground rhizomes in early spring after winter rains, and flower between May and October (Keck 1959, p. 1103). Recently, however, Service biologists observed aerial stems sprouting under dry conditions in late fall (Folarin 2008, pers. comm.). The plants senesce after the growing season, leaving the root system in place from which new aerial stems may sprout when environmental conditions are appropriate (Keck 1959, p. 1103).

*Ambrosia pumila* is presumed to be wind-pollinated because most other species of *Ambrosia* are wind-pollinated, and because biological pollinators have not been observed visiting *A. pumila* flowers (Johnson *et al.* 1999, p. 4; Dudek 2000, p. 16; Dudek 2003, p. P-331). Alternatively, pollinator(s) of *A. pumila* may have been extirpated (Dudek 2003, p. P-331). The species is presumed to be capable

of self-pollination and of being self-fertile (i.e., self-compatible, where pollen from an individual plant can fertilize an ovule on the same plant, resulting in production of viable seed) because other species of *Ambrosia* are capable of self-pollination (Payne 1976, pp. 171–172). The configuration of the male flowers in relation to the female flowers also implies opportunity for self-pollination (Dudek 2000, p. 16). However, studies are needed to determine whether viable seed is produced through self-pollination in this species (Johnson *et al.* 1999, p. 4; Dudek 2000, p. 16; Dudek 2003, p. P-332; McGlaughlin and Friars 2007, p. 329).

*Ambrosia pumila* is thought to have limited sexual reproductive output due to low production of viable seed (Johnson *et al.* 1999, pp. 1–5; Dudek 2000, pp. 16–17; Dudek 2003, pp. P-331–P-332). Low seed production in this species is inferred by the lack of fertile fruits on all but a few preserved *A. pumila* museum specimens (Wallace 1999, pers. comm.), and field observers have found seed production in *A. pumila* to be low (Dudek 2000, p. 17; Dudek 2003, p. P-332). Specific germination requirements of *A. pumila* seed are unknown. A 1998 germination study using 22 *A. pumila* seeds of unknown viability collected from 3 sites at Mission Trails Regional Park did not result in any germination of seedlings (Dudek 2000, Appendix B). The lack of germination could have been due to the seeds being nonviable or to inappropriate germination conditions. Regardless of what proportion of *A. pumila* seeds are viable, low seed production implies that little sexual reproduction is occurring in this species. Low levels of sexual reproduction is not an unusual condition in clonal plant species (Sackville *et al.* 1987, p. 54). This reduced sexual reproduction may negatively impact the ability of the species to adapt to rapid environmental change or environmental change over the long term, which is especially deleterious to a rare species with disjunct occurrences such as *A. pumila* (Dudek 2000, p. 17; Dudek 2003, p. P-332).

The dispersal strategy of *Ambrosia pumila* is unknown. *Ambrosia pumila* seeds lack structures that facilitate dispersal by wind or passing animals (Nuttall 1840, p. 344; Payne 1993, p. 194). The species may depend on periodic flooding of nearby waterways for dispersal of seeds and rhizomes that can produce new aerial stems (Dudek 2003, p. P-332). The longevity of individual plants is also unknown,

although plants with clonal growth patterns tend to be long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). Finally, the longevity of seeds and potential for buried seed banks to develop in the soil is unknown.

#### Genetics

Little is known about genetic diversity or genetic distribution of *Ambrosia pumila* across its range. McGlaughlin and Friar (2007) conducted a genetic study of *A. pumila* to address conservation and management of the species. They found that each population they examined contained multiple genetically distinct individuals, but no individuals that occurred in more than one population. Therefore, they concluded that in order to maintain a level of genetic diversity capable of responding to variable ecological conditions, conservation of the species should involve the protection and maintenance of as many populations of *A. pumila* as possible (McGlaughlin and Friar 2007, pp. 319 and 329).

#### Geographic Range and Status

*Ambrosia pumila* is distributed in southern California from northwestern Riverside County, south through western San Diego County, to northwestern Baja California, Mexico (CNDDDB 2008). It is generally found at or below elevations of 1600 feet (ft) (487 meters (m)) in Riverside County, and 600 ft (183 m) in San Diego County (CNDDDB 2008). When listed as endangered under the Act in 2002, 15 occurrences of *A. pumila* were known in the United States: 3 in Riverside County and 12 in San Diego County (67 FR 44372; July 2, 2002). As noted previously, the term “occurrence” as used in this proposed critical habitat rule is defined as one or more *A. pumila* plants more than 0.25 mi (0.40 km) from another individual or group of individuals (Bittman 2002, *in litt.*). More than 80 percent of the occupied sites identified in the final listing rule were concentrated in the following 6 areas:

- Near Alberhill about 2.1 mi (3.5 km) to the northwest of the Nichols Road site in Riverside County;
- Along Nichols Road in the City of Lake Elsinore, Riverside County;
- Near the Skunk Hollow vernal pool in southwestern Riverside County;
- Adjacent to State Route 76 in northern San Diego County;
- Mission Trails Regional Park, in the City of San Diego, San Diego County; and

- San Diego National Wildlife Refuge near the unincorporated community of Jamul in southern San Diego County.

According to information used to develop the final listing rule (67 FR 44372; July 2, 2002), roughly 44 ac (18 ha) of habitat in San Diego County was occupied by this species in 12 occurrences. This habitat estimate only includes areas where *A. pumila* stems were found in the 5 to 10 years prior to listing in 2002. Similar area estimate data were unavailable for the 3 occurrences in Riverside County.

Since this species was listed, one occurrence was identified in Riverside County about 1 mile (1.6 km) south of Skunk Hollow along San Diego aqueduct, from a survey report (AMEC 2006, pp. 12–13; CNDDDB 2008), and one occurrence was identified in unincorporated San Diego County on the west side of State Route 76, south of Olive Hill Road (see “Criteria Used to Identify Critical Habitat” below). Also since listing, we determined that one occurrence, on the west side of Interstate 15 just north of Lake Hodges and south of Via Rancho Parkway in San Diego County, previously identified as extirpated or not viable in the final listing rule is now extant and viable.

The documented range of *Ambrosia pumila* in Mexico at the time of listing extended from Cabo Colonet south to Lake Chapala in north-central Baja California, Mexico (Burrascano and Hogan 1996, p. 8). Two of these three occurrences were confirmed by David Hogan, formerly with the Southwest Center for Biological Diversity (now Center for Biological Diversity), and Cindy Burrascano of the California Native Plant Society (CNPS), San Diego Chapter (Burrascano and Hogan 1996, p. 8). Although additional occurrences may have existed in Baja California, the species was not considered to be widespread at the time of listing due to the lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast (Burrascano and Hogan 1996, p. 8).

All currently known occurrences are believed to have been present at the time of listing because plants with clonal growth patterns tend to be long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). Although stems may die and portions of the rhizome may disintegrate over time, except under extreme conditions enough of the rhizome survives from one growing season to the next to support continued growth of an individual plant. Also, because the plants produce very few if any seeds, the ability of the plant to disperse into and colonize previously unoccupied

areas is diminished. Since this species was listed, no additional occurrences were documented in Mexico; the occurrences along the west coast of Baja California between Cabo Colonet and the U.S.-Mexico border are rapidly disappearing due to recreational development and agriculture (Dudek 2003, p. P-330).

#### Critical Habitat

##### Background

Critical habitat is defined in section 3(5)(A) of the Act as:

(1) 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 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

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of the Interior 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 an endangered or threatened species to the point at which the measures provided pursuant to 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 otherwise be 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 activities that result in 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 the landowner. Where a landowner

seeks or requests Federal agency funding or authorization for an activity 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 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.

To be considered for inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time of listing must contain 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; that is, areas on which the physical and biological features are found laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Under the Act and regulations at 50 CFR 424.12, we can designate as critical habitat 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 are determining which areas should be proposed 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 dynamic, and species may move from one area to another over time. We recognize that climate change may cause changes in the arrangement of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1-3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11). However, predictions of climatic conditions for smaller subregions such as California remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects, so we are unable to determine what, if any, additional areas would be needed. However, 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 critical habitat 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 implemented 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 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) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Those features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs 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 historical, geographical, and ecological distributions of a species.

Little is known about the habitat specificity and characteristics of this species. Therefore, the PCEs for *Ambrosia pumila* are based on our assessment of the ecosystem settings in which the species has most frequently been detected.

#### *Space for Individual and Population Growth and for Normal Behavior*

##### *Clonal Growth—Rhizome Spread and New Aerial Stems*

Individual *Ambrosia pumila* plants spread by underground rhizomes to produce a group of genetically identical aerial stems—a clone. Growing rhizomes extend underground beyond the extent of the aerial stems into adjacent suitable habitat, and rhizomes of adjacent plants likely intermingle to a degree. The distance rhizomes extend beyond the standing aerial stems is difficult to measure because of the difficulty in investigating an intact, underground rhizome system.

The extent and configuration of the visible portion (aerial stems) of *A. pumila* patches can change from one growing season to the next (Martin 2005, p. 3; City of San Diego 2008a, p.

1). For example, see Figure 4 in Martin 2005, in which patches of *A. pumila* are shown to change in shape and size (up to several square meters) from 2000 to 2005, with some patches not producing any stems in 2005 (some of the patches that did not produce stems in 2005 were observed to produce stems in 2008 (Folarin 2008, pers. comm.)). These changes in patch size and shape are perhaps due to differences in available moisture or competition from other plants (Martin 2005, p. 3; City of San Diego 2008a, p. 1). Based on these and other observations, we conclude that the rhizome system of a group of *A. pumila* stems likely occupies a greater underground area than occupied by the stems above ground at any given time, with aerial stems produced only where conditions are appropriate. Thus, to ensure that a habitat area does not exclude unseen underground portions of *A. pumila* plants, the area needs to include additional surface area beyond the visible surface area covered by the aerial stems.

#### Germination of Seeds and Spread of Seedlings

It is unclear to what extent and with what frequency *Ambrosia pumila* reproduces by seed. Presuming at least low rates of sexual reproduction, space is needed for new plants to germinate, grow, and spread. However, we are not aware of any research that would provide the information needed to assess the species' germination and seedling needs.

#### Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

##### Water

Specific water needs of the species are unknown. *Ambrosia pumila* is adapted to dry conditions which occur annually throughout its range (Keck 1959, p. 1103; Munz 1974, p. 112; Dudek 2000, Appendix A; CNLM 2008, p. 18). Service biologists have observed green (not desiccated) aerial stem shoots after small amounts of precipitation and after annual vegetation in the area had desiccated, implying that either *A. pumila* requires less water than other grassland plants, that the underground perennial rhizome system has some capacity to store enough water to sustain growth, or both (Folarin 2008, pers. comm.). Additionally, we believe that periodic flooding may be necessary to some segment of the plant's life history (such as seed germination, dispersal of seeds and rhizomes) or to maintain some essential aspect of its habitat, because of the indicator that the

plant is always found on river terraces or within the watersheds of vernal pools.

##### Light

*Ambrosia pumila* is limited to open or low-growing plant communities, which implies that the species is not shade-tolerant (Dudek 2000, pp. 18–19). *Ambrosia pumila* stems amid taller vegetation obtain adequate sunlight by growing taller (etiolation) and more slender compared to those in more open areas (Dudek 2000, p. 19), which also implies the species is not shade-tolerant.

##### Soil

*Ambrosia pumila* is found primarily on sandy loam or clay soils including (but not limited to) the Placentia (sandy loam), Diablo (clay), and Ramona (sandy loam) series (Dudek 2000, Appendix A; CNDDDB 2008). These soil types likely are particularly conducive to the growth and persistence of *A. pumila* because it is rarely found growing on other substrate types (such as gravel).

Chemical soil attributes and other abiotic and biotic characteristics have been measured and documented for *Ambrosia pumila* occurrences at Skunk Hollow (Riverside County), and Mission Trails Regional Park and San Diego National Wildlife Refuge (San Diego County) (Dudek 2000, Appendix A; CNLM 2008, pp. 6–7, 12, and 18), including pH, percent organic matter, soil moisture, and elemental composition. These measurements did not provide consistent results across the range of the species; thus, we are unable to make generalizations as to needs of the species as far as soil attributes are concerned.

##### Temperature

We have seen no reports of data on the tolerance of *Ambrosia pumila* to climatic extremes. Temperature is thought to potentially play a role in inducing (or prohibiting) seed germination (Johnson 1999, p. 5), although there is limited information at this time as to whether this species reproduces via seed.

#### Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

As stated above under the "Life History" section, little is known about sexual reproduction in *Ambrosia pumila*. Because occurrences are consistently found on the upper terraces of rivers and other waterways, periodic flooding of these waterways likely plays or likely has played a role in the life history of the plant. For example, Johnson (1999, p. 5) postulated that *A.*

*pumila* seeds may require soaking in flood waters or scarification as they are churned about with debris in flood waters to germinate. Additionally, *A. pumila* may depend on floods to disperse rhizomes and seeds (Dudek 2003, p. P-332) and to create space for new stems by removing or limiting the growth of competitors.

Presuming *Ambrosia pumila* is wind-pollinated, as discussed in the "Life History" section above, the species requires sufficient airflow through inflorescences to pick up and carry pollen (McGlaughlin and Friars 2007, p. 329). This is another reason (in addition to not being shade-tolerant) that *A. pumila* may require habitat containing primarily low-growing plants—low-growing plants do not block or dramatically reduce airflow to plants of *A. pumila*'s stature, which is generally less than 12 in (30 cm) tall (McGlaughlin and Friars 2007, p. 329).

*Ambrosia pumila* is presumed to be self-compatible (an individual can produce viable seed using its own pollen), but this aspect of the species' reproductive strategy has not been well examined. In a recent study, another *Ambrosia* species previously thought to be self-compatible was found not to be self-compatible (Friedman and Barrett 2008, p. 4). If *A. pumila* likewise is not self-compatible, genetically distinct individuals in close proximity to one another may be crucial to maintaining sexual reproduction in the species (McGlaughlin and Friars 2007, p. 329).

#### Habitats Protected from Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

*Ambrosia pumila* occurs most frequently on upper terraces of rivers (flat or gently sloping areas of 0 to 42 percent slopes are typical for terraces on which *A. pumila* occurrences are found, near, but not directly adjacent to, the river channel) and other drainages in western Riverside County, western San Diego County, and northwestern Baja California (Beauchamp 1986, p. 94; Johnson *et al.* 1999, p. 1; McGlaughlin and Friar 2007, p. 321; CNDDDB 2008). These areas are or have been associated with a natural flood disturbance regime. The species is primarily associated with grassland and ruderal communities, and openings in coastal sage scrub (Johnson *et al.* 1999, p. 1; Dudek 2000, p. 18; Dudek 2003, p. P-330; CNDDDB 2008). In Riverside County, *A. pumila* occurs in ruderal and nonnative grassland communities adjacent to creeks and other smaller drainages (for example, Temescal (Alberhill) Creek and Santa Gertrudis Creek) (Dudek 2003, p. P-326;

CNDDDB 2008). *Ambrosia pumila* also occurs in nonnative grassland community adjacent to and within the watershed of Skunk Hollow vernal pool in Riverside County (Dudek 2003, p. P-326; CNDDDB 2008). In San Diego County, *A. pumila* is more often found adjacent to larger waterways (for example, San Luis Rey River, San Diego River, and Sweetwater River), although the species is also often found associated with smaller drainages and washes (CNDDDB 2008).

Occurrences in Riverside County are found at much higher elevation than in San Diego County. For example, the occurrence at Skunk Hollow in Riverside County is 1,350 ft (411 m) above sea level, while the occurrences at Mission Trails Regional Park and San Diego National Wildlife Refuge in San Diego County are about 315 ft and 360 ft (96 m and 110 m) above sea level, respectively (CNLM 2008, p. 7)).

The documented range of *Ambrosia pumila* in Mexico at the time of listing extended from Cabo Colón south to Lake Chapala in north-central Baja California. We have no information regarding additional occurrences in Mexico, or the physical and biological features essential to the conservation of the species there.

#### *Primary Constituent Elements for Ambrosia pumila*

Under the Act and its implementing regulations, we are required to identify the known physical and biological features, called primary constituent elements (PCEs), within the geographical area occupied by *Ambrosia pumila* at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. Again, the physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the species. Because not much is known about the specific needs and characteristics of this species, the PCEs are based on observed traits of the habitat types in which the species is most often found. All areas we are proposing as critical habitat for *A. pumila* were occupied at the time the species was listed, occur within the species' historical geographic range, and contain physical and biological features to support at least one life-history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of *Ambrosia pumila*, and the characteristics of the areas where the species is known to

occur, we have identified two PCEs for *A. pumila*:

1. Sandy loam or clay soils (regardless of disturbance status), including (but not limited to) the Placentia (sandy loam), Diablo (clay), and Ramona (sandy loam) soil series that occur on near (but not directly adjacent to) a river, creek, or other drainage, or within the watershed of a vernal pool, and that occur on an upper terrace (flat or gently sloping areas of 0 to 42 percent slopes are typical for terraces on which *A. pumila* occurrences are found).

2. Grassland or ruderal habitat types, or openings within coastal sage scrub, on the soil types and topography described in PCE 1, that provide adequate sunlight, and airflow for wind pollination.

Based on our current knowledge of the needs of the species, we believe the need for space for individual and population growth and normal behavior is met by PCE 2, and areas for reproduction, water, light, and soil are provided by PCEs 1 and 2. These areas provide nutrients, moisture, and proximity to water features that provide periodic flooding presumed necessary for the plant's persistence.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features that are essential to support the life-history functions that are the basis for the proposal. All units and subunits proposed in this rule as critical habitat contain sufficient PCEs in the appropriate quantity and spatial arrangement to provide for one or more of the life-history functions of *A. pumila*.

We are soliciting public comment for information to help us more specifically identify PCEs and essential habitat for *Ambrosia pumila*. There is a lack of available information regarding what constitutes essential habitat for this species. Additionally, the available information does not identify a consistent pattern in specific life-history requirements and habitat types where *Ambrosia pumila* is found. For these reasons, the PCEs in this proposed rule are broad and based on our assessment of the ecosystem settings in which the species has most frequently been detected and speculation regarding its life history. We specifically seek information that may assist us in defining those physical and biological features essential to the conservation of the species which may require special management considerations or protection, or in identifying specific areas outside the geographical area occupied by the species at the time it was listed that may be essential to the

conservation of the species (see questions 2 and 3 in the **Public Comments** section).

#### *Special Management Considerations or Protection*

When designating critical habitat, we assess whether the physical and biological features within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. All areas proposed for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of *Ambrosia pumila*. In all units, special management will be required to ensure that the habitat is able to provide for the growth and reproduction of the species.

Researchers estimate that *Ambrosia pumila* historically was known from over 50 locations in San Diego and Riverside Counties, but the number of extant occurrences has been dramatically reduced as much of its habitat has been impacted by human activities (Burrascano and Hogan 1997, p. 7; Dudek 2000, p. 17; CNDDDB 2008). A detailed discussion of threats to *A. pumila* and its habitat can be found in the final listing rule (67 FR 44372). The primary threats impacting the physical and biological features essential to the conservation of *A. pumila* that may require special management considerations or protection within the proposed critical habitat include, but are not limited to, the following (67 FR 44372):

- Habitat destruction caused by urban development, including highway and utility corridor construction and maintenance, highway expansion, and development of recreational facilities (such as golf courses and campgrounds). These activities can remove the PCEs by removing soil (by grading) and changing *Ambrosia pumila* habitat to urban land, which is unsuitable for the species.

- Soil compaction caused by the creation of trails by hikers, horses, and vehicles. *Ambrosia pumila* appears to be tolerant to some level of disturbance caused by trail creation and use; it is often found in the disturbed areas along margins of dirt trails. However, it is found less often on trails, implying that although the appropriate soil type might be present, soil compaction can alter the physical characteristics of the soil such that the soil can no longer support growth of the plant.



- Habitat alteration caused by nonnative plant species that may, if present in large enough numbers, change the plant community to the extent that *A. pumila* plants can no longer receive adequate sunlight and airflow.

- Alteration of hydrology and floodplain dynamics (such as channelization and water diversions) (an additional threat not discussed in the listing rule), which can change the frequency of flooding in occupied areas or eliminate periodic flooding presumed necessary for the plant's persistence altogether, or change groundwater levels that could change the plant community to the extent that *A. pumila* plants can no longer receive adequate sunlight and airflow.

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include fencing *Ambrosia pumila* occurrences and providing signage to discourage encroachment by hikers, horses, and off road vehicle users; control of nonnative plants using methods shown to be effective (for examples, see CNLM 2008); guiding the design of development projects to avoid impacts to *A. pumila* habitat; and restoring and maintaining hydrology and floodplain dynamics of waterways associated with *A. pumila* occurrences where feasible.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *Ambrosia pumila*. Federal activities that may affect areas outside of critical habitat are still subject to review under section 7 of the Act if they may affect *A. pumila*. The prohibitions of section 9 of the Act applicable to listed plant species also continue to apply both inside and outside of designated critical habitat.

#### *Criteria Used To Identify Critical Habitat*

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of *Ambrosia pumila*, and areas outside of the geographical area occupied at the time of listing that are essential to the conservation of *A. pumila*, or both. All essential areas were occupied at the time of listing, as discussed below. As a result, we are not currently proposing any areas outside the geographical area presently occupied by *A. pumila* because we have determined that

including only occupied areas in critical habitat is sufficient for the conservation of the species. In San Diego County, where the pattern of extirpated occurrences reflects a loss of occurrences from each of the watersheds in which the species occurs rather than a complete loss from those watersheds, the areas occupied at the time of listing include the known historical range of the species (CNDDDB 2008). In Riverside County, the loss of an occurrence near the Riverside Airport reflects a loss to the geographical extent of the range in that county (Provance and Sanders 2001, p. 47).

We also reviewed available information that pertains to the habitat requirements of this species, although *A. pumila* has not been well studied and little is known about its habitat specificity, characteristics, and breeding system. Additionally, data from different information sources at times conflict, further complicating the task of discerning the specific habitat requirements of the species. We used numerous sources of information, such as materials and data included in reports submitted to the Service during section 7 consultations and other project reviews, and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages for area calculations and mapping; and data collected in the field by Service biologists.

We are proposing to designate critical habitat in areas that we determined were occupied by the species at the time of listing, and that contain the PCEs in the quantity and spatial arrangement to support life history functions essential to the conservation of the species. This includes two areas occupied by occurrences detected after *Ambrosia pumila* was listed. We have concluded that these areas were occupied at the time the species was listed because individuals of species with a clonal growth habit like *A. pumila* are usually long-lived (Watkinson and White 1985, pp. 44–45; Tanner 2001, p. 1980). The occurrence near Santa Gertrudis Creek was found during a survey for a subtransmission line project in 2006 (AMEC 2006, p. 12). The occurrence at the intersection of State Route 76 and Olive Hill Road was found during a general survey for *A. pumila* in 2006 (CNDDDB 2008). To our knowledge, the areas had not been surveyed for *A. pumila* previously, and we have no reason to believe the plant was imported or had dispersed into these areas from other areas after *A. pumila* was listed.

The occurrences identified since listing likely were in existence for many years and were only recently detected due to increased awareness of this species.

We are also proposing to designate critical habitat in some areas where *A. pumila* was thought to be extirpated or where, though extant, *A. pumila* was not considered viable at the time of listing. We conducted surveys of historical occurrences as part of the background research for this proposed rule. We found one documented occurrence area east of Lake Hodges in San Diego County that was thought to be extirpated or nonviable because the occurrence had not been seen since 1999, and because records did not contain sufficient information to locate the occurrence site. Our survey found this site does contain a viable occurrence of *A. pumila* and meets the criteria set out in this rule for *A. pumila* critical habitat. The site was located after the species was listed and found to contain a large population of *A. pumila*. We are not proposing to designate any areas outside the geographical area occupied by the species at the time of listing, and all of the areas we are proposing to designate are currently occupied by the species. All units and subunits proposed contain the PCEs believed to be essential to the conservation of this species.

#### **Methods**

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in trying to determine areas that contain the features that are essential to the conservation of *Ambrosia pumila*. We used the best scientific data available to select areas that we believe may possess those physical and biological features essential to the conservation of the species, and that may require special management considerations or protection.

After identifying the PCEs, we followed these steps to delineate critical habitat:

- (1) We identified areas occupied by *Ambrosia pumila* at the time of listing as extant occurrences, where an occurrence is defined as an occupied habitat area separated by 0.25 mi (0.40 km) or more from the next nearest occupied habitat area.

- (2) We determined that due to the lack of specific information regarding the needs of the species, we are unable to identify specific areas outside the geographical area occupied by the species at the time it was listed that may be essential to the conservation of the species.



(3) We removed all areas where the species occurs in habitat of low quality for growth and propagation (such as pavement areas or cracks within paved areas). Although occupied, we believe these occurrences are not capable of providing for the full life-history requirements of this species and are not likely to contribute to its long-term conservation; therefore, we did not consider these locations as containing essential features as habitat and did not include them in critical habitat.

(4) To define an outer boundary for each patch that captures the existing underground rhizome system (which extends beyond the visible aerial stems of plants within each occurrence), we added the average distance between the visible (aerial stems) portions of each *Ambrosia pumila* patch and the next nearest patch to the limits of the visible portion of each patch. Using GIS data, we found the average distance between clusters of stems in adjacent patches to be approximately 1,181 ft (260 m), and we added this distance to the visible outer limit of each occurrence to delineate the presumed expanse of the occurrence that also includes the underground rhizomes.

(5) We removed any area within the outer boundary of an occurrence where habitat type was not grassland, ruderal, or coastal sage scrub.

We describe how we implemented each of the steps above in detail below.

(1) We identified all occurrences of *Ambrosia pumila*—those known to exist at the time of listing and those detected since listing. We compiled data from the following sources to create our database of *A. pumila* occurrences: (1) Data used in the 2002 listing rule for *A. pumila* (67 FR 44372; July 2, 2002); (2) the California Natural Diversity Database occurrence data report for *A. pumila* and accompanying GIS records (CNDDDB 2008, pp. 1–49); (3) the data from the Consortium of California Herbaria and accompanying Berkeley Mapper GIS records (Consortium of California Herbaria 2008, pp. 1–5); (4) the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) species GIS database; and (5) the Carlsbad Fish and Wildlife Office's internal species GIS database, which includes the species data used for the San Diego Multiple Species Conservation Program (MSCP) and the San Diego Multiple Habitat Conservation Plan (MHCP), reports from section 7 consultations, and Service observations of *A. pumila* (CFWO internal species GIS database). As discussed in detail earlier in this section, we consider all extant occurrences to have been in existence at

the time of listing. We used these data to delineate GIS polygons around *Ambrosia pumila* occurrences.

We reviewed the data that we compiled to ensure its accuracy. We checked each data point in our database to ensure that it represented a site documented by a herbarium voucher or observation of *Ambrosia pumila* and was not a duplicate voucher or observation of another occurrence in the database. Duplicates were removed from our database. Secondly, we checked each data point to ensure that it was correctly mapped. Data points that did not match the description for the original herbarium collection or observation were remapped in the correct location, if possible. We removed observations where the location could not be determined from available data or site visits.

We then determined which areas are currently occupied. For areas where we have past occupancy data for *Ambrosia pumila*, we assumed the area remains occupied unless: (1) Three or more surveys for the species did not find *A. pumila*; (2) the site was significantly disturbed (for example, converted to development) since the last observation of the species at that location; or (3) specific location information for the site was lacking, and field surveys carried out in conjunction with this proposed critical habitat determination could not locate the occurrence.

(2) We determined that there are no specific areas outside the geographical area occupied by the species at the time it was listed that are essential to the conservation of the species. Information found during the Service's research in connection with this proposed action indicated that the geographical area occupied by the species at the time it was listed provides sufficient resources for the conservation of the species. We do not have sufficient information regarding the specific needs of the species to determine if any unoccupied areas are essential for the conservation of the species.

(3) We removed areas where *Ambrosia pumila* occurs in habitat of low quality for growth and propagation (such as pavement areas or cracks within paved areas). Although occupied, we did not consider these locations for critical habitat, as these occurrences are not likely to contribute to the long-term conservation of the species. We made this determination using site descriptions in the California Natural Diversity Database, talking to Service biologists, other researchers, and land managers familiar with the areas in question, and visiting and evaluating sites in person.

(4) We estimated the distance that the root system of an occurrence likely extends beyond the aboveground extent of the occurrence by measuring the distance of each GIS polygon representing an *Ambrosia pumila* patch to the nearest neighboring patch. As mentioned above, an occurrence is defined by CNDDDB as an occupied habitat area separated by 0.25 mi (0.40 km) or more from next nearest occupied habitat area. A patch is defined herein as a distinct cluster of stems within an occurrence. We estimated the average distance of underground rhizome expansion beyond the aboveground aerial stems as 1,181 ft (260 m). We expanded the outer boundary of the above-ground extent of each occurrence by 1,181 ft (260 m) to account for the underground rhizome system extending beyond the area occupied by visible stems. We believe this method adequately captures the extent of individual occurrences.

(5) We removed any areas within the expanded outer boundary of an occurrence where habitat type was not grassland, ruderal, or open areas within coastal sage scrub habitat, using the habitat types assigned to relevant areas in our GIS database, and personal observations of sites by Service biologists and other researchers or land managers.

Based on the results of this methodology, we are proposing to designate 7 units that include 8 subunits as critical habitat for *Ambrosia pumila*. After applying the above criteria and methods, we mapped the critical habitat unit boundaries at each of these seven units as GIS polygons around known occurrences. Critical habitat boundaries were delineated as polygons encompassing the extent of habitat believed to contain the physical and biological features essential to the conservation of the species that may require special management considerations or protection.

When determining the proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands occupied by buildings, paved areas, and other structures that lack PCEs for *Ambrosia pumila*. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed critical habitat are excluded by text in this rule and are not proposed for critical habitat designation. Therefore, if the critical habitat is

finalized as proposed, Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions would affect the species or PCEs in adjacent critical habitat.

We are soliciting public comment for information that may assist us in defining those physical and biological features essential to the conservation of the species which may require special

management considerations or protection, or in identifying specific areas outside the geographical area occupied by the species at the time it was listed that may be essential to the conservation of the species (see questions 2 and 3 in the **Public Comments** section).

#### Proposed Critical Habitat Designation

We determined that approximately 802 ac (324 ha) meet our definition of

critical habitat for *Ambrosia pumila*, including lands under Federal, State, other government, and private ownership. We are proposing 7 units that include 8 subunits as critical habitat for *A. pumila*. Table 1 identifies the approximate area of each proposed critical habitat unit and subunit by landownership.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR *Ambrosia pumila*.

Area estimates reflect all land within critical habitat unit boundaries.

| Location<br>(California Natural Diversity Data-<br>base(CNDDB) Occurrence Number) | Federally Owned<br>Land |          | State or Local<br>Government Owned<br>Land |          | Privately Owned Land |          | Total Area |          |
|-----------------------------------------------------------------------------------|-------------------------|----------|--------------------------------------------|----------|----------------------|----------|------------|----------|
|                                                                                   | acres                   | hectares | acres                                      | hectares | acres                | hectares | acres      | hectares |
| RIVERSIDE COUNTY                                                                  |                         |          |                                            |          |                      |          |            |          |
| Unit 1: Temescal Creek watershed                                                  | —                       | —        | 23.4                                       | 9.5      | 88.4                 | 35.8     | 111.8      | 45.3     |
| 1A. Alberhill (*)                                                                 | —                       | —        | 23.4                                       | 9.5      | 18.0                 | 7.3      | 41.4       | 16.8     |
| 1B. Nichols Road (44)                                                             | —                       | —        | —                                          | —        | 70.4                 | 28.5     | 70.4       | 28.5     |
| Unit 2: Skunk Hollow Vernal Pool watershed<br>(22)                                | —                       | —        | —                                          | —        | 118.1                | 47.8     | 118.1      | 47.8     |
| Unit 3: Santa Gertrudis Creek watershed<br>(55)                                   | —                       | —        | —                                          | —        | 32.5                 | 13.2     | 32.5       | 13.2     |
| SUBTOTAL:                                                                         | —                       | —        | 23.4                                       | 9.5      | 239.0                | 96.8     | 262.4      | 106.3    |
| SAN DIEGO COUNTY                                                                  |                         |          |                                            |          |                      |          |            |          |
| Unit 4: San Luis Rey River watershed                                              | —                       | —        | 2.4                                        | 1.0      | 102.5                | 41.5     | 104.9      | 42.5     |
| 4A. Calle de la Vuelta (43)                                                       | —                       | —        | —                                          | —        | 29.6                 | 12.0     | 29.6       | 12.0     |
| 4B. Olive Hill Road (16)                                                          | —                       | —        | 0.3                                        | 0.1      | 34.8                 | 14.1     | 35.0       | 14.2     |
| 4C. Jeffries Ranch (45)                                                           | —                       | —        | 2.2                                        | 0.9      | 38.1                 | 15.4     | 40.3       | 16.3     |
| Unit 5: San Dieguito River watershed – Lake<br>Hodges (14)                        | —                       | —        | 15.8                                       | 6.4      | 5.3                  | 2.2      | 21.2       | 8.6      |
| Unit 6: San Diego River watershed –<br>Mission Trails Regional Park (12)          | —                       | —        | 171.5                                      | 69.4     | 26.4                 | 10.7     | 197.8      | 80.1     |
| Unit 7: Sweetwater River watershed                                                | 145.5                   | 58.9     | 12.6                                       | 5.1      | 57.1                 | 23.1     | 215.2      | 87.1     |
| 7A. Jamul Road (1)                                                                | —                       | —        | 2.5                                        | 1.0      | 36.4                 | 14.7     | 38.9       | 15.7     |
| 7B. San Diego National Wildlife Refuge (48)                                       | 117.6                   | 47.6     | —                                          | —        | 15.0                 | 6.1      | 132.5      | 53.6     |
| 7C. Steele Canyon Bridge (34)                                                     | 27.9                    | 11.3     | 10.1                                       | 4.1      | 5.8                  | 2.3      | 43.7       | 17.7     |
| SUBTOTAL:                                                                         | 145.5                   | 58.9     | 202.3                                      | 81.9     | 191.3                | 77.4     | 539.1      | 218.2    |
| TOTAL                                                                             | 145.5                   | 58.9     | 225.7                                      | 91.4     | 430.4                | 174.2    | 801.6      | 324.4    |

\* Occurrence not entered in CNDDB.

\*\*Values in this table may not sum due to rounding.

The areas we are proposing as critical habitat currently provide all habitat components necessary to meet the primary biological needs of *Ambrosia pumila*, as defined by the physical and

biological features essential to the conservation of the species. These areas constitute our best assessment of areas determined to be occupied at the time of listing that contain the PCEs for *A.*

*pumila* that may require special management considerations or protection. We are not proposing any unoccupied areas or areas outside of the species' historical range because we

determined that occupied lands within the species' historical range are sufficient for the conservation of *A. pumila*. Each unit and subunit includes suitable habitat that will allow for population growth and growth of aerial stems from parts of the root system.

Presented below are brief descriptions of all subunits and reasons why they meet the definition of critical habitat for *Ambrosia pumila*. The subunits are listed in order geographically north to south and east to west.

#### *Unit 1: Temescal Creek Watershed*

Unit 1 is located in western Riverside County and consists of two subunits totaling approximately 23 ac (10 ha) of County-owned land, and 88 ac (36 ha) of private land, for a total of approximately 112 ac (45 ha) (values do not sum due to rounding).

##### *Subunit 1A: Alberhill*

Subunit 1A is located near Alberhill, north of Lake Elsinore and just west of Interstate Highway 15 in Riverside County, California. This subunit is near the northern base of Alberhill Mountain, east of Lake Street, and south of Temescal Creek (also called Alberhill Creek). Subunit 1A consists of approximately 23 ac (10 ha) of County owned land, and 18 ac (7 ha) of privately owned land, for a total of approximately 41 ac (17 ha). This subunit (along with subunit 1B) represents the northernmost occurrence of this species, which is geographically situated to assist this species expand its range northward. Like all other extant occurrences, this subunit is also essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). This subunit was occupied at the time of listing and remains occupied. Subunit 1A contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1); and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and from human encroachment that occurs in the area. The County-owned

portions of Subunit 1A are conserved and are being managed for the County by the Western Riverside County Regional Conservation Authority in accordance with Western Riverside MSHCP guidelines. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

##### *Subunit 1B: Nichols Road*

Subunit 1B is located about 2.1 mi (3.5 km) southeast of Subunit 1A (Alberhill), on the north and south sides of Nichols Road, in Riverside County, California. This subunit is near the southeastern base of Alberhill Mountain, just west of Durant Road and Temescal Creek. Subunit 1B consists of approximately 70 ac (28 ha) of privately owned land. This subunit was occupied at the time of listing and remains occupied, and is essential to the conservation of this species because this subunit (along with subunit 1A) represents the northernmost occurrences of this species, which is geographically situated to potentially assist this species expand its range northward. Like all other extant occurrences, this subunit is also essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). However, due to impacts from unauthorized grading and disking, and a permitted road realignment project, *A. pumila* within this subunit may be in imminent danger of extirpation. Subunit 1B contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and from activities (grading, construction, human encroachment) that occur in the area. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

#### *Unit 2: Skunk Hollow Vernal Pool Watershed*

Unit 2 is located in the Barry Jones (Skunk Hollow) Wetland Mitigation Bank in unincorporated Riverside County. The mitigation bank is located east of the City of Murrieta and is loosely bounded by Browning Street on the north, the edge of an unnamed canyon on the east, Murrieta Hot Springs Road on the south, and Pourroy Avenue on the west. Unit 2 consists of approximately 118 ac (48 ha) of privately owned land managed by Center for Natural Lands Management. This unit, like all other extant occurrences, is essential to the conservation of *Ambrosia pumila* because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). This unit was occupied at the time of listing and remains occupied. Unit 2 contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and annual grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit require continued special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. The Center for Natural Lands Management is providing needed management by maintaining fencing around the area to protect the area from encroachment, and carrying out research to determine the best method for control of nonnative plant species on-site. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

#### *Unit 3: Santa Gertrudis Creek Watershed (55)*

Unit 3 is located about 1 mile (1.6 km) southwest of Unit 2, along the San Diego Aqueduct, south of the intersection of Chandler and Suzi Roads and north of Santa Gertrudis Creek in Riverside County. Unit 3 consists of approximately 32 ac (13 ha) of privately owned land. This unit was occupied at the time of listing and remains occupied, and, like all other extant

occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Unit 3 contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, and utility maintenance activities. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

#### Unit 4: San Luis Rey River Watershed

Unit 4 is located in northwestern San Diego County and consists of three subunits of approximately 2 ac (1 ha) of State or local government owned land and approximately 103 ac (41 ha) of privately owned land, for a total of approximately 105 ac (42 ha).

##### Subunit 4A: Calle de la Vuelta

Subunit 4A is located near junction of State Route 76 and Calle de la Vuelta in unincorporated San Diego County. Subunit 4A consists of approximately 30 ac (12 ha) of privately owned land. This subunit was occupied at the time of listing and remains occupied, and, like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 4A contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and ruderal habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from

nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road maintenance activities, and future widening of State Route 76. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

##### Subunit 4B: Olive Hill Road

Subunit 4B is located on the west side of State Route 76, south of Olive Hill Road in unincorporated San Diego County. Subunit 4B consists of approximately 0.3 ac (0.1 ha) of State or local government owned land and approximately 35 ac (14 ha) of privately owned land, for a total of approximately 35 ac (14 ha) (values do not sum due to rounding). The occurrence in this subunit was considered extirpated at the time of listing, but has since been found to be extant. Like all other extant occurrences, it is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 4B contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and grassland habitat type which allow adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road maintenance activities, and future widening of State Route 76. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

##### Subunit 4C: Jeffries Ranch

Subunit 4C is located approximately 0.7 mile (1.1 km) southwest of Bonsall Bridge, adjacent to the south side of State Route 76 in the City of Oceanside, San Diego County. Subunit 4C consists of approximately 2 ac (1 ha) of State or local government owned land and approximately 38 ac (15 ha) of privately owned land, for a total of approximately

40 ac (16 ha). This subunit was occupied at the time of listing and remains occupied, and, like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 4C contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, road and utility maintenance activities, future widening of State Route 76, and potential development. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

#### Unit 5: San Dieguito River Watershed—Lake Hodges

Unit 5 is located on the west side of Interstate 15, just north of Lake Hodges and south of Via Rancho Parkway in San Diego County. Unit 5 consists of approximately 16 ac (6 ha) of local government owned land and approximately 5 ac (2 ha) of privately owned land, for a total of approximately 21 ac (9 ha) (values do not sum due to rounding). This unit was occupied at the time of listing, remains occupied, and, like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Unit 5 contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this unit

may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, human encroachment, utility maintenance activities, and potential development. Please see the “Special Management Considerations or Protection” section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

*Unit 6: San Diego River Watershed—Mission Trails Regional Park*

Unit 6 is located in Mission Trails Regional Park in the City of San Diego. This unit includes three areas: (1) South of Old Mission Dam and Father Junipero Serra Trail and west of Simeon Drive; (2) north of Old Mission Dam and the San Diego River, and northwest of Simeon Drive; and (3) immediately east of Kumeyaay Campground, north of Mission Gorge Road, east of Bushy Hill Drive, and south of the San Diego River. Unit 6 consists of approximately 172 ac (69 ha) of land owned and managed by the City of San Diego, and approximately 26 ac (11 ha) of privately owned land, for a total of 198 ac (80 ha). This unit was occupied at the time of listing and remains occupied, and like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Unit 6 contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the “Special Management Considerations or Protection” section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

*Unit 7: Sweetwater River Watershed*

Unit 7 is located in southwestern San Diego County and consists of three subunits containing approximately 146 ac (60 ha) of federally owned land (San

Diego National Wildlife Refuge), approximately 13 ac (5 ha) of State or local government owned land, and approximately 57 ac (23 ha) of privately owned land, for a total of approximately 215 ac (87 ha) (values do not sum due to rounding).

*Subunit 7A: Jamul Road*

Subunit 7A is located southeast of the City of El Cajon at and near junction of Jamul Road and Steele Canyon Road, on the north and south sides of Jamul Road. Subunit 7A consists of approximately 2 ac (1 ha) of State or local government owned land, and approximately 36 ac (15 ha) of privately owned land, for a total of approximately 39 ac (16 ha) (values do not sum due to rounding). This subunit was occupied at the time of listing and remains occupied, and, like all other extant occurrences, is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 7A contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, alterations of site hydrology, and off-highway-vehicle use. Please see the “Special Management Considerations or Protection” section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

*Subunit 7B: San Diego National Wildlife Refuge*

Subunit 7B is located primarily on the San Diego National Wildlife Refuge, south of Sweetwater River between Rancho San Diego Golf Course and the hills to the south, and on the north and south sides of a dirt trail adjoining the end of Par Four Drive in unincorporated San Diego County. Subunit 7B consists of approximately 118 ac (48 ha) of Federal land owned and managed by the Fish and Wildlife Service and approximately 15 ac (6 ha) of privately owned land, for a total of approximately 133 ac (54 ha). This subunit was

occupied at the time of listing and remains occupied, and is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 7B contains physical and biological features that are essential to the conservation of *A. pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection on privately owned lands, and continued management and protection on federally owned lands to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the “Special Management Considerations or Protection” section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

*Subunit 7C: Steele Canyon Bridge*

Subunit 7C is located mainly on the east side of State Route 94 on a slope between a concrete-lined ditch and a fence adjacent and parallel to State Route 94, approximately 0.7 mile (1.1 km) southeast of Subunit 7B, in unincorporated San Diego County. A small portion of the subunit is located on the opposite side of State Route 94 just south of Steele Canyon Bridge in a split-rail enclosure. Subunit 7C consists of approximately 28 ac (11 ha) of federally owned land managed by the Fish and Wildlife Service, approximately 10 ac (4 ha) of State (California Department of Transportation) and local (County of San Diego) government owned land, and approximately 6 ac (2 ha) of privately owned land, for a total of approximately 44 ac (18 ha) (values do not sum due to rounding). This subunit was occupied at the time of listing and remains occupied. Like all other extant occurrences, it is essential to the conservation of this species because of its contribution to the genetic diversity of the species (McGlaughlin and Friar 2007, p. 329). Subunit 7C contains physical and biological features that are essential to the conservation of *Ambrosia pumila*, including sandy loam or clay soils located on an upper terrace of a water source, which provide

nutrients, moisture, and periodic flooding presumed necessary for the plant's persistence (PCE 1), and nonnative grassland habitat type, which allows adequate sunlight and airflow for *A. pumila* (PCE 2). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection on State, local government, and privately owned lands, and continued management and protection on federally owned lands to address threats from nonnative plant species in situations where nonnative species are outcompeting *A. pumila* for resources, and human encroachment. Please see the "Special Management Considerations or Protection" section of this proposed rule for a discussion of the threats to *A. pumila* habitat and potential management considerations.

### 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. Decisions by the 5th and 9th Circuit Courts of Appeal 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, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Service 2004a, p.3). Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is 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 us 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. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are advisory.

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

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the U.S. Bureau of Land Management (BLM) reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM-ACA 2004, pp. 1–8; FS-ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the Bureau of Land Management the opportunity to make "not likely to adversely affect" determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the Bureau of Land

Management must insure staff is properly trained, and both agencies must submit monitoring reports to the Service to determine if the procedures are being implemented properly and effects on endangered species and their habitats are being properly evaluated. As a result we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy and/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 reinitiate 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 reinitiation 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 *Ambrosia pumila* or its designated critical habitat require section 7 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 subject to the section 7 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 consultations.

#### *Application of the 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, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features (PCEs) to an extent that appreciably reduces the conservation value of critical habitat for *Ambrosia pumila*. Generally, the conservation role of the *A. pumila* proposed critical habitat units is to support the various life-history needs and provide for the conservation of the species.

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.

Activities that, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and therefore should result in consultation for *Ambrosia pumila* include actions that would adversely affect the species' exposure to adequate moisture, nutrients, sunlight, airflow, and periodic flooding. For example:

(1) Actions that would alter the configuration of the water sources associated with *Ambrosia pumila* habitat or the upper terraces where *A. pumila* habitat is found. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the

biological and physical features that provide the appropriate habitat for *A. pumila* by altering or eliminating flooding events that this species may rely on for dispersal, seed germination, and control of competitors; reducing or increasing the availability of groundwater that may result in a shift of habitat type to a community unsuitable for *A. pumila* (shrub- or tree-dominated habitat, which would inhibit exposure to needed sunlight and airflow); or causing increased erosion that could remove soils appropriate for *A. pumila* growth.

(2) Activities that remove soils appropriate for *A. pumila* growth such as plowing or grading, or activities that change the characteristics of soils so that *A. pumila* growth is impeded, such as soil compaction due to hiking and vehicle use also adversely affect critical habitat.

We consider all of the units and subunits proposed as critical habitat to contain features essential to the conservation of *Ambrosia pumila*. All units are within the geographic range of the species, were occupied at the time of listing, and are currently occupied by *A. pumila*. To ensure that their actions do not jeopardize the continued existence of *A. pumila*, Federal agencies already consult with us on activities in areas currently occupied by *A. pumila*, or in unoccupied areas if the species may be affected by their actions.

#### **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 for 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, an 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. No. 1088–136) amended the Endangered Species 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 critical habitat designation. Therefore, there are no lands that meet the criteria for being exempted from the designation of critical habitat pursuant to section 4(a)(3) of the Act.

#### **Exclusions**

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

Section 4(b)(2) of the Act states that the Secretary must designate or 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.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits



of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

#### Exclusions Based on Habitat Conservation Plans (HCPs)

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In the following sections, we address a number of general issues that are relevant to the exclusions we are considering. Additionally, we are preparing a draft economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment when it is complete. Based on public comment on that document and the proposed designation itself, as well as the information in the final economic analysis, the Secretary may exclude from critical habitat areas different from those identified for possible exclusion in this proposed rule under the provisions of section 4(b)(2) of the Act, up to and including all areas proposed for designation. This is also addressed in our implementing regulations at 50 CFR 424.19.

*Ambrosia pumila* is a covered species under the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), the City of San Diego Subarea Plan under the Multiple Species Conservation Program (MSCP), and the County of San Diego Subarea Plan under the MSCP. We are considering exclusion of lands covered by each of these plans. Portions of the proposed critical habitat subunits may warrant exclusion from the proposed designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under these approved and legally operative HCPs. In this proposed rule, we are seeking input from the stakeholders in these HCPs, peer reviewers, and the public as to whether or not we should exclude these areas from the final critical habitat designation. Below is a brief description

of each plan and the lands proposed as critical habitat that are covered by each plan.

#### Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP encompassing about 1.26 million ac (510,000 ha) in western Riverside County. The Western Riverside County MSHCP plan area encompasses Units 1, 2, and 3 of proposed critical habitat for *Ambrosia pumila*. The Western Riverside County MSHCP addresses 146 listed and unlisted "covered species," including *A. pumila*. Participants in the Western Riverside County MSHCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (TE-088609-0) under section 10(a)(1)(B) of the Act to 22 permittees under the MSHCP for a period of 75 years.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public lands). These Public/Quasi-Public lands include those under Federal ownership, primarily managed by the U.S. Forest Service and Bureau of Land Management, and also permittee-owned open-space areas (such as State parks, County Flood Control, and county park lands). Collectively, the Additional Reserve Lands and Public/Quasi-Public lands form the overall Western Riverside County MSHCP Conservation Area. The precise configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or identified in the MSHCP, but rather is based on textual descriptions of a Conceptual Reserve Design within the bounds of a 310,000 ac (125,453 ha) "Criteria Area" that is interpreted as implementation of the MSHCP proceeds.

Specific conservation objectives stated in the Western Riverside County MSHCP for *Ambrosia pumila* include conserving at least 21,800 ac (8,822 ha) of occupied or suitable habitat for the species. This goal will be attained through acquisition or other dedications of land assembled from within the Criteria Area (i.e., the Additional Reserve Lands) or Narrow Endemic Plan Species Survey Area and through coordinated management of existing Public/Quasi-Public lands. We mapped a "Conceptual Reserve Design" that illustrates existing Public/Quasi-Public lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet MSHCP conservation goals. Our Conceptual Reserve Design was intended to predict one possible future configuration of 153,000 ac (61,916 ha) of Additional Reserve Lands in conjunction with the existing Public/Quasi-Public lands, including approximately 21,800 ac (8,822 ha) of "suitable" *A. pumila* habitat, that will be conserved to meet the goals and objectives of the plan (Service 2004b, p. 73).

Preservation and management of approximately 21,800 ac (8,822 ha) of suitable *Ambrosia pumila* habitat under the Western Riverside County MSHCP will contribute to conservation and ultimate recovery of this species. *Ambrosia pumila* is threatened primarily by habitat loss due to urbanization, flood control, and nonnative species competition (Service 2004b, pp. 334–342). The Western Riverside County MSHCP aims to remove or reduce threats to this species and its PCEs as the plan is implemented by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. Areas identified for conservation include the occurrences at the Barry Jones (Skunk Hollow) Wetland Mitigation Bank (Unit 2), and the occurrence near Temescal Creek at Nichols Road (Subunit 1B). Additionally, the Western Riverside County MSHCP anticipated conservation of a third occurrence (Subunit 1A), near Temescal Creek east of Lake Street, in accordance with its Narrow Endemics Policy (Dudek 2003, pp. P-327–P-328).

Additionally, the Western Riverside County MSHCP requires surveys for *A. pumila* as part of the project review process for public and private project proposals where suitable habitat is present within a defined narrow endemic species survey area (see Narrow Endemic Species Survey Area

Map, Figure 6–1 of the Western Riverside County MSHCP, Volume I in Dudek 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (see Additional Survey Needs and Procedures; Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek 2003).

The survey requirements, avoidance and minimization measures, and management for *Ambrosia pumila* (and its PCEs) provided for in the Western Riverside County MSHCP are expected to benefit this species on public and private lands covered by the plan. We are considering the exclusion of approximately 263 ac (106 ha) of private lands and permittee-owned or controlled Public/Quasi-Public lands in Units 1 (Subunits 1A and 1B), 2, and 3 within the Western Riverside County MSHCP Plan Area from the final critical habitat designation under section 4(b)(2) of the Act. The Western Riverside County MSHCP has several measures in place to ensure the plan is implemented in a way that conserves *Ambrosia pumila* in accordance with the species-

specific criteria and objectives for this species. Projects in the areas proposed as critical habitat conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *A. pumila*, various policies (including the Narrow Endemic Plant Species Policy (in Dudek 2003)) may provide additional conservation requirements.

The Western Riverside County MSHCP incorporates many processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on a long-term management and monitoring plan; (2) submission of annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004b, pp. 9–10). Below we provide a brief analysis of the lands in Units 1, 2, and 3 that we are considering for exclusion and how each area is covered by the Western Riverside County MSHCP or other conservation measures.

We are considering to exclude from critical habitat designation three Units that are within the boundaries of the Western Riverside County MSHCP.

Within Unit 1, the County-owned portion of Subunit 1A is conserved and is currently managed for the County of Riverside by the Western Riverside County Regional Conservation Authority; transfer of ownership to the Western Riverside County Regional Conservation Authority is planned for the near future. Subunit 1B is on privately owned lands and is not currently conserved or managed for *A. pumila*. It is also within the Western Riverside County MSHCP Criteria Area, but not within the Narrow Endemic Plan Species Survey Area. Unit 2 is on privately owned lands and is conserved and managed by the Center for Natural Lands Management as part of the Barry Jones (Skunk Hollow) Wetland Mitigation Bank. Unit 3 is on privately owned lands and is not currently conserved or managed for *A. pumila*. It is not within the Western Riverside County MSHCP Criteria Area or the Narrow Endemic Plan Species Survey Area.

The approximate amount of land that meets the definition of critical habitat for *Ambrosia pumila* within the Western Riverside County MSHCP and conservation status of those lands is summarized in Table 2.

TABLE 2—LANDS UNDER THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP) THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR *Ambrosia pumila*.

| Unit/Subunit                               | Within Western Riverside County MSHCP |          | Within MSHCP Conservation Area |          | Outside of Conceptual Reserve Design but Within Criteria Area |          |
|--------------------------------------------|---------------------------------------|----------|--------------------------------|----------|---------------------------------------------------------------|----------|
|                                            | acres                                 | hectares | acres                          | hectares | acres                                                         | hectares |
| 1A. Alberhill                              | 41.4                                  | 16.8     | 23.4                           | 9.5      | 34.9                                                          | 14.1     |
| 1B. Nichols Road                           | 70.4                                  | 28.5     | 0.0                            | 0.0      | 1.1                                                           | 0.5      |
| Unit 2: Skunk Hollow Vernal Pool watershed | 118.1                                 | 47.8     | 7.0                            | 2.8      | 0.0                                                           | 0.0      |
| Unit 3: Santa Gertrudis Creek watershed    | 32.5                                  | 13.2     | 0.0                            | 0.0      | 0.0                                                           | 0.0      |
| Totals:                                    | 262.5                                 | 106.2    | 30.4                           | 12.3     | 36.0                                                          | 14.6     |

\* Values in this table may not sum due to rounding.

In summary, we are considering exclusion of approximately 263 ac (106 ha) of *Ambrosia pumila* habitat on private lands and permittee-owned or controlled lands in Subunits 1A and 1B and Units 2 and 3 that meet the definition of critical habitat for *A. pumila* within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The 2002 final listing rule for *A. pumila* identified the following primary threats to *A. pumila*: habitat destruction and fragmentation caused by urban development; highway and utility corridor construction, expansion,

and maintenance; sheep grazing; human encroachment on foot, horses, and vehicles; weed abatement and fire suppression practices (including mowing in mid summer to early fall when mowing would remove flowering portions of the aerial stems, discing, and plowing); stochastic events such as fire or drought; and competition from nonnative plant species (67 FR 44372). The implementation of the Western Riverside County MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the

conservation of *A. pumila*. We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Units 1, 2, and 3 for inclusion or exclusion (see **Public Comments** section above).

# San Diego Multiple Species Conservation Program (MSCP)—City and County of San Diego's Subarea Plans

The MSCP Plan is a framework HCP that has been in place for more than a decade. The plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species (“covered species”) through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands, including lands within the Multi-Habitat Planning Area (MHPA; City of San Diego) and the Pre-Approved Mitigation Areas (PAMA; County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. *Ambrosia pumila* was evaluated in the County of San Diego and the City of San Diego Subarea Plans. We are considering exclusion of lands within the City of San Diego and County of San Diego Subarea Plans. Specifically, we are considering the exclusion of 278 ac (113 ha) in Unit 5, Unit 6, Subunit 7A, and non-federally owned portions of 7B and 7C (see Tables 3 and 4).

Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the “preserve area” in this proposed critical habitat designation. Upon completion of preserve assembly by the end of the permit term, approximately 171,920 ac (69,574 ha) of the 582,243-ac (235,626-ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1, and 4–2 to 4–4). The City of San Diego's preserve is delineated by mapped preserve boundaries referred to as “hardline” boundaries (the Multi-Habitat Planning Area). Most of the County of San Diego preserve areas do not have “hardline” boundaries, but the County's subarea plan identifies areas where mitigation activities should be focused to assemble its preserve areas (the Pre-Approved Mitigation Areas).

When the MSCP preserve is completed, the public sector (Federal, State, and local government, and general public) will have contributed approximately 108,750 ac (44,010 ha)

(63.3 percent) to the preserve. Approximately 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and at least 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed at least 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources. Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands currently and in the future will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1, and 4–2 to 4–4).

Private lands within the Multi-Habitat Planning Area and Pre-Approved Mitigation Areas are subject to special restrictions on development, and lands that are dedicated to the preserve must be permanently protected and managed to conserve the covered species. Public lands owned by the Cities, County, State of California, and the Federal Government that are identified for conservation under the MSCP must also be protected and permanently managed to conserve the covered species.

Numerous processes are incorporated into the MSCP that allow Service oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements, provides for Service review and approval of proposed subarea plan amendments and preserve boundary adjustments, and provides for Service review and comment on projects during the California Environmental Quality Act review process. We also chair the MSCP Habitat Monitoring Subcommittee (MSCP 1998, pp. 5–11 to 5–23). Each MSCP subarea plan must account annually for the progress it is making in assembling conservation areas and show that preserve assembly is in rough step with the development allowed in each jurisdiction. We must receive annual reports that include, both by project and cumulatively, the habitat acreage lost and conserved within the subareas. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans' associated implementing agreements.

The subarea plans under the MSCP contain requirements to monitor and adaptively manage *Ambrosia pumila* habitats and provide for the conservation of this species' PCEs. The framework and area-specific management plans are required to be

comprehensive and address a broad range of management needs at the preserve and species levels that are intended to reduce the threats to covered species and thereby contribute to the recovery of the species. These plans are to include the following: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor, interpretive, and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes of covered species; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (MSCP 1998, p. 49–97).

To protect *Ambrosia pumila* habitat, the City and County of San Diego subarea plans require that development be configured in a manner that minimizes impacts to sensitive biological resources and species covered by those plans (Service 1997, p. 10; Service 1998b, p. 7). The City of San Diego Subarea Plan requires preservation of 90 percent of the occurrence of *A. pumila* at Mission Trails Regional Park, additional impact avoidance and other measures as required under the MSCP Plan for narrow endemic species, and area-specific management directives designed to maintain long-term survival in the planning area (Service 1997, pp. 104–105). Under the City of San Diego's subarea plan, impacts to narrow endemic plants, including *A. pumila*, inside the Multi-Habitat Planning Area will be avoided, and outside the Multi-Habitat Planning Area will be protected as appropriate by: (1) Avoidance of impacts; (2) management; (3) enhancement; and/or (4) translocation to areas identified for preservation (City of San Diego 1997, p. 105–106; Service 1997, p. 15).

The County of San Diego Subarea Plan provides three levels of protection for *Ambrosia pumila*. First, the Plan requires conservation of 87 to 100 percent of *A. pumila* occurrences in the County Subarea. Second, area-specific management directives must be designed for *A. pumila* to maintain long-term survival in the planning area (Service 1997, pp. 104–105). Third, the County Subarea Plan dictates that on category 3 lands (lands for which the County Plan has not delineated preserve and development boundaries), any

newly discovered occurrences of *A. pumila* will be protected by impact avoidance measures required under the County's Biological Mitigation Ordinance. Narrow endemic plants, including *A. pumila*, are conserved under the Biological Mitigation Ordinance using a process that: (1) Requires avoidance to the maximum extent feasible; (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible; and (3) requires in-kind mitigation at 1-to-1 to 3-to-1 ratios for impacts if avoidance and minimization of impacts would preclude reasonable use of the property (County of San Diego 1997, p. 11; Service 1998b, p. 12).

These measures help protect *Ambrosia pumila* and its essential habitat whether located on lands targeted for preserve status within the

Multi-Habitat Planning Area and Pre-Approved Mitigation Areas or located outside of those areas in the City and County of San Diego Subareas. The narrow endemic policy for both the City and County of San Diego subarea plans require *in situ* conservation of *A. pumila* or mitigation to ameliorate any habitat loss. Therefore, although some losses may occur to this species on lands that are not currently preserved or otherwise designated for conservation under the MSCP, the preservation, conservation, and management of *A. pumila* provided under the City and County MSCP subarea plans promotes the long-term conservation of this species and its essential habitat within all areas covered by the subarea plans under the MSCP.

The approximate acreage of land that meets the definition of critical habitat

for *Ambrosia pumila* within the City of San Diego Subarea and conservation status of those lands is summarized in Table 3. The City of San Diego has a management plan in place for the *A. pumila* occurrence in Mission Trails Regional Park (Dudek 2000), ongoing monitoring of that occurrence (City of San Diego 2000, 2001, 2003, 2006, and 2008b), and ongoing maintenance of the Mission Trails Regional Park occurrence, including building and maintaining fencing and rerouting or closing trails to protect plants (Dudek 2000, pp. 29–30). No management plan, management, or monitoring is yet in place for the other non-Federal lands covered by the City or County of San Diego Subarea Plans that meet the definition of critical habitat for *Ambrosia pumila*.

TABLE 3—LANDS UNDER THE CITY OF SAN DIEGO SUBAREA PLAN THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR *AMBROSIA PUMILA* (INCLUDING THE MULTIPLE-HABITAT PLANNING AREA (MHPA)).

| Unit/Subunit                                                   | Within City of San Diego Subarea |          | Within City of San Diego MHPA |          | Conserved within City of San Diego MHPA* |          |
|----------------------------------------------------------------|----------------------------------|----------|-------------------------------|----------|------------------------------------------|----------|
|                                                                | acres                            | hectares | acres                         | hectares | acres                                    | hectares |
| Unit 5: San Dieguito River watershed—Lake Hodges               | 9.0                              | 3.6      | 3.1                           | 1.3      | 0.0                                      | 0.0      |
| Unit 6: San Diego River watershed—Mission Trails Regional Park | 197.5                            | 79.9     | 151.5                         | 61.3     | 46.0                                     | 18.6     |
| Total Area Considered for Exclusion                            | 206.5                            | 83.6     | 154.6                         | 62.6     | 46.0                                     | 18.6     |

\*Conserved outside of MHPA: 23.7 ac (9.6 ha).

\*\*Values in this table may not sum due to rounding.

The approximate amount of land that meets the definition of critical habitat

for *Ambrosia pumila* within the County of San Diego Subarea and conservation

status of those lands is summarized in Table 4.

TABLE 4—LANDS UNDER THE COUNTY OF SAN DIEGO SUBAREA PLAN THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR *Ambrosia pumila* (INCLUDING PRE-APPROVED MITIGATION AREAS (PAMA); AREAS ON FEDERAL LANDS NOTED IN PARENTHESES).

| Unit/Subunit                                                 | Within County of San Diego Subarea (on Federal lands) |                | Within County of San Diego PAMA (on Federal lands) |                | Conserved within County of San Diego PAMA* (on Federal lands) |                |
|--------------------------------------------------------------|-------------------------------------------------------|----------------|----------------------------------------------------|----------------|---------------------------------------------------------------|----------------|
|                                                              | acres                                                 | hectares       | acres                                              | hectares       | acres                                                         | hectares       |
| 7A. Jamul Road                                               | 38.9                                                  | 15.7           | 20.4                                               | 8.2            | 13.6                                                          | 5.5            |
| 7B. San Diego National Wildlife Refuge                       | 132.5<br>(116.1)                                      | 53.6<br>(47.0) | 116.2<br>(116.1)                                   | 47.0<br>(47.0) | 116.1<br>(116.1)                                              | 47.0<br>(47.0) |
| 7C. Steele Canyon Bridge                                     | 43.7<br>(27.6)                                        | 17.7<br>(11.2) | 30.6<br>(27.6)                                     | 12.4<br>(11.2) | 28.4<br>(27.6)                                                | 11.5<br>(11.2) |
| Totals:                                                      | 215.2<br>(143.7)                                      | 87.1<br>(58.1) | 167.1<br>(143.7)                                   | 67.6<br>(58.1) | 158.1<br>(143.7)                                              | 64.0<br>(58.1) |
| Total Area Considered for Exclusion (non-Federal lands only) | 71.5                                                  | 29.0           | 23.4                                               | 9.5            | 14.4                                                          | 5.9            |

\*Conserved outside of PAMA: 0.1 ac (0.0 ha)

\*\*Values in this table may not sum due to rounding.

Approximately 51.9 ac (21.0 ha), or 25 percent of non-Federal lands under the City of San Diego's Subarea Plan that meet the definition of critical habitat, are outside the Multi-Habitat Planning Area; approximately 48.1 ac (23.2 ha), or 67.3 percent of non-Federal lands under the County of San Diego's Subarea Plan that meet the definition of critical habitat, are outside the Pre-Approved Mitigation Areas. Consistent with the narrow endemic species requirements of the MSCP, the lands outside the Pre-Approved Mitigation Areas and Multi-Habitat Planning Area will be surveyed for *Ambrosia pumila* prior to any development occurring on these lands, and any occurrences of *A. pumila* discovered must be protected in accordance with those requirements. Additionally, as stated above, preservation and management will be provided for occurrences within the preserve areas of these subarea plans.

In summary, we are considering exclusion of 278 ac (113 ha) of non-Federal lands that meet the definition of critical habitat for *Ambrosia pumila* within the City and County of San Diego Subarea Plans under section 4(b)(2) of the Act. There are an additional 143.7 ac (58.1 ha) of Federal land at the San Diego National Wildlife Refuge included in Subunits 7B and 7C that are within the County of San Diego's subarea plan that meet the definition of critical habitat, but because these lands are federally owned we are not considering them for exclusion. The 2002 final listing rule for *A. pumila* identified the following primary threats for this species: habitat destruction and fragmentation from urban development and development of recreational activities; highway and utility corridor construction, highway expansion, and maintenance of these corridors; trampling and soil compaction caused by hikers, horses, and vehicles; fire suppression practices; competition from nonnative plant species; and stochastic events such as fire or drought (67 FR 44372; July 2, 2002). The implementation of the City and County of San Diego MSCP subarea plans helps to address these threats through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of *A. pumila*. We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas discussed above for inclusion or exclusion.

#### Economic Analysis

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

In compliance with section 4(b)(2) of the Act, we are preparing an analysis of the economic impacts of proposing critical habitat designation and related factors for *Ambrosia pumila*, to evaluate the potential economic impact of the designation. This economic analysis also will be used to determine compliance with the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, E.O. 12630 (Takings), and E.O. 13211 (Energy Supply, Distribution, or Use).

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. 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 Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). Based on public comment on that document, and our evaluation of the relative benefits of inclusions and exclusion, areas may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act in the final rule, as provided for in the Act and in our implementing regulations at 50 CFR 242.19.

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are soliciting the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our 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 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, our final decision may differ from this proposal.

#### Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to Jim Bartel, Field Supervisor of the Carlsbad Fish and Wildlife Office (see **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 first 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 under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

- (1) 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.
- (2) Whether the rule will create inconsistencies with other Federal agencies' actions.
- (3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- (4) 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 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of 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 for the areas being proposed in this revision to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. 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. We concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

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

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

1. 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, permits, or 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.

2. We do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the rule, we will further evaluate this issue and revise this assessment if appropriate.

#### *Takings—Executive Order 12630*

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 *Ambrosia pumila* in a takings implications assessment. The takings implications

assessment concludes that this designation of critical habitat for *A. pumila* does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism—Executive Order 13132*

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 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 PCEs 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 these 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—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designation of critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of *Ambrosia pumila*.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require

approval by OMB under the Paperwork Reduction Act of 1995. 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) (42 U.S.C. 4321 et. seq.)*

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 in connection with designating critical habitat under the Endangered Species 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)).

*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:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) 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 determined there are no Tribal lands occupied by *Ambrosia pumila* at the time of listing that contain the features essential for the conservation of *Ambrosia pumila*, nor are there any other Tribal lands that are essential for the conservation of this species. Therefore, designation of critical habitat for *A. pumila* is not being proposed on Tribal lands. We will continue to coordinate with Tribal governments as appropriate during the designation process.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for the preparation of this proposal, we determined that this proposed rule to

designate critical habitat for *Ambrosia pumila* 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. 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, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

**Author(s)**

The primary author of this notice is the staff from the Carlsbad 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. In § 17.12(h), revise the entry for "*Ambrosia pumila*" under "FLOWERING PLANTS" to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

| Species                |                    | Historic range      | Family     | Status | When listed | Critical habitat | Special rules |
|------------------------|--------------------|---------------------|------------|--------|-------------|------------------|---------------|
| Scientific name        | Common name        |                     |            |        |             |                  |               |
| FLOWERING PLANTS       |                    |                     |            |        |             |                  |               |
| * * * * *              |                    |                     |            |        |             |                  |               |
| <i>Ambrosia pumila</i> | San Diego ambrosia | U.S.A. (CA), Mexico | Asteraceae | E      | 727         | 17.96(a)         | NA            |
| * * * * *              |                    |                     |            |        |             |                  |               |



3. In § 17.96(a), add an entry for “*Ambrosia pumila* (San Diego ambrosia),” in alphabetical order under family Asteraceae, to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) *Flowering plants.*

\* \* \* \* \*

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

(1) Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements (PCEs) of critical habitat for *Ambrosia pumila* are:

(i) Sandy loam or clay soils (regardless of disturbance status), including (but not limited to) the Placentia (sandy loam), Diablo (clay),

and Ramona (sandy loam) soil series that occur on or near (but not directly adjacent to) a river, creek, or other drainage, or within the watershed of a vernal pool, and that occur on an upper terrace (flat or gently sloping areas of 0 to 42 percent slopes are typical for terraces on which *A. pumila* occurrences are found).

(ii) Grassland or ruderal habitat types (disturbed communities containing a mixture of native and nonnative grasses and forbs) or openings within coastal sage scrub, on the soil types and topography described in the PCE set forth in paragraph (2)(i) of this entry, that provide adequate sunlight and airflow for population growth and reproduction.

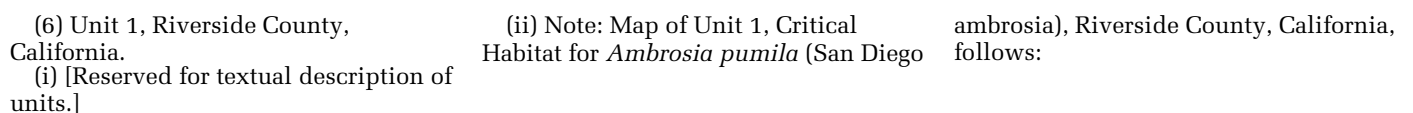
(3) Critical habitat does not include manmade structures existing on the

effective date of this rule, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, and not containing one or more of the PCEs.

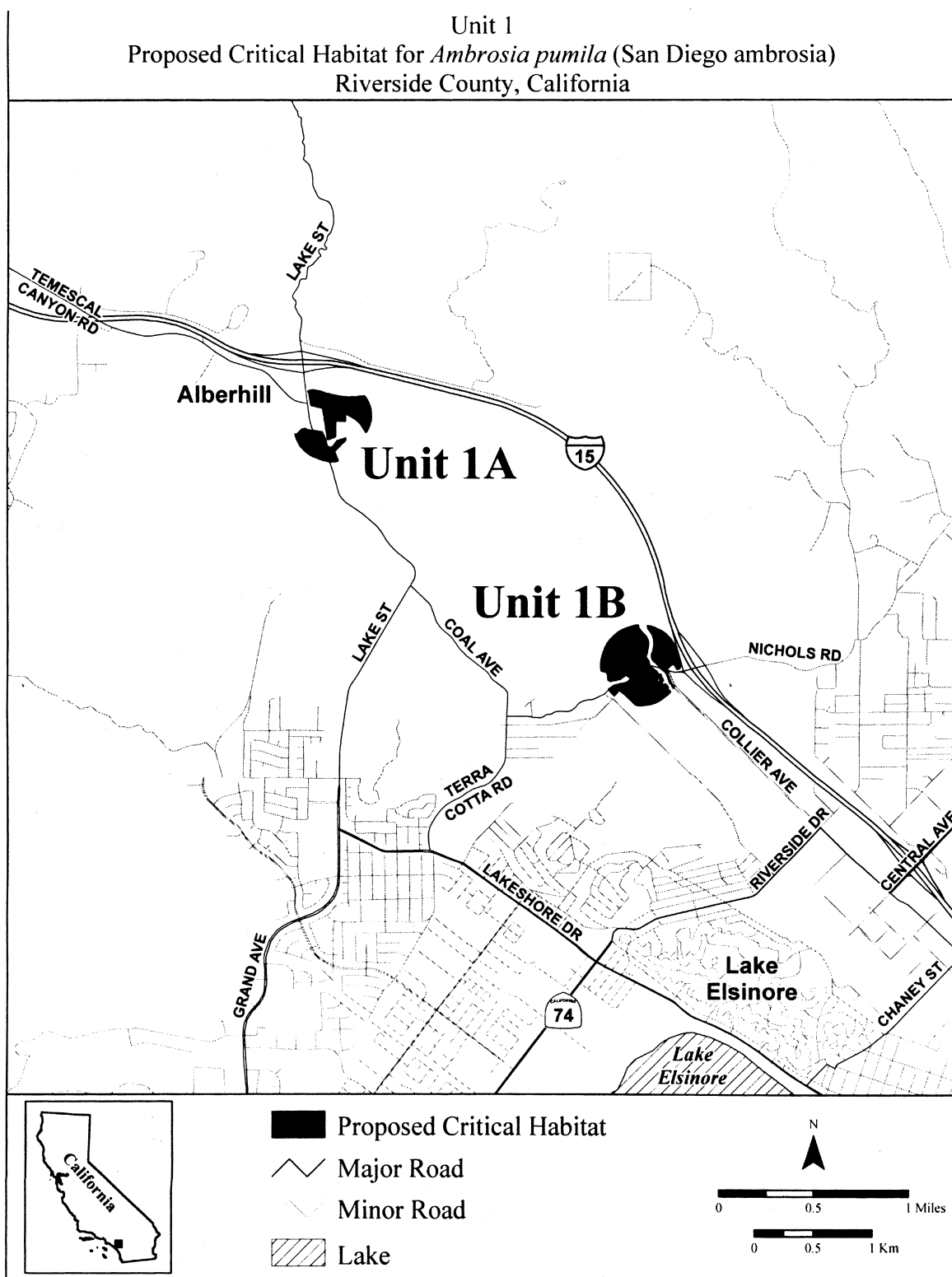
(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5' quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units and subunits.

(5) Note: Index Map of critical habitat for *Ambrosia pumila* (San Diego ambrosia), Riverside and San Diego Counties, California, follows:

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ambrosia), Riverside County, California, follows:

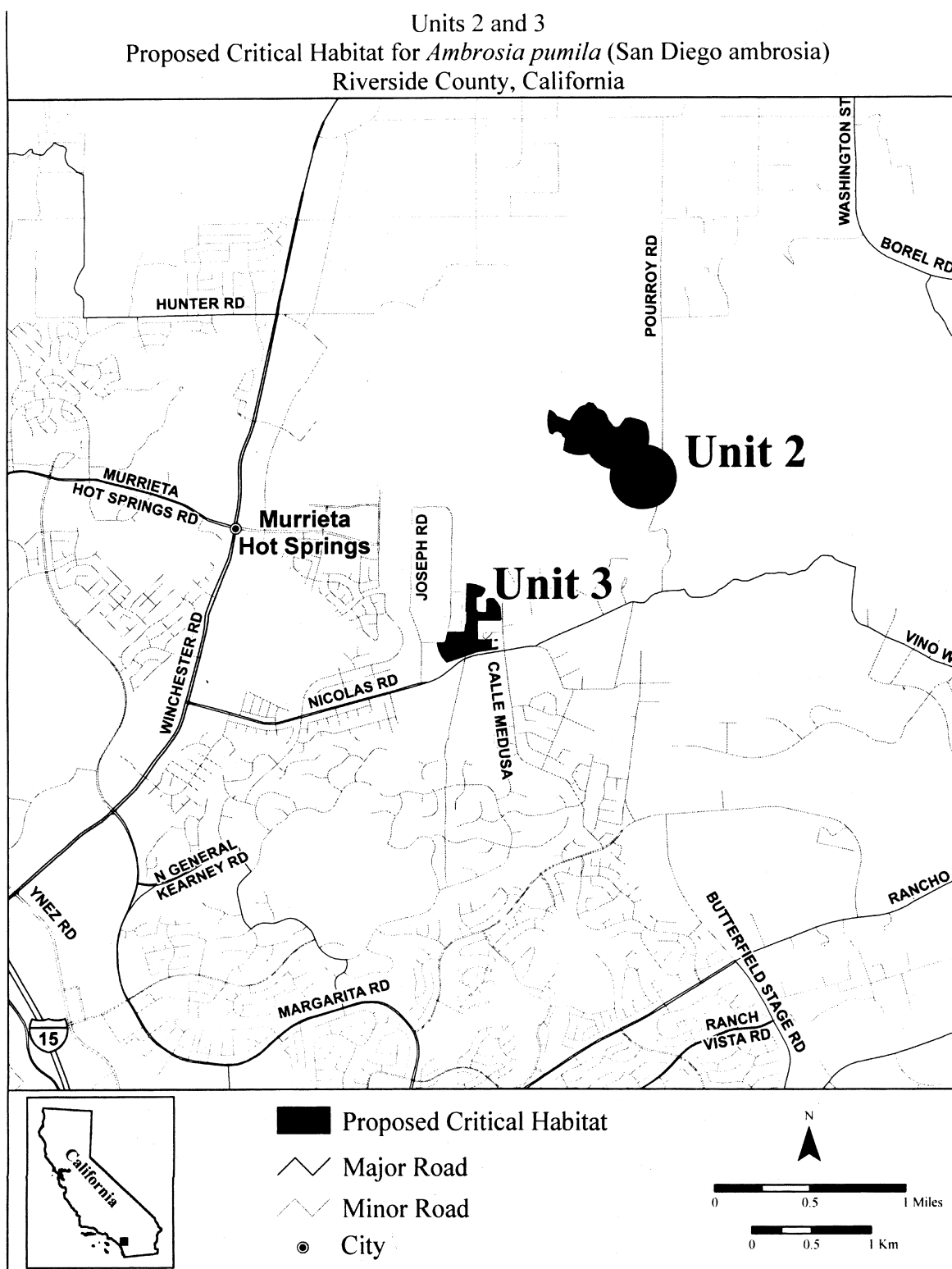


(7) Units 2 and 3, Riverside County, California.

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

(ii) Note: Map of Units 2 and 3, Critical Habitat for *Ambrosia pumila*

(San Diego ambrosia), Riverside County, California, follows:

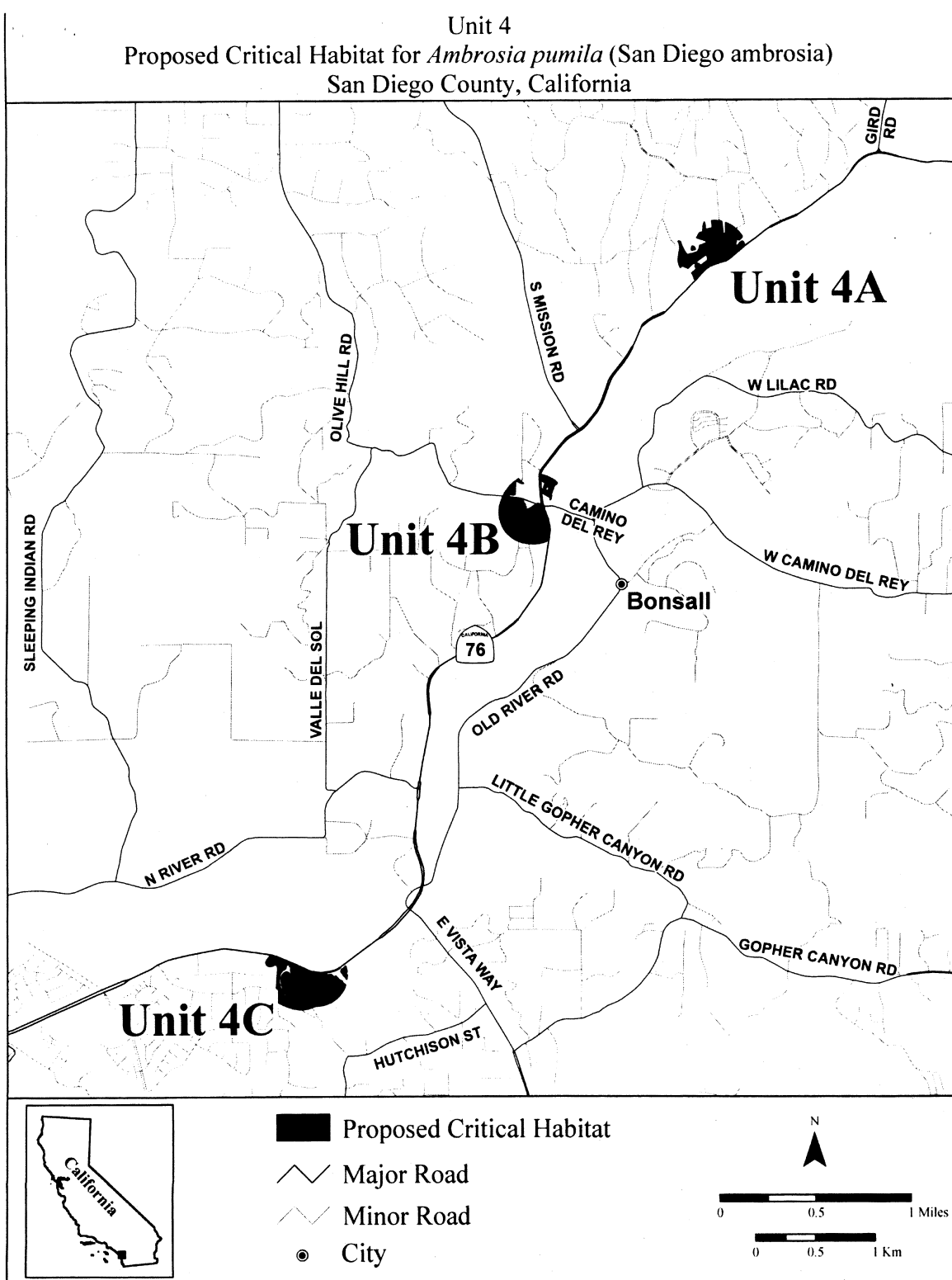


(8) Unit 4, Subunits 4A, 4B, and 4C, San Diego County, California.

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

(ii) Note: Map of Unit 4, Critical Habitat for *Ambrosia pumila* (San Diego

*ambrosia*), San Diego County, California, follows:

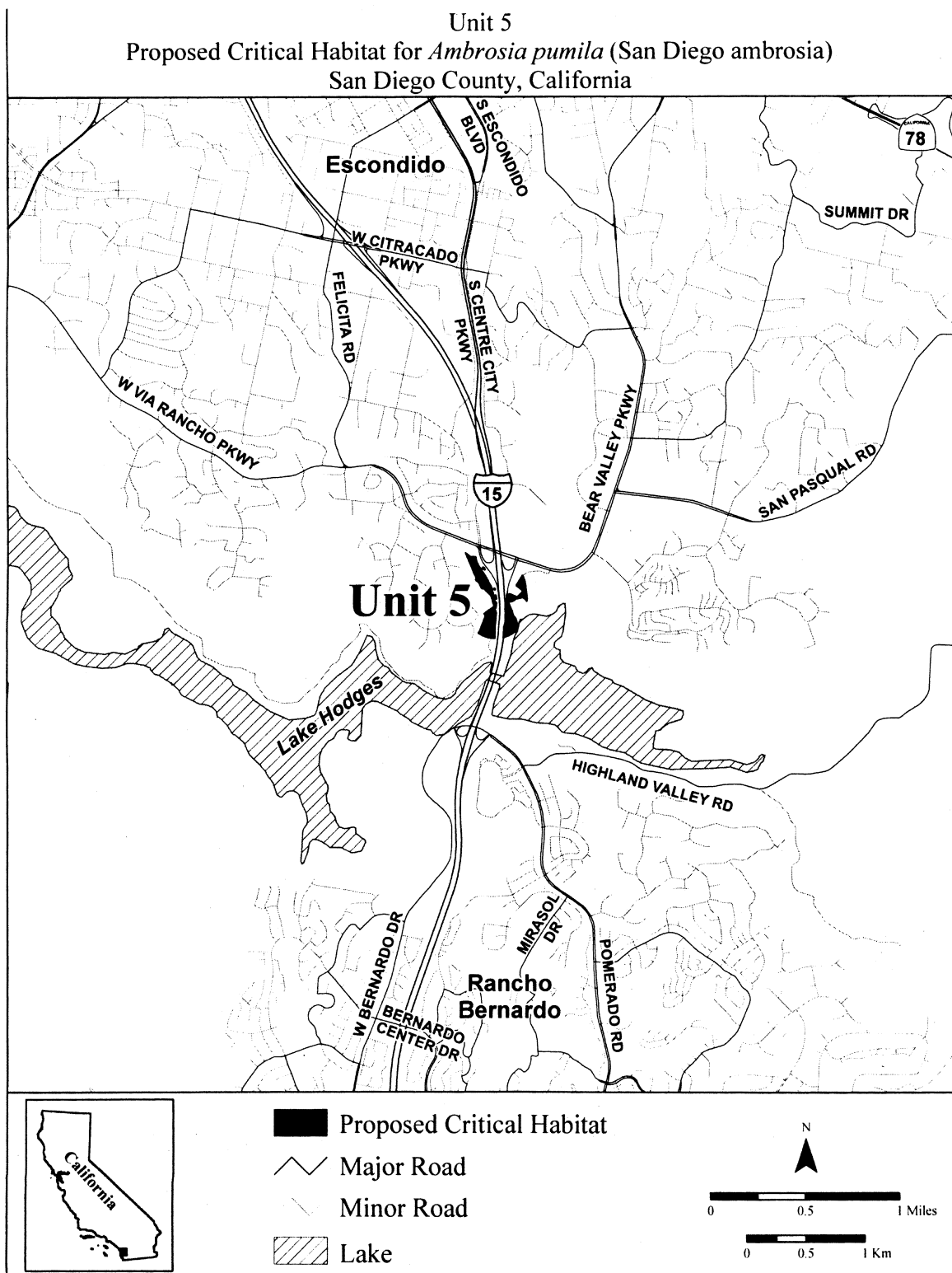


(9) Unit 5, San Diego County, California.

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

(ii) Note: Map of Unit 5, Critical Habitat for *Ambrosia pumila* (San Diego

*ambrosia*), San Diego County, California, follows:

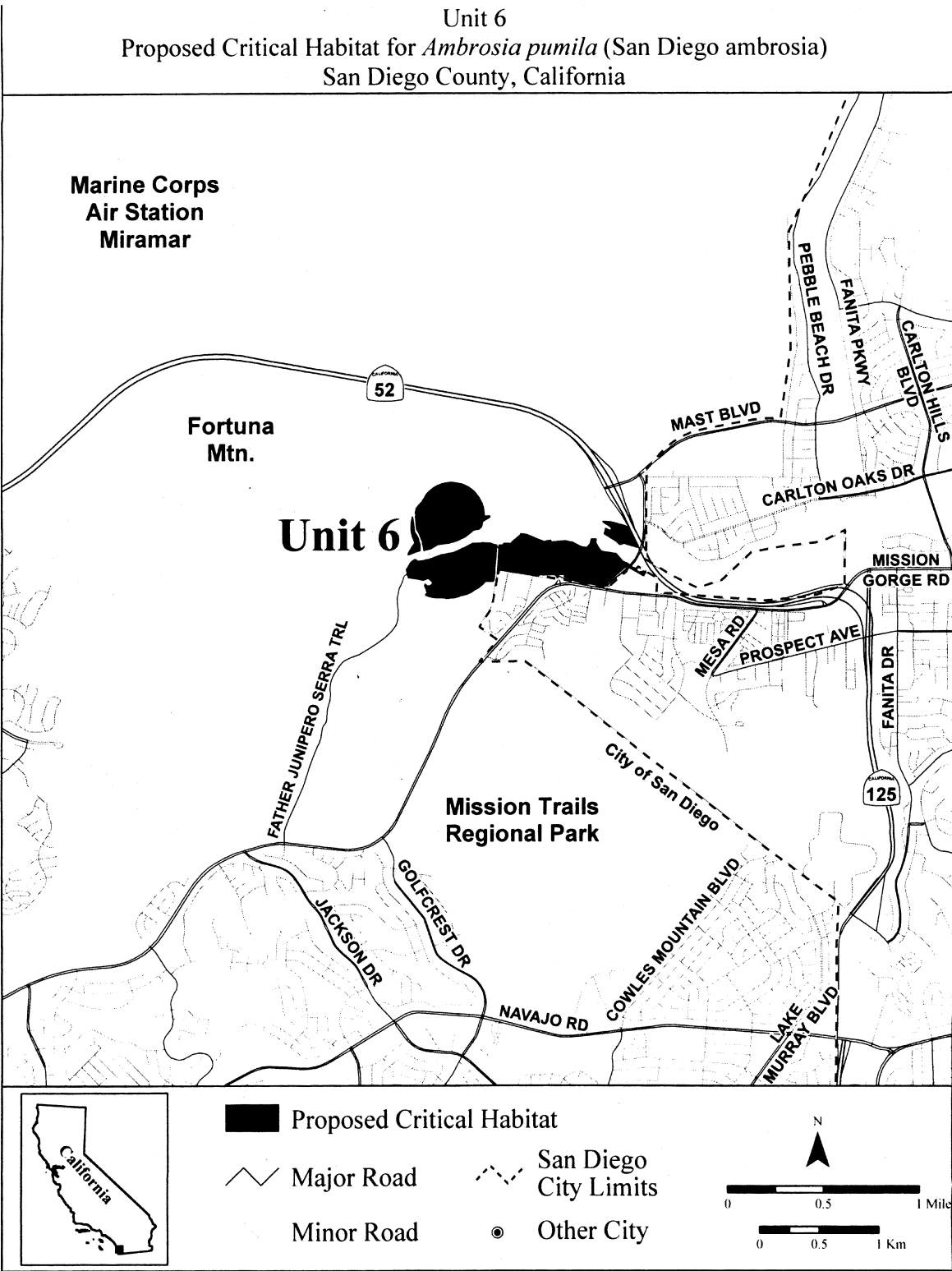


(10) Unit 6, San Diego County, California.

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

(ii) Note: Map of Unit 6, Critical Habitat for *Ambrosia pumila* (San Diego

*ambrosia*), San Diego County, California, follows:

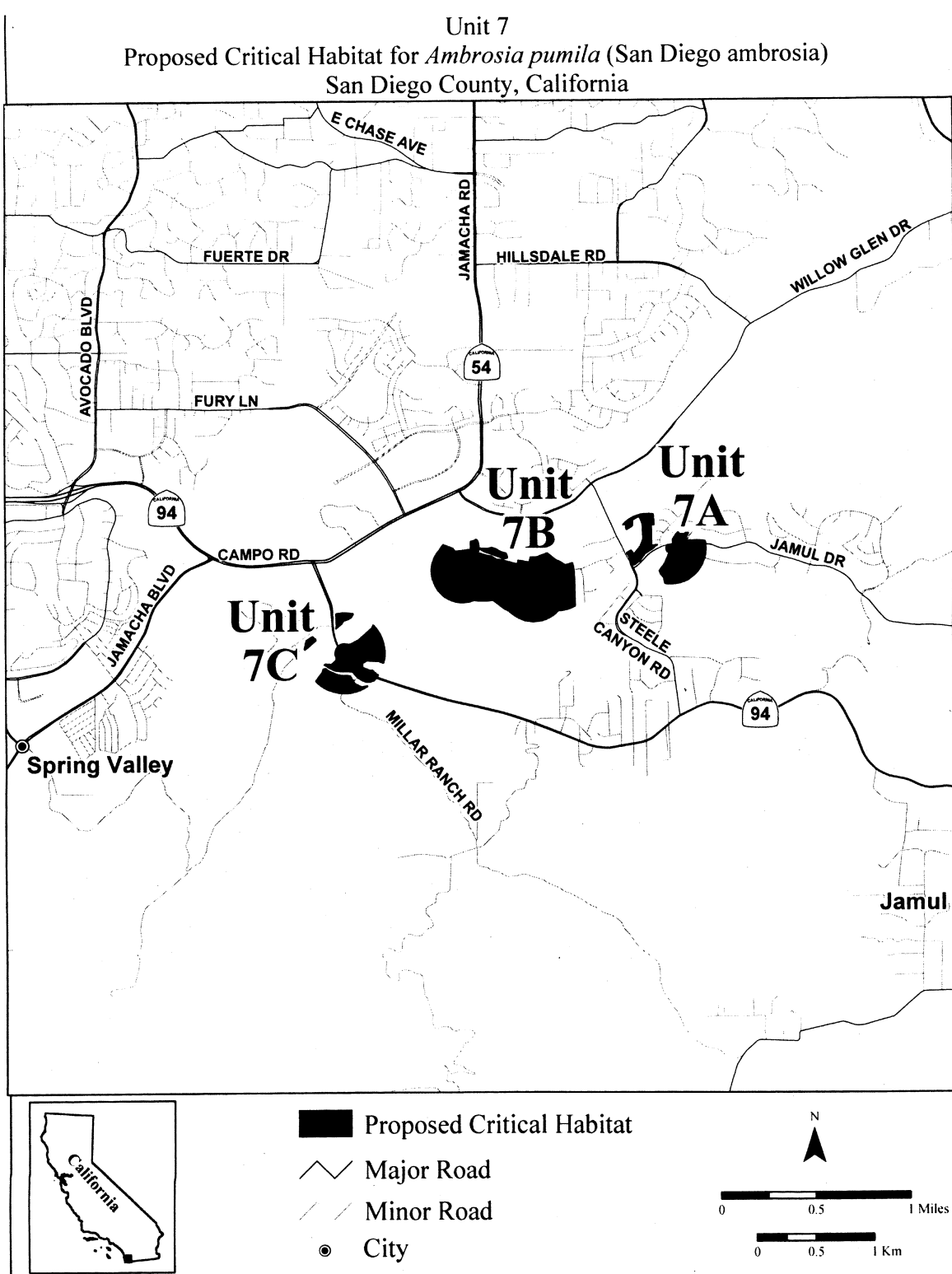


(11) Unit 7, Subunits 7A, 7B, and 7C, San Diego County, California.  
(i) [Reserved for textual description of units.]

(ii) Note: Map of Unit 7, Critical Habitat for *Ambrosia pumila* (San Diego

*ambrosia*), San Diego County, California, follows:





Dated: August 14, 2009

**Will Shafroth,**

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

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