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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Alameda Whipsnake; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT93

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Alameda Whipsnake

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 the Alameda whipsnake (*Masticophis lateralis euryxanthus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 203,342 acres (ac) (82,289 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California.

DATES: We will accept comments from all interested parties until December 19, 2005. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 2, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room 2605, Sacramento, California 95825–1846.

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *alameda_whipsnake@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office at (916) 414–6712.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room 2605, Sacramento, California 95825–1846 (telephone (916) 414–6600).

FOR FURTHER INFORMATION CONTACT:
Arnold Roessler, Listing Branch Chief,

Sacramento Fish and Wildlife Office, at the address or telephone number above.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the subspecies due to designation;

(2) Specific information on the amount and distribution of Alameda whipsnake habitat and occurrence records, and what habitat features are essential to the conservation of the subspecies and why;

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

(4) Information regarding the benefits of excluding specific lands from, or including specific lands in, the designation of critical habitat including but not limited to, State lands contained within the Mount Diablo State Park in Contra Costa County; Department of Energy lands in Alameda and San Joaquin Counties; and Bureau of Land Management lands within Contra Costa County, including specific information about existing management plans in place for these lands, and the provisions of such plans for the conservation of the Alameda whipsnake and its habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed and/or final designation of critical habitat and, in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *alameda_whipsnake@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption.

Please also include "Attn: Alameda whipsnake" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at (916) 414–6600. Please note that the Internet address (*alameda_whipsnake@fws.gov*) will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 466 species or 37 percent of the 1,268 listed species in the United States under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,268 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434 and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Subspecies Description

The Alameda whipsnake is a member of the family Colubridae (Stebbins 1985), and one of two subspecies of *Masticophis lateralis.* The Alameda whipsnake is a slender, fast-moving, diurnally active snake with a slender neck, broad head, and large eyes. Alameda whipsnakes range from 3 to 4 feet (ft) (91 to 122 centimeters (cm)) in length. The Alameda whipsnake is distinguished from the more common chaparral whipsnake (*Masticophis lateralis lateralis*) by a sooty black back area, wider yellow-orange stripes that run laterally down each side, the lack of a dark line across the scale near the tip of the nose, an uninterrupted light stripe between the tip of the nose and eye, and the virtual absence of spotting on the

underside of the head and neck. For more information on the Alameda whipsnake, refer to the final listing rule and previous final critical habitat designation published in the **Federal Register** on December 5, 1997 (62 FR 64306), and October 3, 2000 (65 FR 58933), respectively.

Life History

Members of the genus *Masticophis* are slender, fast-moving, diurnal snakes with a broad head, large eyes, and slender neck. When hunting, these snakes commonly move with the head held high and occasionally move it from side to side, possibly to aid in depth perception. Prey is seized with great speed, pinioned under loops of the body, and engulfed without constriction. The Alameda whipsnake is a lizard-eating specialist, although its diet may include other prey (e.g.), rattlesnakes and nesting birds) depending on an individual's size, sex, age, and location. These snakes are good climbers that can escape into scrub or trees. Additionally, they seek shelter in rock piles, outcrops, or small mammal burrows (Stebbins 1985).

In a study of the thermal responses of the Alameda whipsnake, Hammerson (1979) observed that snakes emerged from burrows in the morning with a low body temperature, often exposing just the head first, then basking in full or partial sun until they reached a body temperature of 91.4 to 93.4 degrees Fahrenheit (33.0 to 34.1 degrees Celsius). Alameda whipsnakes maintained a high body temperature (compared to other snakes) during the day, and retreated to burrows when soil surface temperatures began to fall. Alameda whipsnakes have a higher degree of body temperature stability than other snakes (Swaim 1994). Alameda whipsnakes maintain this high, stable body temperature by using open and partially open and or low growing shrub communities that provide cover from predators. Alameda whipsnakes require a mosaic of sunny and shady areas to regulate their body temperature.

Swaim (1994) used trapping and radio telemetry to study several aspects of Alameda whipsnake life history at multiple sites in Alameda and Contra Costa counties. Adult snakes had a bimodal seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short, above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (i.e.), a protective site where the snakes remain over the

winter) and emerge in March. Courtship and mating were observed from late March through mid-June. During this time males move around throughout their home ranges, but females appear to remain at or near their hibernacula where mating occurs. The home range of a male Alameda whipsnake ranged from 4.7 to 21.5 ac (1.9 to 8.7 ha) in size (mean of 13.6 ac (5.5 ha), n = 4), and showed a high degree of spatial overlap. Suspected egg-laying sites for two female snakes were located in grassland with scattered shrub habitat. Similarly, recent trapping studies have documented captures of spent females (*i.e.,* morphologically identifiable as having recently laid eggs) within scrub communities (Swaim 2002a), suggesting that these areas are in close association with egg-laying sites. Typically, clutches of 6 to 11 eggs are laid between May and July (Stebbins 1985), with young hatching and emerging in late summer to early fall (Swaim 1994). These hatchlings have been seen and captured above ground from August through November. Prey items were occasionally detected in the stomachs of captured hatchlings during this period, indicating that some hatchlings feed prior to winter hibernation.

Three individual snakes monitored by Swaim (1994) for nearly an entire activity season appeared to maintain stable home ranges. Movements of these individuals were multi-directional and individual snakes returned to specific areas and retreat sites after long intervals of nonuse. Snakes had one or more core areas (i.e., areas of concentrated use) within their home range as described above, with large areas of the home range receiving little use.

Geographical Range

The Alameda whipsnake currently inhabits the inner coast range mostly in Contra Costa and Alameda counties (Jennings 1983; McGinnis 1992; Swaim 1994), with additional occurrence records in San Joaquin and Santa Clara counties (CNDDB 2005; Swaim 2004). Compared to the much more common chaparral whipsnake, the Alameda whipsnake subspecies historic range has always had a very restricted distribution. The subspecies historic range most likely included the entirety of the coastal scrub and oak woodland communities throughout the East Bay in Contra Costa, Alameda, and parts of San Joaquin and Santa Clara counties (McGinnis 1992). The current distribution of the subspecies has been reduced from the known historic range to five separate areas with little or no interchange due to habitat loss,

alteration, and fragmentation. The five populations remain centered in: (1) Sobrante Ridge, Tilden/Wildcat Regional Parks to the Briones Hills, in Contra Costa County (Tilden-Briones population); (2) Oakland Hills, Anthony Chabot area to Las Trampas Ridge, in Contra Costa County (Oakland-Las Trampas population); (3) Hayward Hills, Palomares area to Pleasanton Ridge, in Alameda County (Hayward-Pleasanton Ridge population); (4) Mount Diablo vicinity and the Black Hills, in Contra Costa County (Mount Diablo-Black Hills population); and (5) Wauhab Ridge, Del Valle area to the Cedar Mountain Ridge, in (Sunol-Cedar Mountain population). For more information on the current distribution of the subspecies, refer to the **Federal Register** notices listing the species on December 5, 1997 (62 FR 64306) and the previous designation of critical habitat on October 3, 2000 (65 FR 58933).

Habitat

The distribution of the Alameda whipsnake coincides most closely with scrublands broken by grassy patches, and rocky hillsides (Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on scrub plant communities, Alameda whipsnakes frequently venture out into adjacent habitats, including grassland, oak savannah, and occasionally oak-bay woodland. The Alameda whipsnake occurs typically within a mosaic of habitat types containing scrub/shrub (chamise-redshank chaparral, mixed chaparral, coastal scrub) communities, with a significant component of annual grassland, as well as other wooded habitats such as blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, and riparian communities (Sawyer and Keeler-Wolf 1995; Mayer and Laudenslayer 1988; CDFG 1998) or rock outcrops. Alameda whipsnakes exhibit a preference for open-canopy stands and habitats with woody debris and exposed rock outcrops because these habitats provide areas for basking, cover from predators, and an ample source of prey. Until recently, Alameda whipsnakes were most often found on southeast, south, and southwest facing slopes (McGinnis 1992; Swaim 1994). Swaim (1994) reported that Alameda whipsnakes have been shown to travel distances greater than 500 ft (152.5 meters (m)) over grassland and other vegetation types and communities to exposed rock outcrops.

However, additional study has established that concentrated activity and/or movement occurs on all slope

aspects, including northern exposures, riparian areas (e.g. stream corridors), and through both open and closed canopy woodlands (Swaim 2000; Swaim 2002b; Swaim 2004; Swaim 2005b–d). Recent data from incidental sighting on free-ranging Alameda whipsnakes and recapture trapping surveys show regular use of habitats a distance of greater than 656 ft (200 m) from scrub and chaparral and include observations of Alameda whipsnakes up to 23,950 yards (yd) (7,300 m) from scrub (Swaim 2003; Swaim 2004; Swaim 2005b), and movement of marked snakes of several thousand feet (meters) (Swaim 2005c) in a matter of 4 to 10 days.

Telemetry data indicate that Alameda whipsnakes remain in grasslands for periods of several hours to weeks at a time (Swaim 1994). Grassland habitats are extensively used by male Alameda whipsnakes during the spring mating season. Female Alameda whipsnakes use grassland areas after mating, possibly in search of egg-laying sites.

Rock outcrops are considered an important feature of Alameda whipsnake habitat because they provide shelter and potential hibernacula. Rock outcrops also support lizard populations. Lizards, especially the western fence lizard (Sceloporus occcidentalis), are a major prey item of Alameda whipsnakes (Stebbins 1985; Swaim 1994). Most telemetered locations of Alameda whipsnakes were within rock outcrops and talus.

Threats

Current threats to Alameda whipsnake habitat are urban development and associated impacts that result from increased human population densities, fire suppression and resulting likelihood of catastrophic wildfires, increased predation pressure, and incompatible grazing practices. McGinnis (1992) identified the loss of large blocks of prime habitat due to relatively recent urban development as the principle reason for the decline in the subspecies. The central and western portions of Alameda and Contra Costa counties are highly urbanized and continue to be subjected to increased urbanization. Habitat fragmentation from urban development and associated infrastructure (e.g., highway and road construction) has led to isolation of the five populations by wholly preventing or severely reducing movement of individuals between each of the areas occupied by the five populations. Consequently, these activities have reduced the total amount of habitat available for the Alameda whipsnake.

Previous Federal Action

On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306). On October 3, 2000, we published a final rule designating critical habitat for the Alameda whipsnake within Alameda, Contra Costa, San Joaquin, and Santa Clara counties (65 FR 58933).

On June 7, 2001, the Home Builders Association of Northern California and others filed a lawsuit in the Eastern District of California against the Service, challenging the final designation of critical habitat for the Alameda whipsnake (*Home Builders Association of Northern California, et al.* v. *U.S. Fish and Wildlife Service, et al.*, CV F 01–5722 AWI SMS). On May 9, 2003, the U.S. District Judge vacated and remanded the October 3, 2000, final rule designating critical habitat for the Alameda whipsnake. On January 14, 2004, the Service was ordered to complete and publish a proposed rule on critical habitat designation for the Alameda whipsnake no later than October 1, 2005, and to complete and publish a final rule no later than October 1, 2006. For more information on previous Federal actions concerning the Alameda whipsnake, refer to the final listing rule published in the **Federal Register** (62 FR 64306).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of 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 government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are "essential to the conservation of the species." 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 (i.e., areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service 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 determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources 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. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic and may change over time due to vegetational succession, climate, or catastrophic events (e.g., fire, landslides). As a result of habitat change a species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the 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, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Alameda whipsnake, including information gathered for the Draft Recovery Plan, information from local subspecies experts, published and unpublished research papers (e.g., peer-reviewed journal articles in the public domain), academic theses, abstracts of presentations at scientific meetings, notes from our attendance at such presentations, consultation with recognized experts in the field, and review of case studies of other critical habitat designations. We assembled the

best and most recently available information on soil, vegetation, Alameda whipsnake records, topography, urban development, road systems, and aerial imagery, into a Geographic Information Systems (GIS) database. We are not proposing to designate any areas as critical habitat that lie outside the geographical area presently occupied by the subspecies.

We have also reviewed available information that pertains to the habitat requirements of this subspecies, including reports submitted during section 7 consultations 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; and regional GIS coverages.

As mentioned in the Habitat and Primary Constituent Elements sections, Alameda whipsnakes have the capability and need for long range movement. These movements are essential for establishment of home ranges, finding retreats, maintenance of gene flow, recolonization of habitat, relocation in response to disturbance, and finding mates. Such movements have been documented by observation of snake distance from scrub habitat (Swaim 2003) and tracking of snake movements (Swaim 2005 b–d), and are well within the general range as exemplified by other snake species in the same family (Loughheed *et al.* 1999; Blouin-Demers and Weatherhead 2002). Habitat determined to be occupied included that habitat between recorded observations within the capable and necessary range of movement, which has relatively high quality habitat for the Alameda whipsnake, PCEs, and other factors (see Criteria for Identification of Critical Habitat, below). Only such occupied habitat has been considered in the designation of critical habitat for this subspecies. All proposed units were occupied at the time of listing and are currently occupied by the Alameda whipsnake.

A GIS database was constructed to overlay key layers which served as indices of habitat quality. The critical habitat boundary was adjusted as warranted by major landforms and features (*e.g.*, ridgelines, water courses), soils, development, distance from known records, and barriers to movement.

We determined that soil type could be employed to distinguish those areas most likely to support Alameda whipsnake and/or its PCEs. To determine suitability, soils were ranked by the number of Alameda whipsnake records falling within individual soil types. We decided to map those soil

layers with a minimum of three Alameda whipsnake records. Because of the inherent biases in Alameda whipsnake data collection techniques, we believe this criterion does not over-represent areas with a single observation, nor under-represent those areas that had numerous records as a consequence of more frequent scientific study. The soil types associated with three or more Alameda whipsnake records included rock outcrop, wisflat-arburua-san timoteo complex, various types of loams, rocky loams, clay loams, and silt loams, and riverwash. Although rock outcrops and rocky soils accounted for a disproportionate number of Alameda whipsnake observations, multiple Alameda whipsnake records were also associated with other soil types. Many of the same soils associated with multiple Alameda whipsnake records are also associated strongly with chaparral or coastal scrub. Thus, soil type associated with multiple Alameda whipsnake records was considered a useful indicator of the presence of appropriate vegetation and rocky land or talus.

Vegetation quality was evaluated by examining the distribution and pattern of the grassland and woodland vegetation types used by Alameda whipsnake. Two primary sources were used: (1) The GIS-based land-cover map for California (California GAP Analysis 1998), and (2) visual inspection of digital aerial imagery from several sources. The visual inspection was necessary because the mapping unit for the GAP is relative large (*i.e.*, 100 ha) and because of a somewhat restrictive GAP mapping criterion (designations reflect a dominant canopy species, *i.e.*, greater than 20 percent). In some cases, vegetation very similar in appearance to chaparral could be seen in the aerials but was not reported as dominant in the GAP layer. Much smaller amounts of chaparral are likely to be distributed more widely, but could not be detected with either the GAP or aerial imagery layers. In general, habitat quality was deemed to be higher where all PCEs were present in abundance, and where the vegetation consisted of a more finely dissected mosaic. Additionally, areas which had chaparral were considered of greater importance because of the stronger association of snake records with this vegetation type. Quantitative limits for average patch dimension and/or minimum amount of chaparral were not established due to the varying size of chaparral known to support the Alameda whipsnake.

We also examined the digital imagery for roads, structures, cultivation, or other disturbances that would affect

habitat quality for Alameda whipsnake. Some areas were not included as critical habitat because the level of such disturbance was determined to be high to support the Alameda whipsnake over time.

Criteria Used To Identify Critical Habitat

The criteria we utilized to designate critical habitat for Alameda whipsnake are based on the best scientific information available about the biology and ecology of the subspecies. In our determination of critical habitat for the Alameda whipsnake, we selected areas that possess the physical and biological features essential to the conservation of the subspecies and that may require special management considerations or protection. Application of these criteria (1) protects the best quality habitat in areas where Alameda whipsnake occurs; (2) maintains the current geographical, elevational, and ecological distribution of habitat and the subspecies, thereby preserving genetic variation within the range of the Alameda whipsnake, and minimizing the effects of local extinction; (3) minimizes fragmentation by establishing unit boundaries that would result in the lowest possible ratio of perimeter/unit area, maintaining the essential need for snake movement, dispersal, and interaction within the population. The specific habitat quality factors that we considered in determining critical habitat included soil type, vegetation type, vegetation mosaic, and degree of included development (e.g., roads, structures).

There is no firm information on the actual population of Alameda whipsnake within its range. In addition, there has been no analysis of the minimum viable population size necessary to maintain a stable or increasing population of Alameda whipsnake. However, expert opinion is that the subspecies persists in relatively low numbers throughout its range (McGinnis 1992). Moreover, irretrievable loss of occupied Alameda whipsnake habitat due to recent urban development is significant in areas adjacent to several of the proposed critical habitat units. This development has likely resulted in a commensurate reduction in population size for the Alameda whipsnake. Accordingly, the general pattern of habitat loss and fragmentation was taken into consideration in the designation of critical habitat.

Connectivity has been applied as a criterion to those areas where designation would result in a relatively high potential for dispersal between and within units. The need for special

management considerations was applied where such management may be essential to enhance the connectivity or the integrity of high quality habitat within a unit.

We are proposing to designate critical habitat on lands that we have determined are occupied at the time of listing and that contain the features found to be essential to the conservation of the Alameda whipsnake (PCEs). Within the boundaries of critical habitat, land that contains developed areas such as buildings, paved areas, and other structures has been excluded from this designation.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are proposing to exclude critical habitat from portions of Unit 4 based on the development of the draft East Contra Costa County HCP and lands within the East Bay Regional Park District. See Relationship of Critical Habitat to the Draft East Contra Costa County Habitat Conservation Plan (ECCHCP) below.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (PCEs) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The specific

PCEs essential for the conservation of the Alameda whipsnake are derived from the biological and ecological needs of the Alameda whipsnake as described in the Background section of this proposal and in previous listing and critical habitat rules for the species, as well as derived from the abiotic and biotic needs of the species as described below.

The specific feeding and foraging habits of Alameda whipsnake are relatively well known (Stebbins 1985; Swaim 1994; Green 1998). Alameda whipsnake prey extensively on western fence lizards (*Sceloporus occidentalis*), but also have been known to prey on western skinks (*Eumeces skiltonianus*), as well as frogs, birds, and other snakes (Stebbins 1985; Swaim 1994). Its specialization on lizard prey and mode of foraging require areas that both support abundant prey populations and provide prey-viewing and capture opportunities. The Alameda whipsnake is most frequently recorded in close association with chaparral or scrub patches. These patches serve as the center of home ranges, and provide for concealment from predators and prey-viewing opportunities while foraging. Snakes venture into adjacent grasslands or wooded habitats that exhibit, at a minimum, a partially open canopy. The open canopy character is believed to allow both development of the primary lizard prey base used by the snake, and efficient thermoregulation and foraging activities. The Alameda whipsnake hunts by sight, holding its head off the ground to peer over grass or rocks for potential prey capture opportunities. Essential features of Alameda whipsnake habitat must therefore include consideration of the habitat needs of the prey species and for prey captures. Such opportunities, as well as the prey base, are provided for by what is termed a ''scrub community.'' The particular arrangement of the landscape mosaic that supports Alameda whipsnake commonly consists of scrub patches within an open canopy of interspersed grasslands and rocklands, but may include closed or nearly closed scrub areas, including rocklands, and a much lower complement of grasses. Typical scrub communities within the range of the Alameda whipsnake include diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-chaparral (Mayer and Laudenslayer 1998), and chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation

(Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998). These vegetation series are characterized as being less than 20 ft (6 m) in height with sparse ground cover (the interior live oak shrub vegetation series having variable ground cover) and form a nearly continuous cover of closely spaced shrubs often with intertwining branches. Sufficient light penetrates through the canopy to support a herbaceous understory. The soils are usually nutrient poor and rocky, and stands are best developed on steep slopes. Because of complex patterns of topographic, edaphic, and climatic variations, these vegetation series form a mosaic pattern with inclusions of other vegetation series (blue oak, coast live oak, California Bay, California buckeye, California annual grassland) or open spaces. The percentage cover for these vegetation series is variable depending on species composition and aspect. Bare zones about 3 ft (1 m) wide may be interspersed within these vegetation series and extend around and out into adjacent vegetation series. These vegetation series occur on all slope aspects with patch sizes varying from square feet (meters) to square miles (kilometers) in dimension. The plant species associated with these vegetation series include, but are not limited to: chamise (*Adenostoma* sp.), manzanita (*Artostaphylos* sp.), *Ceanothus* sp., buckwheat (*Eriogonum* sp.), bush monkey flower (*Diplacus* sp.), toyon (*Heteromeles arbutifolia*), scrub oak (*Quercus* sp.), interior live oak (*Q. wislizenii*), canyon live oak (*Q. chrysolepis*), California coffeeberry *Rhamnus* sp.), California buckeye (*Aesculus californica*), poison oak (*Toxicodendron diversilobum*), yerba santa (*Eriodictyon californicum*), and mountain mahogany (*Cercocarpus* sp.).

Swaim (1994) found that core areas (i.e., areas of concentrated use by Alameda whipsnakes, based on telemetry and trapping data) were predominantly located on east, southeast, south, or southwest facing slopes and were characterized by open or partially-open canopy or grassland within 500 ft (150 m) of scrub. In early studies, Alameda whipsnakes were captured primarily where the canopy cover was open (less than 75 percent cover) or partially open (75 to 90 percent cover). However, more recent trapping efforts have collected Alameda whipsnakes in scrub ranging from nearly complete or completely closed canopies, to very open canopies with a

few patches of high quality scrub present (Swaim 2005b). These core areas provide sun-shade mosaics that offer an opportunity for the snake to achieve temperatures necessary for foraging, while providing retreat from predators (Swaim 1994). The open scrub habitat supports prey viewing opportunities, aiding foraging opportunities for this diurnal sight-hunting snake (Swaim 1994). As previously mentioned, capture of spent females within scrub communities (Swaim 2002a) indicates scrub areas are in very close association with egg-laying sites, probably located in nearby grassland. Because they provide the primary foraging, breeding, and shelter areas for Alameda whipsnake, scrub communities are considered a PCE essential to the conservation of this subspecies.

Although much of Alameda whipsnake activity occurs in scrub communities, other types of vegetation are also used for foraging and are necessary for normal behavior, breeding, reproduction, population interaction, and dispersal. Core areas used by the snake can be sustained by very small patches of scrub embedded within a larger mosaic of other dominant vegetation types (Swaim 2005b). Our review of available vegetation data and aerial imagery indicate that much of the distribution of Alameda whipsnake does not consist of large unbroken tracts of scrub community. The vegetation types adjacent to the scrub habitat that the Alameda whipsnake needs for foraging, dispersal, and population interactions include annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities (e.g. stream corridors). McGinnis (1992) has documented Alameda whipsnakes using oak woodland/grassland habitat as a corridor between stands of northern coastal scrub.

Grassland habitats are used extensively by both sexes of Alameda whipsnake during the breeding season. Males used these areas most extensively during the spring mating season, possibly in search and selection of mates (Swaim 1994). Female use occurred after mating, possibly looking for egg laying sites or for dispersal to scrub habitat (Swaim 1994, Swaim 2002a). Specifically, concentrated activity of gravid females, and hence the suspected location of egg laying sites, was in grassland areas with scattered shrubs within 10 to 20 ft (3 to 6 m) of true scrub habitat (Swaim 1994).

Embedded within these scrub communities and adjacent habitats are areas consisting of rocky habitat (either

rock outcrops or rock debris piles, known as "talus") and small rodent burrows; however, brush piles and deep soil crevices are also used by the snake (Swaim 1994). These areas are essential for normal behavior, breeding, reproduction, dispersal, and foraging because they provide shelter from predators, egg laying sites, over night retreats, and winter hibernacula (Swaim 1994) and are associated with areas that have increased numbers of foraging opportunities (Stebbins 1985; Swaim 1994). Swaim (1994) found rock outcrops were typically abundant in core areas and observed Alameda whipsnakes mating in these outcrops. During the mating season females remain near the retreat sites while males disperse throughout their home ranges (Swaim 1994). Hammerson (1979 in litt.) observed Alameda whipsnake emerging from burrows in the morning, basking in the sun, and retreating into burrows when the soil surface temperatures began to fall. Alameda whipsnakes retreat into winter hibernacula (e.g. rodent burrows, crevices between rocks) around November and emerge in March. Trapping of gravid females close to scrub communities in grassland with scattered shrubs (Swaim 1994) and spent females in true scrub communities (Swaim 2002a) suggests that rock outcrops, talus, and burrows (mating habitats) need to be relatively close to scrub and nearby grassland habitat (suspected egg laying habitats).

Dispersal habitats are essential for the conservation of Alameda whipsnake. Protecting the ability of Alameda whipsnake to move freely across the landscape in search of habitats is essential for: (1) Sustaining populations by providing opportunity for movement and establishment of home ranges by juvenile recruits, (2) maintaining gene flow by the movement of both juveniles and adults between subpopulations, and (3) allowing recolonization of habitat after fires or other natural events that have resulted in local extirpations. The available information on movements of other colubrid snakes is limited to a small minority of species, but indicates a general potential for significant mobility. Loughheed *et al.* (1999) found evidence of substantial genetic exchange among local hibernacula greater than 3.75 miles (6 km) apart, although gene flow over distances of 6.25 miles (10 km) and greater appears to be substantially less. Based on extensive radio-tracking data, Blouin-Demers and Weatherhead (2002) found that male and female ratsnake (*Elaphe obsolete*) (a species similar in size and

characteristics to the Alameda whipsnake) travel up to 5 miles (8 km) from hibernacula to mate. Therefore, it is likely that medium-sized species of this group, such as the Alameda whipsnake, move between areas up to a few miles apart. This is consistent with the distribution of vegetation types in portions of the Alameda whipsnake range, where the vegetation often has more dense closed canopy on the northeast-facing slopes, and less dense open canopy on southwest-facing slopes. Very recent trapping data has shown several instances of snakes residing in and moving through predominantly north-facing slopes in two of the six proposed units (Swaim 2005c, Swaim 2005d). Habitat with a more open canopy would provide the greatest range of essential functions. However closed-canopy areas are considered essential because they provide avenues of dispersal and interaction between sub-populations, and movement through such closed-canopy areas has been documented (Swaim 2002b).

Additional trapping data has shown the maximum distance between Alameda whipsnake observations from the nearest scrub is much larger, up to 4.5 miles (7.3 km), than either the home range diameter or average movements, suggesting more extensive use of grassland for either foraging or corridor movement (Swaim 2000; Swaim 2003; Swaim 2005b). The scale of these grassland patches is on the order of several miles (kilometers) across, and movement of this degree would permit Alameda whipsnakes to disperse to other adjacent habitat. Large blocks of contiguous habitat, relatively uninterrupted by roads, structures, or other development, fulfills the essential need for interchange and interaction among individuals and subpopulations within the limited distribution of Alameda whipsnake. Thus, other vegetation (e.g., annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities) adjacent to scrub habitat is considered a feature essential to the conservation of the Alameda whipsnake.

The characteristics and composition of the vegetation series adjacent to scrub or rocky habitats which are used by Alameda whipsnake for foraging, short and long distant dispersal, and mating can be variable depending on location, topography, soils, and rainfall. The woodland vegetation series are comprised of slow growing, long-lived deciduous and evergreen trees 15 to 70 ft (4 to 21 m) tall with a mixed

understory of grass and herbaceous vegetation or shrub vegetation. Some common species associated with the woodland vegetation series include: blue oak (*Quercus douglassi*), valley oak (*Quercus lobata*), canyon live oak, California black oak (*Quercus kellogi*), interior live oak, madrone (*Arbutus menziesii*), foothill pine (*Pinus sabatiana*), California bay, California buckeye, coyote brush, manzanita, gooseberry (*Ribes* sp.), redwood (*Sequoia sempervirens*), and *Eucalyptus* sp. Some common species associated with the California annual grassland vegetation series include: wild oats (*Avena* sp.), soft chess (*Bromus mollis*), brome sp., barley (*Hordeum* sp.), and fescue (*Festuca* sp.). Some remnant perennial grasses may also be distributed within this grassland vegetation series comprised of species such as needlegrass (*Nassella* sp.), California onion grass (*Melica californica*), and California fescue (*Festuca californica*). Herbaceous vegetation within the woodland and grassland vegetation series includes filaree sp., turkey mullein (*Eremocarpus* sp.), popcorn flower (*Plagiobothrys* sp.), and California poppy (*Eschscholtzia california*).

Primary Constituent Elements for the Alameda Whipsnake

Based on our current knowledge of the life history, biology, and ecology of the Alameda whipsnake and the requirements of the habitat necessary to sustain the essential life history functions of the subspecies, we have determined that the primary constituent elements for the Alameda whipsnake are:

(1) *Scrub/shrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low to medium-stature woody shrubs with a mosaic of open and closed canopy as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998), occurring at elevations from sea level to approximately 3,850 ft (1,170 m). Such scrub/shrub vegetation within these series form a pattern of open and closed canopy which is used by the Alameda whipsnake to provide shelter from predators, temperature regulation by providing sunny and shady locations, prey-viewing opportunities, and nesting habitat and substrate. These features contribute to

support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds.

(2) *Woodland or annual grassland plant communities contiguous to lands containing PCE 1:* Woodland or annual grassland vegetation series comprised of one or more of the following: blue oak, coast live oak (*Quercus* sp.), California bay (*Umbellularia californica*), California buckeye, and California annual grassland vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998)) are PCE 2. This mosaic of vegetation supports a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds and provides opportunities for: (1) Foraging by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards along with other prey such as skinks, frogs, birds); (2) short and long distance dispersal within, between, or to adjacent to areas containing essential features (i.e., PCE 1 or PCE 3); and (3) contact with other Alameda whipsnakes for mating and reproduction.

(3) *Lands containing rock outcrops, talus, and small mammal burrows.* These areas are used for retreats (shelter), hibernacula, foraging, dispersal, and provide additional prey population support functions.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the features essential to the conservation of the whipsnake that have been identified as PCEs that may require special management considerations or protections. Special management is required when threats to the species and features essential to its conservation exist and must be reduced by management to conserve the species. The greatest threat to all six units is continued urban development, which destroys and fragments the features essential to the conservation of the subspecies and thus the habitat used by the Alameda whipsnake. Second, fragmentation and destruction of features essential to the conservation of the subspecies and thus the habitat also results from road development and widening in all six units. Third, the features essential to the conservation of the subspecies are threatened directly and indirectly by the effects of fire suppression. Fire suppression

exacerbates the effects of wildfires through the buildup of fuel (i.e., underbrush and woody debris), creating conditions for slow-moving, hot fires that completely burn all sources of cover for the Alameda whipsnake. Highest intensity fires occur in the summer and early fall, when accumulated fuel is abundant and dry. During this period, hatchling and adult Alameda whipsnakes are aboveground (Swaim 1994), resulting in populations being more likely to sustain heavy losses from fires. Fire suppression has led to the encroachment of non-indigenous and ornamental trees into grassland habitats, further increasing flammable fuel loads in and around Alameda whipsnake habitat. Fire suppression has also lead to the change of scrub communities from open/closed mosaics to closed canopy stands. As described above, Alameda whipsnakes prefer scrub communities consisting of an open/closed mosaic. The closed scrub canopy also results in a buildup of flammable fuels over time (Parker 1987). Special management would be required to properly manage fuel load and prevent catastrophic fire within the six units.

Finally, the features essential to the conservation of the subspecies and thus the habitat within all six units are subject to increased predatory pressure from introduced species, such as rats (*Rattus* spp.), feral pigs (*Sus scrofa*), and feral and domestic cats (*Felis domestica*) and dogs (*Canis familiaris*). These additional threats become particularly acute where urban development immediately abuts Alameda whipsnake habitat. A growing movement to maintain feral cats in parklands is an additional potential threat to the Alameda whipsnake. The East Bay Regional Park District (EBRP) is currently facing public pressure to allow private individuals to maintain feral cats on park lands (DelVecchio 1997). Although the actual impact of predation under such situations has not been studied, feral cats are known to prey on reptiles, including yellow racers (*Coluber* sp. (Hubbs 1951)), a fast, diurnal snake closely related to the Alameda whipsnake (Stebbins 1985). Alameda whipsnakes may be adversely affected in areas that lie adjacent to urban development because of the associated loss of cover habitats in combination with increased native and nonnative predators using these areas. Special management of nonnative predators would be required within all six units.

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Proposed Critical Habitat Designation

We are proposing six units as critical habitat for the Alameda whipsnake. The critical habitat areas described below constitute our assessment of areas that have been determined to be occupied at the time of listing, that contain the PCEs, and that may require special management. The six areas proposed for designation as critical habitat for the Alameda whipsnake are described below.

Table 1 below provides the approximate area (ac/ha) determined to be essential to the Alameda whipsnake and the area proposed for exclusion from the final critical habitat designation by unit.

TABLE 1.—AREAS WITH ESSENTIAL FEATURES FOR THE ALAMEDA WHIPSNAKE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION.

Unit	Area with essential features		Area Proposed for exclusion from the Final Critical Habitat Designation	
	ac	ha	ac	ha
1	34,119	13,808	8,108	3,281
2	24,524	9,925	4,408	1,784
3	27,551	11,150	404	163
4	69,598	28,165	46,306	18,739
5A	24,723	10,005	246	100
5B	18,214	7,371	361	146
6	4,612	1,866	272	110
Total	203,342	82,289	60,105	24,323

The approximate area encompassed within each proposed critical habitat unit by ownership is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR ALAMEDA WHIPSNAKE

[Area (ac/ha) estimates reflect all land within critical habitat unit boundaries]

Unit	Federal		State		Local		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1					8,108	3,281	26,012	10,527	34,119	13,808
2					4,408	1,784	20,116	8,141	24,524	9,925
3					404	164	27,146	10,986	27,551	11,149
4	61	25	13,873	5,615	3,641	1,474	52,022	21,053	69,598	28,165
5A	2,492	1,009			246	99	21,986	8,897	24,723	10,005
5B					361	146	17,854	7,225	18,214	7,371
6					272	110	4,340	1,756	4,612	1,867
Total	2,553	1,033	13,873	5,615	17,440	7,057	169,476	68,584	03,342	82,289

We present brief descriptions of all units, and reasons why they are essential for the conservation of the Alameda whipsnake below.

Unit 1: Tilden-Briones; Alameda and Contra Costa Counties (34,119 ac (13,808 ha))

Unit 1 is bordered approximately by State Highway 4 and the cities of Pinole, Hercules, and Martinez to the north; by State Highway 24 and the City of Orinda Village to the south; Interstate 80, and the cities of Berkeley, El Cerrito, and Richmond, to the west; and Interstate 680 and the City of Pleasant Hill to the east. Unit 1 is connected to Unit 6 to the south. Land ownership within the proposed unit includes approximately 8,108 ac (3,281 ha) of East Bay Regional Park (EBRP) lands with the remainder of

land being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section "Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)" below).

The unit contains a complex mosaic pattern of grassland with woody scrub vegetation of several types (PCE 1 and PCE 2) as well as rock outcrops or other talus features (PCE 3) which are uniformly distributed throughout the unit with little habitat fragmentation. Alameda whipsnake records occur within the unit and are also uniformly distributed with the dates of Alameda whipsnake records spanning a time period ranging from before the subspecies' listing to after the time of listing (1986-present). Very limited

development or habitat fragmentation is present, with the exception of a few structures presumably associated with livestock management. The distribution of essential features throughout the unit allows Alameda whipsnake populations to utilize and freely disperse within the unit, making the overall population less vulnerable to local extinction which could result from fire, landslide, or some other natural event (e.g. drought, disease). The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the northwestern portion of the subspecies range and one of five population centers. The special management actions which may be required within the unit include

prescribed burns, and management of grazing activities to maintain a mosaic of open habitat. Additional special management which may be required for this unit includes management of trespass, unauthorized trail construction, dumping, feral animal control and other activities associated with urban interface.

Unit 2: Oakland–Las Trampas; Contra Costa and Alameda Counties (24,524 ac (9,925 ha))

Unit 2 is located south of State Route 24, north of Interstate 580, east of State Route 13, and west of Interstate 680 and the cities of Danville, San Ramon, and Dublin. Unit 2 is connected to Unit 6 to the north. Land ownership includes 4,408 ac (1,784 ha) of East Bay Regional Park and East Bay Municipal Utilities District (EBMUD) lands with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 2 contains a range of vegetation (PCE 1 and PCE 2), soil types, and rocky features (PCE 3) essential to the conservation of the subspecies, supports viable Alameda whipsnake populations, and has minimal development such as roads and structures. Areas with development or reduced soil and vegetation characteristics were not included as proposed critical habitat for this unit. Essential features within Unit 2 which contain denser woodland habitat may be subject to special management considerations, such as prescribed burns, to improve the habitat quality and enhance the potential for Alameda whipsnake movement between units. Additional special management which may be required throughout this unit includes management of trespass, unauthorized trail construction, dumping, feral animal control and other activities associated with urban interface. Alameda whipsnake records have been documented by multiple records within the unit as well as adjacent to the unit. Dispersal between Units 2 and 1 occurs directly through Unit 6, and impediments to such movement do not appear to be present. Unit 2 is included in the proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the central distribution of Alameda whipsnake and one of the five population centers.

Unit 3: Hayward–Pleasanton Ridge; Alameda County (27,551 ac (11,149 ha))

Unit 3 is generally located immediately to the west of Interstate 680 and to the south of Interstate 580. Land ownership includes 404 ac (164 ha) of East Bay Regional Park with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 3 contains the mosaic of scrub and chaparral vegetation and rocky outcrops considered as essential features (PCE 1). The unit also includes a variation in vegetation patch size, abundant edge between grassland and woodland, and minimal amount of development or planned development. The soils present are considered supportive of the scrub and rock outcrop features essential for Alameda whipsnake. The Alameda whipsnake records within this unit are associated with Gaviota rocky sandy loams in particular, which likely provide talus (PCE 3) and appear to coincide in aerial imagery to scrub or chaparral vegetation preferred by Alameda whipsnake. Vegetation is largely woodland of variable densities (PCE 2) and statures (trees, shrubs) interspersed with grassland. Some peripheral portions of habitat around this unit were not included as proposed critical habitat due to the high degree of development-related disturbance and fragmentation of the habitat. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the southwestern portion of the subspecies range and one of the five population centers. The special management which may be required throughout this unit includes management of controlled burns and grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface.

Unit 4: Mount Diablo–Black Hills; Contra Costa and Alameda counties (69,598 ac (28,165 ha))

This unit encompasses Mount Diablo State Park and surrounding lands, and is largely within Contra Costa County except a small portion that lies in Alameda County. Lands are owned by the Bureau of Land Management (61 ac (25 ha)), State Department of Parks and Recreation (13,874 ac (5,615 ha)), East

Bay Regional Park (3,641 ac (1,475 ha)), and private landowners (52,022 ac (21,053 ha)).

Numerous Alameda whipsnake observations (i.e., greater than 50 records from 1972 to present) occur throughout the unit, many of which are associated with dense rock outcrops (PCE 3) and chaparral, scrub, and oak woodland (PCE 1, PCE 2). The pattern of woody vegetation with grassland and rock outcrops forms an intricate landscape mosaic that is highly functional habitat for the Alameda whipsnake. The vegetation and soil characteristics, the mosaic habitat pattern, the abundance of Alameda whipsnake records, and the lack of surrounding development and relative absence of roadways, together indicate that this unit likely provides some of the very highest quality and largest contiguous blocks of habitat within the range of the subspecies, as well as some of its most robust populations. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. Special management required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is occupied by the subspecies, and represents the northeastern portion of the subspecies range and one of the five population centers. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 5A: Cedar Mountain; Alameda and San Joaquin Counties (24,723 ac (10,005 ha))

The unit is generally located east of Lake Del Valle along Cedar Mountain Ridge and Crane Ridge to Corral Hollow west of Interstate 580. Land ownership within the proposed unit includes approximately 2,492 ac (1,009 ha) of Department of Energy land and 246 ac (99 ha) of East Bay Regional Park. Lands within the remainder of the unit are privately owned.

The vegetation pattern within this unit consists of dominance by various woodland, scrub, and/or chaparral communities on northeast-facing slopes (PCE 1, PCE 2). More open, grassland-dominated communities are prominent on southwest-facing slopes, but there is also a significant component of

woodland habitat on these slopes. Significant areas of vegetation types known to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue-oak-foothill pine woodland, blue oak woodland, valley oak woodland, and montane hardwood. In most instances, the proposed boundaries for critical habitat designation correspond to natural breaks in plant communities and soil quality, and/or landform (ridgelines, water features). A moderate number of light roads are present within the unit, although there are very few structures or other land modifications. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management which may be required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied by the subspecies, and represents the southern and eastern most distribution of Alameda whipsnake and one of five population centers for the subspecies. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

Unit 5B: Alameda Creek; Alameda and Santa Clara Counties (18,214 ac (7,371 ha))

This unit is located northeast of Calaveras Reservoir, south of the town of Sunol including the area along Wauhab Ridge in Alameda County and Oak Ridge in Santa Clara County. Alameda Creek is located at the west margin of the unit, and the unit contains the Sunol Regional Wilderness and Camp Ohlone Regional Park (approximately 361 ac (146 ha)) which are managed by the East Bay Regional Park. Vegetation is a mix of blue oak-foothill pine and annual grassland with a significant amount of woodland patches. Coastal live oak is present in the vicinity of Lleyden Creek. Soil types in which Alameda whipsnakes are found dominate the unit. This subunit contains six Alameda whipsnake records documented between 1972 and 2000. Significant areas of vegetation types know to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue-oak-foothill pine

woodland, blue oak woodland, valley oak woodland, and montane hardwood interspersed with rock outcrops or talus (PCEs 1, 2, 3). The proposed boundaries for critical habitat designation correspond to natural breaks in plant communities, soil type, and or landform. A moderate number of light roads are present within the unit, although there are very few structures or other land modifications. Development pressure within or adjacent to the unit is small, as a result the survey efforts for the Alameda whipsnake have also not been as extensive as in the other proposed units. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management which may be required throughout this unit includes management of grazing, trespass, unauthorized trail and road construction, dumping, feral animal control and other activities associated with urban or recreational interface. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the southern most distribution of Alameda whipsnake and one of the five population centers for the subspecies. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park— Exclusion Under Section 4(b)(2)'' below).

Unit 6: Caldecott Tunnel; Contra Costa and Alameda Counties (4,612 ac (1,867 ha))

This proposed critical habitat unit lies between Units 1 and 2, along the Alameda and Contra Cost County line. Land ownership within this unit includes 272 ac (110 ha) of East Bay Regional Park lands with the remainder of lands being privately owned. We propose to exclude from critical habitat a portion of the East Bay Regional Park from this unit (see section ''Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)'' below).

The unit is bounded by dense urban development to the east and west. However, the vegetation and soil types that are known to support Alameda whipsnake are dominant throughout the unit (PCEs 1, 2, 3). About eight Alameda whipsnake records are known from the unit between 1990 and 2002. Special management considerations may be warranted to consolidate existing roads or limit additional road construction in order to preserve a corridor function in

this unit as a consequence of the restricted width of the unit and the current presence of a moderate number of roads. Prescribed burns may also be required to maintain the habitat mosaic considered essential. The unit is included in proposed critical habitat because it contains features essential to the conservation of the Alameda whipsnake, it is occupied, and represents the last remaining habitat connecting two of the five population centers for the subspecies. Maintaining connectivity between units allows for dispersal between units for the subspecies and allows for genetic exchange between two of the five population centers for the Alameda whipsnake.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 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. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the subspecies.

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

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species 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 are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) 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. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of 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 critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect Alameda whipsnakes or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Each of the specific areas designated in this rule as critical habitat for the Alameda whipsnake have been determined to contain sufficient PCEs to provide for one or more of the life history functions for the whipsnake. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation pursuant to section 7 of the Act conducted subsequent to this designation.

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 Alameda whipsnake. Federal activities that, when carried out, may adversely affect critical habitat for the Alameda whipsnake include, but are not limited to:

(1) Actions that would result in altered or degraded chaparral scrub or oak woodland communities. Such activities could include, but are not limited to, urban development, unmanaged fire suppression activities, and livestock overgrazing. These activities could eliminate or reduce the habitat essential for reproduction, growth, or shelter of Alameda whipsnake.

(2) Actions that would result in complete loss of habitat or impediments to migration by development of partial or complete barriers through habitat areas. These activities are most often funded or permitted by the Federal Highway Administration or the State highway system, or involve licensing of construction for communication sites by the Federal Communications Commission. Such activities could include, but are not limited to, new road construction, right-of-way designation, routine maintenance and operation of existing roads, or installation of new radio equipment and facilities. These activities could eliminate foraging, resting, or denning habitat, as well as reduce movement corridors essential for reproduction, sheltering, or growth of Alameda whipsnake. Such activities could also lead to increased road kill incidences for the subspecies.

(3) Actions that result in a discharge of dredged or fill material into waters of the United States by the Army Corps under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands or channelization of stream corridors. These activities could eliminate or reduce the habitat essential for the reproduction, feeding, or growth of Alameda whipsnake.

All six proposed critical habitat units are occupied by the subspecies at the time of listing due to documented records of Alameda whipsnakes in those units. All lands proposed for critical habitat designation are within the historical geographical area occupied by the subspecies, and are likely to be used by the Alameda whipsnake whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all units included in this proposed designation to include features essential to the conservation of the Alameda whipsnake.

Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

We are not proposing to exempt any lands from critical habitat pursuant to section 4(a)(3) of the Act.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, 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. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we consider proposing to designate as critical habitat. Lands we have found that do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section

4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Endangered Species Management Plans prepared by the DOD (where a 4(a)(3) exemption is not possible due to a unsigned Integrated Natural Resource Management Plan (INRMP)); (2) legally operative HCPs that cover the subspecies and provide assurances that the conservation measures for the subspecies will be implemented and effective; (3) draft HCPs that cover the subspecies, have undergone public review and comment, and provide assurances that the conservation measures for the subspecies will be implemented and effective (*i.e.*, pending HCPs); (4) Tribal conservation plans/ programs that cover the subspecies and provide assurances that the conservation measures for the subspecies will be implemented and effective; (5) State conservation plans/ programs that provide assurances that the conservation measures for the subspecies will be implemented and effective; (6) National Wildlife Refuges with Comprehensive Conservation Plans (CCPs) or programs that provide assurances that the conservation measures for the subspecies will be implemented and effective; and (7) Partnerships, conservation plans/ easements, or other type of formalized relationship/agreement on private lands where a conservation plan or program provide assurances that the conservation measures for the subspecies will be implemented and effective.

Relationship of Critical Habitat to Habitat Conservation Plan Lands— Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. HCPs vary in size and may provide for incidental take coverage and conservation management for one or many Federally-listed species.

Additionally, more than one applicant may participate in the development and implementation of an HCP. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous Federally-listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs are designed to proactively implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP. However, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur may actually take place. The State of California also has a NCCP process that is very similar to the Federal HCP process and is often completed in conjunction with the HCP process. We recognize that many of the projects with HCPs also have State-issued NCCPs. In the case of approved regional HCPs and accompanying Implementing Agreements (IAs) (e.g., those sponsored by cities, counties, or other local jurisdictions) that provide for incidental take coverage, a primary goal of these regional plans is to provide for the protection and management of habitat essential for species conservation, while directing development to other areas. We are considering excluding lands within the Draft East Contra Costa County HCP from the designation of critical habitat for the Alameda whipsnake pursuant to section 4(b)(2) of the Act. This draft HCP includes lands within a portion of proposed critical habitat Unit 4. We believe the benefits of excluding lands within this draft HCP from the final critical habitat designation outweigh the benefits of including them and seeking public comment on this proposed exclusion. The following represents our rationale for excluding this area.

Draft East Contra Costa County Habitat Conservation Plan (ECCHCP)

The draft ECCHCP is currently under review and open for public comment until December 1, 2005. The document is available at the following Web site: *http://www.cocohcp.org.* The document will also be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

We expect a finalized plan before the end of 2006. Participants in the draft ECCHCP include the County of Contra Costa; the cities of Brentwood, Clayton, Oakley, and Pittsburg, California; the Contra Costa Water District; and the East Bay Regional Park District. The draft ECCHCP encompasses the eastern portion of Contra Costa County from approximately west of Concord to Sand Mound Slough and Clifton Court Forebay on the east. The draft ECCHCP is also a subregional plan under the State's Natural Community Conservation Planning (NCCP) process and was developed in cooperation with the California Department of Fish and Game. The draft ECCHCP identifies the Alameda whipsnake as a covered species and has identified areas where growth and development are expected to occur, as well as several conservation measures, including: (1) Preserving between 12,254 to 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserving major habitat connections linking existing public lands; (3) incorporating a range of habitat and population management and enhancement measures including monitoring, prescribed burning, and recreational use controls; (4) fully mitigating the impacts to covered species; (5) maintaining ecosystem processes; and (6) contributing to the recovery of covered species. When the conservation measures are implemented they will benefit Alameda whipsnake conservation by preserving and restoring existing core area and upland movement habitat for the species. We expect that the draft ECCHCP will provide substantial protection for all three of the primary constituent elements for the Alameda whipsnake, and that protected lands will receive the special management they require through funding mechanisms that will be implemented under the ECCHCP.

(1) Benefits of Inclusion

The primary benefit to designation of critical habitat is the requirement that Federal agencies consult with the Service under section 7 of the Act to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat. If critical habitat were designated in these areas, primary constituent elements in these areas would be protected from destruction or adverse modification by Federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot.* This requirement would be in addition to the requirement that proposed Federal actions would not be likely to jeopardize the species' continued

existence. However, inasmuch as these areas are currently occupied by the species, consultation for activities that might adversely impact the species, including habitat modification (see definition of ''harm'' at 50 CFR 17.3), would be required even without the critical habitat designation. Because habitat modification is considered under the jeopardy analysis, we believe the benefits of habitat protection from critical habitat is now small to moderate.

As discussed above, we expect the ECCHCP to provide substantial protection of the PCEs and protection of essential features for the Alameda whipsnake on ECCHCP conservation lands. We expect the ECCHCP to provide a greater level of management for the Alameda whipsnake on private lands than would designation of critical habitat on private lands. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas proposed as critical habitat. Therefore, we do not expect that including those areas in the final designation will lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat. Therefore in this case, because of the ECCHCP protections, there is little to no additional protection from critical habitat, and thus the benefits of inclusion are small.

A benefit of including an area in a critical habitat designation is the education of landowners and the public regarding the potential conservation value of the area. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this conservation benefit has largely been achieved for the Alameda whipsnake through the hearings and workshops that have been held in the East Bay area associated with the listing of the species and previous critical habitat designation. In addition, the HCP itself undergoes public review and comment, providing another layer of educational benefit as the importance of this area for conservation of the species. Therefore the benefits of inclusion for educational purposes are extremely small.

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Many HCPs, particularly large regional HCPs such as the

ECCHCP, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP could result in the loss of species' benefits if participants abandon the voluntary HCP process, in part because of the burden of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued voluntary participation in plans targeting listed species conservation.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996). Thus, we believe it is essential for the recovery of the Alameda whipsnake to build on continued conservation activities such as the ECCHCP, and to provide positive incentives for other local government or private landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP that might adversely impact the species, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above. This standard also would apply to all consultation conducted in the interim period prior to finalization of the ECCHCP, whether or not incidental take exemption is provided under section 7 or section 10 of the Act. Therefore, we consider the benefits of exclusion to be moderate.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the conservation measures identified for the Alameda whipsnake identified in the ECCHCP. Based on this evaluation, we currently find that the benefits of exclusion of the lands containing features essential to the conservation of the Alameda whipsnake in the planning area for the draft ECCHCP outweigh the benefits of including those portions of the draft ECCHCP area within Unit 4 as critical habitat. Our final determination will be made after we receive public comment on this proposed critical habitat designation.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the ECCHCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long term conservation of the species, are still accomplished from material provided on our website and through public notice and comment procedures required to establish the ECCHCP. The public also has been informed through the public participation that occurs during the development of this regional HCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft ECCHCP.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands, which are considered occupied habitat, will not result in the extinction of the Alameda whipsnake. Actions that might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, as discussed in the economic analysis, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from take prohibitions in section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being proposed for designation for the Alameda whipsnake in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot.* Additionally, the species occurs on

lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values; this factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded each species by the remaining critical habitat designation for the species, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the draft ECCHCP seeks to: (1) Preserve between 12,254 to 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserve major habitat connections linking existing public lands; (3) incorporate a range of habitat and population management and enhancement measures including monitoring, prescribed burning, and recreational use controls; (4) fully mitigate the impacts to covered species; (5) maintain ecosystem processes; and (6) contribute to the recovery of covered species.

Relationship of Critical Habitat to the East Bay Regional Park—Exclusion Under Section 4(b)(2)

The East Bay Regional Park District (EBRPD) manages 65 regional parks, recreation areas, wilderness, shorelines, preserves, and land bank areas covering over 95,000 ac (34,446 ha) in Alameda and Contra Costa counties. The EBRPD Board of Directors adopted the EBRPD Plan on December 17, 1996, under Resolution Number 1996–12–349. The EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

We are proposing to exclude lands within the administrative boundaries for EBRPD from the designation of critical habitat for the Alameda whipsnake pursuant to section 4(b)(2) of the Act. A total of approximately 17,440 ac (7,057 ha) is being considered for exclusion.

(1) Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved management plans are small. The EBRPD Plan provides for priority management and conservation of threatened and endangered species

where park activities conflict with threatened and endangered species management. The EBRPD Plan provides a mechanism to accomplish these goals for the Alameda whipsnake through the implementation of specific conservation objectives outlined above. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. In the case of the EBRPD Plan, consultation must be initiated for any activity involving the Alameda whipsnake to evaluate the impact of the activity on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act. The EBRPD currently holds a Service recovery permit, pursuant to section 10(a)(1)(A) of the Act. As with HCPs, the benefits of designating critical habitat on lands within the boundaries of areas properly managed for threatened and endangered species are small.

(2) Benefits of Exclusion

The benefits of excluding lands within approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans like the EBRPD Plan provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon any voluntary HCP process in which they may be involved. The EBRPD is participating in the ECCHCP, and part of the strategy of the HCP is to link with lands such as those managed by the EBRPD for the conservation of the Alameda whipsnake. The loss of these connecting linkages as a part of the ECCHCP would reduce the conservation benefit for the Alameda whipsnake. Designation of critical habitat within the boundaries of management plans which provide conservation for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

An applicant and any agency carrying out a Federally funded activity that may adversely affect Alameda whipsnake must enter into consultation with the Service under section 7 of the Act. While these consultations will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the actions jeopardize the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. Additionally, Federal actions not covered by an HCP or approved management plan in areas occupied by listed species would still require consultation under section 7 of the Act. Plans such as the EBRPD Plan typically provide greater conservation benefits to the covered species than section 7 consultations because they: (1) Assure the long-term protection and management of a covered species and its habitat; (2) include the development of biological information to guide conservation efforts and assist in species conservation; and (3) create innovative solutions to conserve species while still allowing public use of the area.

Maps delineating essential habitat for the Alameda whipsnake, overlaid with the boundary area for the EBRPD, are available for public review and comment at the Sacramento Fish and Wildlife Office (see **ADDRESSES**). These maps are provided to allow the public the opportunity to adequately comment on these potential exclusions.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the conservation measures identified for the Alameda whipsnake identified in the EBRPD. Based on this evaluation, we

currently find that the benefits of exclusion of the lands essential to the conservation of the Alameda whipsnake within the boundaries of the EBRPD land outweigh the benefits of including those portions of land as critical habitat. Our final determination will be made after we receive public comment on this proposed critical habitat designation.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the local jurisdiction. The educational benefits of critical habitat, including informing the public of areas that are essential for the long term conservation of the species, are still accomplished from material provided on our website and through public notice and required comment procedures. The public also has been informed through the public participation that occurs during the development of this proposed designation and previous listing and critical habitat actions for the subspecies. For these reasons, we believe that designating critical habitat has little benefit in areas managed by the EBRPD.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands, which are considered occupied habitat, would not result in the extinction of the Alameda whipsnake. Actions which might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from the take prohibitions under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being proposed for designation for the Alameda whipsnake in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot.* Additionally, the subspecies occurs on lands protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values; this factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert

with protections afforded the subspecies by the remaining critical habitat designation for the subspecies, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the subspecies is found in other areas and the EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

Relationship of Critical Habitat to the State Park Lands—Exclusion Under Section 4(b)(2)

Mount Diablo State Park

Approximately 97 percent of the lands within the boundary of Mount Diablo State Park are currently being proposed as critical habitat. The total amount of State-owned lands proposed for critical habitat within Mount Diablo State Park is approximately 13,874 ac (5,615 ha). Currently, we know of no specific management plan or conservation activities for the Alameda whipsnake within Mount Diablo State Park. However, the lands within the park are publicly owned, and the natural resources within the park are managed in a way to preserve the ecological diversity of the area. The designation of critical habitat would not have any appreciable effect on the development or implementation of public education programs because these lands already are publicly owned, and critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands publicly protected and managed lands. Exclusion of these lands would not increase the likelihood that management activities would be proposed that would appreciably diminish the value of the habitat for conservation of the Alameda whipsnake.

We are, however, not currently proposing to exclude from the designation the State Park lands at Mount Diablo State Park. Should information become available during the public comment period on this proposed rule that would support an exclusion of these State lands, we will conduct an analysis of such information and make our determination of the appropriateness of such an exclusion in our final designation.

Relationship of Critical Habitat to Department of Energy Lands—Exclusion Under Section 4(b)(2)

Approximately 2,492 ac (1,009 ha) of proposed critical habitat for the Alameda whipsnake within Unit 5A are owned by the Department of Energy. The lands are located in eastern Alameda and western San Joaquin counties. The Department of Energy has used these lands within the past as a testing facility. Currently, we know of no specific management plan or conservation activities for the Alameda whipsnake on these lands. However, the lands are publicly owned and currently protected from development. Any activities that may take place which may affect the Alameda whipsnake or its habitat would be subject to consultation under section 7 of the Act.

We are, however, not currently proposing to exclude from critical habitat designation the Department of Energy lands in eastern Alameda and western San Joaquin counties. Should information become available during the public comment period on the proposed rule that would support an exclusion of the Department of Energy lands, we will conduct an analysis of such information and make our determination of the appropriateness of such an exclusion in our final designation.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Alameda whipsnake is being prepared. 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 on the analysis. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/pacific/sacramento,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES**).

After reviewing the economic analysis, the public comment on it, and the public comment on this proposal, we may exclude additional areas under section 4(b)(2) based on economic or other relevant impact. Our regulations expressly contemplate that these decisions would occur after the comment period (50 CFR 424.19), and do not require advance public notice of intent to make specific exclusions. While we are seeking public comment on those possible exclusions of which we are now aware, we also want to insure that the public is aware that the economic analysis and all public comments may lead us to exclude other areas.

Peer Review

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

We will consider all comments and information received during public comment periods on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (groupings and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination thereof, in a designation constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the

Federal Register and in local newspapers so that it is available for public review and comment. When completed, the draft economic analysis can be obtained from the Internet website at *http://www.fws.gov/pacific/ sacramento/* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES**).

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

Our assessment of economic effect will be completed prior to any final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, 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. The Service has 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 the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Alameda whipsnake is not a significant regulatory action under Executive Order 12866, and it 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.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. 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 tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide

funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. 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 of the Act. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) Due to current public knowledge of the subspecies' protection, and the prohibition against take of the subspecies both within and outside of the designated areas, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of 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 in that the areas essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the survival of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case consultations under section 7 of the Act to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has 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 designating critical habitat in accordance with the provisions of the 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 the Alameda whipsnake.

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. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal

Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Alameda whipsnake. Therefore, critical habitat for the Alameda whipsnake is not being proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this package are the staff of the Sacramento Fish and Wildlife Office.

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 § 17.95(c), revise the entry for ''Alameda Whipsnake (*Masticophis lateralis euryxanthus*'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

*   *   *   *   *

(c) Reptiles.

*   *   *   *   *

Alameda Whipsnake (*Masticophis lateralis euryxanthus*)

(1) Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin, and Santa Clara counties, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) are:

(i) *Scrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low to medium-stature woody shrubs with a mosaic of open and closed canopy as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998). These vegetation series occur within the range of the Alameda whipsnake from near sea level to approximately 3,850 ft (1,170 m). Such scrub/shrub vegetation within these series form a pattern of open and closed canopy which is used by the Alameda whipsnake to provide shelter from predators, temperature regulation by providing sunny and shady locations, prey-viewing opportunities, and nesting habitat and substrate. These features contribute to support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds. These areas are the core areas where Alameda whipsnakes reside most frequently and are used for retreats (shelter), thermoregulation, foraging, and provide additional prey population support functions.

(ii) *Other lands adjacent to the Alameda whipsnake's home range as described in PCE 1, i.e., scrub communities with a mosaic of open and closed canopy of varying vegetation types:* Other lands adjacent to PCE 1 composed of either one or both woodland or annual grassland vegetation series such as blue oak, coast live oak (Quercus sp.), California bay (*Umbellularia californica*), California buckeye, and California annual grassland vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998)) are PCE 2. These vegetation series establish a pattern of vegetation which provide opportunities for:

(A) Foraging by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards along with other prey such as skinks, frogs, birds);

(B) Short and long distance dispersal within, between, or to adjacent to areas containing essential features (i.e., PCE 1 or PCE 3); and

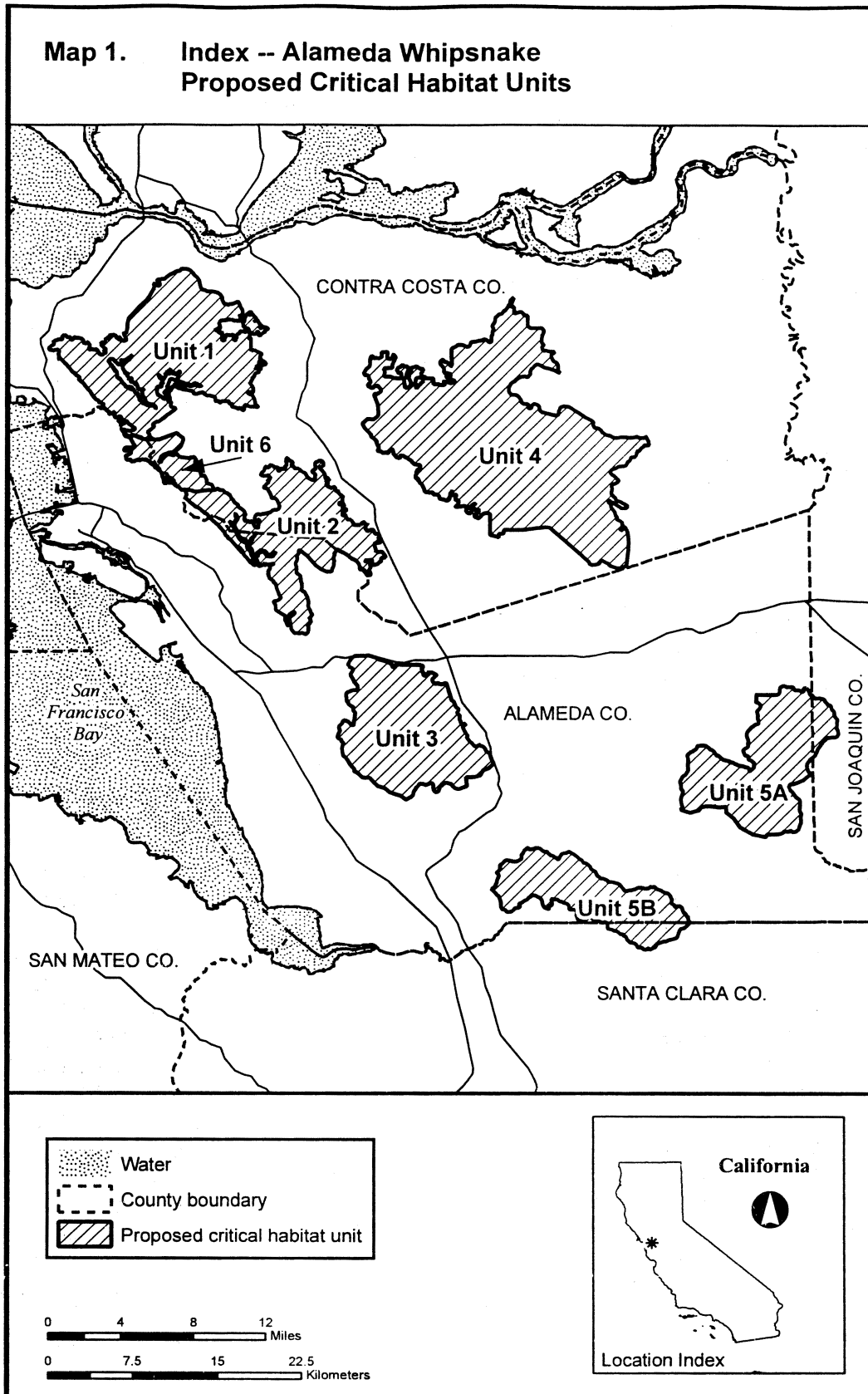(C) Contact with other Alameda whipsnakes for mating and reproduction.

(iii) *Rock outcrops, talus, and small mammal burrows within the essential core scrub or adjacent areas containing essential features identified in PCE 1 and 2:* Rock outcrops, talus, and small mammal burrows within either rock outcrops or grassland or other vegetation series identified in PCE 2 located in close proximity to or embedded within those essential core scrub/shrub areas (PCE 1) and intervening non-scrub communities (PCE 2) that support a prey base, are PCE 3. These areas are used for retreats (shelter), hibernacula, foraging, dispersal, mating, and provide additional prey population support functions.

(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.

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

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

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Map 1.   Index -- Alameda Whipsnake Proposed Critical Habitat Units

(6) Unit 1: Tilden-Briones Unit, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 scale quadrangles Benicia, Richmond, Briones Valley, Walnut Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 568816,4192719; 568794,4192710; 568668,4192690; 568516,4192684; 568350,4192684; 568198,4192684; 568154,4192688; 568059,4192697; 567874,4192737; 567735,4192796; 567596,4192862; 567470,4192915; 567365,4192955; 567193,4193015; 567014,4193041; 566895,4193034; 566776,4192988; 566650,4192915; 566650,4192915; 566627,4192907; 566624,4192906; 566624,4192905; 566624,4192905; 566597,4192895; 566552,4192888; 566521,4192917; 566488,4192936; 566462,4192947; 566440,4192960; 566427,4192961; 566400,4192966; 566374,4192986; 566356,4193003; 566343,4193028; 566329,4193054; 566313,4193082; 566303,4193114; 566300,4193137; 566308,4193173; 566304,4193194; 566299,4193206; 566295,4193224; 566289,4193242; 566272,4193263; 566264,4193283; 566257,4193304; 566244,4193328; 566218,4193353; 566191,4193372; 566172,4193392; 566153,4193417; 566142,4193427; 566130,4193452; 566116,4193473; 566110,4193492; 566107,4193514; 566107,4193528; 566135,4193541; 566161,4193552; 566206,4193554; 566224,4193561; 566242,4193562; 566256,4193561; 566279,4193564; 566318,4193554; 566350,4193555; 566369,4193539; 566383,4193537; 566412,4193510; 566443,4193494; 566492,4193479; 566516,4193476; 566576,4193472; 566614,4193469; 566635,4193452; 566659,4193446; 566685,4193446; 566726,4193452; 566775,4193453; 566815,4193462; 566865,4193470; 566882,4193472; 566928,4193481; 566957,4193473; 566973,4193477; 566999,4193498; 567067,4193498; 567140,4193530; 567231,4193610; 567262,4193679; 567196,4193738; 567112,4193745; 567064,4193797; 566998,4193888; 566914,4193947; 566907,4193947; 566744,4194028; 566704,4194054; 566645,4194123; 566629,4194171; 566590,4194250; 566542,4194313; 566475,4194340; 566430,4194341; 566357,4194341; 566306,4194332; 566236,4194326; 566187,4194311; 566166,4194288; 566181,4194263; 566226,4194236; 566297,4194219; 566346,4194200; 566359,4194141; 566321,4194109; 566219,4194071; 566123,4194045; 566121,4194043; 566085,4194028; 566045,4194009; 566000,4193982;

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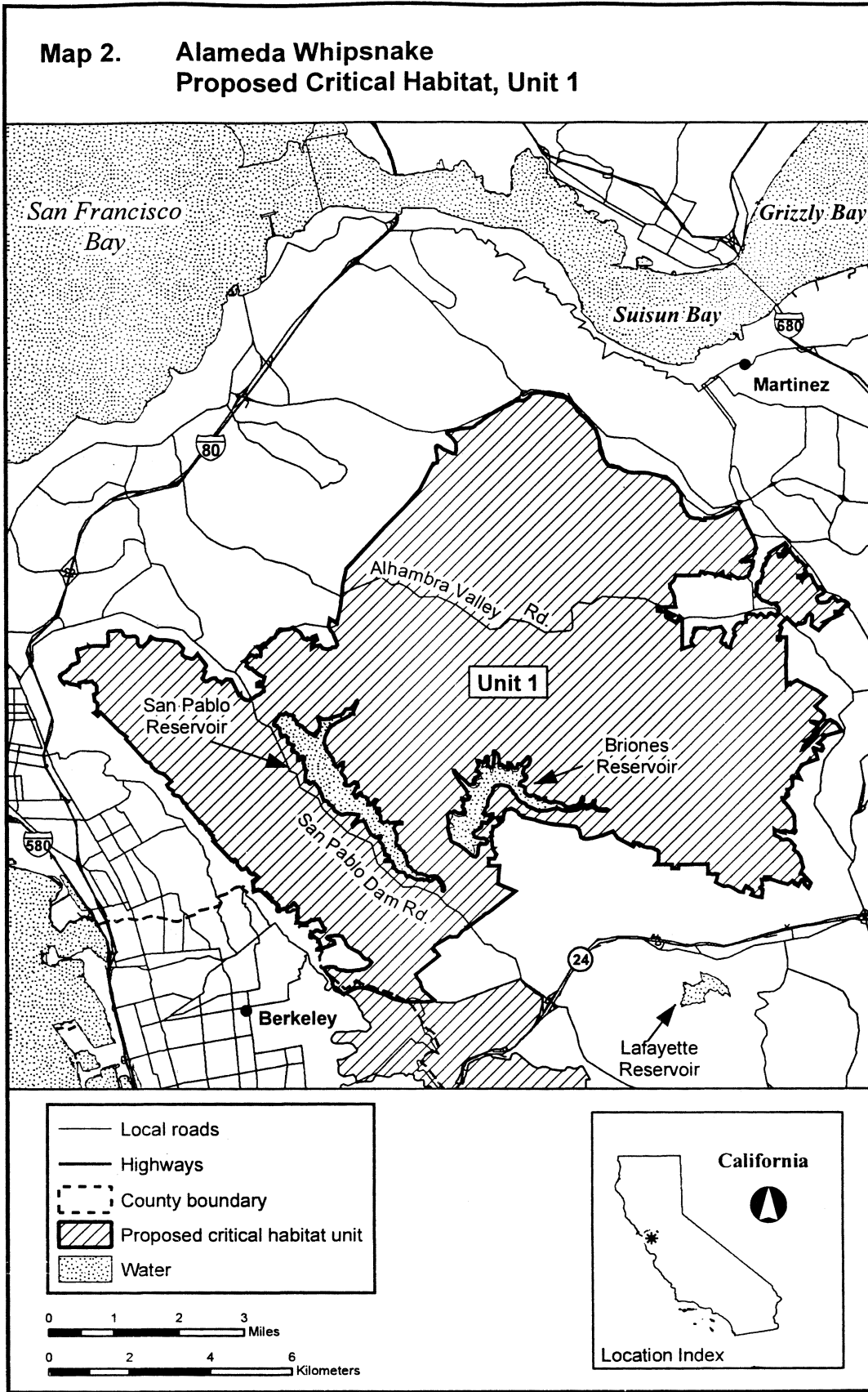565083,4199317; 565156,4199348;

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570447,4198629; 570454,4198705;
570430,4198865; 570340,4198940;
570315,4198940; and returning to
570307,4198894.

(ii) Note: Map 2 (Unit 1) follows:

Map 2. Alameda Whipsnake Proposed Critical Habitat, Unit 1

(7) Unit 2: Oakland-Las Trampas Unit, Alameda and Contra Costa Counties, California

(i) From USGS 1:24,000 scale quadrangles Oakland East, Las Trampas Ridge, Diablo, and Hayward. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):
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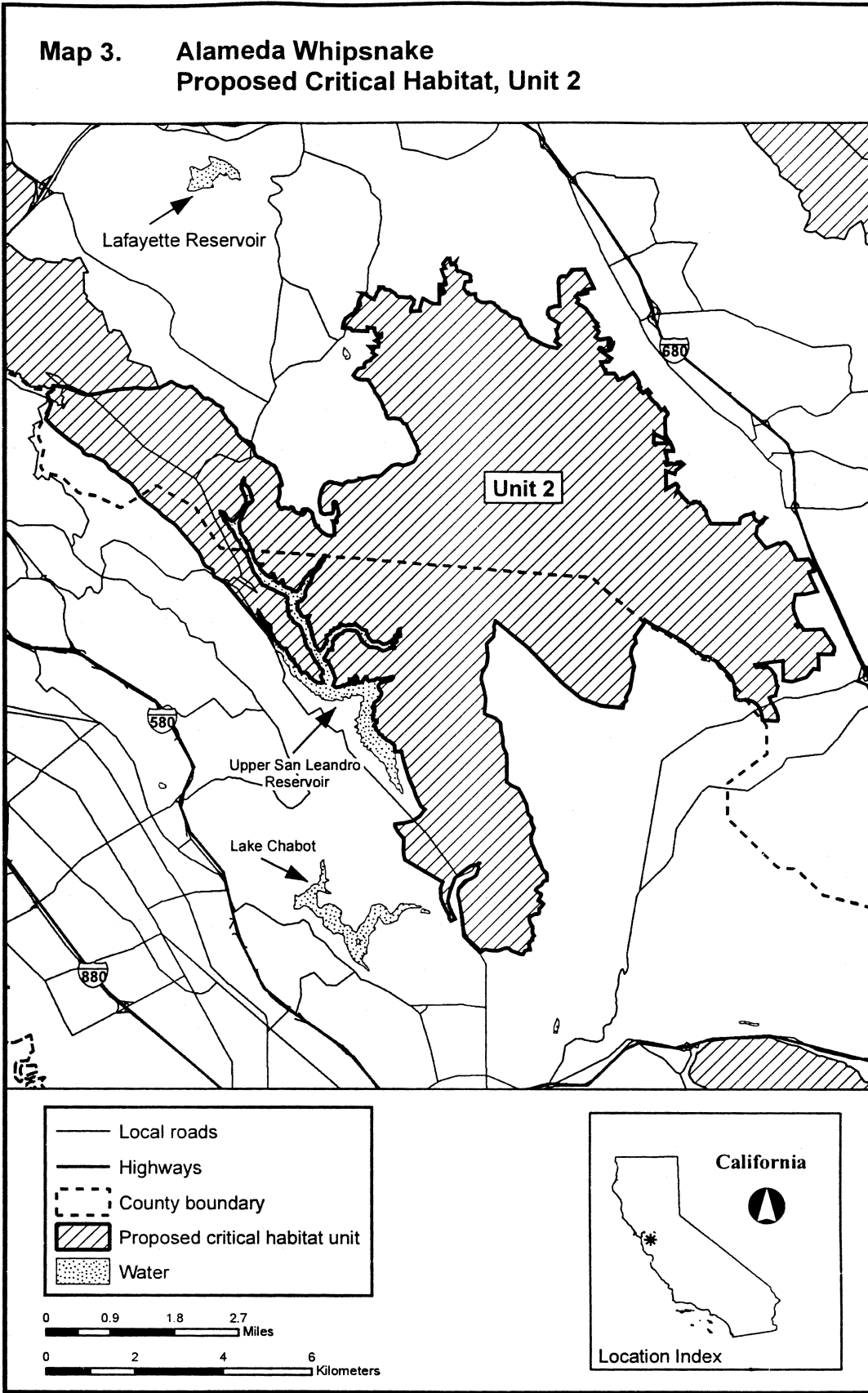577144,4182150; 577134,4182163;

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(ii) Note: Map 3 (Unit 2) follows:
BILLING CODE 4310–55–U

Map 3. Alameda Whipsnake
Proposed Critical Habitat, Unit 2

(8) Unit 3: Hayward-Pleasanton Ridge Unit, Alameda County, California

(i) From USGS 1:24,000 scale quadrangles Hayward, Newark, Dublin, and Niles. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 588108,4173288; 588135,4173280; 588151,4173269; 588170,4173262; 588185,4173256; 588193,4173250; 588220,4173238; 588252,4173225; 588272,4173218; 588275,4173213; 588529,4173138; 588702,4173099; 588854,4173025; 588988,4172966; 589160,4172888; 589260,4172878; 589278,4172870; 589288,4172866; 589303,4172859; 589320,4172852; 589334,4172847; 589349,4172841; 589372,4172834; 589405,4172822; 589419,4172820; 589429,4172817; 589450,4172811; 589470,4172806; 589483,4172803; 589516,4172796; 589557,4172780; 589566,4172777; 589578,4172773; 589617,4172759; 589631,4172757; 589647,4172753; 589657,4172751; 589675,4172749; 589701,4172744; 589711,4172741; 589726,4172737; 589746,4172728; 589756,4172718; 589769,4172707; 589780,4172691; 589785,4172669; 589794,4172663; 589804,4172654; 589820,4172647; 589834,4172643; 589850,4172644; 589858,4172649; 589859,4172653; 589866,4172649; 590046,4172523; 590097,4172410; 590195,4172296; 590238,4172275; 590281,4172276; 590362,4172317; 590344,4172351; 590351,4172402; 590391,4172433; 590434,4172457; 590508,4172445; 590579,4172428; 590606,4172421; 590681,4172527; 590734,4172567; 590740,4172568; 590754,4172571; 590773,4172574; 590779,4172574; 590806,4172547; 590818,4172492; 590830,4172479; 591370,4172472; 592495,4172468; 592495,4172469; 592548,4172468; 592577,4172462; 592597,4172459; 592634,4172451; 592649,4172452; 592664,4172451; 592673,4172450; 592640,4172397; 592706,4172349; 592766,4172440; 592771,4172439; 592861,4172439; 592862,4172439; 592864,4172331; 592864,4172326; 592865,4172264; 592830,4172268; 592821,4172262; 592821,4172246; 592824,4172235; 592833,4172217; 592837,4172207; 592848,4172192; 592856,4172180; 592737,4172211; 592697,4172225; 592685,4172236; 592665,4172235; 592663,4172209; 592685,4172164; 592723,4172119; 592772,4172075; 592810,4172048; 592804,4172039; 592794,4172026; 592792,4172006; 592802,4171984; 592833,4171939; 592851,4171927; 592785,4171852; 592786,4171803; 592891,4171806; 592891,4171773; 592888,4171769;

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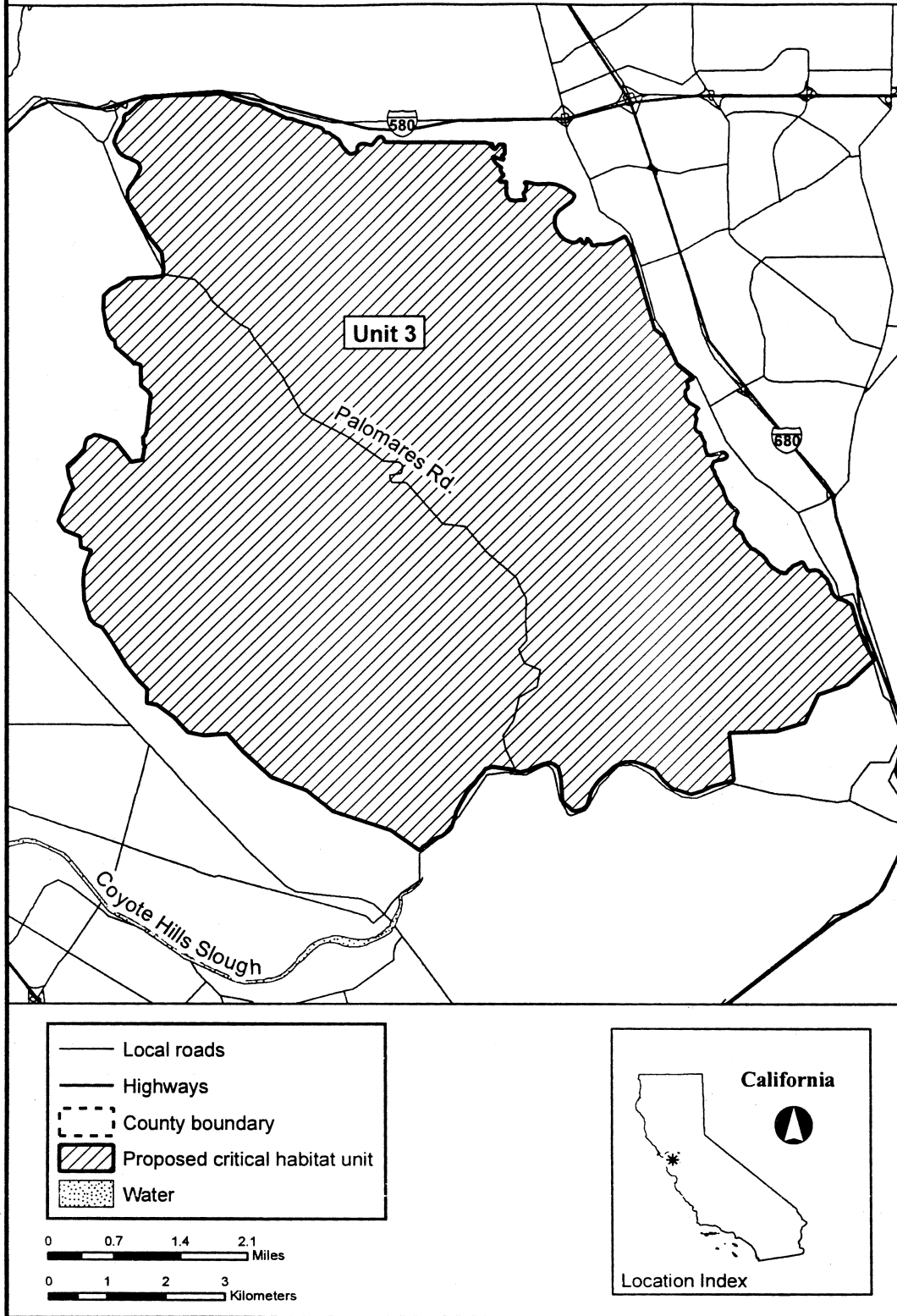
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588108,417328.

(ii) Note: Map 4 (Unit 3) follows:
BILLING CODE 4310–55–U

**Map 4.   Alameda Whipsnake
             Proposed Critical Habitat, Unit 3**

Local roads
Highways
County boundary
Proposed critical habitat unit
Water

0   0.7   1.4   2.1
Miles

0   1   2   3
Kilometers

California

Location Index

(9) Unit 4: Mount Diablo-Black Hills Unit, Alameda and Contra Costa Counties, California

(i) From USGS 1:24,000 scale quadrangles Walnut Creek, Clayton, Antioch South, Brentwood, Diablo, Tassajara, Byron Hot Springs. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):

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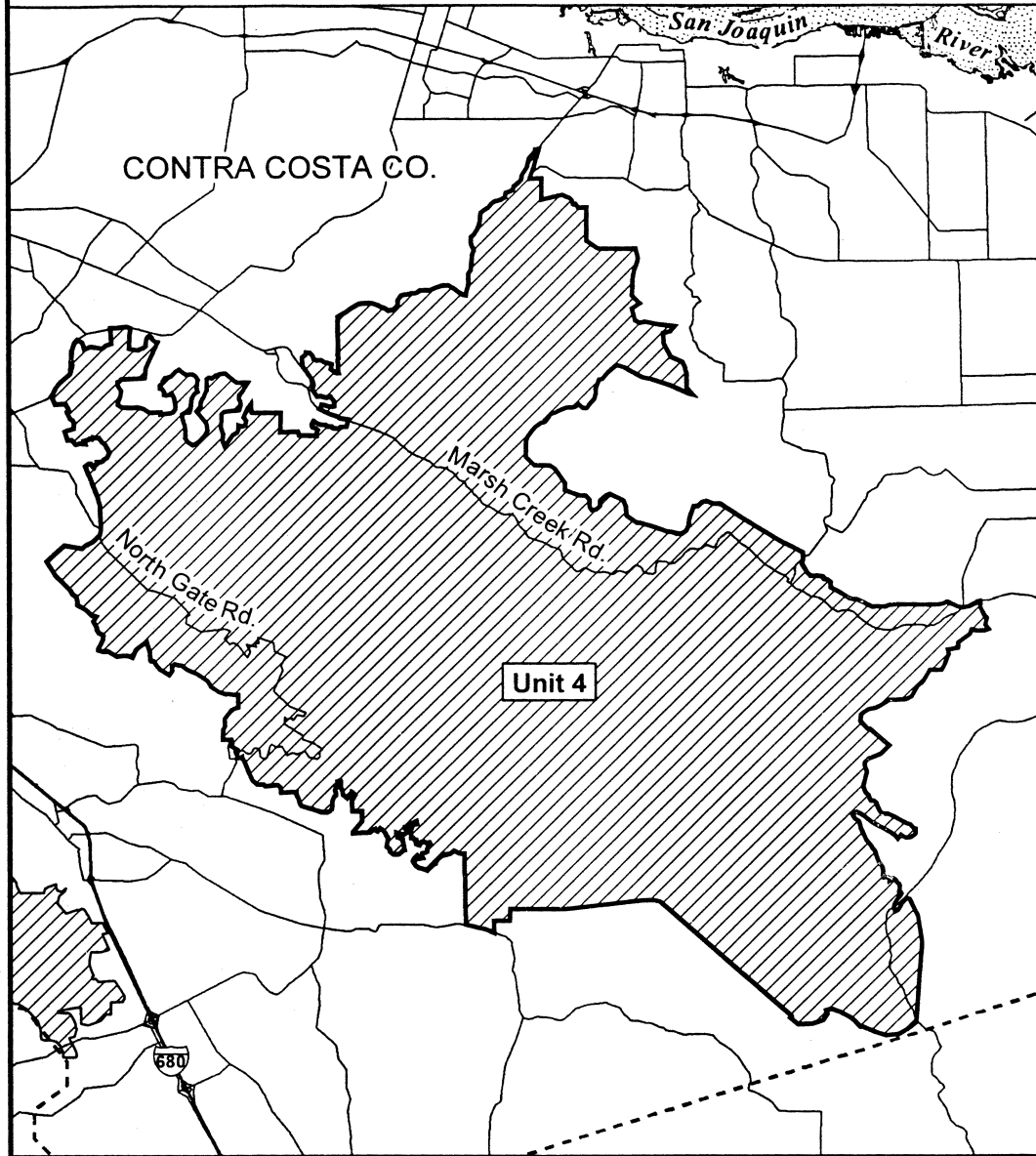595076,4198605; 594986,4198615;

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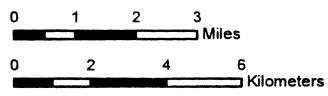600628,4204716; and returning to
600579,4204646.

(ii) Note: Map 5 (Unit 4) follows:
BILLING CODE 4310–55–U

Map 5.　　Alameda Whipsnake
Proposed Critical Habitat, Unit 4

(10) Unit 5A: Cedar Mountain Unit, Alameda and San Joaquin Counties, California

(i) From USGS 1:24,000 scale quadrangles Altamont, Midway, Mendenhall Springs, and Cedar Mtn.. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 624962,4170579; 625090,4170515; 625154,4170515; 625282,4170515; 625474,4170515; 625645,4170558; 625731,4170366; 625837,4170216; 626179,4170216; 626478,4170066; 626585,4170066; 626607,4170195; 626586,4170399; 626612,4170390; 626615,4170402; 626626,4170412; 626629,4170422; 626647,4170434; 626684,4170436; 626707,4170437; 626747,4170425; 626770,4170407; 626790,4170391; 626813,4170378; 626916,4170347; 626952,4170323; 626958,4170301; 626972,4170253; 626979,4170229; 626989,4170208; 627014,4170156; 627029,4170132; 627056,4170089; 627067,4170049; 627082,4170002; 627104,4169947; 627139,4169865; 627167,4169809; 627195,4169785; 627228,4169767; 627251,4169785; 627304,4169793; 627382,4169802; 627397,4169763; 627414,4169719; 627433,4169669; 627458,4169619; 627478,4169587; 627515,4169552; 627558,4169537; 627589,4169507; 627605,4169498; 627635,4169480; 627660,4169479; 627680,4169489; 627710,4169497; 627746,4169507; 627774,4169519; 627799,4169530; 627821,4169526; 627879,4169517; 627925,4169510; 627973,4169509; 628048,4169503; 628109,4169500; 628174,4169480; 628209,4169464; 628262,4169442; 628292,4169436; 628335,4169426; 628368,4169417; 628404,4169394; 628430,4169357; 628450,4169311; 628467,4169264; 628487,4169239; 628505,4169216; 628508,4169199; 628522,4169179; 628555,4169134; 628575,4169119; 628598,4169094; 628639,4169047; 628666,4169011; 628750,4168928; 628805,4168875; 628842,4168896; 628863,4168894; 628886,4168893; 628938,4168875;
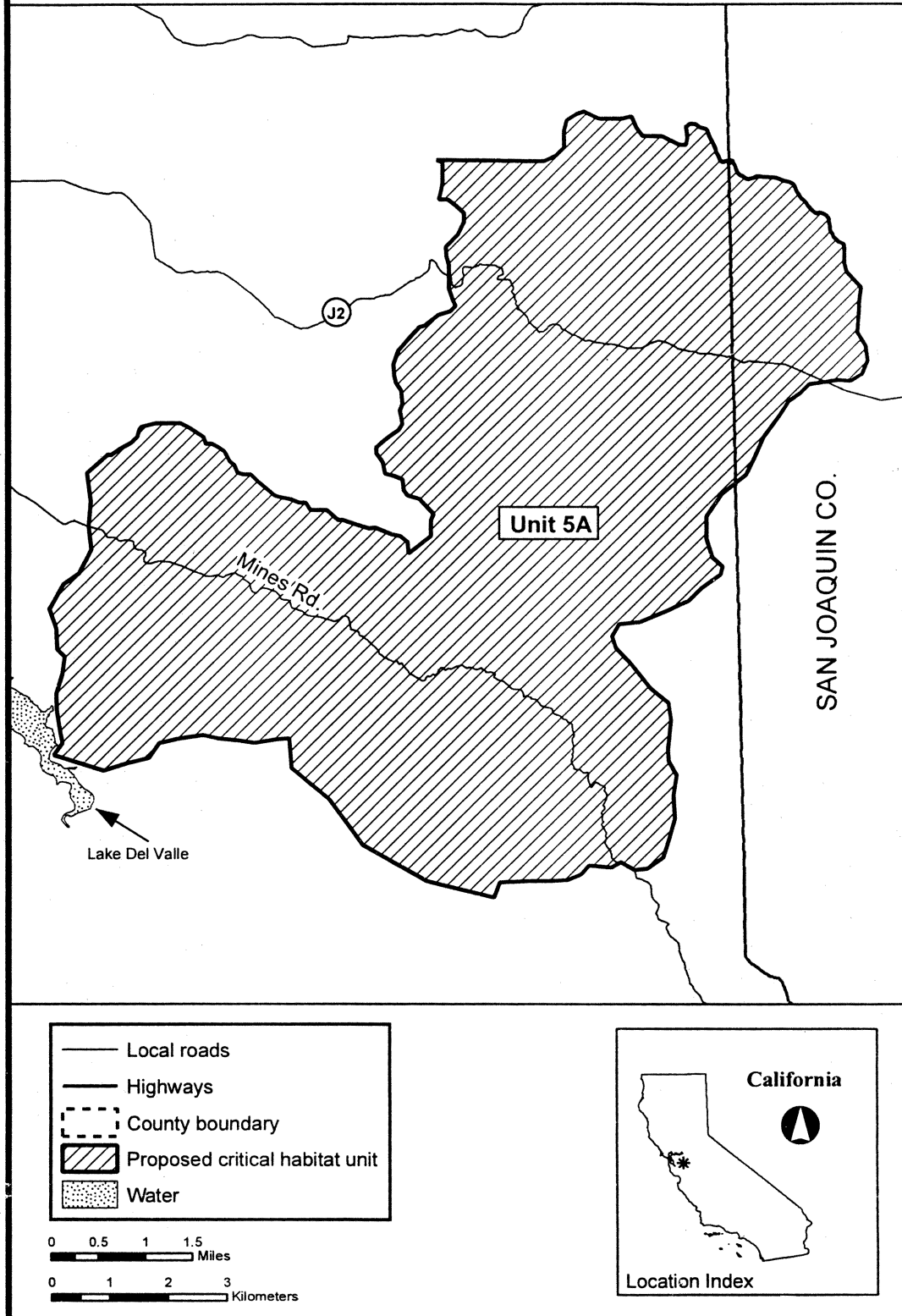
628971,4168851; 629006,4168810; 629023,4168784; 629021,4168755; 629020,4168729; 629029,4168691; 629039,4168653; 629035,4168625; 629041,4168604; 629049,4168574; 629076,4168531; 629098,4168485; 629141,4168434; 629182,4168396; 629196,4168394; 629218,4168381; 629270,4168352; 629286,4168227; 629286,4168009; 629326,4167870; 629564,4167612; 629544,4167413; 629524,4167116; 629504,4166838; 629643,4166600; 629683,4166342; 629584,4166104; 629385,4165985; 629167,4166005; 628671,4165925; 628532,4165786; 628314,4165628; 628155,4165370; 627897,4165012; 627738,4164655; 627599,4164358; 627183,4164020; 626925,4163643; 626925,4163246; 627024,4162929; 627202,4162770; 627163,4162631; 626845,4162393; 626627,4162175; 626250,4161996; 625774,4161798; 625416,4161758; 625297,4161540; 625357,4161341; 625615,4161063; 625952,4160647; 626270,4160389; 626309,4160091; 626250,4159575; 626270,4159377; 626409,4159139; 626349,4158781; 626369,4158385; 626239,4157942; 626171,4157710; 625893,4157511; 625674,4157492; 625436,4157630; 625278,4157531; 624901,4157571; 624762,4157412; 624524,4157313; 624206,4157293; 623809,4157293; 623373,4157273; 623369,4157265; 623273,4157015; 622122,4157293; 621011,4157928; 620436,4158722; 619801,4159258; 619761,4159774; 619543,4159754; 619166,4159694; 618888,4159734; 618531,4159774; 618293,4159833; 617896,4159774; 617538,4159694; 617360,4159436; 616983,4159337; 616586,4159218; 615732,4159484; 615878,4159699; 615819,4160001; 615780,4160265; 615771,4160548; 615878,4160899; 615917,4161191; 615790,4161328; 615771,4161679; 615653,4162020; 615897,4162459; 616170,4162645; 616375,4163064; 616328,4163465; 616368,4163901; 616308,4164397; 616658,4164712;

616715,4164704; 616865,4164811; 617057,4164918; 617164,4165025; 617207,4165153; 617249,4165196; 617484,4165260; 617698,4165260; 617912,4165260; 618061,4165174; 618296,4165025; 618339,4164896; 618446,4164896; 618531,4164854; 618659,4164768; 618745,4164597; 618830,4164533; 618873,4164405; 618980,4164362; 619108,4164362; 619236,4164234; 619514,4163999; 619599,4163978; 619792,4163935; 619941,4163871; 620048,4163871; 620133,4163743; 620411,4163743; 620603,4163572; 620689,4163572; 620796,4163529; 621137,4163422; 621244,4163444; 621437,4163358; 621543,4163316; 621672,4163294; 621800,4163187; 621821,4162995; 621832,4163004; 622206,4163294; 622206,4163465; 622206,4163572; 622248,4163679; 622013,4163935; 621928,4163956; 621800,4163999; 621736,4164085; 621714,4164277; 621565,4164341; 621415,4164384; 621372,4164576; 621330,4164640; 621266,4164726; 621266,4164832; 621415,4164961; 621522,4165046; 621650,4165131; 621714,4165238; 621693,4165345; 621672,4165473; 621714,4165580; 621693,4165815; 621607,4165965; 621586,4166071; 621565,4166232; 621565,4166285; 621650,4166520; 621821,4166712; 622013,4166926; 622099,4166947; 622334,4167140; 622547,4167204; 622633,4167289; 622590,4167396; 622526,4167588; 622526,4167866; 622526,4167994; 622483,4168144; 622462,4168315; 622676,4168528; 622782,4168742; 622782,4168891; 622654,4169020; 622505,4169126; 622355,4169126; 622377,4169233; 622419,4169426; 622419,4169596; 622419,4169767; 622312,4169810; 624150,4169789; 624342,4169874; 624492,4170024; 624492,4170152; 624492,4170323; 624534,4170494; 624705,4170601; 624833,4170643; and returning to 624962,4170579.

(ii) Note: Map 6 (Unit 5A) follows:
BILLING CODE 4310–55–U

**Map 6.   Alameda Whipsnake
Proposed Critical Habitat, Unit 5A**

J2

Unit 5A

Mines Rd.

SAN JOAQUIN CO.

Lake Del Valle

——— Local roads

——— Highways

County boundary

Proposed critical habitat unit

Water

0   0.5   1   1.5
Miles

0   1   2   3
Kilometers

California

Location Index

(11) Unit 5B: Alameda Creek Unit, Alameda and Santa Clara Counties, California.

(i) From USGS 1:24,000 scale quadrangles Niles, La Costa Valley, Mendenhall Springs, Calaveras Reservoir, and Mt. Day. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 602197,4155953; 602258,4155892; 602394,4155892; 602455,4155938; 602516,4155938; 602637,4155938; 602698,4155953; 602747,4156027; 602943,4156019; 603025,4156003; 603122,4156019; 603334,4155905; 603480,4155791; 603577,4155710; 603724,4155710; 603854,4155726; 603919,4155564; 604016,4155499; 604114,4155499; 604130,4155353; 604260,4155353; 604358,4155320; 604520,4155190; 604634,4155174; 604797,4154979; 604911,4155076; 604927,4155206; 605008,4155336; 605089,4155385; 605138,4155483; 605220,4155531; 605350,4155580; 605561,4155580; 605659,4155645; 605805,4155743; 605984,4155613; 606244,4155450; 606569,4155206; 606699,4155092; 606780,4155011; 606862,4154979; 606943,4154914; 607089,4154702; 607349,4154670; 607658,4154410; 607707,4154296; 607772,4154166; 607951,4154052; 608146,4153922; 608309,4153499; 608471,4153467; 608585,4153402; 608666,4153255; 608926,4153255; 609008,4153174; 609105,4153174; 609203,4153125; 609284,4152979; 609495,4152995; 609609,4152995; 609902,4152914; 610195,4152816; 610357,4152719; 610455,4152524; 610552,4152475; 610634,4152394; 610666,4152296; 610699,4152198; 610861,4152150; 610975,4152150; 611089,4152198; 611268,4152198; 611398,4152198; 611495,4152296; 611625,4152296; 611690,4152345; 611820,4152394; 611869,4152459; 611983,4152475; 612373,4152475; 612552,4152361; 612650,4152361; 612763,4152377; 612910,4152426; 613056,4152540; 613089,4152540; 613186,4152491; 613267,4152491; 613397,4152524; 613446,4152524; 613495,4152442; 613593,4152361; 613674,4152361; 613706,4152312; 613788,4152280; 613885,4152263; 613934,4152215; 614015,4152198; 614097,4152150; 614259,4152052; 614340,4152052; 614438,4151987; 614487,4151955; 614617,4151961; 614655,4151916; 614722,4151868; 614780,4151820; 614808,4151743; 614828,4151675; 614847,4151627; 614876,4151560; 614913,4151454; 614962,4151397; 614962,4151368; 614933,4151282; 614914,4151205; 614895,4151109; 614905,4151070; 614953,4151041;
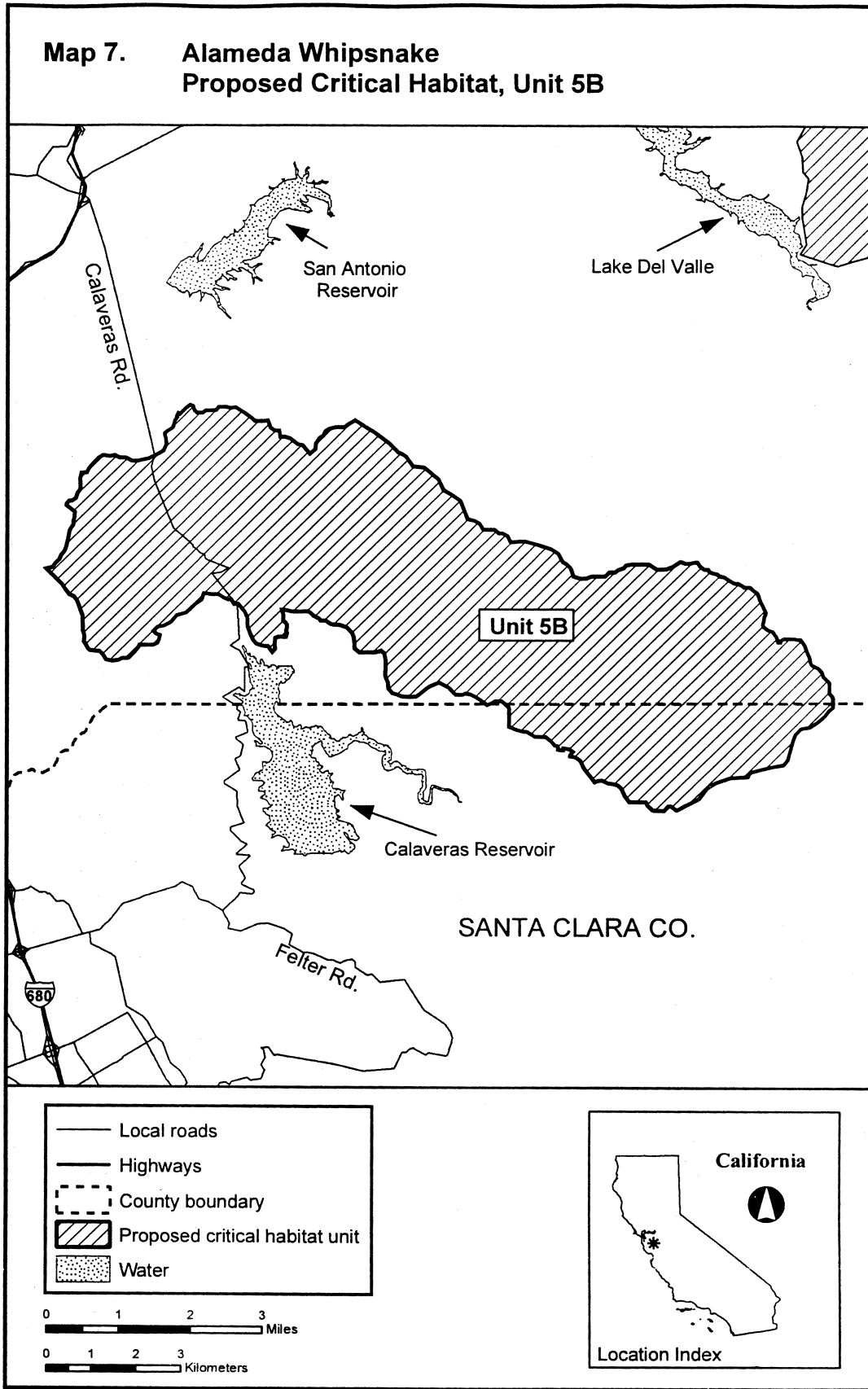
615001,4151003; 615049,4150984; 615116,4150964; 615202,4150840; 615241,4150715; 615298,4150715; 615308,4150753; 615366,4150801; 615539,4150801; 615615,4150801; 615692,4150782; 615750,4150782; 615846,4150657; 615884,4150542; 615913,4150465; 615952,4150378; 615990,4150254; 616019,4150206; 616067,4150177; 616163,4150138; 616192,4150109; 616240,4150042; 616269,4149946; 616317,4149917; 616413,4149812; 616413,4149572; 616470,4149504; 616499,4149447; 616499,4149360; 616499,4149254; 616403,4149168; 616307,4149053; 616134,4148909; 615971,4148793; 615775,4148764; 615641,4148634; 615584,4148470; 615467,4148052; 615372,4147941; 615144,4147897; 614816,4147815; 614624,4147768; 614579,4147670; 614189,4147648; 613874,4147530; 613683,4147420; 613492,4147170; 613184,4147002; 613095,4146958; 613007,4146920; 612885,4147011; 612824,4147011; 612733,4146904; 612627,4146904; 612475,4146920; 612354,4147026; 612323,4147102; 612126,4147102; 611959,4147102; 611853,4147254; 611777,4147406; 611701,4147481; 611564,4147512; 611504,4147512; 611337,4147588; 611306,4147573; 611261,4147573; 611185,4147542; 611139,4147618; 610957,4147846; 610927,4147907; 610866,4148043; 610760,4148119; 610638,4148134; 610638,4148165; 610699,4148241; 610623,4148301; 610486,4148316; 610471,4148271; 610441,4148271; 610365,4148286; 610365,4148362; 610289,4148377; 610243,4148438; 610092,4148575; 610001,4148575; 609849,4148575; 609667,4148681; 609606,4148681; 609469,4148711; 609393,4148742; 609302,4148772; 609257,4148800; 609257,4149227; 609090,4149379; 608938,4149379; 608892,4149349; 608771,4149288; 608604,4149410; 608513,4149470; 608391,4149531; 608270,4149546; 608209,4149516; 608057,4149516; 607966,4149607; 607905,4149683; 607693,4149789; 607617,4149774; 607465,4149698; 607359,4149622; 607237,4149516; 607161,4149470; 607025,4149470; 606888,4149470; 606752,4149516; 606645,4149546; 606554,4149652; 606539,4149789; 606509,4149865; 606478,4149956; 606478,4150032; 606493,4150123; 606493,4150290; 606463,4150457; 606387,4150518; 606296,4150487; 606205,4150472; 606038,4150472; 605901,4150472; 605795,4150563; 605795,4150654; 605780,4150821; 605750,4150913; 605628,4151034; 605461,4151095; 605340,4151095;

605264,4151110; 605157,4151186; 605036,4151186; 605006,4151231; 604884,4151292; 604823,4151353; 604763,4151398; 604641,4151398; 604520,4151383; 604383,4151398; 604262,4151429; 604186,4151429; 604216,4151307; 604216,4151171; 604262,4151140; 604292,4151095; 604292,4151019; 604277,4150958; 604292,4150897; 604277,4150821; 604095,4150821; 604034,4150791; 604019,4150654; 604034,4150548; 603973,4150472; 603867,4150609; 603806,4150609; 603685,4150639; 603609,4150670; 603533,4150746; 603457,4150913; 603412,4151049; 603412,4151201; 603396,4151262; 603336,4151383; 603229,4151535; 603199,4151565; 603108,4151550; 603047,4151656; 602971,4151656; 602850,4151717; 602759,4151778; 602683,4151778; 602577,4151778; 602501,4151793; 602425,4151793; 602394,4151702; 602377,4151646; 602227,4151550; 602030,4151353; 601817,4151292; 601681,4151140; 601529,4151064; 601392,4151034; 601301,4150943; 601362,4150882; 601438,4150852; 601423,4150746; 601377,4150670; 601286,4150624; 600982,4150624; 600952,4150563; 600861,4150457; 600724,4150320; 600588,4150320; 600512,4150275; 600360,4150260; 600239,4150290; 600163,4150412; 600087,4150487; 600026,4150487; 599874,4150503; 599829,4150548; 599737,4150700; 599753,4150821; 599737,4150867; 599722,4150943; 599707,4151292; 599677,4151368; 599586,4151626; 599525,4151717; 599419,4151763; 599328,4151884; 599267,4151990; 598902,4152355; 599039,4152385; 599100,4152461; 599191,4152552; 599236,4152658; 599312,4152765; 599358,4152886; 599388,4153023; 599419,4153220; 599449,4153266; 599495,4153342; 599510,4153372; 599510,4153448; 599525,4153509; 599540,4153645; 599358,4153782; 599358,4153827; 599403,4153888; 599479,4153903; 599555,4153949; 599601,4154070; 599662,4154161; 599662,4154344; 599646,4154389; 599677,4154526; 599798,4154541; 599844,4154632; 599965,4154769; 600056,4154860; 600147,4154921; 600208,4154921; 600314,4154905; 600421,4154936; 600527,4154875; 600679,4154875; 600800,4154799; 600922,4154799; 601180,4154860; 601392,4154966; 601514,4155042; 601575,4155179; 601559,4155300; 601544,4155391; 601544,4155437; 601605,4155482; 601711,4155558; 601742,4155649; 601757,4155710; 601817,4155786; 601802,4155816; 601833,4155877; 601878,4155862;

602015,4155999; 602106,4156074;
602167,4156044; and returning to
602197,4155953.

(ii) Note: Map 7 (Unit 5B) follows:

BILLING CODE 4310–55–U

Map 7. **Alameda Whipsnake**
Proposed Critical Habitat, Unit 5B

San Antonio
Reservoir

Lake Del Valle

Calaveras Rd.

Unit 5B

Calaveras Reservoir

SANTA CLARA CO.

Felter Rd.

680

Local roads

Highways

County boundary

Proposed critical habitat unit

Water

0   1   2   3
Miles

0   1   2   3
Kilometers

California

Location Index

(12) Unit 6: Caldecott Tunnel Unit, Alameda and Contra Costa Counties, California

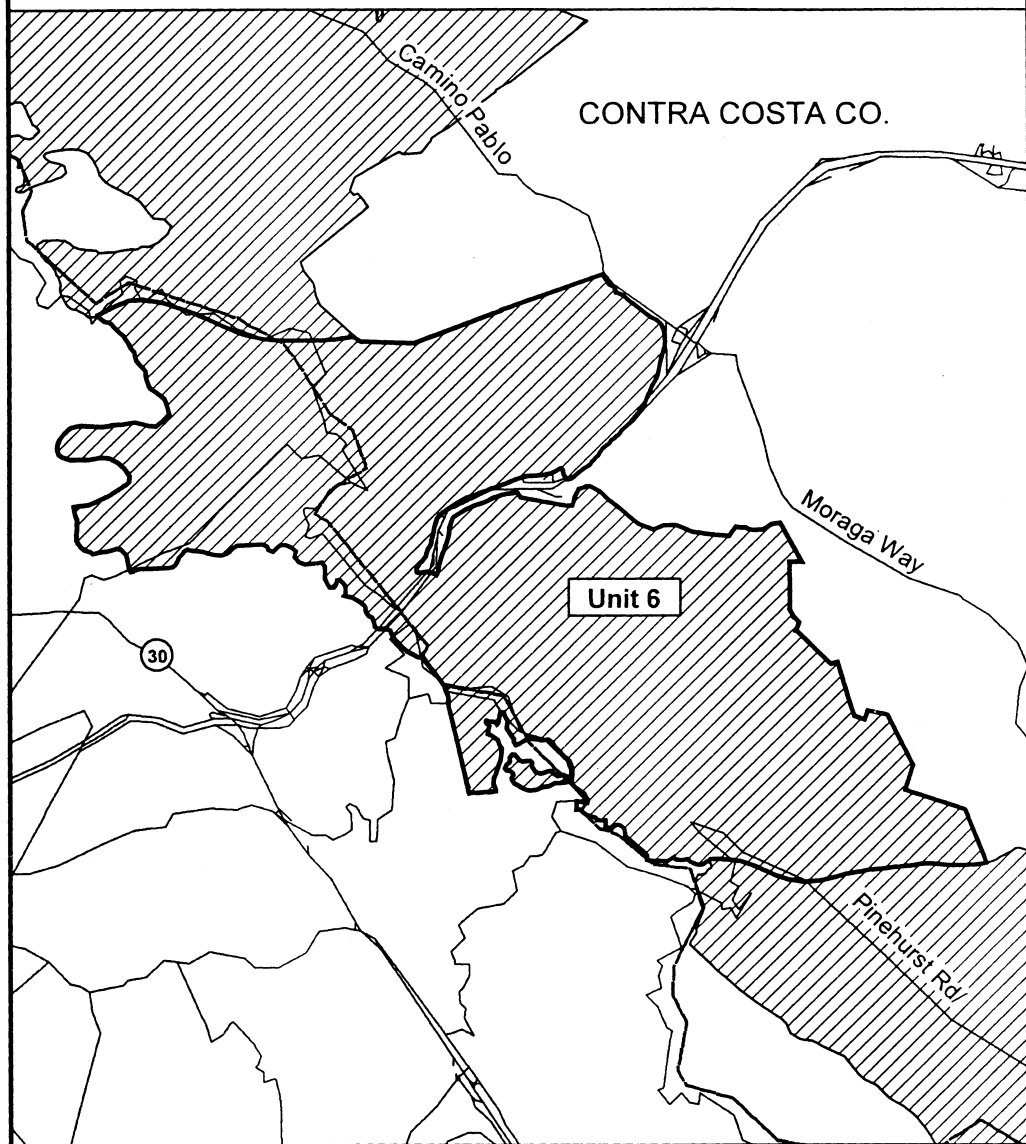(i) From USGS 1:24,000 scale quadrangles Briones Valley, and Oakland East. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):574257,4188128; 574237,4188122; 574149,4188116; 574055,4188110; 573986,4188110; 573898,4188116; 573804,4188122; 573710,4188122; 573597,4188103; 573484,4188097; 573371,4188084; 573251,4188072; 573163,4188053; 573050,4188034; 572943,4188003; 572824,4187978; 572686,4187965; 572560,4187984; 572447,4188022; 572340,4188072; 572259,4188110; 572146,4188147; 572045,4188160; 571970,4188166; 571888,4188166; 571887,4188166; 571887,4188166; 571887,4188165; 571886,4188165; 571886,4188165; 571881,4188161; 571877,4188157; 571873,4188153; 571871,4188149; 571870,4188147; 571869,4188144; 571867,4188142; 571864,4188142; 571861,4188142; 571853,4188140; 571840,4188132; 571830,4188124; 571820,4188118; 571808,4188115; 571795,4188114; 571786,4188115; 571778,4188116; 571765,4188119; 571749,4188124; 571727,4188134; 571718,4188138; 571708,4188144; 571698,4188159; 571692,4188165; 571679,4188165; 571670,4188161; 571655,4188156; 571634,4188158; 571592,4188163; 571567,4188176; 571565,4188179; 571512,4188141; 571496,4188145; 571484,4188148; 571473,4188148; 571459,4188148; 571450,4188148; 571425,4188145; 571395,4188147; 571362,4188155; 571338,4188158; 571339,4188199; 571336,4188202; 571332,4188206; 571316,4188221; 571290,4188247; 571267,4188268; 571159,4188361; 571159,4188361; 571152,4188367; 571152,4188367; 571152,4188369; 571147,4188412; 571139,4188431; 571124,4188447; 571110,4188455; 571092,4188459; 571077,4188458; 571059,4188452; 571045,4188442; 571037,4188430; 571036,4188431; 570979,4188447; 570979,4188503; 570910,4188502; 570903,4188514; 570896,4188523; 570872,4188536; 570858,4188540; 570843,4188543; 570813,4188552; 570797,4188566; 570784,4188581; 570763,4188592; 570733,4188594; 570735,4188667; 570745,4188667; 570754,4188667; 570787,4188661; 570806,4188660; 570819,4188664; 570830,4188660; 570833,4188677; 570824,4188685; 570801,4188738; 570730,4188783; 570704,4188807; 570689,4188832; 570671,4188834; 570654,4188836; 570578,4188823;

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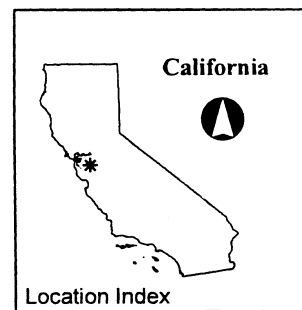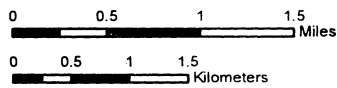
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returning to 574257,4188128.

(ii) Note: Map 8 (Unit 6) follows:
BILLING CODE 4310–55–U

**Map 8.   Alameda Whipsnake
Proposed Critical Habitat, Unit 6**

CONTRA COSTA CO.

Camino Pablo

Moraga Way

Unit 6

30

Pinehurst Rd

Local roads

Highways

County boundary

Proposed critical habitat unit

Water

0   0.5   1   1.5
Miles

0   0.5   1   1.5
Kilometers

California

Location Index

*   *   *   *   *

Dated: September 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20145 Filed 10–17–05; 8:45 am]

BILLING CODE 4310–55–C