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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat); Proposed Rules

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

RIN 1018-AU80

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)**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 *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) under the Endangered Species Act of 1973, as amended (Act). In total approximately 1,511 acres (ac) (611 hectares (ha)) of land in San Bernardino County, California, fall within the boundaries of the proposed critical habitat designation for these three plant species. The majority of the lands within the proposed designation are under Federal ownership (1,394 ac (564 ha)); however, some State (4 ac (2 ha)) and private lands (112 ac (45 ha)) are also included.

DATES: We will accept comments from all interested parties until January 22, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 8, 2007.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments and materials identified by RIN 1018-AU80, by any of the following methods:

(1) You may send comments by electronic mail (e-mail) to fw8cfwocomments@fws.gov. Include "RIN 1018-AU80" in the subject line.

(2) You may fax your comments to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at 760-431-9624.

(3) You may mail or hand-deliver your written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) You may submit your comments at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the instructions for submitting comments.

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 Carlsbad Fish and Wildlife Office at the above address (telephone 760-431-9440).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address or telephone number listed under **ADDRESSES**. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

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 species due to designation.

(2) Specific information on the amount and distribution of *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* habitat, and what areas that were occupied at the time of listing that contain features essential for the conservation of the species should be included in the designation and why, and what areas that were not occupied at the time of listing are essential to the conservation of the species and why.

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities.

(5) 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**). Please submit e-mail comments to

fw8cfwocomments@fws.gov. Please include "Attn: RIN 1018-AU80" in your e-mail subject line 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 message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760-431-9440. Please note that comments must be received by the date specified in **DATES** in order to be considered.

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 names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

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

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require

specific actions to restore or improve habitat.

Currently, only 476 species, or 36 percent of the 1,311 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 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, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluate the benefits of designation in light of *Gifford Pinchot*. In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this proposed designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, 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.

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 limited ability to provide for 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, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled 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 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

This proposed rule addresses critical habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) because they largely occupy the same habitat, referred to as pebble plain habitat. For additional information on the biology and ecology of these species, refer to the final rule listing them as threatened that was published in the **Federal Register** on September 14, 1998 (63 FR 49006). It is our intention to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule.

Pebble Plain Habitat

Pebble plains are characteristically treeless openings surrounded by montane pinyon-juniper woodland or coniferous forest. This "dry meadow-like" habitat, which occurs on clay soils covered with quartzite pebbles, is unique to the San Bernardino Mountains of San Bernardino County, California. Pebble plains are remnants of a Pleistocene lake bed (Derby 1979, pp. 11–14; Krantz 1983, pp. 9–10). Pebble plains are the result of a combination of soil and climatic factors that support a unique assemblage of plant species, some of which are restricted endemics while others represent disjunct occurrences of species more common elsewhere (USFS 2002, p. 12).

Pebble plain vegetation is comprised of various combinations of the 73 plant taxa recorded from pebble plains (USFS 2002, p. 12). While *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* were the two indicator species that characterized pebble plains when they were first described as a unique habitat type (as pavement plains) (Derby 1979, p. 77), *Ivesia argyrocoma* (silver-haired ivesia) is also considered a strong indicator of pebble plain habitat (USFS 2002, p. 14). *Castilleja cinerea* is nearly restricted to pebble plain habitat but does occur in non-pebble plain habitat, such as upper montane coniferous forest, meadows, and pinyon-juniper woodland. These non-pebble plain areas lack either one or both of the two former indicator species and quartzite pebbles or cobbles.

Each of the three listed pebble plains species has a natural mosaic distribution among the various pebble plain complexes. The distribution of each plant may change locally over time but generally extends throughout a pebble plain complex. The fact that these three plant taxa essentially occupy the same habitat is reflected here in the

description and mapping of the critical habitat units and subunits. In a study on the distribution of pebble plain plant species within three pebble plains in the San Bernardino Mountains, Derby (1979, p. 77–78) concluded that, while perennial plant species present on pebble plains tend toward evenly spaced overall distributions, some perennial species, including *Arenaria ursina* and *Castilleja cinerea*, are restricted to microhabitat niches within the habitat (such as on northwest exposures). Each of the pebble plain complexes identified by the Forest Service supports all three of the pebble plain species with five exceptions: Coxey Meadow, Rattlesnake, Grinnell Ridge, Snow Valley, and Sugarloaf Ridge (USFS 2002). Coxey Meadow and Rattlesnake complexes do not support any of the three listed species and are not proposed as critical habitat. Grinnell Ridge and Snow Valley complexes support only *C. cinerea*. Grinnell Ridge is not considered in this proposed designation because the area was last surveyed in 1994 and we are unable to determine whether the mapped area represents the species occurrence or the pebble plain boundary (Eliason 2006b, p. 1). Of the five pebble plain complexes mentioned above, only two, Snow Valley and Sugarloaf Ridge, are being proposed as critical habitat for *C. cinerea* and *A. ursina*, respectively.

Pebble plain complexes were first described and delineated by Neal and Barrows (1990, p. 11) who grouped pebble plains that were clearly clustered and isolated from other complexes and presumed to have comparable origins. According to the final listing rule, nine pebble plain complexes were described at that time (Neal and Barrows 1990, pp. 1–33): Arrastre/Union Flat, Big Bear Lake, Coxey Meadow, Gold Mountain, Holcomb Valley, North Baldwin Lake Onyx Ridge/Broom Flat, Sawmill, and South Baldwin Ridge/Erwin Lake. The

final listing rule also discussed pebble plains in the Lost Creek area (within the area now referred to as the Grinnell Ridge Complex) and the Snow Valley Ski area (within the area now referred to as Snow Valley Complex). The Grinnell Ridge and Snow Valley areas were named as pebble plain complexes in 2002 (USFS 2002, p. 30, 53). Of the 11 complexes discussed in the listing rule, all except Coxey Meadow were known to be occupied at that time (Table 1).

Each of the three listed species was known to occur in the 1970s, prior to the time of listing, on pebble plains within the area now referred to as the Fawnskin Complex (CNDDDB 1997a, 1997b, 1997c) (#12 in Table 1). While this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records in our files. Since listing, two other pebble plain complexes have been identified and mapped—Rattlesnake and Sugarloaf Ridge (USFS 2002, p. 57, 66) (#13 and #14, respectively, in Table 1). However, only the Sugarloaf Ridge complex is known to be occupied by the species discussed in this proposed rule.

Species Descriptions

Arenaria ursina (Bear Valley sandwort)

Arenaria ursina is a low tufted perennial plant in the Caryophyllaceae (pink) family. *A. ursina* produces seeds by selfing (self-pollinating) and entomophilous (insect-mediated) outcrossing (O'Brien 1979, p. 80). The seeds of *Arenaria ursina* are flat, reticulate, measure 2 millimeters (mm) (0.079 inches (in)) long, remain in open erect capsules for up to 2 months, and can bounce out of the capsule in a strong wind (O'Brien 1979, p. 81). Small syrphid flies and bees appear to be the primary insect pollinators for this species (O'Brien 1979, p. 82; Freas and

Murphy 1990, p. 6). However, Freas and Murphy (1990, pp. 7, 8) state that there is no evidence indicating that either wind- or pollinator-mediated dispersal plays a role in gene flow between pebble plain sites. Therefore, it appears that species persistence in each pebble plain is regulated by internal processes.

Arenaria ursina is found on pebble plains and dry slopes in pinyon and juniper woodland in the northeastern San Bernardino Mountains (63 FR 49006; September 14, 1998). *A. ursina* has one of the most restricted ranges of any of the pebble plain restricted endemic plants, second only to *Eriogonum kennedyi* var. *austromontanum*. *A. ursina* exhibits a patchy distribution within pebble plains and appears to prefer areas with low levels of shade and leaf litter accumulation (Derby 1979, p. 42). Species associated with *A. ursina* include *E. k.* var. *austromontanum*, *Antennaria dimorpha*, *Arabis parishii*, *Dudleya abramsii* spp. *affinis*, and *Ivesia argyrocoma* (USFS 2002, p. 17).

According to the final listing rule, *Arenaria ursina* was known from eight pebble plain complexes in the vicinity of Big Bear and Baldwin Lakes (63 FR 49006). This species was also known to occur in the 1970s, prior to the time of listing, on pebble plains within the area now referred to as the Fawnskin Complex (CNDDDB 1997a). As stated above, while this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records. Currently, *A. ursina* is known to occupy 10 pebble plain complexes in the vicinity of Big Bear and Baldwin Lakes (USFS 2002, p. 90). This occupancy includes the Sugarloaf Ridge complex, which was found to be occupied by this species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a, p. 1).

TABLE 1.—PEBBLE PLAIN COMPLEXES IN THE SAN BERNARDINO MOUNTAINS, CALIFORNIA, OCCUPIED AT THE TIME OF LISTING (OTL), CURRENTLY OCCUPIED (CO), OR NOT KNOWN TO BE OCCUPIED AT THE TIME OF LISTING OR CURRENTLY (NO) FOR EACH OF THE THREE LISTED PEBBLE PLAIN SPECIES

[Pebble plain complex names follow USFS 2002]

	Pebble plain complex	<i>Arenaria ursina</i>	<i>Castilleja cinerea</i>	<i>Eriogonum kennedyi</i> var. <i>austromontanum</i>
1	Arrastre/Union Flat	OTL, CO	OTL, CO	OTL, CO
2	Big Bear Lake	OTL, CO	OTL, CO	OTL, CO
3	Coxey Meadow	NO	NO	NO
4	Gold Mountain	OTL, CO	OTL, CO	OTL, CO
5	Holcomb Valley	OTL, CO	OTL, CO	OTL, CO
6	North Baldwin Lake	OTL, CO	OTL, CO	OTL, CO
7	Broom Flat (Onyx Ridge)	OTL, CO	OTL, CO	CO
8	Sawmill	OTL, CO	OTL, CO	OTL, CO
9	South Baldwin Ridge/Erwin Lake	OTL, CO	OTL, CO	OTL, CO
10	Grinnell Ridge		OTL	

TABLE 1.—PEBBLE PLAIN COMPLEXES IN THE SAN BERNARDINO MOUNTAINS, CALIFORNIA, OCCUPIED AT THE TIME OF LISTING (OTL), CURRENTLY OCCUPIED (CO), OR NOT KNOWN TO BE OCCUPIED AT THE TIME OF LISTING OR CURRENTLY (NO) FOR EACH OF THE THREE LISTED PEBBLE PLAIN SPECIES—Continued

[Pebble plain complex names follow USFS 2002]

	Pebble plain complex	<i>Arenaria ursina</i>	<i>Castilleja cinerea</i>	<i>Eriogonum kennedyi</i> var. <i>austromontanum</i>
11	Snow Valley	OTL, CO.	
12	Fawnskin	OTL, CO	OTL, CO	OTL, CO
13	Rattlesnake	NO	NO	NO
14	Sugarloaf Ridge	CO	CO.	

Castilleja cinerea (ash-gray paintbrush)

Castilleja cinerea is a semi-parasitic perennial in the Scrophulariaceae (figwort) family. Recent taxonomic studies (Olmstead et al. 2001, p. 350) have placed the genus *Castilleja* and other plant genera formerly in the Scrophulariaceae into the Orobanchaceae (broomrape) family. This proposed rule includes a change to the list of Endangered and Threatened Plants at 50 CFR 17.12(h) to reflect this taxonomic change. This taxonomic change was explained by Olmstead (2002, pp. 13–22) and is accepted here.

Known hosts for this root-parasite in pebble plain habitat include *Eriogonum kennedyi* var. *austromontanum*, *E. k. var. kennedyi*, *E. wrightii* var. *subscaposum*, and in non-pebble plain meadow margin habitat include *Artemisia tridentata*, *A. nova*, and *A. ludoviciana* (USFS 2002, p. 92). All *Castilleja* species are parasitic, and this species is distinguished from other *Castilleja* in its range by short-haired stems and leaves, yellowish flowers, calyx lobes of equal length, and perennial nature (63 FR 49006; September 14, 1998).

The seeds of *Castilleja cinerea* are loosely held in the open erect capsules, taking about a month to fall onto the ground after maturation. The dispersal agent (such as wind or foraging animals) for this species is unknown. Moreover, seeds are the product of self-pollinating outcrossing (O'Brien 1979, p. 67), and insect visitation does not appear significant for *Castilleja* species (Duffield 1972, pp. 110–114; O'Brien 1979, p. 69; Freas and Murphy 1990, p. 6).

Castilleja cinerea is usually found on pebble plain habitat, but also occurs in other habitats including upper montane coniferous forest, meadows, and pinyon-juniper woodland (USFS 2002, pp. 17, 92). Species associated with *C. cinerea* on pebble plain habitat include *Artemisia nova*, *Eriogonum kennedyi* var. *austromontanum*, *Erigeron aphanactis* (fleabane daisy), and *Poa*

secunda ssp. *secunda* (pine bluegrass) (USFS 2002, p. 17).

According to the final listing rule (63 FR 49006; September 14, 1998), *Castilleja cinerea* was known from fewer than 20 localities, mostly on pebble plains, but also from several localities in pine forest habitats near the Snow Valley Ski area, along Sugarloaf Ridge (part of the Sawmill Complex), and in the vicinity of Lost Creek (within the area now referred to as the Grinnell Ridge Complex). This species was also known in the 1970s, prior to the time of listing, to occur on pebble plains within the area now referred to as the Fawnskin Complex and in non-pebble plain meadow margin habitat adjacent to Big Bear and Baldwin lakes (CNDDDB 1997b). While these areas were not identified in the final listing rule, we consider them to be occupied at the time of listing based on pre-listing occupancy records in our files (CNDDDB 1997b). This species is now known to occur in 11 pebble plain complexes (see Table 1 above) and several non-pebble plain habitat areas (USFS 2002, p. 92). The 11 pebble plain complexes include the Sugarloaf Ridge Complex, which was found to be occupied by this species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a, p. 1). While the pebble plain in the Grinnell Ridge Complex was known to be occupied by *Castilleja cinerea* at the time of listing (Table 1), the area was last surveyed in 1994 and we are unable to determine whether the mapped area represents the species occurrence or the pebble plain boundary (Eliason 2006b, p. 1). Additional information is needed for us to determine if this area should be considered currently occupied by this species.

Eriogonum kennedyi var. *austromontanum* (southern mountain wild-buckwheat)

Eriogonum kennedyi var. *austromontanum* is a woody-based, cushion-like, perennial plant in the Polygonaceae (buckwheat family). This species is often confused with *E. k. var.*

kennedyi, *E. k. var. alpigenum*, or *E. wrightii* spp. *subscaposum*, but it can be distinguished from these taxa by its longer, unbranched flower stalks, leaves, fruits, and involucre (63 FR 49006; USFS 2002, pp. 93–94).

Eriogonum kennedyi var. *austromontanum* produces seeds by self-pollinating and insect-mediated outcrossing (O'Brien 1979, p. 97). Numerous types of wasps, bees, and flies have been recorded as pollinators on this plant (O'Brien 1979, p. 99; Freas and Murphy 1990, p. 6). This species produces single-seeded fruits, the majority of which remain at the base of the parent plant after falling off (O'Brien 1979, p. 99). While Freas and Murphy (1990, pp. 7, 8) detected seeds of either *E. k. var. austromontanum* or *E. k. var. kennedyi* in seed traps placed along pebble plain-forest edges, they state that there is no evidence indicating that either wind- or pollinator-mediated dispersal plays a role in gene flow between pebble plain sites. Therefore, it appears that species persistence in each pebble plain is regulated by internal processes.

Eriogonum kennedyi var. *austromontanum* has the most restricted range of any of the pebble plain restricted endemic plants, although it may be the dominant plant on pebble plains where it occurs. It was one of the taxa identified as characteristic of the unique pebble plain habitat first described by Derby (1979, p. 32). Although this taxon typically occupies clay soils with pebbles or cobbles, *E. k. var. austromontanum* also occurs on sandy, clay soils (e.g., Burnt Flat) or clay soils lacking pebbles or cobbles (e.g., areas at North Baldwin Lake) (USFS 2002, p. 94). This species prefers areas with low levels of shade and leaf litter accumulation (Derby 1979, p. 42).

Eriogonum kennedyi var. *austromontanum* was known from seven pebble plain complexes at the time of listing (63 FR 49006; September 14, 1998) (see Table 1 above). This species was also known in the 1970s, prior to the time of listing, to occur on

pebble plains within the area now referred to as the Fawnskin Complex (CNDDDB 1997c). As stated above, while this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records in our files (CNDDDB 1997c). The species is now known to occur in nine pebble plain complexes (see Table 1 above) including the Broom Flat Complex that was not known to be occupied by this species at the time of listing (USFS 2002, pp. 62, 94). However, the Broom Flat complex was known to be occupied by *Arenaria ursina* and *Castilleja cinerea* at the time of listing.

Threats to Pebble Plain Habitat

Major threats to the listed pebble plains species include development on private lands, off-highway vehicle (OHV) use off of designated routes, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, habitat fragmentation, and the invasion of nonnative *Bromus tectorum* (cheatgrass). See the "Special Management Considerations or Protection" section for further discussion of the threats to the listed pebble plains species.

Previous Federal Actions

Arenaria ursina, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* were federally listed as threatened on September 14, 1998 (63 FR 49006). These species are not currently listed as endangered, threatened, or rare by the State of California. At the time these plants were federally listed, the Service compared the value of designating critical habitat to the detrimental effects of increased collection, vandalism, and other human activities. The Service found, based on these factors, that designation of critical habitat for *A. ursina*, *C. cinerea*, and *E. k.* var. *austromontanum* was not prudent. On September 13, 2004, the Center for Biological Diversity and the California Native Plant Society filed a joint lawsuit challenging the Service's failure to designate critical habitat for six California plant species, including *A. ursina*, *C. cinerea*, and *E. k.* var. *austromontanum* (*Center for Biological Diversity, et al. v. Norton, No. ED CV-04-1150 RT (SGLx)*). In an April 14, 2005, settlement agreement, the Service agreed to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before November 9, 2006, and a final rule by November 9, 2007. This proposed rule

complies with the April 14, 2005, settlement agreement.

We have reconsidered our not prudent finding, and now believe that identification of primary constituent elements and essential areas (critical habitat designation) may provide educational information to individuals, local and State governments, and other entities. Because these species are so limited in their ecological and geographical ranges, and many of these pebble plains are adjacent to or bisected by classified and unclassified roads, most landowners and collectors have been aware of their presence since publication of the final listing rule in 1998. We do not have any documentation that over-collection has increased significantly since these species were listed and now believe that the benefits of identifying essential habitat for these species outweighs the potential risk of over-collection.

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

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. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species 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, 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 considerations or protection. Areas outside of the geographic area occupied by the species at the time of listing may only be included in critical habitat if they are essential for the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, 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 not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species 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 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)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* and the habitat requirements of these species. These sources included, but were not limited to, the proposed (60 FR 39337; August 2, 1995) and final (63 FR 49006; September 14, 1998) rules to list these species; data and information published in peer-reviewed articles; data and

information contained in reports prepared for or by the U.S. Forest Service (USFS); discussions and site visits with species experts including USFS personnel; data and information presented in academic research theses and dissertations; data provided by the California Department of Fish and Game Natural Diversity Data Base (CNDDDB); herbarium records; data submitted during section 7 consultations; and regional Geographic Information Systems (GIS) data.

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 consider those areas occupied by the species at the time of listing that contain physical and biological features (primary constituent elements or PCEs) that are essential to the conservation of the species, and that may require special management considerations or 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 of offspring germination and seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* are derived from the biological needs described in the Background section of this proposal. They include those habitat components essential for the biological needs of each species, including seed germination and seedling growth, flower production, pollination, fruit production and seed set, and genetic exchange.

Space for Individual and Population Growth and Normal Behavior; Food, Water, Air, Light, Minerals, or other Nutritional or Physiological Requirements

Arenaria ursina, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* require pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon/juniper woodlands, or Mojavean desert scrub at elevations between 5,900 to 9,800 feet (1,830 to 2,990 m) for individual and population growth (PCE 1).

These typically treeless openings are the result of a combination of soil and climatic factors that support an assemblage of plant species found only in the San Bernardino Mountains, California (USFS 2002, p. 12). Frost heaving and alternating wet and dry cycles force associated quartzite pebbles to the soil surface in areas of shallow clay deposits (PCE 2) to create the characteristic appearance of the pebble plains (Derby 1979, p. 61; Krantz 1983, p. 10; USFS 2002, p. 22). These soils have an extremely slow infiltration rate and, thus, have a high runoff potential (Neel and Barrows 1990, p. 8).

The establishment of tree species on pebble plains appears to be limited primarily by high clay content in the soil (Derby 1979, p. 74). Trees that become established alter the surrounding microhabitat by increasing leaf litter and shading and probably reducing temperature extremes (USFS 2002, p. 15). The increase in leaf litter under trees appears to reduce the densities of all three of the listed pebble plains species and increase tree and shrub seedlings under the tree canopy (Derby 1979, p. 72). Pebble plain species flourish in their specific environment, but they cannot compete with other plant species adapted to shaded areas, or areas where heavy litter layers accumulate (USFS 2002, p. 15).

Pebble plains are typified by the presence of one or more of the following associated species: *Ivesia argyrocoma*, *Eriogonum kennedyi* var. *kennedyi*, *Allium parryi*, *Antennaria dimorpha*, *Arabis parishii*, *Astragalus purshii* var. *lectulus*, *Dudleya abramsii* var. *affinis*, *Echinocereus engelmannii*, *Erigeron aphanactis* var. *congestus*, *Eriogonum wrightii* var. *subscaposum*, *Lewisia rediviva* var. *minor*, and *Mimulus purpureus*.

In addition to pebble plain habitat, *Castilleja cinerea* is also found in dry meadow margin areas that lack either *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* or both and quartzite pebbles or cobbles. However, as a semi-parasitic perennial plant, this root-parasite requires host plant species found in pebble plain habitat (*Eriogonum kennedyi* var. *austromontanum*, *E. k.* var. *kennedyi*, and *E. wrightii* var. *subscaposum*) and host plant species found in both pebble plain and non-pebble plain habitat (*Artemisia tridentata*, *A. nova*, and *E. wrightii* var. *subscaposum*) for individual and population growth and for its nutritional and physiological requirements (PCE 3) (USFS 2002, p. 92).

Sites for Reproduction, Germination, Seed Dispersal, or Pollination

While pollination (via selfing, wind, or insect) is important for maintaining genetic diversity within a pebble plain (Duffield 1972, pp. 110–114; O'Brien 1979, pp. 67, 82, 97, 99; Freas and Murphy 1990, p. 6), limited research indicates that little genetic material is exchanged among pebble plains (Freas and Murphy 1990, pp. 6–8). According to Freas and Murphy (1990, p. 6), observed pollen transfer distances were less than 4 meters (13 feet).

Primary Constituent Elements for Arenaria ursina, Eriogonum kennedyi var. austromontanum and Castilleja cinerea

Under our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. All areas proposed as critical habitat for each taxon are currently occupied, within the taxon's historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCEs for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* are:

(1) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 feet (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal; and

(2) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

We have determined that *Castilleja cinerea* also requires the following PCE:

(3) The presence of one or more of its known host species, such as *Eriogonum kennedyi* var. *austromontanum*, *E. k. var. kennedyi*, and *E. wrightii* var. *subscaposumon* in pebble plain habitat and species such as *Artemisia*

tridentata, *A. nova*, and *E. wrightii* var. *subscaposumon* in pebble plain and non-pebble plain meadow margin habitat that provide some of the physiological requirements for this species.

This proposed designation is designed for the conservation of those areas containing the PCEs necessary to support the life history functions that are the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. To delineate the proposed critical habitat boundaries associated with habitat occupied by the listed species, we relied on GIS data provided by the USFS's San Bernardino National Forest (SBNF). SBNF personnel mapped pebble plain and some non-pebble plain habitat on SBNF lands for the 2002 Pebble Plain Management Guide using a combination of 1:10,000 air photos, 1:24,000 orthographic photos, 1:24,000 topographic maps, and ground-truthing with global positioning system (GPS) units (USFS 2002, p. 30). We also worked with SBNF personnel with species and habitat expertise to determine the status of pebble plains being considered for designation (habitat quality and land ownership).

Working with SBNF personnel with knowledge of pebble plains species and habitats, we then identified pebble plains within each of the 12 occupied pebble plain complexes that met the following criteria for each of the three listed species: (1) Contained the PCEs, (2) known to be occupied at the time of listing and currently occupied; (3) if not known to be occupied at the time of listing, currently occupied and essential to the conservation of the species; (4) large or well-defined relative to other pebble plains in the complex; and (5) least disturbed by anthropogenic threats (such as unauthorized vehicle use) relative to other pebble plains in the

complex. The majority of the pebble plains (14 of 22) being proposed as critical habitat contain all three of the listed species. To the extent possible, we included the larger pebble plains within a complex that were proximal to other relatively large pebble plains occupied by the listed species in order to capture areas with presumably higher species diversity. Ciano (1984, p. 14) examined species variability on pebble plains in relation to island biogeography theory and found that the number of species within a pebble plain increased with the size of the pebble plain and decreased as distance from other pebble plains increased; thus larger pebble plains located closer to other pebble plains had higher species diversity.

For non-pebble plain meadow margin areas (Mojavean desert scrub—PCE 1) containing *Castilleja cinerea*, we identified those occupied areas that: (1) Contain unique habitat characteristics (such as soil type—PCE 2)) relative to other non-pebble plain areas occupied by the species, and (2) are within areas with the least amount of disturbance by anthropogenic threats (such as unauthorized vehicle use) relative to other occupied non-pebble plain habitat.

For the purposes of this rule, occupied "at the time of listing" is defined as those occurrences or areas identified in the final listing rule (63 FR 49006; September 14, 1998) or those areas known to be occupied prior to the publication of the listing rule according to occupancy data in our files (CNDDDB 1997a, 1997b, 1997c). Table 1 above lists the pebble plain complexes occupied at the time of listing and currently occupied for each of the three listed pebble plain species. We are not proposing any unoccupied areas or areas outside the geographic area presently occupied by the species.

When determining proposed critical habitat boundaries, we tried to avoid including within the boundaries of the proposed critical habitat developed areas such as buildings, paved areas, and other structures that lack PCEs for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger

section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing or are currently occupied by *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* and that contain one or more of the primary constituent elements to support life history functions essential for the conservation of these species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain primary constituent elements that may require special management considerations or protection.

As stated in the final listing rule, major threats to all three listed pebble plains species throughout their range include land development, off-highway vehicle (OHV) use off of designated routes, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, and nonnative plant species (63 FR 49006; September 14, 1998). The use of OHVs off of designated routes has historically been the greatest threat to pebble plains habitat (63 FR 49006). The primary constituent elements for the listed pebble plains species may require special management considerations or protection to minimize impacts associated with—(1) Vehicle use and road maintenance; (2) recreational activities; and (3) the presence of nonnative species (63 FR 49006; USFS 2002, p. 17; USFS 2005, pp. 207, 249, 293).

All of the pebble plain complexes have some degree of impact associated with the USFS-authorized and unauthorized use of vehicles and associated maintenance (USFS 2002, pp. 20, 25, 30–68). Vehicle use and road maintenance could introduce invasive, nonnative plants, increase the potential for unauthorized routes to develop (leading to the crushing and burying of individual plants and soil compaction), and cover individuals with dust and mud that can impair physiological functions (USFS 2002, p. 20; USFWS 2005, pp. 233, 238, 243).

Along with soil compaction, soil erosion resulting from vehicle use could significantly alter the soil composition required by the listed species (PCE 2). During the wet season, vehicle traffic directly disturbs or destroys vegetation and creates deep ruts that change the

hydrological patterns over the pebble plain (USFS 2002, p. 20). Vehicle traffic also increases breakdown in natural soil aggregates (structure) (Sadler, pers. comm. 1989 cited in USFS 2002, p. 22). Changes in the hydrological pattern associated with a pebble plain could alter the soil composition by allowing for erosion of clay sediments during rainfall events, leaving only large cobbles and pebbles (PCE 2). These changes to the soil morphology and composition could result in alterations to the vegetation structure and composition of the area, allowing for the invasion of native and nonnative plant species that could out-complete the listed species for space and resources and further alter the soil composition by increasing organic debris (PCEs 1, 2, and 3).

The invasion of nonnative plant species can result in crowding, overshadowing, and altering fuel loads and hydrology (USFS 2002, p. 25). While fire has not been considered an important factor in shaping the pebble plain community, the establishment of an introduced species, such as cheatgrass, might provide the fine fuels to allow fire to spread more readily and result in alterations to the composition and structure of the pebble plain community (USFS 2002, pp. 19–20). Pebble plain species flourish in their specific environment, but they cannot complete with other plant species adapted to shaded areas or sites where heavy litter layers accumulate (USFS 2002, p. 15). The invasion of nonnative species may alter the soil composition (PCE 2) or cause an increase in the amount of leaf litter, allowing for the eventual encroachment of adjacent native shrub and tree species into the pebble plain, and diminishing the habitat available to pebble plain obligate species and host species (PCE 1). Derby (1979, p. 72) found lower densities of all three of the listed species in pebble plain areas where leaf litter was abundant under trees.

The USFS prepared the 2002 Pebble Plain Management Guide (USFS 2002, p. i) as an update to the 1990 Pebble Plain Habitat Management Guide and Action Plan by Neal and Barrows. The 2002 Pebble Plain Management Guide was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally listed plants, and to improve conditions for Forest sensitive species occurring in this habitat. The 2002 Pebble Plain Management Guide identifies the following management goals necessary to reduce impacts to pebble plain habitat—protecting pebble plain habitat

throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i).

The USFS has completed many of the actions outlined in the plan to avoid and minimize impacts to the three listed pebble plain species including, but not limited to permanently closing some roads bisecting pebble plains, installing fencing or gates along some roads to prevent unauthorized access onto adjacent pebble plains, establishing alternate trails, adding law enforcement patrols, relocating special events out of pebble plain habitat, and posting of signs to keep vehicles out of sensitive habitat; however, ongoing unauthorized use is still occurring in all of the pebble plain complexes (USFS 2002, pp. 30–68). See the “Unit Description” section for a discussion of the special management considerations or protection that may be needed for each unit or subunit being proposed as critical habitat.

Proposed Critical Habitat Designation

We are proposing a total of 1,511 ac (611 ha) of Federal, State, and private land within 11 units, with 9 of these units further divided into 20 subunits, as critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Table 2 below provides the approximate area of each unit or subunit being proposed as critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Table 3 below provides landownership sizes in each unit or subunit. Table 4 outlines the units and subunits proposed as critical habitat and the total area for each species. Since these species often occur in the same pebble plains, the total area being proposed as critical habitat for each species will not equal the total area being proposed for all three species combined.

While the pebble plain in the Grinnell Ridge Complex was known to be occupied by *Castilleja cinerea* at the time of listing (Table 1), the area was last surveyed in 1994 (Eliason 2006b, p. 1), and we cannot determine whether the mapped area represents the species occurrence or the pebble plain boundary. Moreover, this pebble plain is located in a remote area in the San Geronio Wilderness Area on SBNF and is not easily accessible. We do not have sufficient information to determine that this area has the features that are essential to the conservation of the species as defined for the purposes of this critical habitat designation, and therefore we are not proposing to

designate the Grinnell Ridge Complex as essential habitat.

The critical habitat areas described below constitute our best assessment at this time of areas determined to be

occupied at the time of listing, containing primary constituent elements that may require special management considerations or protection, and those additional areas that were not occupied

at the time of listing but were found to be essential to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*.

TABLE 2.—PROPOSED CRITICAL HABITAT (ACRES (AC), HECTARES (HA)) FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM. THE ABBREVIATION “PPN.” REFERS TO THE PEBBLE PLAIN NUMBER IDENTIFIED IN THE USFS PEBBLE PLAIN MANAGEMENT GUIDE (2002)

[Area estimates reflect all land within critical habitat unit boundaries]

Proposed critical habitat unit	Pebble plain complex and subunit name	Total area of unit (ac (ha))	Total area of subunit (ac (ha))	Listed species in unit or subunit ¹
1	Arrastre/Union Flat			
	1A (ppn. 100)	298 (121)	69 (28)	1,2,3
	1B (ppn. 87)		229 (93)	1,2,3
2	Big Bear Lake			
	2A (ppn. 248)	28 (11)	21 (9)	1,2
	2B (ppn. 254)		6 (2)	1,2,3
3	Broom Flat			
	3A (ppn. 311)	384 (156)	58 (23)	1,2,3
	3B (ppn. 285 & 309)		326 (132)	1,2
4	Fawnskin			
	4A (ppn. 301)	41 (17)	15 (6)	1,2,3
	4B (ppn. 302)		24 (10)	1,2,3
	4C (Juniper Point)		2 (1)	2
5	Gold Mountain			
	5A (ppn. 188)	105 (42)	62 (25)	1,2,3
	5B (ppn. 192)		43 (17)	1,2,3
	5C (South Baldwin meadow)		0.3 (0.1)	2
6	Holcomb Valley			
	6A (ppn. 98 & 109)	72 (29)	28 (11)	1,2,3
	6B (ppn. 153)		44 (18)	1,2,3
7	North Baldwin Lake			
	7A (ppn. 128)	351 (142)	320 (129)	1,2,3
	7B (ppn. 168)		4 (2)	2
8	Sawmill			
	8A (ppn. 236)	50 (20)	44 (18)	1,2,3
	8B (ppn. 224)		5 (2)	1,2,3
9	Snow Valley (ppn. 270)	26 (10)	NA	2
10	South Baldwin Ridge/Erwin Lake (ppn. 212)	23 (9)	NA	1,2,3
11	Sugarloaf Ridge			
	11A (ppn. 294)	161 (65)	127 (51)	1,2
	11B (ppn. 289)		34 (14)	1,2
Total	22		1,511 (611)	

¹ 1 = *Arenaria ursina*, 2 = *Castilleja cinerea*, 3 = *Eriogonum kennedyi* var. *austromontanum*.

TABLE 3.—LANDOWNERSHIP (ACRES (AC), HECTARES (HA)) IN UNITS OR SUBUNITS BEING PROPOSED AS CRITICAL HABITAT FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM

Unit or subunit	Landowner ¹	Total area (ac (ha))
1A	USFS	69 (28)
1B	USFS	229 (93)
2A	USFS	21 (9)
2B	USFS	6 (2)
3A	USFS	58 (23)
3B	USFS	255 (103)
	Private (The Wildlands Conservancy)	71 (29)
4A	USFS	15 (6)
4B	USFS	24 (10)
4C	USFS	2 (1)
5A	USFS	62 (25)
5B	USFS	43 (17)
5C	USFS	0.2 (0.1)
6A	USFS	22 (9)
	Private	6 (2)
6B	USFS	44 (18)
7A	USFS	320 (129)

TABLE 3.—LANDOWNERSHIP (ACRES (AC), HECTARES (HA)) IN UNITS OR SUBUNITS BEING PROPOSED AS CRITICAL HABITAT FOR *ARENARIA URSINA*, *CASTILLEJA CINEREA*, AND *ERIOGONUM KENNEDYI* VAR. *AUSTROMONTANUM*—Continued

Unit or subunit	Landowner ¹	Total area (ac (ha))
7B	CDFG	4 (2)
8A	USFS	15 (6)
	Private	30 (12)
8B	Private	5 (2)
9	USFS	26 (10)
10	USFS	23 (9)
11A	USFS	127 (51)
11B	USFS	34 (14)
Total		1,511 (611)

¹ USFS = U.S. Forest Service (lands in the San Bernardino National Forest), CDFG = California Department of Fish and Game.

TABLE 4.—UNITS OR SUBUNITS AND TOTAL AREA (ACRES (AC), HECTARES (HA)) BEING PROPOSED AS CRITICAL HABITAT FOR *ARENARIA URSINA*, *CASTILLEJA CINEREA*, AND *ERIOGONUM KENNEDYI* VAR. *AUSTROMONTANUM*

Species	Unit or subunits	Total area (ac (ha))*
<i>Arenaria ursina</i>	All except 4C, 5C, 7B, 9	1,478 (598)
<i>Castilleja cinerea</i>	All	1,511 (611)
<i>Eriogonum kennedyi</i> var. <i>austromontanum</i>	All except 2A, 3B, 4C, 5C, 7B, 9, 11A, 11B	970 (393)

* These species often occur in the same pebble plains. Therefore the total area being proposed as critical habitat for each species will not equal the total area being proposed for all three species combined.

Unit Descriptions

We present brief descriptions of all units and subunits below and reasons why they meet the definition of critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Each subunit is named using the pebble plain occurrence number (for example “ppn. 100”) as identified in the USFS’s 2002 Pebble Plain Management Guide.

Unit 1: Arrastre/Union Flat

The Arrastre/Union Flat pebble plain complex consists of 33 pebble plains of varying size that total approximately 377 ac (153 ha) of habitat, the majority of which are on the San Bernardino National Forest (SBNF) land (USFS 2002, pp. 32, 47). Pebble plains in this complex have historically been, and continue to be, impacted by vehicle use related to woodcutting and camping activities not authorized by the USFS (USFS 2002, p. 47). Pebble plains in this complex are also threatened by the invasion of nonnative cheatgrass (USFS 2002, pp. 47–48).

We are proposing to designate as critical habitat approximately 298 ac (121 ha) within this complex consisting of two pebble plains in the SBNF: Subunit 1A (ppn. 100) is 69 ac (28 ha) and Subunit 1B (ppn. 87) is 229 ac (93 ha) (Tables 2, 3). Subunits 1A and 1B were known to be occupied by all three listed plants at the time of listing, and all three listed species continue to occur

within these subunits (Table 1).

Subunits 1A and 1B contain the PCEs for each of the listed species; are large, well defined pebble plains; are within the northernmost pebble plains in the designation; are within the geographic range occupied by the species at time of listing; and represent the least disturbed pebble plains in this complex.

Both subunits are bisected by existing USFS roads. As outlined in the USFS’s Pebble Plain Management Guide (USFS 2002) and the USFS’s Biological Assessment for the Revised Land Management Plans (USFS 2005), the USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping (defacing) some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat. However, unauthorized vehicle use still occurs on the pebble plains in this complex (USFS 2002, pp. 48, 48a). Special management may be required to protect and maintain the PCEs supported by Subunits 1A and 1B due to the potential impacts of unauthorized use and invasive nonnative plant species (such as cheatgrass) that occur in some of the other pebble plain complexes.

Unit 2: Big Bear Lake

The Big Bear Lake pebble plain complex consists of a series of 39 pebble plains of varying sizes within and adjacent to the City of Big Bear Lake. This complex totals approximately 96 ac (39 ha) of habitat on private and SBNF lands (USFS 2002, pp. 31, 37). Prior to residential development in Big Bear Valley and the construction of Big Bear Dam, pebble plain habitat was more widespread and more contiguous in this complex (USFS 2002, p. 38). Threats to pebble plain habitat on private lands include residential development and trampling from horses and hikers, and on USFS lands they include trampling, soil compaction, and unauthorized vehicle use through dispersed recreation (USFS 2002, p. 39). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 28 ac (11 ha) within this complex consisting of two pebble plains in the SBNF—Subunit 2A (ppn. 248) is 21 ac (9 ha) and Subunit 2B (ppn. 254) is 6 ac (2 ha) (Tables 2, 3). Subunit 2A was known to be occupied at the time of listing by *Arenaria ursina* and *Castilleja cinerea*, and both species continue to grow within this subunit (Table 1). This subunit is not proposed as critical habitat for *Eriogonum kennedyi* var.

austromontanum. Subunit 2A contains the PCEs for both species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at time of listing. Subunit 2B was known to be occupied at the time of listing by all three listed species, and these species still occur within this subunit (Table 1). Subunit 2B contains the PCEs for each of the three species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at time of listing.

Both Subunits 2A and 2B historically have been impacted by recreational activities (USFS 2002, pg. 38). Subunit 2A, in the Aspen Glen area, is bisected by a recreational trail, which is used by horses, hikers, and mountain bikers. Subunit 2B, in the former Snow Summit Ski Area, has historically been the site of annual bicycle races and is bisected by several classified and unclassified bicycle trails. USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including installing fencing along trails to prevent further encroachment into the pebble plain, establishing alternate paths, installing gates and fencing to prevent motorized access to pebble plains, relocating annual bicycle races to other sites (USFS 2002, p. 39; USFS 2005, p. 208), and closing the Snow Summit Ski Area (USFS 2005, p. 250; USFS 2005, p. 233). However, special management may be required to protect and maintain the PCEs supported by Subunits 2A and 2B.

Unit 3: Broom Flat

The Broom Flat pebble plain complex consists of 23 pebble plains of varying size that total approximately 752 ac (304 ha) of habitat, the majority of which are in the SBNF (USFS 2002, pp. 33, 62). Pebble plains in this complex have historically been impacted primarily by unauthorized vehicle use and are now being impacted by the presence of invasive nonnative plant species (such as cheatgrass and common knotweed (USFS 2002, p. 64)).

We are proposing to designate as critical habitat approximately 384 ac (156 ha) within this complex consisting of two pebble plains on Federal (SBNF) and private lands (The Wildlands Conservancy): Subunit 3A (ppn. 311) is 58 ac (23 ha) and Subunit 3B (ppn. 285 and 309) is 326 ac (132 ha) (Tables 2, 3). Subunit 3A was known to be occupied at the time of listing and is

currently occupied by *Arenaria ursina* and *Castilleja cinerea*. *Eriogonum kennedyi* var. *austromontanum* is also currently found in this subunit, but it was not known from here at the time of listing (Table 1). Subunit 3A contains the PCEs for each of the species, and is essential to the conservation of *E. k.* var. *austromontanum* because it is a relatively large pebble plain that represents the least disturbed pebble plains in this complex, and is within the eastern/most pebble plain complex in this designation. Subunit 3B was known to be occupied at the time of listing by *Arenaria ursina* and *Castilleja cinerea*, and both species still occur within this subunit (Table 1). Subunit 3B is only being proposed as critical habitat for these two species. Subunit 3B contains the PCEs for both species, is a relatively large pebble plain, represents the least disturbed pebble plains in this complex, is within the geographic range occupied by the species at time of listing, and is within the eastern/most pebble plain complex in this designation.

Both subunits are bisected by existing USFS roads. USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat; however, these barriers are in need of constant monitoring and repairs (USFS 2002, p. 64). The pebble plain in Subunit 3A may also be impacted by cattle trespass from the Rattlesnake grazing allotment and burro use associated with the Burro Herd Management Area (USFS 2002, p. 64). Special management may be required to protect and maintain the PCEs supported by Subunits 3A and 3B.

Unit 4: Fawnskin

The Fawnskin pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 64 ac (26 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 44). Pebble plains in this complex have historically been and are currently being impacted by urban development, unauthorized vehicle use, and the presence of invasive nonnative species (such as cheatgrass) (USFS 2002, pp. 45).

We are proposing to designate as critical habitat approximately 41 ac (17 ha) within this complex consisting of two pebble plains and one non-pebble plain meadow margin area in the SBNF. Subunit 4A (ppn. 301) is 15 ac (6 ha), Subunit 4B (ppn. 302) is 24 ac (10 ha),

and Subunit 4C (Juniper Point) is 2 ac (1 ha) (Tables 2, 3). Subunits 4A and 4B were known to be occupied at the time of listing by all three listed species and these plants continue to occur within these subunits. Subunit 4C was known to be occupied at the time of listing and is still occupied only by *Castilleja cinerea* (Table 1). Subunit 4C is being proposed as critical habitat only for *C. cinerea*. Subunits 4A and 4B contain the PCEs for all three of the listed species, are within the geographic range occupied by the species at time of listing, and are relatively large and the least disturbed pebble plains remaining in this complex. Subunit 4C (Juniper Point) is essential to the conservation of *Castilleja cinerea* because it contains the PCEs for the species, is within the geographic range occupied by the species at time of listing, represents a unique habitat type (non-pebble plain meadow margin) for the species (Engelhard 2006), and is important for maintaining genetic diversity for the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed.

Both Subunits 4A and 4B are bisected by several unclassified roads associated with existing USFS roads. While USFS has undertaken various actions such as permanently closing roads and posting signs to keep vehicles out of sensitive habitat, barriers have been repeatedly breached over the past decade and unauthorized vehicle use along some of the unclassified roads still continues (USFS 2002, pp. 45–46). Subunit 4C is within a fenced area adjacent to Big Bear Lake owned by the USFS. The area contains a paved trail for hiking and is across the street from the ranger station. Special management may be required to protect and maintain the PCEs supported by Subunits 4A and 4B due to the potential impacts of public vehicle use outside of designated areas and the invasion of nonnative plant species (such as cheatgrass). Special management may also be required to protect and maintain the PCEs supported by Subunits 4A, 4B and 4C due to the potential impacts of dispersed recreation and OHV use outside of designed areas.

Unit 5: Gold Mountain

The Gold Mountain pebble plain complex consists of 18 pebble plains of varying sizes that total approximately 88 ac (36 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 52). Pebble plains in this complex have historically been impacted by USFS-authorized vehicle use and vehicle use associated with woodcutting and rock

collecting not authorized by the USFS (USFS 2002, pg. 52). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 105 ac (42 ha) of Federal land (SBNF) consisting of two pebble plains in this complex and one non-pebble plain meadow margin area adjacent to this complex. Subunit 5A (ppn. 188) is 62 ac (25 ha), Subunit 5B (ppn. 192) is 43 ac (17 ha), and Subunit 5C (South Baldwin meadow) is 0.3 ac (0.1 ha) (Tables 2, 3). Subunits 5A and 5B were known to be occupied at the time of listing and are still occupied by all three listed species (Table 1). While the non-pebble plain meadow margin habitat in Subunit 5C was not identified in the final listing rule (63 FR 49006; September 14, 1998), it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDDB 1997b). Subunit 5C is being proposed as critical habitat only for *C. cinerea*.

Subunits 5A and 5B contain the PCEs for each of the three listed species, are relatively large and well-defined pebble plains, represent the least disturbed pebble plains in this complex, and are within the geographic range occupied by the species at time of listing. Subunit 5C is essential to the conservation of *Castilleja cinerea* because it contains the PCEs for the species, it is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin) for the species, representing an area that is important for maintaining genetic diversity for the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed and also supports other federally listed plant species (such as *Sidalcea pedata*).

Subunits 5A and 5B are bisected by Forest Road 3N69 and several unclassified roads. While USFS has undertaken various actions such as closing the area to woodcutting, permanently closing roads, and conducting area patrols, unauthorized vehicle use continues to impact these pebble plains (USFS 2002, p. 53; Engelhard 2006). Subunit 5C is threatened by occasional unauthorized access by equestrian and OHV use by adjacent private landowners (Engelhard 2006). Special management may be required to protect and maintain the PCEs supported by Subunits 5A, 5B, and 5C due to the potential impacts of

dispersed recreation and OHV use outside of designed areas. Special management, such as the development of a routine monitoring and removal program, may also be required to protect and maintain the PCEs supported by Subunits 5A and 5B due to the invasion of nonnative plant species (such as cheatgrass).

Unit 6: Holcomb Valley

The Holcomb Valley pebble plain complex consists of 96 pebble plains of varying sizes that total approximately 460 ac (186 ha) of habitat primarily in the SBNF (USFS 2002, pp. 31, 40). Pebble plains in this complex have historically been impacted by USFS-authorized and unauthorized vehicle use, previous silviculture treatments, campground development, dispersed recreation, and access or maintenance associated with a gas pipeline (USFS 2002, pp. 41–42). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 72 ac (29 ha) within this complex consisting of two pebble plains on Federal (SBNF) and private (Boy Scouts of America (BSA)) land: Subunit 6A (ppn. 98 and 109) is 28 ac (11 ha) and Subunit 6B (ppn. 153) is 44 ac (18 ha) (Tables 2, 3). The majority of Subunit 6A is in the SBNF, though a small portion occurs on private land owned by the BSA (Hitchcock Ranch). Subunit 6B is entirely within the SBNF. Subunits 6A and 6B were known to be occupied at the time of listing and are still occupied by all three listed species (Table 1). Subunits 6A and 6B contain the PCEs for each of the three listed species, are within the geographic range occupied by the species at time of listing, are among the northern most pebble plains in this designation, are relatively large and well-defined pebble plains, and represent the least disturbed pebble plains in this complex.

USFS has undertaken various actions, such as decommissioning and rehabilitating certain roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, posting signs to keep vehicles out of sensitive habitat, relocating special events formerly in pebble plain habitat (such as the Mountain Man event), and discontinuing camping permits in certain areas to reduce the impact in these areas. However, pebble plains in the Holcomb Valley Complex continue to be impacted by unauthorized vehicle

use (USFS 2002, p. 40). Special management may be required to protect and maintain the PCEs supported by Subunits 6A and 6B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 7: North Baldwin Lake

The North Baldwin Lake pebble plain complex consists of 12 pebble plains of varying sizes that totals approximately 527 ac (213 ha) of habitat primarily in the SBNF (USFS 2002, pp. 33, 54). Pebble plains in this complex were historically, and continue to be impacted, by authorized and unauthorized vehicle use, mining activity, residential development, burros, and invasive nonnative plant species (such as cheatgrass and *Lepidium perfoliatum* (claspig pepperweed)) (USFS 2002, pg. 56).

We are proposing to designate as critical habitat approximately 351 ac (142 ha) within this complex consisting of one pebble plain and one non-pebble plain meadow margin area on Federal (SBNF) and State (CDFG) lands: Subunit 7A (ppn. 128) is 320 ac (129 ha) and Subunit 7B (ppn. 168) is 4 ac (2 ha) (Tables 2, 3). All of Subunit 7A is in the SBNF and all of Subunit 7B in the CDFG's Baldwin Ecological Reserve. Subunit 7A was known to be occupied at the time of listing and continues to be occupied by all three listed plants (Table 1). While the non-pebble plains meadow margin habitat in Subunit 7B was not identified in the listing rule, it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDDB 1997b).

Subunit 7A contains the PCEs for each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well defined pebble plain in this complex, and represents one of the least disturbed pebble plain in this complex. Subunit 7B contains the PCEs for *Castilleja cinerea*, is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin habitat with alkali soils) and the only area known to support this species on alkali soils. This occurrence represents a unique portion of the range of environmental variability for the species and is important for maintaining genetic diversity of the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed. This area also supports

other federally listed plant species (such as *Sidalcea pedata* and *Thelypodium stenopetalum*).

Subunit 7A is bisected by several unclassified roads associated with existing USFS roads and Subunit 7B is adjacent to an existing road. USFS has undertaken various actions such as permanently closing roads, installing fencing along major roads adjacent to pebble plain habitat, and posting signs to keep vehicles out of sensitive habitat. However, authorized and unauthorized vehicle use continues to impact pebble plains in the North Baldwin Lake Complex (USFS 2002, p. 57). Special management may be required to protect and maintain the PCEs supported by Subunits 7A and 7B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 8: Sawmill

The Sawmill pebble plain complex consists of 22 pebble plains of varying size that total approximately 396 ac (160 ha) of habitat on private and Federal land (SBNF) (USFS 2002, pp. 32, 49). Pebble plains in this complex were historically, and continue to be impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pp. 50).

We are proposing to designate as critical habitat approximately 50 ac (20 ha) within this complex consisting of two pebble plains on Federal (USFS) and private lands: Subunit 8A (ppn. 236) is 45 ac (18 ha) and Subunit 8B (a portion of ppn. 244) is 5 ac (2 ha) (Tables 2, 3). About half of Subunit 8A is in the SBNF, while the other half is on private land within an area protected from development by a conservation easement. Subunit 8B is entirely on private land within an area protected from development by a conservation easement. Subunits 8A and 8B were known to be occupied at the time of listing and continue to be occupied by all three listed species (Table 1). Subunits 8A and 8B contain the PCEs for each of the three listed species, are within the geographic range occupied by the species at time of listing, are relatively large and well-defined pebble plains, and represent the only pebble plains remaining in this complex that have not been destroyed or significantly degraded by residential development.

The southern portion of Subunit 8A is on private land and protected by a conservation easement held by the local homeowners' association and established as part of the Moonridge

residential development (Engelhard 2006). The northern portion of this subunit is bisected by a partially revegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents. Subunit 8B is bisected by several unclassified roads associated with woodcutting and dispersed recreation (USFS 2002, pp. 50–51). USFS has undertaken or participated in various actions, such as posting signs to keep hikers and vehicles out of sensitive habitat. However, authorized and unauthorized dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sawmill Complex, including the northern portion of Subunit 8A (USFS 2002, p. 51; Engelhard 2006). Special management may be required to protect and maintain the PCEs supported by Subunits 8A and 8B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 9: Snow Valley

The Snow Valley pebble plain complex consists of 3 pebble plains of varying sizes that total approximately 33 ac (13 ha) of habitat in the SBNF (USFS 2002, pp. 30, 31). Pebble plains in this complex were historically impacted by vehicle access, residential development, and heavy-use recreation (such as skiing or biking) (USFS 2002, pp. 30). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 26 ac (10 ha) within this complex consisting of one pebble plain within the SBNF: Unit 9 (ppn. 270) (Tables 2, 3). Unit 9 was known to be occupied at the time of listing and is still occupied by *Castilleja cinerea* (Table 1). This unit is being proposed as critical habitat only for *C. cinerea*. It contains the PCEs for the species, is within the geographic range occupied by the species at time of listing, is within the western most pebble plain complex in this designation, represents a unique habitat type (pebble plain habitat with granitic soils), and supports the only known occurrence of this species on granitic soils. This occurrence represents a unique portion of the range of environmental variability for the species and is important for maintaining genetic diversity for the species.

Unit 9 borders Highway 18 and is within a heavy recreational use area.

USFS has undertaken or participated in various actions, such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continues to impact pebble plains in the Snow Valley (USFS 2002, p. 51). Special management may be required to protect and maintain the PCEs supported by Unit 9 due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 10: South Baldwin Ridge/Erwin Lake

The South Baldwin Ridge/Erwin Lake pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 87 ac (35 ha) of habitat on private and SBNF lands (USFS 2002, pp. 33, 49). Pebble plains in this complex were historically, and continue to be impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pp. 50).

We are proposing to designate as critical habitat approximately 23 ac (9 ha) within this complex consisting of one pebble plain in the SBNF: Unit 10 (ppn. 212) (Tables 2, 3). Unit 10 was known to be occupied at the time of listing and still is occupied by all three listed plants (Table 1). This unit contains the PCEs for each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well-defined pebble plain, and is the only occupied pebble plain in this complex that has not been destroyed or significantly degraded due to residential development.

Unit 10 is bisected by a partially revegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents (USFS 2002, pp. 50–51). USFS has undertaken or participated in various actions such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continue to impact pebble plains in the South Baldwin Ridge Complex (USFS 2002, p. 51). Special management may be required to protect and maintain the PCEs supported by Unit 10 due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 11: Sugarloaf Ridge

The Sugarloaf Ridge pebble plain complex consists of 22 pebble plains of

varying sizes that total approximately 573 ac (232 ha) of habitat in the SBNF (USFS 2002, pp. 33, 58). Pebble plains in this complex were historically and continue to be impacted by authorized and unauthorized vehicle use and dispersed recreation (USFS 2002, p. 58). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in some of the other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 161 ac (65 ha) within this complex consisting of two pebble plains within the SBNF: Subunit 11A (ppn. 294) is 127 ac (51 ha) and Subunit 11B (ppn. 289) is 34 ac (14 ha) (Tables 2, 3). Subunits 11A and 11B are known to be occupied by *Castilleja cinerea* and *Arenaria ursina*. However, since the Sugarloaf Ridge complex was found to be occupied by these species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a), these subunits are not considered to have been occupied at the time of listing (Table 1).

Pebble plains in Subunits 11A and 11B are being proposed as critical habitat for *Arenaria ursina* and *Castilleja cinerea* only. They contain the PCEs for both species, are within the geographic range occupied by the species at time of listing, are relatively large pebble plains, and represent the least disturbed pebble plains in this complex. In addition, the *A. ursina* occurrence in the Sugarloaf Ridge complex is the within the southern most pebble plain complex in this designation, is the highest elevation occurrence known for this species, and is considered disjunct from populations in other complexes. The *C. cinerea* occurrence in this complex is morphologically distinctive from populations in other complexes (USFS 2002, p. 58; Bill 2006). These occurrences represent a unique portion of the range of environmental variability for these species and are important for maintaining genetic diversity for the species.

Several unclassified roads occur in or adjacent to Subunits 11A and 11B (USFS 2002, p. 59). USFS has undertaken various actions such as posting signs to keep walkers and vehicles out of sensitive habitat within the Sugarloaf Ridge Complex overall. However, dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sugarloaf Ridge Complex (USFS 2002, pp. 58–59). Special management may be required to protect and maintain the PCEs supported by Subunits 11A and 11B due

to the potential impacts of dispersed recreation and OHV use outside of designated areas and the invasion of nonnative plant species (such as cheatgrass).

Effects of Critical Habitat Designation

Section 7 Consultation

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 species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

Once a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Recent decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of “adverse modification” at 50 CFR 402.02 (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, we determine destruction or adverse modification based on whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service’s issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. “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 jeopardy to the listed

species or 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 certain instances, including where a new species is listed or critical habitat is subsequently designated that may be affected by the Federal action, where 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 with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Arenaria ursina, Castilleja cinerea, and Eriogonum kennedyi var. *austromontanum* and Their Critical Habitat

Jeopardy Standard

The Service applies an analytical framework for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* jeopardy analyses that relies heavily on the importance of core area populations

to the survival and recovery of these species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum will be used to complete section 7(a)(2) analyses for Federal actions affecting critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of critical habitat units for these species is to support viable core area populations.

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

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* include, but are not

limited to the following (please see the "Special Management Considerations or Protection" section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that result in ground disturbance to pebble plains. Such activities could include, but are not limited to: Residential or recreational development, OHV activity, dispersed recreation, new road construction or widening, existing road maintenance, and grazing (such as cattle and burros). These activities could impact pebble plains by damaging or eliminating habitat, altering soil composition due to increased erosion, and allowing nonnative invasive plant species to invade. In addition, changes in the soil composition may lead to cascading changes in the vegetation composition, such as growth of shrub cover that decreases density or eliminates pebble plain species.

(2) Actions that result in alteration of the hydrological regime of the pebble plain habitat. Such activities could include residential or recreational development adjacent to pebble plains, OHV activity, dispersed recreation, new road construction or widening, and existing road maintenance. These activities could alter surface layers and hydrological regime in a manner that promotes loss of clay components of soil matrix necessary to support the growth and reproduction of the pebble plain species.

All of the units and subunits proposed as critical habitat contain features essential to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Federal agencies already consult with us on activities in areas currently occupied by *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* or if these species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of these species.

Exclusions Under Section 4(b)(2) 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. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific

data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors to consider and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to any exclusions we may consider.

We are not aware of any habitat conservation plans under development for *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* on any lands included in this proposal, and the proposed designation does not include any Tribal lands or trust resources. During the development of this proposal, we coordinated with SBNF staff to seek input on the appropriate areas to include in proposed critical habitat that would be essential to *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* on SBNF lands.

We examined the USFS's 2002 Pebble Plain Management Guide (Management Guide), which was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally listed plants, and to improve conditions for Forest Sensitive species occurring in this habitat and identifies the following management goals and actions necessary to reduce impacts to pebble plain habitat: protecting pebble plain habitat throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i).

We also examined the USFS's Revised Land and Resource Management Plans for the Four Southern California Forests, California (Forest Plan) that was approved in September 2005, and the Service's biological opinion that was issued on the Forest Plan on September 15, 2005. While the USFS has implemented many of the actions outlined in the Management Guide and

Forest Plan, we believe ongoing unauthorized activities continue to require special management. Therefore, we are not proposing to exclude any areas under section 4(b)(2) of the Act.

The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, habitat containing essential features for *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* 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. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.fws.gov/carlsbad> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

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 copies of this proposed rule to these peer reviewers copies 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 the comment period 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. 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 (grouping 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? (5) 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, Executive Order 12630,

Executive Order 13211, and Executive Order 12875.

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 comments. The draft economic analysis can be obtained from the Internet Web site at <http://www.fws.gov/carlsbad> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

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

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 (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 under 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 for an additional 60 days. 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. Although this proposed rule to designate critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* is a significant regulatory action under Executive Order 12866, 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. 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.

Due to current public knowledge of the species' protection and the fact that virtually all of the proposed critical habitat is on Federal lands, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the *Arenaria ursina*,

Castilleja cinerea, and *Eriogonum kennedyi* var. *austromontanum* does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI 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 of critical habitat in areas currently occupied by *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species 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 section 7 consultations 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

Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*.

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 Endangered Species Act of 1973, as amended. 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 supporting habitat for *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* that meets the definition of critical habitat. Therefore, designation of critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* has not been proposed on Tribal lands.

References Cited

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

Author(s)

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h), revise the entries for "*Arenaria ursina*", "*Castilleja cinerea*", and "*Eriogonum kennedyi* var. *austromontanum*" under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Arenaria ursina</i>	* Bear Valley sandwort.	* U.S.A. (CA)	* Caryophyllaceae	* T	* 644	* 17.96(a)	* NA
* <i>Castilleja cinerea</i>	* Ash-gray Indian paintbrush.	* U.S.A. (CA)	* Orobanchaceae	* T	* 644	* 17.96(a)	* NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Eriogonum kennedyi</i> var. <i>austromontanum</i> .	Southern mountain wild-buckwheat.	U.S.A. (CA)	Polygonaceae	T	644	17.96(a)	NA
*	*	*	*	*	*	*	*

3. In § 17.96(a), as set forth below:
 a. Add “Family Caryophyllaceae” and “Family Orobanchaceae” in alphabetical order of the family names;
 b. Add a critical habitat entry for “*Arenaria ursina*” under Family Caryophyllaceae and a critical habitat entry for “*Castilleja cinerea*” under Family Orobanchaceae; and
 c. Add a critical habitat entry for “*Eriogonum kennedyi* var. *austromontanum*” in alphabetical order under Family Polygonaceae.

§ 17.96 Critical habitat—plants.

* * * * *
 (a) Flowering plants.
 * * * * *

Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush) and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat). Because all of the critical habitat units for these three species are designated for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), the units are set forth in text and depicted on the maps in the critical habitat entry for that species.

(2) The primary constituent elements of critical habitat for *Arenaria ursina* are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet (1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) The applicable units and subunits of critical habitat for *Arenaria ursina* are 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 8A, 8B, 10, 11A, and 11B in the critical habitat entry for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush).

* * * * *

Family Orobanchaceae: *Castilleja cinerea* (Ash-Gray Indian Paintbrush)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort) and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat). Because all of critical habitat units for these three species are designated for *Castilleja cinerea*, the units are set forth in text and depicted on the maps below in the entry for this species.

(2) The primary constituent elements of critical habitat for *Castilleja cinerea* are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet

(1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal;

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species; and

(iii) The presence of one or more of its known host species such as *Eriogonum kennedyi* var.

austromontanum, *E. k.* var. *kennedyi*, and *E. wrightii* var. *subscaposumum* in pebble plain habitat and species such as *Artemisia tridentata*, *A. nova*, and *E. wrightii* var. *subscaposumum* in pebble plain and non-pebble plain habitat that provide some of the physiological requirements for this species.

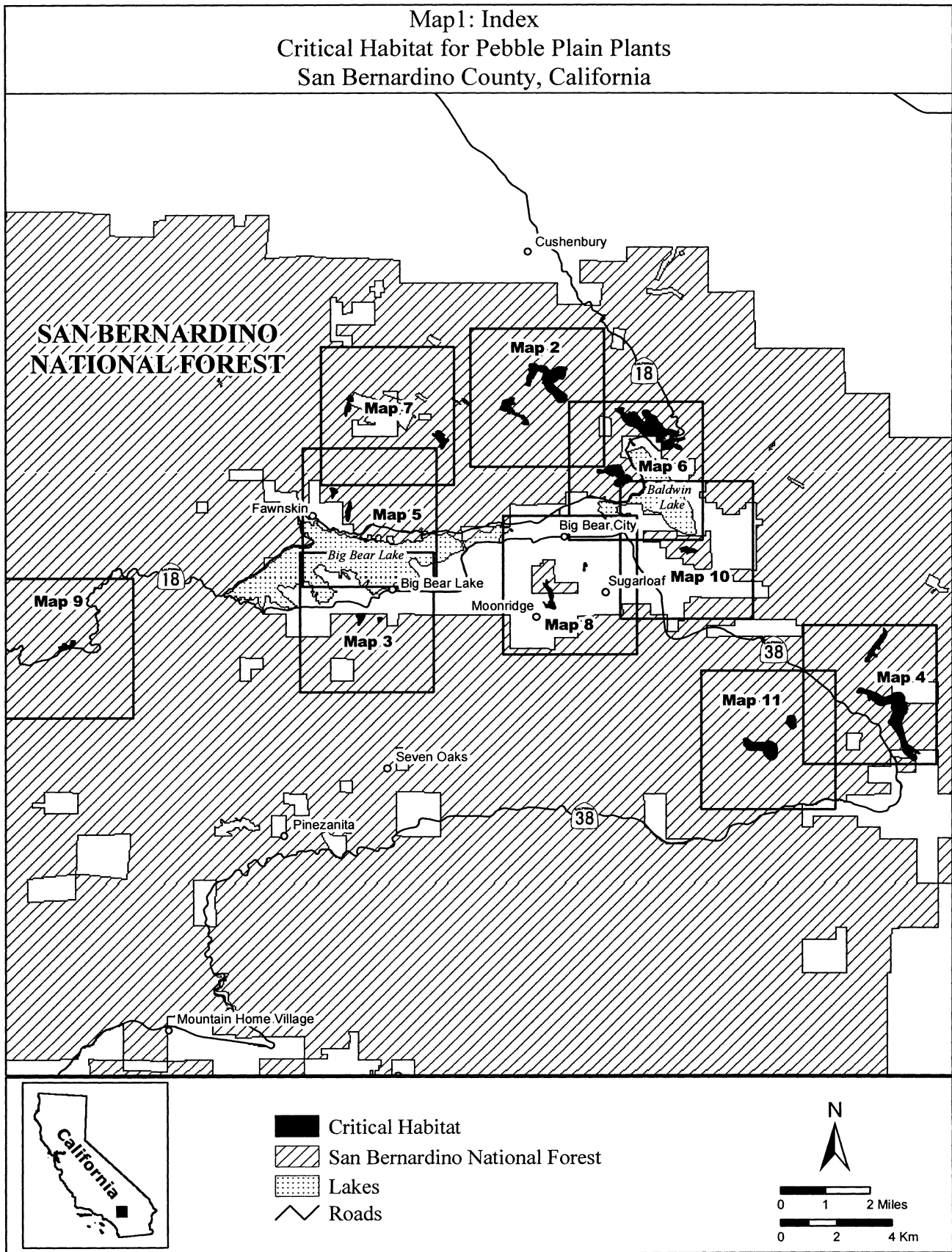
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

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

(5) The applicable units and subunits of critical habitat for *Castilleja cinerea* are 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 4C, 5A, 5B, 5C, 6A, 6B, 7A, 7B, 8A, 8B, 9, 10, 11A, and 11B.

(6) *Note:* Index map of critical habitat units for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort), Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat) (Map 1) follows:

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(7) Unit 1: Arrastre/Union Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Subunit 1A. Land bounded by the following UTM NAD27 coordinates (E,N): 512434, 3795966; 512436,

3795961; 512446, 3795966; 512450, 3795966; 512469, 3795969; 512508, 3795965; 512533, 3795959; 512537, 3795959; 512539, 3795960; 512549, 3795964; 512560, 3795961; 512568, 3795954; 512573, 3795948; 512573, 3795936; 512571, 3795930; 512568, 3795927; 512565, 3795927; 512563, 3795927; 512563, 3795924; 512561, 3795914; 512556, 3795904; 512555, 3795903; 512554, 3795901; 512548, 3795879; 512535, 3795835; 512544, 3795791; 512546, 3795790; 512554, 3795787; 512568, 3795779; 512576, 3795774; 512582, 3795771; 512592, 3795764; 512595, 3795753; 512595, 3795747; 512591, 3795739; 512584, 3795732; 512581, 3795731; 512575, 3795727; 512569, 3795727; 512560, 3795728; 512552, 3795733; 512544, 3795739; 512542, 3795740; 512541, 3795739; 512540, 3795738; 512525, 3795717; 512469, 3795694; 512447, 3795680; 512445, 3795679; 512427, 3795653; 512428, 3795649; 512450, 3795617; 512476, 3795588; 512476, 3795588; 512504, 3795564; 512514, 3795552; 512541, 3795525; 512546, 3795509; 512548, 3795508; 512553, 3795501; 512554, 3795500; 512558, 3795490; 512566, 3795479; 512573, 3795468; 512584, 3795444; 512586, 3795433; 512588, 3795412; 512594, 3795398; 512601, 3795395; 512607, 3795395; 512627, 3795401; 512632, 3795400; 512641, 3795402; 512654, 3795400; 512675, 3795405; 512691, 3795401; 512699, 3795397; 512703, 3795397; 512707, 3795394; 512715, 3795393; 512718, 3795391; 512730, 3795388; 512740, 3795378; 512742, 3795374; 512746, 3795371; 512770, 3795357; 512806, 3795330; 512815, 3795317; 512837, 3795311; 512856, 3795327; 512872, 3795330; 512883, 3795343; 512886, 3795339; 512900, 3795331; 512905, 3795319; 512909, 3795312; 512913, 3795307; 512913, 3795306; 512913, 3795305; 512914, 3795303; 512920, 3795287; 512924, 3795286; 512935, 3795275; 512938, 3795270; 512944, 3795264; 512948, 3795258; 512953, 3795250; 512955, 3795245; 512954, 3795239; 512953, 3795233; 512949, 3795225; 512946, 3795221; 512949, 3795219; 512976, 3795203; 512998, 3795196; 513006, 3795189; 513014, 3795187; 513019, 3795183; 513030, 3795176; 513031, 3795173; 513048, 3795163; 513049, 3795158; 513051, 3795154; 513053,

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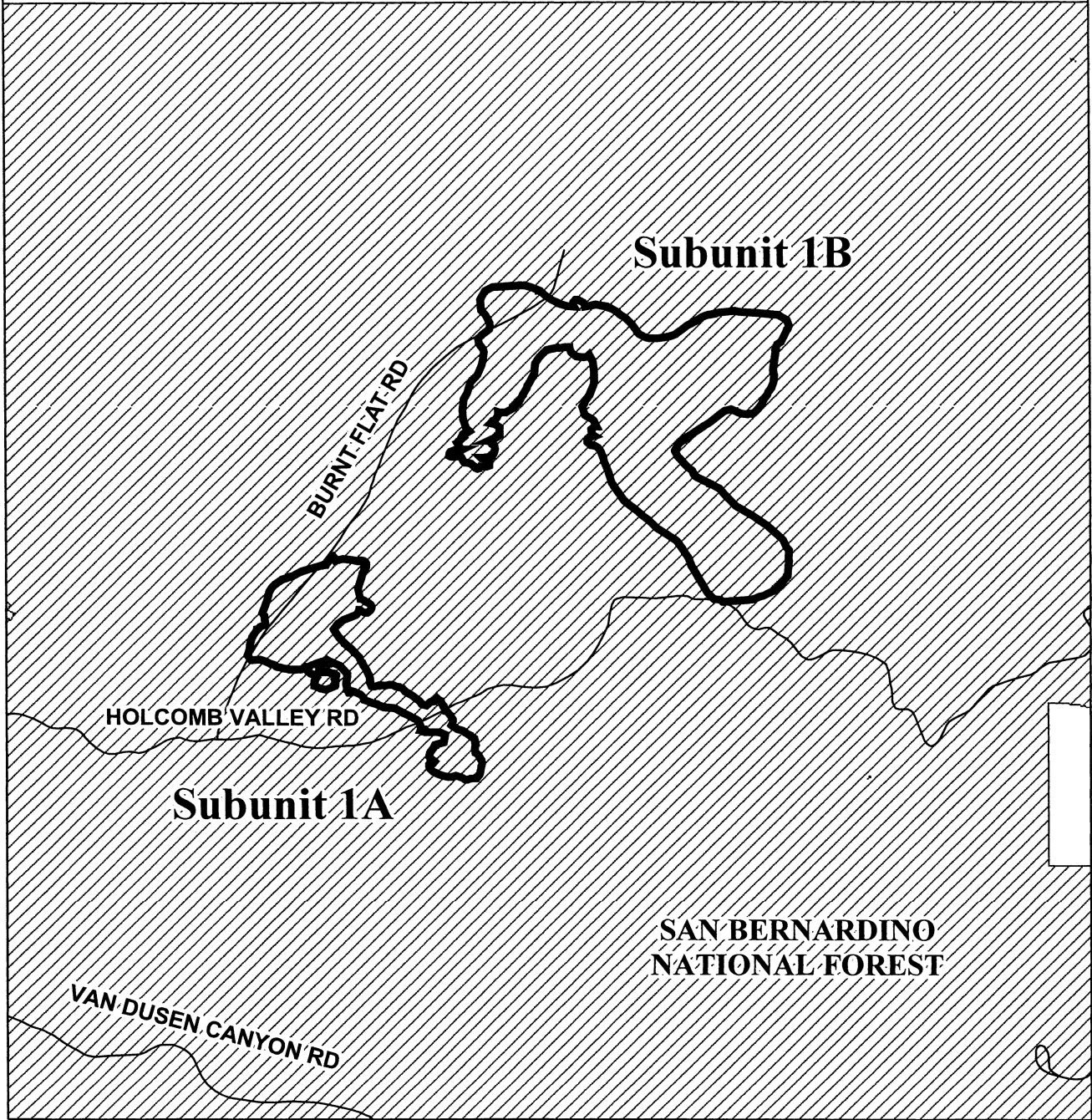
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

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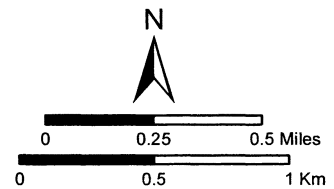
(iii) Note: Map of Unit 1, Subunits 1A and 1B (Map 2), follows:

BILLING CODE 4310-55-P

Map 2
Critical Habitat for Pebble Plain Plants
Unit 1: Subunits 1A and 1B, San Bernardino County, California



-  Critical Habitat
-  San Bernardino National Forest
-  Roads



(8) *Unit 2*: Big Bear Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear Lake.

(i) Subunit 2A. Land bounded by the following UTM NAD27 coordinates (E, N): 506933, 3788172; 506933, 3788172; 507055, 3788172; 507058, 3788169; 507058, 3788169; 507166, 3788172; 507208, 3788170; 507213, 3788165; 507215, 3788157; 507213, 3788134; 507205, 3788104; 507197, 3788062; 507176, 3788009; 507151, 3787955; 507123, 3787915; 507111, 3787897; 507087, 3787865; 507069, 3787840; 507045, 3787831; 507043, 3787831; 507040, 3787820; 507041, 3787818; 507036, 3787807; 507036, 3787807; 507036, 3787806; 507036, 3787806; 507025, 3787783; 507009, 3787755;

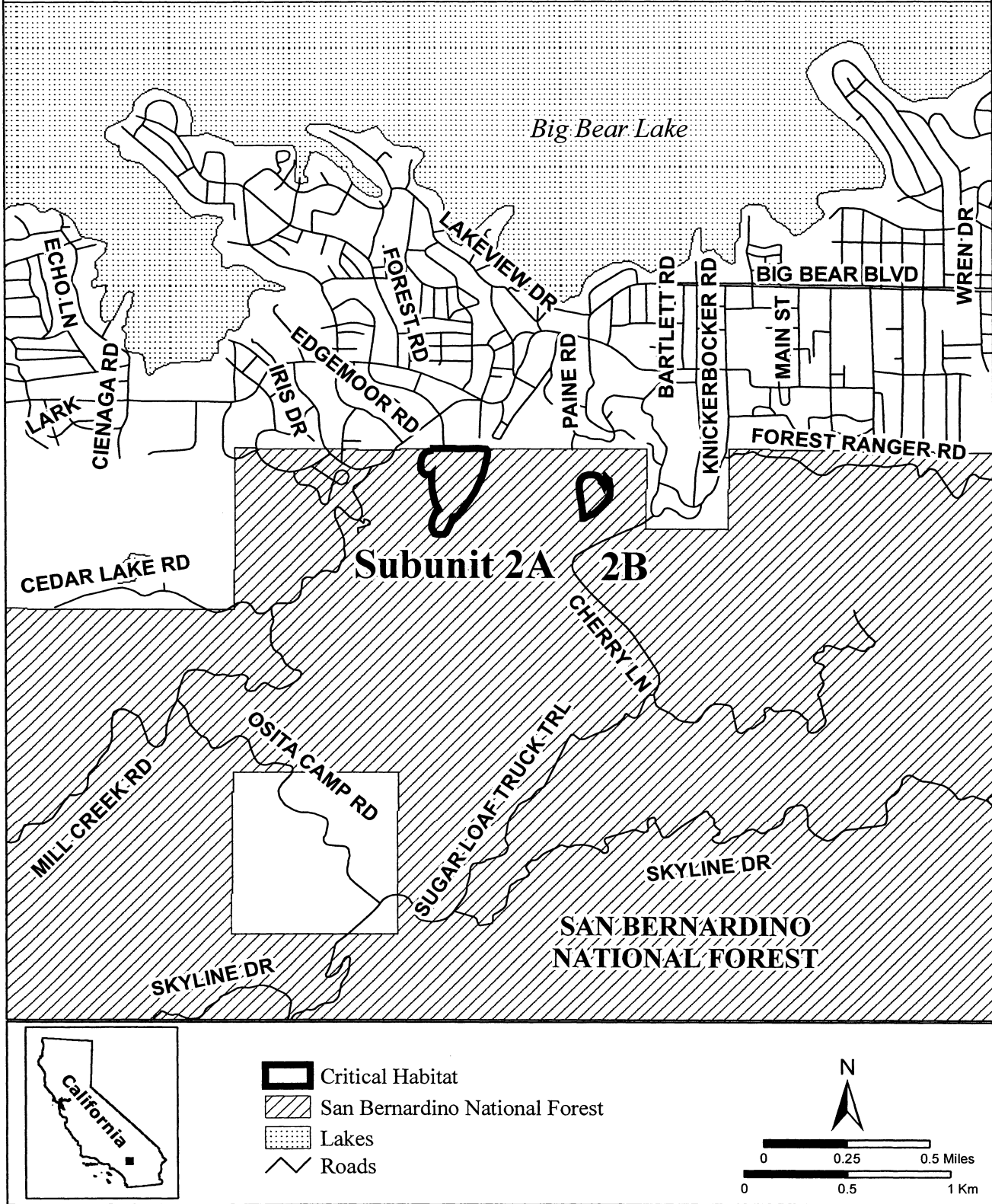
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(ii) Subunit 2B. Land bounded by the following UTM NAD27 coordinates (E, N): 507777, 3788001; 507780, 3787993; 507783, 3788009; 507791, 3788029; 507801, 3788015; 507806, 3788013;

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(iii) *Note*: Map of Unit 2, Subunits 2A and 2B (Map 3), follows:

Map 3
Critical Habitat for Pebble Plain Plants
Unit 2: Subunits 2A and 2B, San Bernardino County, California



(9) *Unit 3*: Broom Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Onyx Peak.

(i) Subunit 3A. Land bounded by the following UTM NAD27 coordinates

(E,N): 525644, 3786958; 525650, 3786943; 525657, 3786886; 525619, 3786867; 525580, 3786879; 525577, 3786894; 525574, 3786905; 525542, 3786911; 525498, 3786892; 525473, 3786847; 525450, 3786817; 525440, 3786790; 525442, 3786753; 525491, 3786702; 525528, 3786682; 525545, 3786658; 525552, 3786616; 525518, 3786601; 525472, 3786618; 525418, 3786655; 525374, 3786645; 525352, 3786596; 525312, 3786569; 525288, 3786552; 525285, 3786508; 525261, 3786459; 525229, 3786435; 525185, 3786425; 525148, 3786423; 525114, 3786442; 525107, 3786462; 525112, 3786503; 525121, 3786543; 525151, 3786587; 525190, 3786606; 525202, 3786658; 525246, 3786724; 525278, 3786795; 525327, 3786873; 525374, 3786910; 525377, 3786968; 525396, 3786994; 525428, 3787032; 525469, 3787091; 525533, 3787152; 525580, 3787209; 525619, 3787254; 525644, 3787311; 525657, 3787355; 525688, 3787387; 525733, 3787419; 525746, 3787419; 525771, 3787444; 525771, 3787508; 525777, 3787565; 525771, 3787616; 525777, 3787641; 525815, 3787629; 525834, 3787597; 525860, 3787552; 525898, 3787527; 525911, 3787495; 525904, 3787457; 525904, 3787425; 525892, 3787368; 525860, 3787324; 525828, 3787260; 525784, 3787203; 525777, 3787152; 525765, 3787127; 525733, 3787121; 525688, 3787076; 525644, 3787019; 525638, 3786974; 525644, 3786958.

(ii) Subunit 3B. Land bounded by the following UTM NAD27 coordinates

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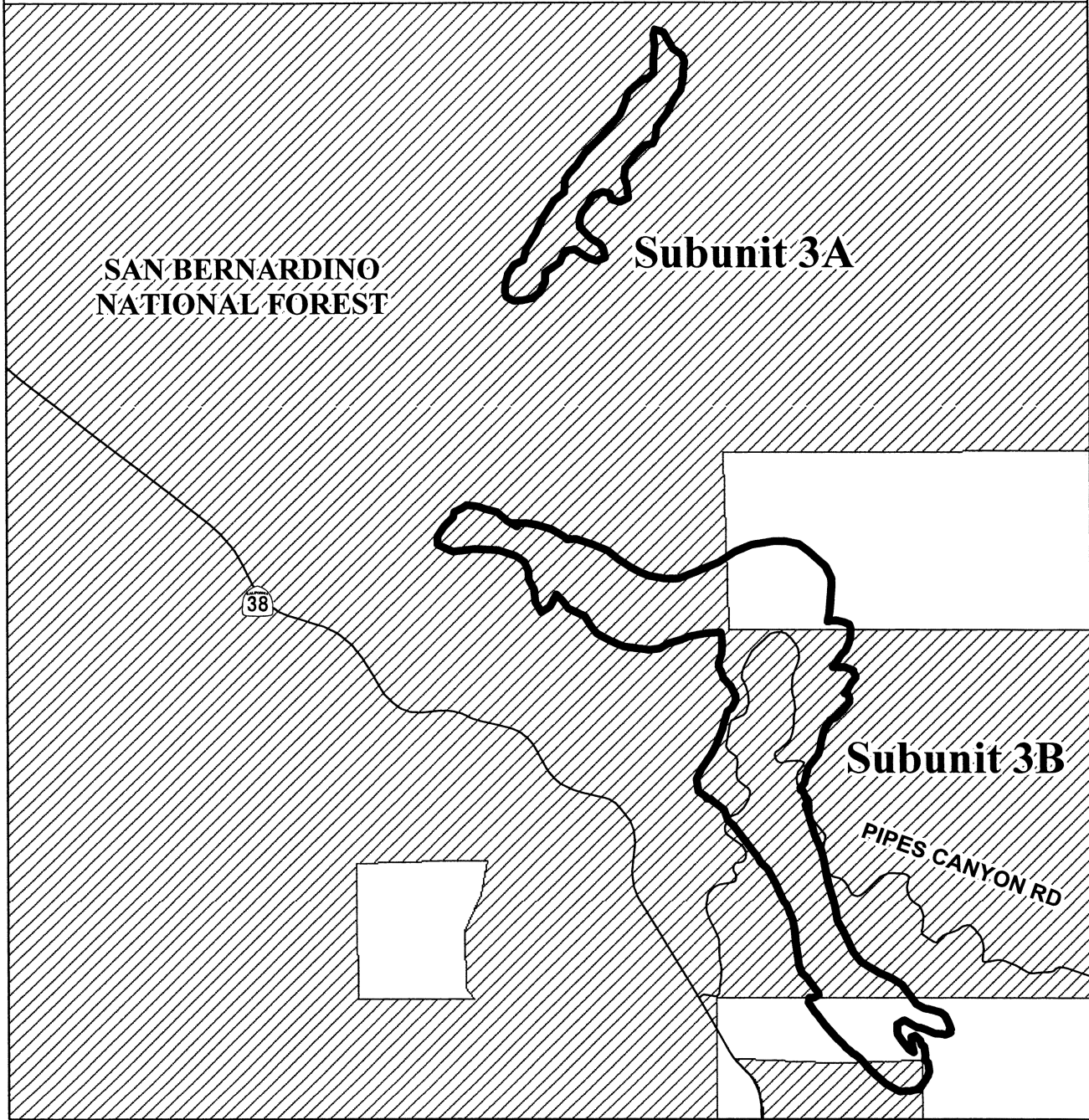
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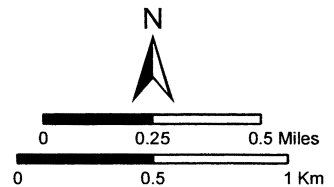
(iii) *Note*: Map of Unit 3, Subunits 3A and 3B (Map 4), follows:

BILLING CODE 4310-55-P

Map 4
Critical Habitat for Pebble Plain Plants
Unit 3: Subunits 3A and 3B, San Bernardino County, California



-  Critical Habitat
-  San Bernardino National Forest
-  Roads



(10) *Unit 4*: Fawnskin, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

(i) Subunit 4A. Land bounded by the following UTM NAD27 coordinates (E, N): 506020, 3792309; 506020, 3792303; 506001, 3792335; 506014, 3792404; 506014, 3792468; 506001, 3792538; 505982, 3792557; 505963, 3792595; 505950, 3792639; 505937, 3792671; 505944, 3792703; 505994, 3792722; 506039, 3792722; 506109, 3792684; 506147, 3792665; 506191, 3792627; 506229, 3792582; 506217, 3792525; 506166, 3792493; 506121, 3792462;

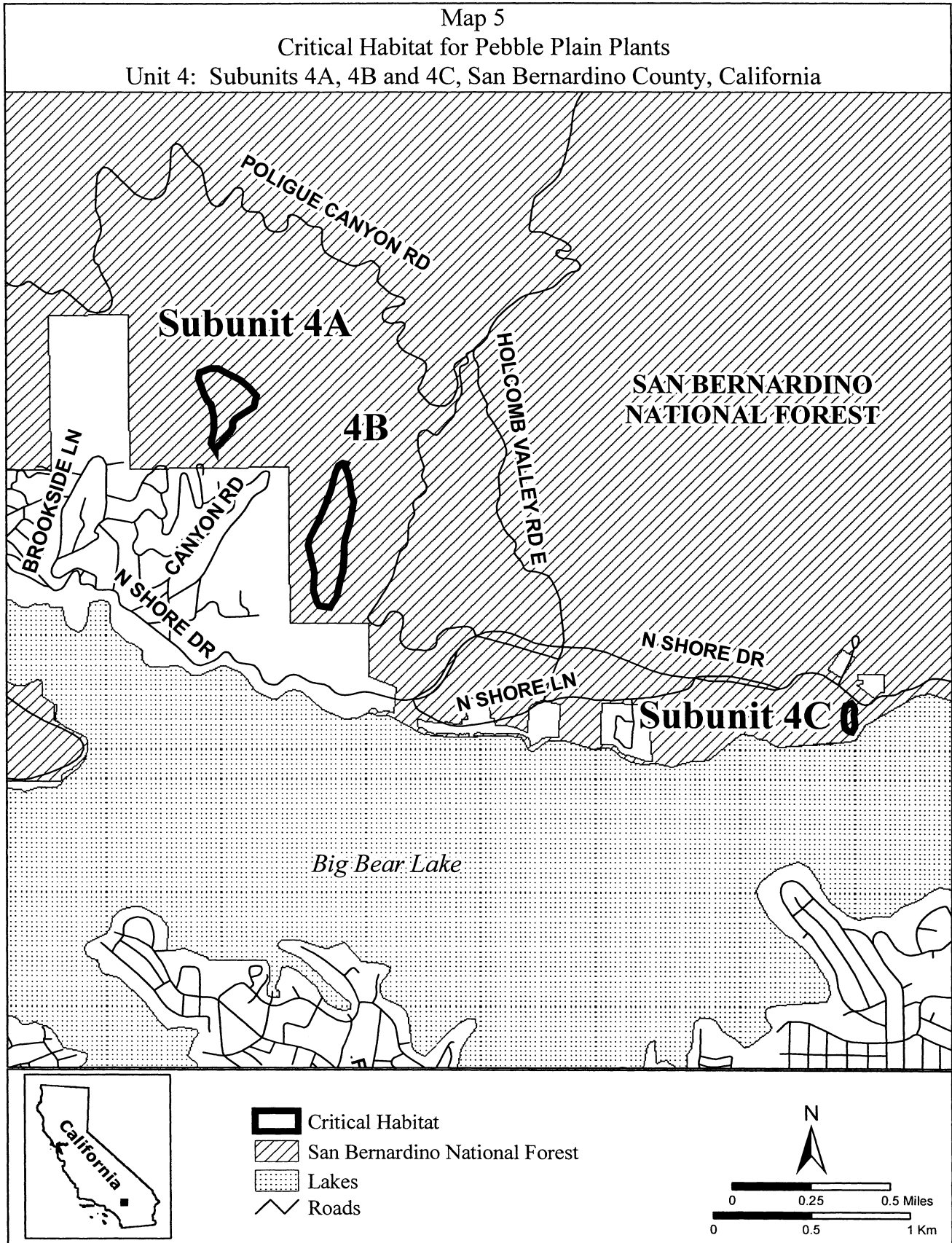
506109, 3792442; 506109, 3792417; 506096, 3792392; 506077, 3792373; 506052, 3792335; 506020, 3792309.

(ii) Subunit 4B. Land bounded by the following UTM NAD27 coordinates (E, N): 506636, 3791541; 506604, 3791490; 506547, 3791496; 506534, 3791515; 506515, 3791579; 506522, 3791661; 506502, 3791757; 506490, 3791807; 506502, 3791852; 506547, 3791941; 506579, 3792017; 506610, 3792100; 506629, 3792182; 506649, 3792220; 506668, 3792233; 506687, 3792227; 506680, 3792214; 506693, 3792182; 506706, 3792138; 506712, 3792074; 506725, 3792036; 506706, 3791928;

506680, 3791846; 506674, 3791801; 506674, 3791744; 506668, 3791674; 506655, 3791623; 506636, 3791541.

(iii) Subunit 4C. Land bounded by the following UTM NAD27 coordinates (E, N): 509277, 3790880; 509264, 3790854; 509248, 3790857; 509229, 3790873; 509223, 3790908; 509223, 3790943; 509226, 3790972; 509232, 3790991; 509261, 3791003; 509273, 3790988; 509277, 3790969; 509273, 3790943; 509277, 3790908; 509277, 3790880.

(iv) *Note*: Map of Unit 4, Subunits 4A, 4B, and 4C (Map 5), follows:



(11) *Unit 5*: Gold Mountain, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Subunit 5A. Land bounded by the following UTM NAD27 coordinates (E, N): 516297, 3793523; 516342, 3793514;

516374, 3793491; 516405, 3793447; 516412, 3793390; 516424, 3793352; 516421, 3793333; 516437, 3793335; 516450, 3793331; 516463, 3793309; 516466, 3793281; 516465, 3793279; 516475, 3793268; 516469, 3793227; 516447, 3793207; 516421, 3793189; 516380, 3793166; 516345, 3793154; 516311, 3793139; 516272, 3793103; 516244, 3793081; 516215, 3793077; 516187, 3793090; 516206, 3793135; 516202, 3793144; 516207, 3793149; 516196, 3793141; 516172, 3793137; 516163, 3793137; 516157, 3793137; 516154, 3793135; 516147, 3793133; 516132, 3793125; 516128, 3793123; 516109, 3793112; 516096, 3793112; 516095, 3793112; 516081, 3793111; 516065, 3793105; 516045, 3793109; 516017, 3793126; 516016, 3793127; 516006, 3793132; 516003, 3793145; 515998, 3793153; 515995, 3793166; 515988, 3793165; 515980, 3793163; 515971, 3793161; 515961, 3793161; 515956, 3793162; 515943, 3793162; 515926, 3793178; 515919, 3793180; 515912, 3793182; 515905, 3793188; 515899, 3793193; 515893, 3793198; 515884, 3793209; 515881, 3793219; 515879, 3793220; 515793, 3793243; 515732, 3793233; 515685, 3793220; 515647, 3793211; 515577, 3793211; 515536, 3793230; 515507, 3793261; 515501, 3793303; 515501, 3793335;

515542, 3793357; 515586, 3793360; 515625, 3793357; 515666, 3793341; 515707, 3793335; 515761, 3793338; 515809, 3793354; 515828, 3793376; 515851, 3793399; 515851, 3793403; 515848, 3793408; 515845, 3793414; 515844, 3793417; 515842, 3793424; 515842, 3793431; 515843, 3793438; 515839, 3793448; 515845, 3793446; 515849, 3793444; 515856, 3793439; 515860, 3793433; 515872, 3793430; 515873, 3793429; 515879, 3793443; 515901, 3793468; 515904, 3793468; 515910, 3793468; 515917, 3793461; 515921, 3793461; 515935, 3793473; 515980, 3793495; 516015, 3793501; 516082, 3793514; 516132, 3793514; 516212, 3793520; 516262, 3793527; 516297, 3793523.

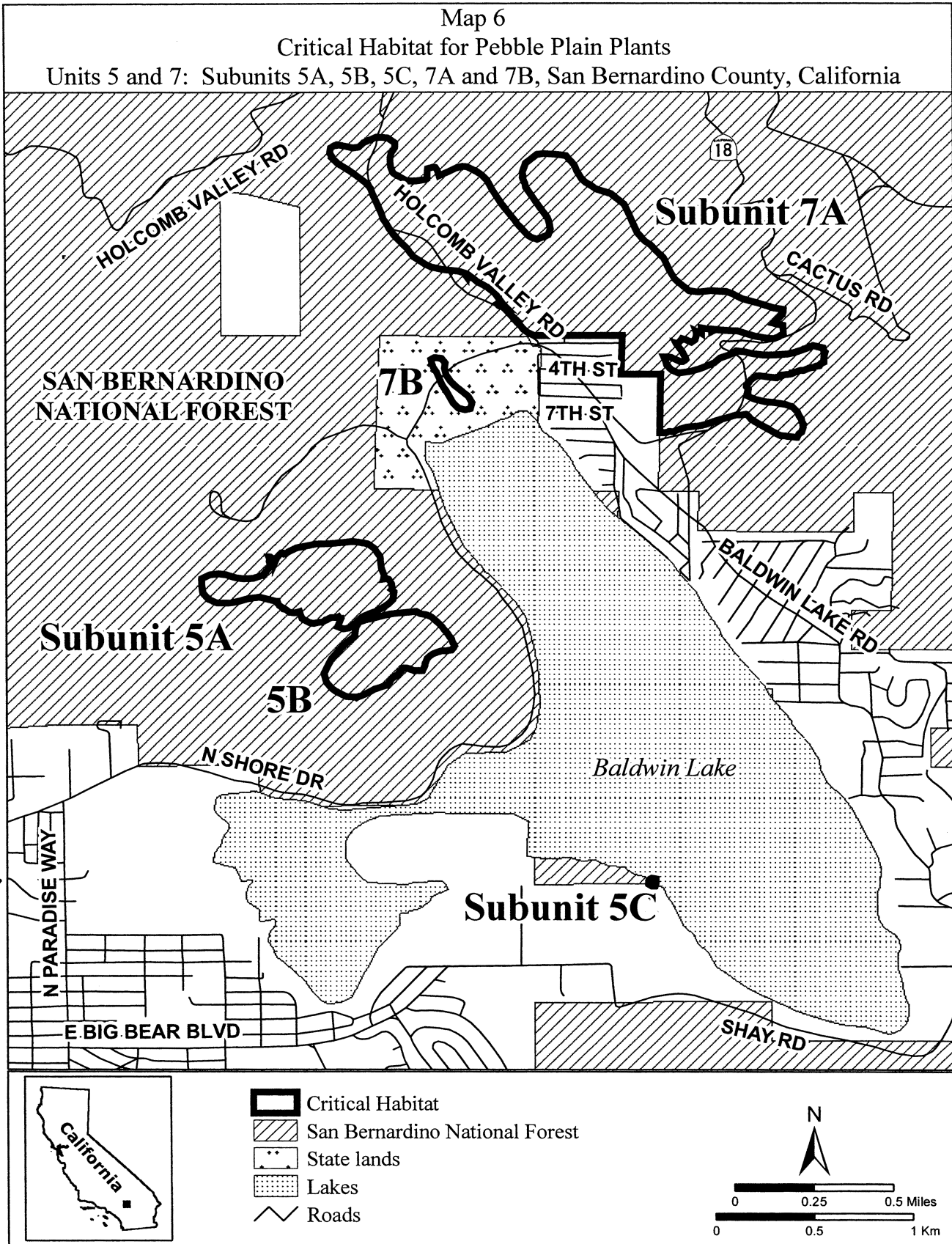
(ii) Subunit 5B. Land bounded by the following UTM NAD27 coordinates (E, N): 516768, 3792969; 516744, 3792965;

516720, 3792965; 516705, 3792961; 516685, 3792953; 516673, 3792949; 516652, 3792935; 516645, 3792926; 516642, 3792923; 516641, 3792918; 516633, 3792898; 516633, 3792891; 516633, 3792891; 516623, 3792868; 516621, 3792864; 516585, 3792863; 516581, 3792865; 516578, 3792862; 516562, 3792870; 516560, 3792871; 516556, 3792871; 516545, 3792873; 516540, 3792875; 516521, 3792875; 516510, 3792864; 516502, 3792855; 516496, 3792848; 516490, 3792840; 516477, 3792833; 516463, 3792824; 516461, 3792822; 516450, 3792804; 516447, 3792800; 516438, 3792788; 516423, 3792784; 516410, 3792780; 516377, 3792769; 516375, 3792768; 516364, 3792763; 516319, 3792740;

516318, 3792740; 516311, 3792737; 516304, 3792731; 516298, 3792731; 516283, 3792725; 516279, 3792728; 516271, 3792727; 516229, 3792731; 516176, 3792758; 516157, 3792773; 516130, 3792803; 516127, 3792815; 516119, 3792849; 516138, 3792891; 516157, 3792925; 516180, 3792952; 516203, 3792979; 516233, 3793009; 516268, 3793036; 516274, 3793041; 516275, 3793055; 516282, 3793087; 516298, 3793112; 516329, 3793125; 516364, 3793131; 516453, 3793154; 516520, 3793160; 516590, 3793166; 516610, 3793155; 516641, 3793150; 516668, 3793139; 516694, 3793116; 516717, 3793093; 516732, 3793074; 516748, 3793055; 516759, 3793039; 516770, 3793024; 516772, 3793012; 516775, 3793010; 516778, 3793004; 516778, 3793004; 516780, 3793001; 516784, 3792993; 516783, 3792989; 516783, 3792987; 516783, 3792987; 516782, 3792985; 516780, 3792983; 516780, 3792981; 516777, 3792979; 516777, 3792978; 516775, 3792975; 516773, 3792971; 516772, 3792971; 516772, 3792971; 516771, 3792971; 516769, 3792970; 516768, 3792969.

(iii) Subunit 5C. Land bounded by the following UTM NAD27 coordinates (E,N): 517804, 3791769; 517801, 3791754; 517782, 3791754; 517766, 3791765; 517766, 3791780; 517774, 3791792; 517782, 3791796; 517804, 3791792; 517804, 3791769.

(iv) *Note*: Map of Unit 5, Subunits 5A, 5B, 5C, 7A, and 7B (Map 6), follows:



(12) *Unit 6*: Holcomb Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

(i) Subunit 6A. Land bounded by the following UTM NAD27 coordinates (E, N): 506727, 3796049; 506738, 3796035; 506743, 3796031; 506761, 3796001; 506765, 3795985; 506767, 3795981; 506783, 3795942; 506785, 3795915; 506787, 3795910; 506790, 3795878; 506784, 3795872; 506782, 3795867; 506779, 3795843; 506773, 3795840; 506772, 3795835; 506767, 3795833; 506752, 3795821; 506730, 3795818; 506689, 3795818; 506663, 3795823; 506634, 3795825; 506624, 3795837; 506612, 3795847; 506606, 3795854; 506597, 3795862; 506571, 3795881; 506571, 3795883; 506557, 3795893; 506544, 3795910; 506529, 3795930; 506530, 3795930; 506528, 3795934; 506565, 3795933; 506565, 3795935; 506574, 3795964; 506600, 3795986; 506635, 3796001; 506633, 3796023; 506631, 3796041; 506632, 3796041; 506644, 3796045; 506663, 3796042; 506681, 3796042; 506707, 3796045; 506715, 3796049; 506727, 3796049. Land bounded by the following UTM NAD27 coordinates (E, N): 506666, 3795511; 506661, 3795481; 506647, 3795471; 506625, 3795463; 506622, 3795462; 506612, 3795476; 506604, 3795484; 506602, 3795500; 506591, 3795480; 506584, 3795455; 506569,

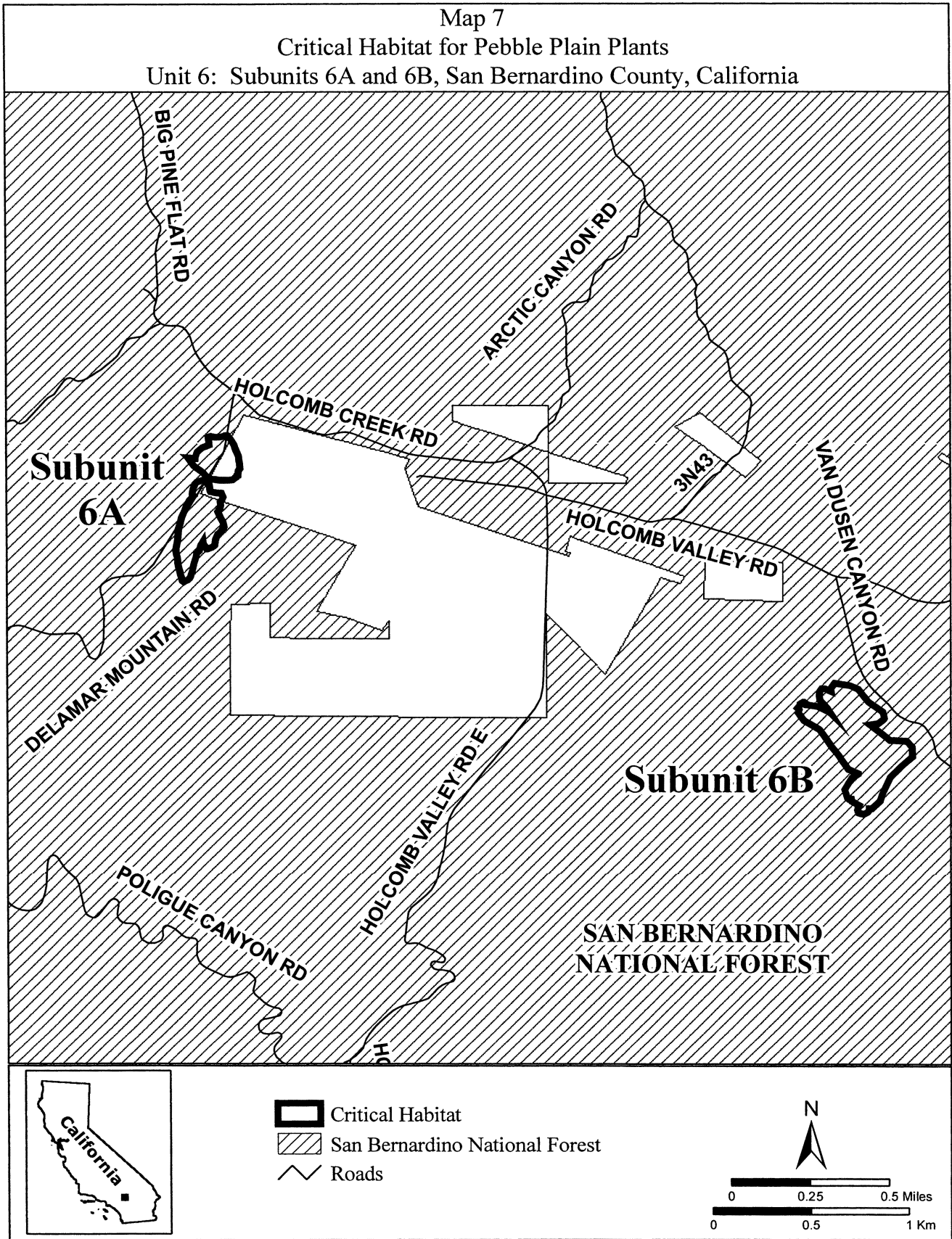
3795435; 506569, 3795428; 506562, 3795409; 506556, 3795389; 506547, 3795351; 506537, 3795317; 506532, 3795310; 506524, 3795303; 506512, 3795298; 506504, 3795291; 506495, 3795298; 506492, 3795307; 506487, 3795328; 506483, 3795347; 506477, 3795372; 506472, 3795393; 506470, 3795416; 506466, 3795433; 506463, 3795457; 506468, 3795488; 506472, 3795510; 506474, 3795533; 506477, 3795567; 506485, 3795593; 506494, 3795624; 506507, 3795657; 506517, 3795687; 506534, 3795715; 506555, 3795736; 506549, 3795747; 506552, 3795771; 506564, 3795799; 506572, 3795807; 506600, 3795819; 506616, 3795811; 506617, 3795807; 506620, 3795805; 506635, 3795794; 506639, 3795763; 506641, 3795759; 506670, 3795753; 506695, 3795750; 506705, 3795731; 506695, 3795712; 506690, 3795703; 506692, 3795687; 506687, 3795672; 506679, 3795655; 506689, 3795626; 506705, 3795598; 506708, 3795575; 506689, 3795550; 506677, 3795540; 506676, 3795537; 506666, 3795511.

(ii) Subunit 6B. Land bounded by the following UTM NAD27 coordinates (E, N): 509943, 3794740; 509997, 3794674; 510070, 3794623; 510076, 3794591; 510073, 3794585; 510044, 3794562; 510003, 3794556; 510054, 3794518; 510105, 3794477; 510124, 3794477; 510194, 3794473; 510219, 3794442;

510222, 3794391; 510168, 3794347; 510105, 3794283; 510067, 3794201; 510054, 3794162; 510013, 3794124; 509999, 3794124; 509999, 3794118; 509996, 3794110; 509991, 3794106; 509987, 3794102; 509981, 3794099; 509975, 3794097; 509968, 3794095; 509961, 3794096; 509955, 3794096; 509950, 3794098; 509946, 3794101; 509940, 3794109; 509940, 3794115; 509940, 3794122; 509943, 3794131; 509947, 3794139; 509911, 3794159; 509908, 3794173; 509894, 3794173; 509886, 3794181; 509874, 3794221; 509894, 3794256; 509914, 3794284; 509943, 3794302; 509943, 3794305; 509893, 3794327; 509858, 3794375; 509839, 3794404; 509807, 3794445; 509782, 3794480; 509747, 3794531; 509668, 3794579; 509639, 3794617; 509643, 3794633; 509635, 3794642; 509648, 3794660; 509649, 3794664; 509664, 3794674; 509668, 3794674; 509674, 3794667; 509680, 3794664; 509682, 3794659; 509737, 3794651; 509797, 3794623; 509800, 3794620; 509787, 3794641; 509771, 3794660; 509747, 3794684; 509743, 3794708; 509747, 3794731; 509755, 3794743; 509775, 3794743; 509791, 3794735; 509806, 3794729; 509803, 3794743; 509822, 3794772; 509902, 3794759; 509943, 3794740.

(iii) *Note*: Unit 6, Subunits 6A and 6B (Map 7), follows:

BILLING CODE 4310-55-P



(13) *Unit 7*: North Baldwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Subunit 7A. Land bounded by the following UTM NAD27 coordinates (E, N): 516160, 3795525; 516163, 3795551;

516182, 3795563; 516194, 3795563; 516198, 3795566; 516240, 3795559; 516278, 3795551; 516308, 3795555; 516331, 3795578; 516396, 3795605; 516406, 3795603; 516415, 3795605; 516453, 3795601; 516491, 3795578; 516491, 3795574; 516491, 3795551; 516472, 3795525; 516466, 3795501; 516465, 3795486; 516468, 3795452; 516480, 3795422; 516486, 3795415; 516518, 3795399; 516552, 3795379; 516598, 3795380; 516649, 3795388; 516655, 3795391; 516654, 3795425; 516658, 3795442; 516685, 3795452; 516698, 3795449; 516708, 3795431; 516716, 3795406; 516765, 3795429; 516807, 3795448; 516810, 3795448; 516834, 3795456; 516857, 3795452; 516906, 3795429; 516933, 3795410; 516960, 3795383; 516971, 3795361; 516986, 3795334; 517009, 3795299; 517032, 3795262; 517063, 3795223; 517097, 3795181; 517110, 3795163; 517131, 3795140; 517165, 3795101; 517184, 3795090; 517207, 3795083; 517211, 3795082; 517269, 3795104; 517278, 3795133; 517272, 3795170; 517264, 3795193; 517230, 3795239; 517196, 3795288; 517154, 3795349; 517150, 3795370; 517146, 3795376; 517139, 3795399; 517141, 3795414; 517139, 3795425; 517146, 3795448; 517154, 3795471; 517211, 3795517; 517245, 3795521; 517314, 3795517; 517360, 3795509; 517381, 3795485; 517386, 3795479; 517388, 3795476; 517402, 3795460; 517413, 3795433; 517440, 3795387; 517460, 3795371; 517489, 3795353; 517506, 3795341; 517520, 3795334; 517584, 3795315; 517611, 3795292; 517653, 3795261; 517672, 3795219; 517699, 3795159; 517718, 3795115; 517749, 3795078; 517759, 3795070; 517786, 3795052; 517809, 3795029; 517840, 3794999; 517841, 3794997; 517851, 3794987; 517882, 3794923; 517908, 3794881; 517917, 3794871; 517939, 3794854; 517981, 3794819; 518023, 3794812; 518038, 3794812; 518095, 3794819; 518152, 3794816; 518155, 3794815; 518171, 3794816; 518202, 3794804; 518251, 3794778; 518339, 3794755; 518411, 3794732; 518461, 3794724; 518461, 3794713; 518457, 3794698; 518442, 3794683; 518439, 3794680; 518438, 3794679; 518415, 3794652; 518458, 3794642; 518462, 3794598; 518443, 3794587; 518438, 3794583; 518413, 3794573; 518371, 3794577; 518322, 3794586; 518279, 3794597;

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(ii) Subunit 7B. Land bounded by the following UTM NAD27 coordinates (E, N): 516869, 3794211; 516844, 3794205; 516809, 3794214; 516783, 3794239; 516764, 3794271; 516749, 3794300; 516733, 3794325; 516720, 3794347; 516710, 3794376; 516695, 3794405; 516682, 3794424; 516672, 3794449; 516669, 3794465; 516688, 3794475; 516723, 3794471; 516742, 3794449; 516739, 3794421; 516745, 3794385; 516771, 3794351; 516793, 3794329; 516822, 3794306; 516860, 3794275; 516879, 3794243; 516869, 3794211.

(iii) *Note*: Map of Unit 7, Subunit 7A and 7B (Map 6), is provided at paragraph (11)(iv) of this entry.

(14) *Unit 8*, Sawmill, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear City and Moonridge.

(i) Subunit 8A. Land bounded by the following UTM NAD27 coordinates (E, N): 513776, 3789263; 513753, 3789217; 513753, 3789214; 513750, 3789205; 513748, 3789194; 513745, 3789182; 513744, 3789171; 513744, 3789168;

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 513798, 3789111; 513804, 3789105;
 513812, 3789102; 513826, 3789091;
 513836, 3789093; 513846, 3789090;
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 513906, 3789010; 513913, 3789005;
 513913, 3789001; 513918, 3788993;
 513918, 3788973; 513923, 3788961;
 513919, 3788942; 513926, 3788919;
 513935, 3788882; 513948, 3788850;
 513957, 3788824; 513964, 3788796;
 513957, 3788729; 513945, 3788701;
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 513948, 3788599; 513964, 3788577;
 513986, 3788561; 513992, 3788542;
 513999, 3788507; 514008, 3788472;
 514021, 3788448; 514027, 3788437;
 514027, 3788415; 514030, 3788373;
 514030, 3788345; 514027, 3788326;
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 513951, 3788323; 513916, 3788335;
 513884, 3788342; 513850, 3788351;
 513821, 3788367; 513802, 3788380;
 513767, 3788383; 513764, 3788382;
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 513678, 3788395; 513653, 3788442;
 513650, 3788468; 513649, 3788469;
 513634, 3788501; 513611, 3788529;
 513596, 3788545; 513592, 3788564;
 513592, 3788573; 513608, 3788586;
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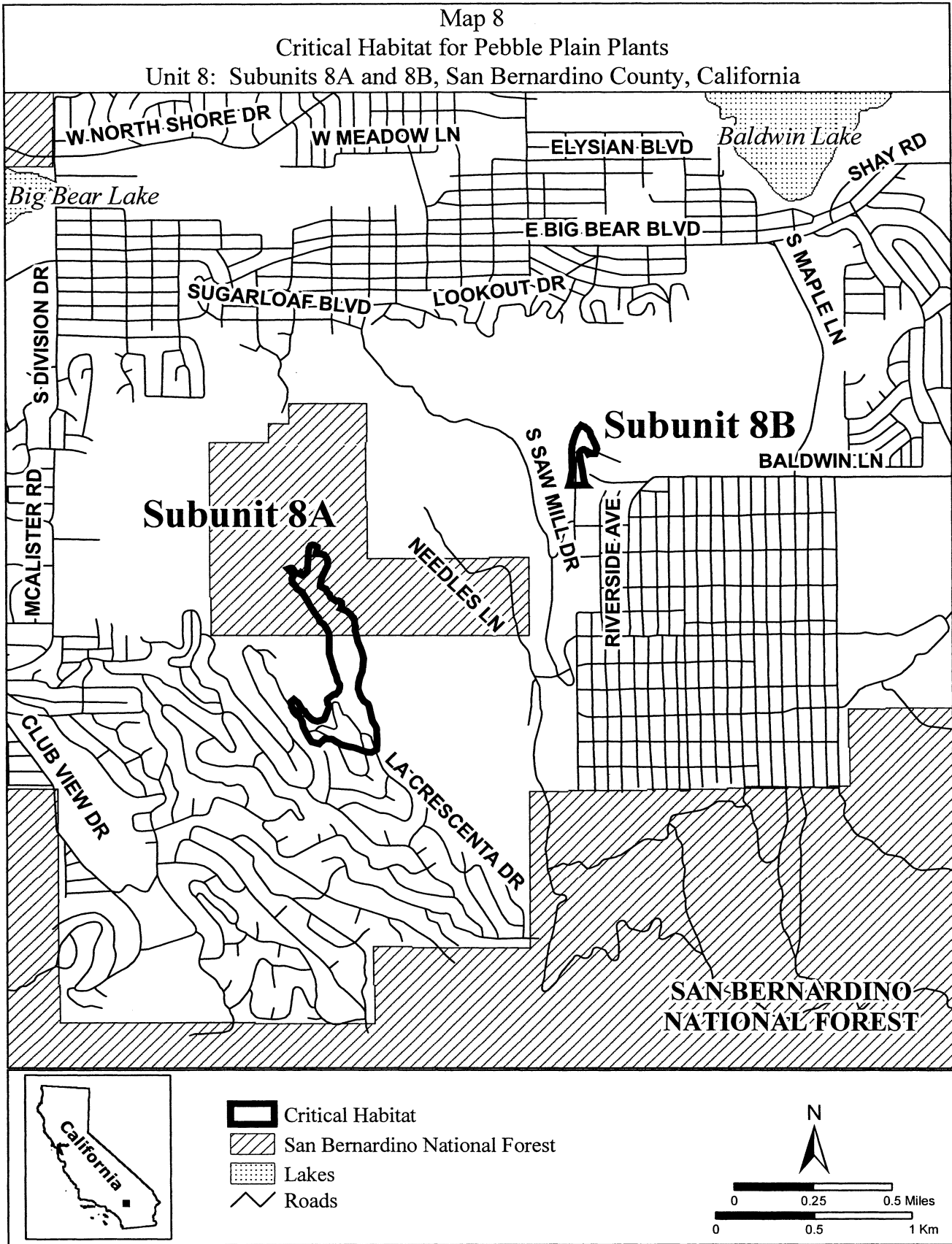
513697, 3788485; 513704, 3788479;
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 513779, 3788566; 513777, 3788572;
 513775, 3788579; 513777, 3788585;
 513784, 3788591; 513809, 3788609;
 513815, 3788611; 513820, 3788612;
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 513811, 3788742; 513789, 3788818;
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 513789, 3788923; 513776, 3788948;
 513761, 3788973; 513742, 3788986;
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 513652, 3789137; 513648, 3789140;
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(ii) Subunit 8B. Land bounded by the following UTM NAD27 coordinates (E, N): 515098, 3789689; 515095, 3789689; 515057, 3789689; 515014, 3789689; 515020, 3789706; 515021, 3789719; 515031, 3789764; 515027, 3789815; 515027, 3789875; 515029, 3789884; 515029, 3789895; 515034, 3789907; 515034, 3789909; 515035, 3789912; 515037, 3789923; 515053, 3789964; 515054, 3789966; 515058, 3789977; 515063, 3789983; 515066, 3789986; 515069, 3789988; 515077, 3789997; 515092, 3789990; 515094, 3789989; 515104, 3789979; 515113, 3789974; 515120, 3789962; 515128, 3789941; 515137, 3789925; 515140, 3789915; 515142, 3789911; 515153, 3789887; 515153, 3789881; 515156, 3789875; 515148, 3789851; 515132, 3789851; 515116, 3789851; 515113, 3789850; 515104, 3789865; 515098, 3789869; 515091, 3789873; 515089, 3789873; 515077, 3789867; 515066, 3789856; 515069, 3789834; 515073, 3789814; 515077, 3789790; 515085, 3789759; 515089, 3789723; 515097, 3789691; 515098, 3789689.

(iii) *Note:* Unit 8, Subunits 8A and 8B (Map 8), follows:

BILLING CODE 4310-55-P



(15) *Unit 9*: Snow Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Keller Peak.

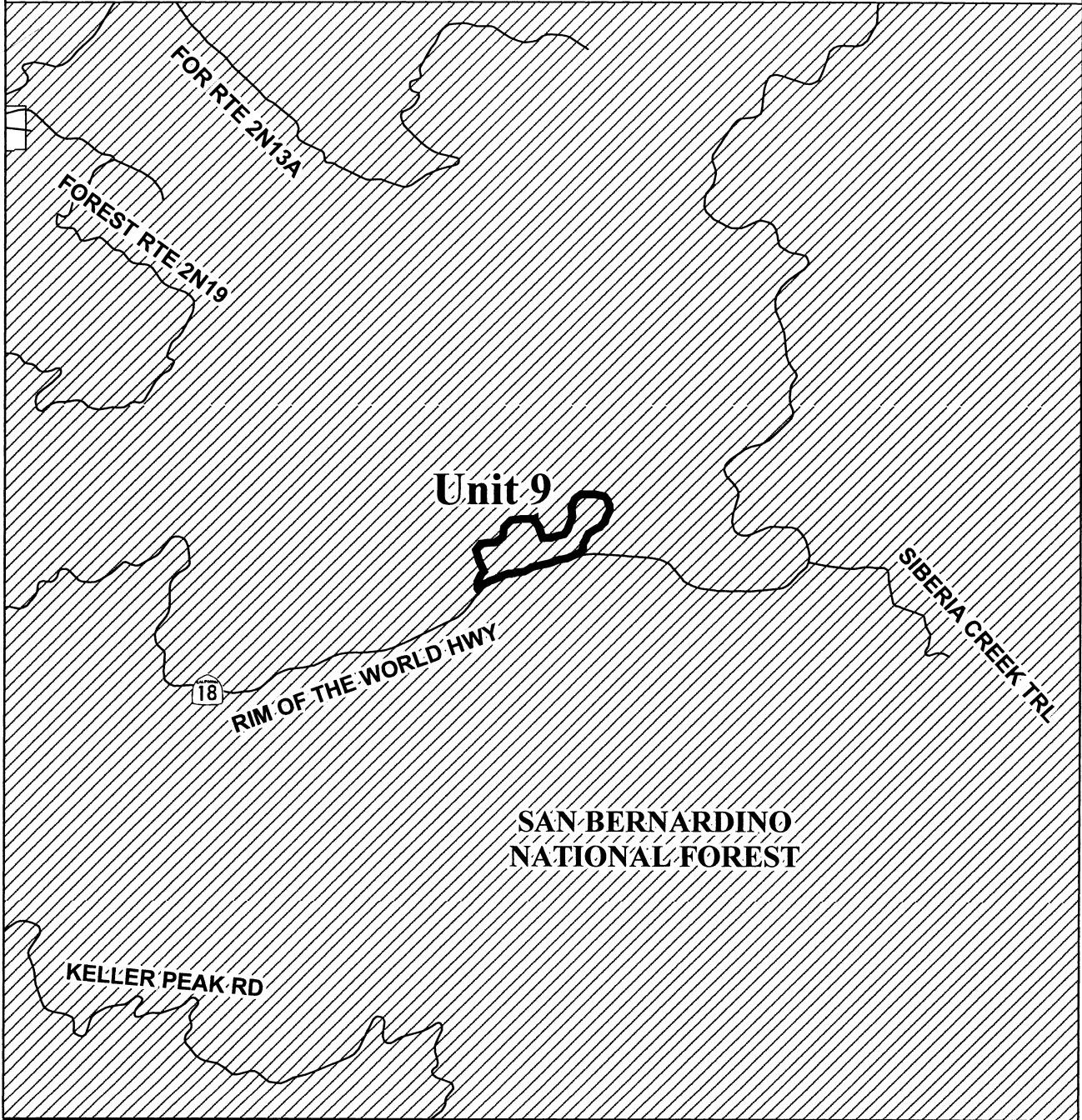
(i) Unit 9. Land bounded by the following UTM NAD27 coordinates (E,N): 496377, 3786874; 496368, 3786876; 496360, 3786876; 496349, 3786874; 496333, 3786868; 496319, 3786861; 496300, 3786853; 496289, 3786849; 496273, 3786842; 496263, 3786836; 496249, 3786830; 496241, 3786825; 496236, 3786822; 496232, 3786816; 496224, 3786804; 496222, 3786803; 496219, 3786810; 496219, 3786838; 496219, 3786840; 496235, 3786873; 496248, 3786886; 496226, 3786935; 496210, 3786983; 496232, 3787012; 496268, 3787015; 496296, 3787018; 496331, 3787041; 496338, 3787085; 496370, 3787117; 496411,




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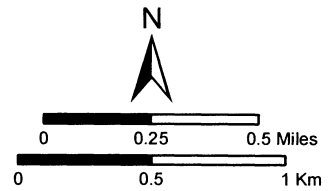
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(ii) *Note*: Map of Unit 9 (Map 9) follows:

Map 9
Critical Habitat for Pebble Plain Plants
Unit 9, San Bernardino County, California



-  Critical Habitat
-  San Bernardino National Forest
-  Roads



(16) *Unit 10*: South Baldwin Ridge/
Erwin Lake, San Bernardino County,
California. From USGS 1:24,000
quadrangle map Big Bear City.

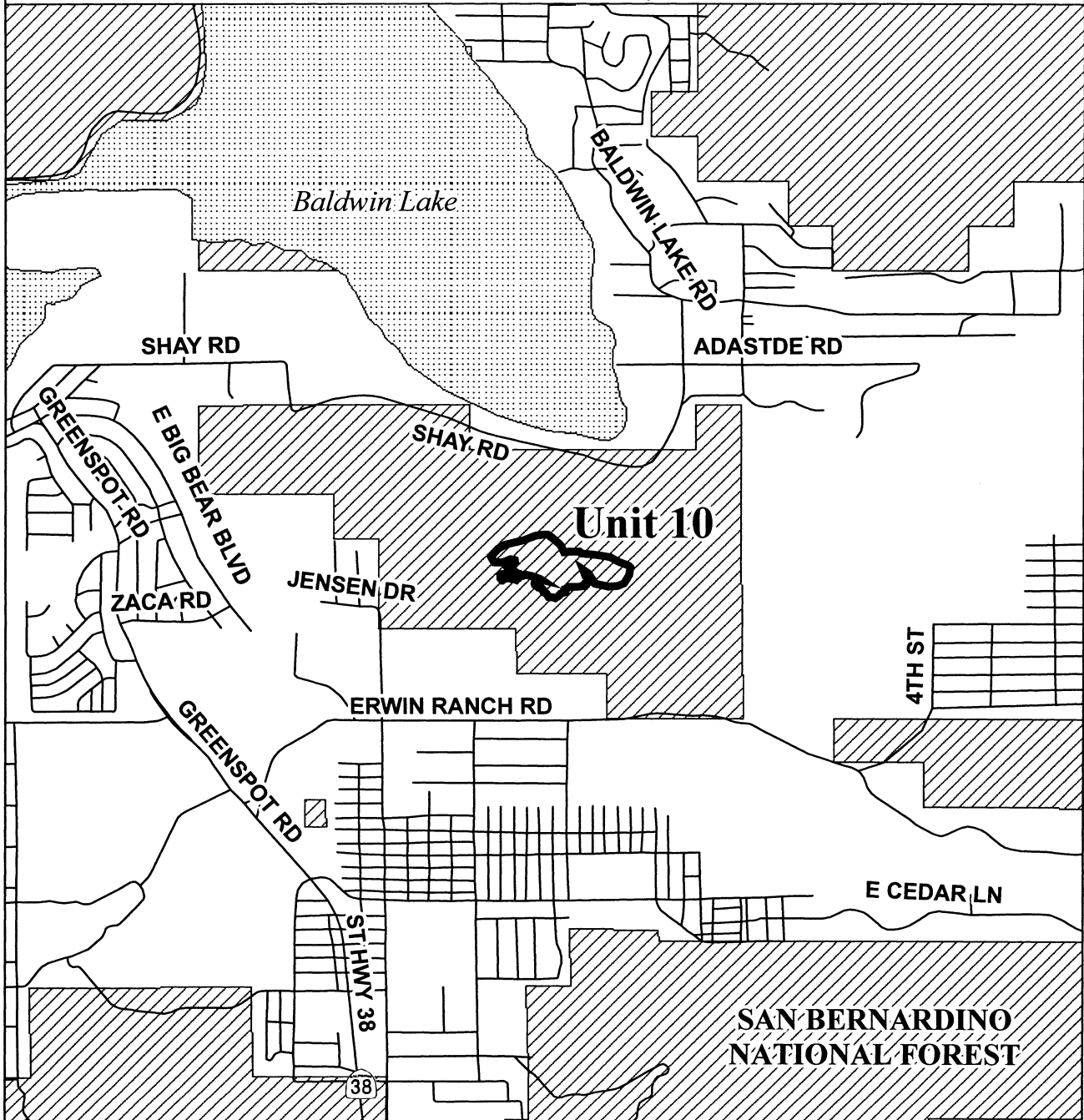
(i) Unit 10. Land bounded by the
following UTM NAD27 coordinates
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3790313; 518797, 3790307; 518792,
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


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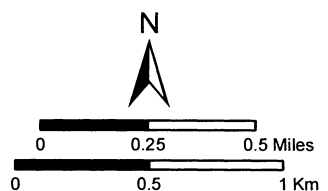
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3790571; 518720, 3790579; 518740,
3790579; 518764, 3790562; 518798,
3790531.

(ii) *Note*: Map of Unit 10 (Map 10)
follows:

Map 10
Critical Habitat for Pebble Plain Plants
Unit 10, San Bernardino County, California



-  Critical Habitat
-  San Bernardino National Forest
-  Lakes
-  Roads



(17) *Unit 11*: Sugarloaf Ridge, San Bernardino County, California. From USGS 1:24,000 quadrangle map Moonridge.

(i) Subunit 11A. Land bounded by the following UTM NAD27 coordinates

(E,N): 521244, 3783525; 521340, 3783525; 521411, 3783533; 521470, 3783533; 521550, 3783517; 521601, 3783537; 521617, 3783561; 521669, 3783589; 521752, 3783569; 521824, 3783533; 521883, 3783493; 521939, 3783453; 521959, 3783406; 521971, 3783351; 521982, 3783287; 521975, 3783203; 521970, 3783181; 521967, 3783152; 521967, 3783101; 521967, 3783072; 521951, 3783015; 521939, 3782987; 521897, 3782936; 521875, 3782911; 521831, 3782891; 521793, 3782882; 521739, 3782888; 521694, 3782888; 521650, 3782911; 521624, 3782926; 521602, 3782955; 521561, 3782993; 521520, 3783066; 521485, 3783126; 521462, 3783203; 521440, 3783228; 521380, 3783237; 521323, 3783241; 521266, 3783247; 521228,

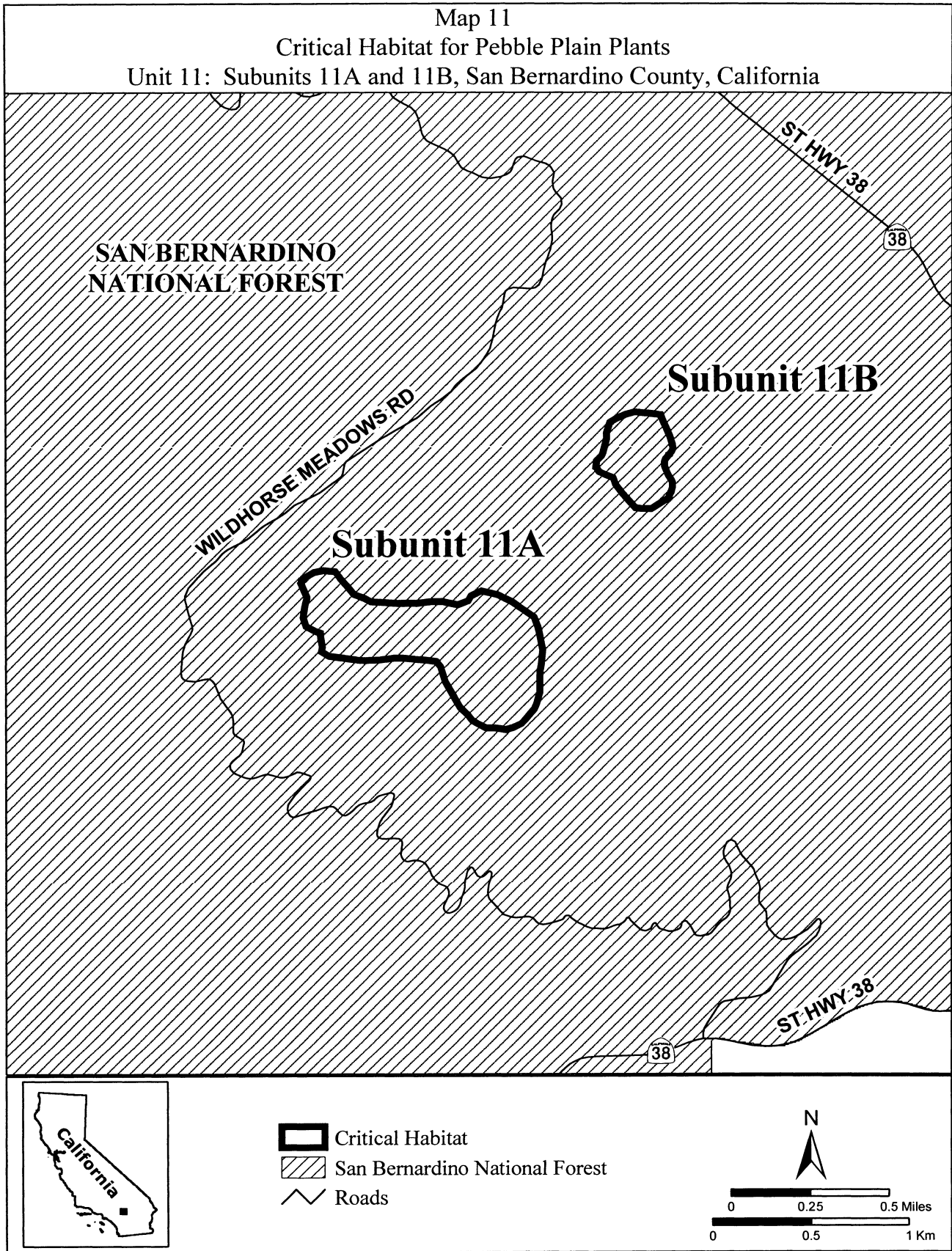
3783247; 521151, 3783237; 521075, 3783234; 521040, 3783237; 520939, 3783250; 520894, 3783257; 520859, 3783279; 520862, 3783301; 520856, 3783336; 520853, 3783371; 520852, 3783374; 520828, 3783382; 520780, 3783410; 520764, 3783453; 520776, 3783521; 520784, 3783549; 520784, 3783557; 520752, 3783628; 520764, 3783652; 520820, 3783684; 520867, 3783692; 520927, 3783688; 520955, 3783652; 520994, 3783605; 521022, 3783573; 521078, 3783549; 521109, 3783533; 521244, 3783525.

(ii) Subunit 11B. Land bounded by the following UTM NAD27 coordinates

(E,N): 522459, 3784505; 522475, 3784502; 522490, 3784501; 522542, 3784497; 522570, 3784493; 522573, 3784489; 522582, 3784489; 522598, 3784448; 522601, 3784441; 522629, 3784382; 522640, 3784339; 522641, 3784335; 522641, 3784333; 522645, 3784318; 522637, 3784302; 522627, 3784289; 522625, 3784287; 522623, 3784285; 522621, 3784283; 522607,

3784265; 522602, 3784251; 522602, 3784227; 522613, 3784195; 522622, 3784177; 522637, 3784156; 522641, 3784144; 522640, 3784127; 522641, 3784116; 522638, 3784107; 522637, 3784097; 522633, 3784091; 522621, 3784064; 522586, 3784040; 522552, 3784021; 522534, 3784009; 522531, 3784009; 522530, 3784009; 522486, 3784009; 522455, 3784013; 522427, 3784044; 522387, 3784088; 522351, 3784135; 522347, 3784153; 522340, 3784168; 522292, 3784188; 522268, 3784200; 522258, 3784217; 522252, 3784223; 522256, 3784247; 522256, 3784255; 522280, 3784279; 522289, 3784297; 522292, 3784306; 522308, 3784366; 522308, 3784397; 522324, 3784449; 522327, 3784451; 522328, 3784454; 522339, 3784459; 522359, 3784473; 522403, 3784493; 522447, 3784505; 522455, 3784504; 522459, 3784505.

(iii) *Note*: Map of Unit 11, Subunits 11A and 11B (Map 11), follows:



* * * * *

Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort) and Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush). Because all of critical habitat units for these three species are designated for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), the units are set forth in text and depicted on the maps in the critical habitat entry for that species.

(2) The primary constituent elements of critical habitat for *Eriogonum kennedyi* var. *austromontanum* are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet (1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings,

aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) The applicable units and subunits of critical habitat for *Eriogonum kennedyi* var. *austromontanum* are 1A, 1B, 2B, 3A, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 8A, 8B, and 10 in the critical habitat entry for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush).

* * * * *

Dated: November 1, 2006.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

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