

APPENDIX D
ADDITIONAL MATERIALS SUBMITTED
TO THE BLM DURING THE
FEDERAL SCOPING PROCESS



Anza-Borrego Desert State Park
200 Palm Canyon Drive
Borrego Springs, CA 92004
(760) 767-4962 FAX 767-7492

May 30, 2003

Mr. Greg Thomsen
Field Office Manager
Bureau of Land Management
1661 South 4th Street
El Centro, CA 92243

Mr. Thomsen:

I am writing to you concerning the proposed expansion of the U.S. Gypsum Company operation on Public Lands in the Fish Creek Mountains adjacent to Anza-Borrego Desert State Park. My staff and I have grave concerns about the expansion of the strip mining operation and patent application adjacent to the State Wilderness area, and within designated Critical Habitat of the Peninsular bighorn sheep. We have worked with the U.S. Gypsum Company over the years and have been good neighbors. The proposal to expand into the south part of the land there, and to threaten the resources and viewshed of the park boundary is worrisome in the least.

I am sure you share my concern for the continued degradation of habitat within the range to the Federally Endangered Peninsular bighorn sheep. We have numerous locations of our radio telemetered bighorn in the Fish Creek Mountains, east of Split Mountain. Many of these location points are of ewes in lambing areas and of bighorn likely visiting remote watering locations known as "tinajas", which fill with rain and provide water for wildlife several months of the year.

Please consider what you can do to curtail uncontrolled expansion of the strip mine, reconsider the Patent Application, and help us preserve the integrity of the nearby Anza-Borrego Desert State Park and State Wilderness area.

Thank you for your consideration.

Sincerely,


Mark C. Jorgensen
Superintendent
Anza-Borrego Desert State Park

RECEIVED
BUREAU OF LAND MANAGEMENT
EL CENTRO, CA
MAY 30 2003



APPENDIX D-1
FEDERAL REGISTER
VOL. 67, No. 84
WEDNESDAY, MAY 1, 2002/NOTICES

(OMB) for approval under the provisions of the Paperwork Reduction (44 U.S.C. Chapter 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43899) requesting comments on the collection. The comment period ended October 22, 2001. No comments were received. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-0185), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630) 1849 C St., NW., Mail Stop 401 LS, Washington, DC. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;
3. Ways to enhance the quality, utility, and clarity of the information collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Onshore Oil and Gas Drainage Protection, 43 CFR 3100 and 3162.

OMB Approval Number: 1004-0185.

Abstract: Federal and Indian (except Osage) oil and gas lessees and operating rights owners must monitor drilling activities of offending wells that may result in drainage situations of Federal oil and gas mineral resources. Respondents are oil and gas companies, lessees, operators, operating rights owners, and individuals.

Form Number: None.

Frequency: On occasion; nonrecurring.

Description of Respondents: Lessees and operating rights owners.

Estimated Completion Time: For ease of reference, this table summarizes the burden items in this information collection request:

Type of analysis	Number of analyses and reporting per respondent	Hours
Preliminary	1,000@ 2 hours	2,000
Detailed	100@ 24 hours ..	2,400
Additional	10@ 20 hours	200
Total	1,110	4,600

Annual Responses: 1,110.

Annual Burden Hours: 4,600.

Bureau Clearance Officer: Michael H. Schwartz (202) 452-5033.

Dated: April 5, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02-10689 Filed 4-30-02; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA-44014]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Proposed Expansion/Modernization of an Existing Wallboard Manufacturing Facility and Associated Quarry Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: United States Gypsum (USG) has proposed the expansion and modernization of USG's Plaster City wallboard manufacturing operations and Fish Creek Quarry operations located in Imperial County, California. Although USG's facilities are primarily on private land, several appurtenances cross public land. Using the U.S. government survey method, the areas within which the existing and proposed facilities are located are generally described as follows: SBBM, T.16S., R.11E. (Plaster City wallboard plant and portion of Interstate rail line; T.13S., R.9E. (Fish Creek quarry); T.13S., R.9E.; T.13S., R.10E.; T.14S., R.10E.; T.15E., R.10E., T.15S., R.11E.; T.16S., R.11E. (narrow gauge rail line between quarry and plant); T.16S., R.10E.; T.16S., R.11E. (water pipeline between Ocotillo and plant).

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM will direct the preparation of an environmental impact

statement (EIS) by a third-party contractor on the impacts of this proposed project. Interested members of the public are encouraged to identify significant issues or concerns related to the proposed action to determine the scope of the issues (including alternatives) that need to be analyzed and to eliminate from detailed study those issues that are not significant. One public scoping meeting will be held. The location and time of the meeting will be announced in local newspapers or may be obtained by contacting Nicole Riven at 760-337-4426 or e-mail nriven@ca.blm.gov. Comments recommending that the EIS address specific environmental issues should include supporting documentation. Written comments must be received at the El Centro Field Office no later than June 10, 2002. Comments, including names and street addresses of respondents, will be available for public review at the El Centro Field Office during regular business hours and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Written comments should be addressed to Greg Thomsen, Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Linda Self (760) 337-4426.

SUPPLEMENTARY INFORMATION: USG's Plaster City wallboard plant has been in operation for over 55 years and is located adjacent to Evan Hewes Highway in Plaster City approximately 18 miles west of El Centro and 2 miles north of Interstate 8. The Fish Creek Quarry operations are located on Split Mountain Road approximately 26 miles north by northwest of Plaster City. The quarry operations are located within designated critical habitat for the Peninsular bighorn sheep (*Ovis canadensis*). Water for the facility is delivered via pipeline from the Ocotillo-Coyote Wells Groundwater Basin. Generally, the overall expansion/modernization project consists of construction of new buildings, a

doubling in wallboard production by removing one operating production wallboard line, and installing a new state-of-the-art high speed line and increased mining of gypsum from 1.1 million tons per year (mty) to approximately 1.9 mty on land reserves owned and mined by USG. The project also includes expanding existing and planned quarry areas. The accumulated inert materials associated with the expanded manufacturing activities at the Plaster City site will be recycled or transferred to a landfill. To accommodate the expanded operations, water usage will increase from 400 acre-feet per year (AF/Yr) to a maximum of 767 AF/Yr. The project will include modernizing the existing warehouses, storage structures, and rail loading facility; upgrading electrical transmission lines (by Imperial Irrigation District); maintaining the narrow gauge rail line which runs between the plant and the quarry; replacing the existing pipeline that runs between Ocotillo and the plant and relocating a short portion of the Interstate rail line that runs through the Plaster City facility. Some of these facilities may be located within habitat for the Flat-tailed horned lizard (*Phrynosoma mcalli*). Although certain aspects of the project have already been implemented pursuant to Imperial County's previous decision to adopt a Negative Declaration for portions of the project, for purposes of this EIS, the "baseline" for evaluating the potential impacts of the project on the environment shall be the physical conditions that existed prior to project implementation.

Dated: April 25, 2002.

Greg Thomsen,
Field Manager.

[FR Doc. 02-10687 Filed 4-30-02; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-040-1430-EU; AA-083994, A-029786]

Notice of Realty Action: Direct Sale, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action: Direct Sale of Reversionary Interest of Recreation & Public Purpose Patent, Number 1230095; Chugiak, Alaska.

SUMMARY: Reversionary interest held by the United States in the following lands has been determined to be suitable for

direct sale to the Chugiak Benefit Association (CBA), under the authority of section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713), at no less than the appraised fair market value of \$31,649.25. The land is described as T. 15N., R. 1 W., Sec. 9, Lots 16 and 17, and 20 Seward Meridian, Alaska, located southwest of the North Birchwood Interchange, containing 3 acres, more or less. The land is currently owned by CBA, but is restricted by a reversionary clause in the patent. The land is an isolated parcel, difficult and uneconomic to manage as part of the public lands, and not needed for federal purposes. The sale is consistent with BLM's land use planning for the area involved and the public interest will be served by the sale.

FOR FURTHER INFORMATION CONTACT: Callie Webber, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267-1272.

SUPPLEMENTARY INFORMATION: This action will accommodate and provide for the expansion of an existing senior housing and community development project, located on adjacent land. Funding is made available through a U.S. Department of Housing and Urban Development grant. The patent, when issued, will be for reversionary interest only. All other terms and conditions of Patent No. 1230095 will continue to apply to the lands involved. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed direct sale of the reversionary interest to the Anchorage Field Office Manager. Adverse comments will be evaluated, and could result in the modification or vacation of this decision. The reversionary interest will not be offered for conveyance until at least 60 days after the date of this notice.

Dated: March 29, 2002.

June Bailey,

Acting Anchorage Field Office Manager.

[FR Doc. 02-10703 Filed 4-30-02; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-02-1430-ES; A-31350]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in the community of Littlefield in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Littlefield School District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Littlefield School District proposes to use the land for schools.

Gila and Salt River Meridian

T. 40 N., R. 16 W.,

Sec. 13, SE¼.

T. 41 N., R. 15 W.,

Sec. 33, portions of Lots 1, 4 and 5.

Containing 139 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for Old Highway 91, 200 feet wide granted by right-of-way AZA-021195.

5. Those rights for a 30 foot wide telephone line granted by right-of-way AZAR-035969.

6. Any other valid and existing rights of record not yet identified.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Arizona Strip Field Office, 345 E. Riverside Dr., St. George, Utah 84790.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the Field Office Manager, Arizona Strip Field Office, 345 E. Riverside Dr., St. George, UT 84790.

APPENDIX D-2
FEDERAL REGISTER
VOL. 72, No. 195
WEDNESDAY, OCTOBER 10, 2007/
PROPOSED RULES



Federal Register

Wednesday,
October 10, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
the Peninsular Bighorn Sheep (*Ovis
canadensis nelsoni*) and Proposed
Taxonomic Revision; Proposed Rule**

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

RIN 1018-AV09

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Peninsular Bighorn Sheep (*Ovis canadensis nelsoni*) and Proposed Taxonomic Revision**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for the Peninsular bighorn sheep (*Ovis canadensis nelsoni*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 384,410 acres (ac) (155,564 hectares (ha)) of land in Riverside, San Diego, and Imperial counties, California, fall within the boundaries of the proposed revised critical habitat designation. Of the area proposed as revised critical habitat, approximately 4,512 ac (1,826 ha) of land are Tribal; 93,720 ac (37,927 ha) are Federal; 249,840 ac (101,107 ha) are State; 35,824 ac (14,497 ha) are private; and 514 ac (208 ha) are local. We are proposing to exclude from the final designation, under section 4(b)(2) of the Act, approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians Tribal land. We are also evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land covered under the draft Coachella Valley Multiple Species Habitat Conservation Plan. Further, we are acknowledging a taxonomic change to the species and are proposing a taxonomic revision of the listed entity from distinct population segment (DPS) of species *Ovis canadensis*, to DPS of subspecies *Ovis canadensis nelsoni*.

DATES: We will accept comments from all interested parties until December 10, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 26, 2007.

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

1. *By mail or hand-delivery to:* Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. *By electronic mail (e-mail) to:* fw8cfwocomments@fws.gov. Please see the Public Comments Solicited section below for other information about electronic filing.

3. *By fax to:* the attention of Jim Bartel at 760-431-5901.

4. *Via the Federal eRulemaking Portal at:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760-431-9440 ; facsimile 760-431-5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Public Comments**

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

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the subspecies from human activity, the degree of which can be expected to increase due to the designation, that outweigh the benefit of designation, such that the designation of critical habitat is not prudent, and whether there are areas we previously designated, but are not proposing for revised designation here, that should be designated as critical habitat;

(2) Specific information on the amount and distribution of Peninsular bighorn sheep habitat, what areas occupied at the time of listing and that contain features essential for the conservation of the subspecies we should include in the designation and why, and what areas not occupied at the time of listing are essential for the conservation of the subspecies and why;

(3) The appropriateness of the proposed exclusion of approximately 4,512 ac (1,826 ha) of Peninsular bighorn sheep habitat from the final designation in consideration of Secretarial Order 3206, "American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion); specifically any additional information regarding the benefits of including these Tribal lands in the designation or of excluding these lands from the designation;

(4) The appropriateness of the possible exclusion of approximately 19,211 acres (ac) (7,774 hectares (ha)) of Peninsular bighorn sheep habitat from the final designation based on the benefits to the conservation of the subspecies and its PCEs provided by the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP) (see "Areas Considered for Exclusion Under Section 4(b)(2) of the Act" for a detailed discussion), specifically any additional information on the benefits of including land covered by the draft Coachella Valley Multiple Species Habitat Conservation Plan in the designation or of excluding these lands from the designation. At this time we are only considering private lands under the draft Coachella Valley MSHCP for exclusion and soliciting comment on the appropriateness of excluding California Department of Fish and Game, and Bureau of Land Management lands as Memorandum of Understanding partners to the MSHCP;

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

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

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

You may submit your comments and materials concerning this proposal by one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include "Attn: Peninsular bighorn sheep" in your e-mail subject header, preferably with 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 e-mail, contact us directly by calling our Carlsbad Fish and Wildlife Office at 760-431-9440. Please note that we must

receive comments by the date specified in the **DATES** section in order to consider them in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we 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, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760-431-9440).

Background

In this proposed rule, it is our intent to discuss only those topics directly relevant to the revision of designated critical habitat for the Peninsular bighorn sheep and the proposed taxonomic revision of the current listed entity. For more information on the biology, and ecology of the Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and the proposed and final critical habitat rules published in the **Federal Register** on July 5, 2000, and February 1, 2001, respectively (65 FR 41405 and 66 FR 8650).

In the 1998 final listing rule, Peninsular bighorn sheep were listed as a distinct population segment (DPS) of the species *Ovis canadensis*. As stated in the 2001 critical habitat rule, based on morphometric and genetic analysis, Wehausen and Ramey (1993, p. 9) synonymized Peninsular bighorn sheep with the subspecies *nelsoni*, which is the current taxonomy. Although we accepted this taxonomy at the time of the designation in 2001, we have yet to formally revise the taxonomy of the listed entity. Therefore, we are formally proposing a taxonomic revision to amend the final listing rule from a DPS of the species *Ovis canadensis*, to a DPS of the subspecies *Ovis canadensis nelsoni*. Therefore, within this proposed critical habitat rule we will refer to the listed entity as a subspecies and not a species. The taxonomic revision does not materially affect discreteness and significance of the Peninsular bighorn sheep as a DPS entity. As stated in the final listing rule (63 FR 13134), regardless of taxonomic issues

surrounding this species at the time of listing, the biological evidence supports recognition of Peninsular bighorn sheep as a distinct vertebrate population segment in the Service's Recognition of Distinct Vertebrate Population Segments (DPS) (61 FR 4722). For a detailed discussion of the DPS analysis for Peninsular bighorn sheep, see the Distinct Vertebrate Population Segment section of the final listing rule.

Peninsular bighorn sheep (a large mammal in the family Bovidae) occupying the Peninsular Ranges of southern California were determined, at the time of listing in 1998, to be a distinct vertebrate population segment (DPS) of bighorn sheep based on their geographic isolation and separation from other desert bighorn sheep (63 FR 13134; March 18, 1998). Peninsular bighorn sheep occur on moderate to steep (greater than 20 percent) (NRCS 1993, p. 66) open slopes, canyons, and washes in hot and dry desert regions of the Peninsular Ranges of southern California in Riverside, San Diego, and Imperial counties (66 FR 8650; February 1, 2001). Peninsular bighorn sheep use several different habitat types, elevations, and slopes depending on seasonal environmental conditions and/or their life history stage. The 2001 final critical habitat rule (66 FR 8650) stated that most Peninsular bighorn sheep live between 300 and 4,000 feet (ft) (91 and 1,219 meters (m)) in elevation. Upon review of available literature, we now believe 4,600 ft (1,400 m) (below forested vegetation) is a more widely accepted upper elevational limit in the Peninsular Ranges (Jorgensen and Turner 1975, p. 51; DeForge *et al.* 1997, p. 11; Rubin *et al.* 1998, p. 541; Ernest *et al.* 2002, p. 76). Desert bighorn sheep are frequently found on slopes greater than 20 percent (Elenowitz 1983, p. 87; Andrew and Bleich 1999, p. 13; Dunn 1996, p. 5), and our Geographic Information System (GIS) records and occurrence data confirm this observation for Peninsular bighorn sheep. Steep terrains with slopes of 60 percent or greater used for predator evasion and lambing are a crucial component of Peninsular bighorn sheep habitat (Dunn 1996, p. 1; Service 2000, p. 6). Peninsular bighorn sheep will use caves and rock outcrops for shelter during inclement weather and for shade during summer months. Bighorn sheep are primarily diurnal (Krausman *et al.* 1985, p. 25), but Peninsular bighorn sheep may be active at any time of day or night (Miller *et al.* 1984, p. 24). A wide range of forage resources and vegetation associations are required by this subspecies to meet annual and

drought-related variations in forage quality and availability. In a study of Peninsular bighorn sheep, Scott (1986, p. 21) found that diets were dominated by shrub species, while grasses and forbs species made up a smaller portion of the Peninsular bighorn sheep's diet depending on the season. Valley floors, rolling hills, and alluvial fans and washes with productive soils provide seasonal vegetation and water resources important to the Peninsular bighorn sheep, especially for ewes during the reproductive season (Service 2000, p. 8). Please see the "Primary Constituent Elements" section of this proposed rule for a detailed discussion of the habitat requirements of this subspecies.

At the time of listing (1998), Peninsular bighorn sheep were known to occupy habitat along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California into the Volcan Tres Virgenes Mountains in Baja California, Mexico (63 FR 13134; March 18, 1998). Population estimates at the time indicated approximately 280 Peninsular bighorn sheep existed within the United States, divided amongst approximately 8 subpopulations or ewe groups (63 FR 13134; March 18, 1998). At the time of the final critical habitat designation in 2001, a range-wide census estimated approximately 400 Peninsular bighorn sheep existed within the United States (Torres 2000, p. 1). We have extensive occurrence data documenting bighorn sheep within the entire range identified in the listing rule. Population estimates for 2006, derived from data collected by the Bighorn Institute, California Department of Fish and Game (CDFG), and Anza Borrego Desert State Park, indicate approximately 793 adult and yearling Peninsular bighorn sheep exist within the United States (Torres 2007). Population estimates for various regions within the Peninsular Ranges in 2006 are as follows: San Jacinto Mountains, 21; North Santa Rosa Mountains, 49; Central Santa Rosa Mountains, 163; South Santa Rosa Mountains, 179; Coyote Canyon, 42; North San Ysidro Mountains, 79; South San Ysidro Mountains, 38; Vallecito and Fish Creek Mountains, 77; and Carrizo Canyon, 145 (Torres 2007).

A captive breeding program has been maintained by the Bighorn Institute since 1984 in cooperation with CDFG, the Bureau of Land Management (BLM), and the Service (Ostermann *et al.* 2001, p. 751). Originally instituted to conduct disease research on low lamb survival, the captive breeding program was formalized in 1995, with the goals of safeguarding a sample of the Peninsular bighorn sheep gene pool and

augmenting and reestablishing wild populations (Ostermann *et al.* 2001, p. 751). Captive-bred Peninsular bighorn sheep have been released in the northern Santa Rosa Mountains and the San Jacinto Mountains (Ostermann *et al.* 2001, p. 751), areas historically occupied by the subspecies.

Within the Peninsular Ranges, habitat is patchy, and the sheep populations are naturally fragmented (Bleich *et al.* 1990, p. 386; Rubin *et al.* 1998, p. 547). Male and female bighorn sheep remain loosely segregated much of the year and come together during the breeding period or rut (Bleich *et al.* 1997, p. 7). In the Peninsular Ranges, the rut occurs in the late summer and fall months (Service 2000, p. 15), peaking from August to October (Rubin *et al.* 2000, p. 774). As parturition (giving birth) approaches, ewes seek isolated sites (escape terrain) with shelter and unobstructed views (Turner and Hansen 1980, p. 148), seclude themselves from other females, and find sites to give birth (Geist 1971, p. 239; Etchberger and Krausman 1999, p. 358). Ewes usually give birth to one lamb after an approximately 6-month gestation period (Geist 1971, p. 239; Turner and Hansen 1980, p. 146). During the period of sexual segregation, ewes and their lambs are typically found in steeper, more secure habitat, while rams inhabit less steep or less rugged terrain (Geist 1971, p. 239; Bleich *et al.* 1997, p. 23).

Previous Federal Actions

On February 1, 2001, we designated approximately 844,897 ac (341,919 ha) of land in Riverside, San Diego, and Imperial counties, California, as critical habitat. The designation followed the Service's release of the final Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (dated October 25, 2000). On March 7, 2005, the Agua Caliente Band of Cahuilla Indians filed a complaint against the Service alleging that the economic analysis developed for our 2001 designation used a methodology similar to that ruled to be insufficient by the Tenth Circuit Court in *New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). Other parties subsequently intervened as plaintiffs in the case. A July 31, 2006, court-approved consent decree enacted a limited partial vacatur of Tribal, mining, and Desert Riders lands (29,925 ac (12,110 ha)) and remanded the critical habitat designation back to the Service for new rulemaking. Publication of this proposed revision of critical habitat satisfies our obligation under the consent decree to submit a revised

proposed rule to the **Federal Register** on or before September 30, 2007. The final rule is due to the **Federal Register** on or before September 30, 2008. For more information on previous Federal actions concerning the Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and the designation of critical habitat for the Peninsular bighorn sheep published in the **Federal Register** on February 1, 2001 (66 FR 8650).

Critical Habitat

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

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

(a) Essential to the conservation of the species and

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

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

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

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid

destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed 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 (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if its essential features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

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

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that

designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

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

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the Peninsular bighorn sheep, and areas unoccupied at the time of listing that are essential to the conservation of the Peninsular bighorn sheep, or both. Material reviewed included information from the final listing rule (63 FR 13134; March 18, 1998) and final critical habitat rule (66 FR 8650; February 1, 2001), information and survey observations published in peer-reviewed literature and provided in academic theses and agency reports; location data and survey information provided in agency status and monitoring reports and on GIS maps; habitat analysis and other information provided in the Peninsular bighorn sheep recovery plan (Service 2000); material submitted during section 7 consultations; data made available through members of the Peninsular Bighorn Sheep Recovery Team, Coachella Valley Multiple Species Habitat Conservation Plan program, and Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan program; and regional GIS coverages.

We are not proposing any areas outside the geographical area presently occupied by the Peninsular bighorn sheep as revised critical habitat because presently occupied areas are sufficient for the conservation of the subspecies.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied at the time of listing to propose as critical habitat, we consider the primary constituent elements (PCEs) to be those physical and biological features 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:

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

We derive the specific primary constituent elements (PCEs) required for the Peninsular bighorn sheep from its biological needs.

Space for Individual and Population Growth and for Normal Behavior

Peninsular bighorn sheep occur on moderately steep to very steep open slopes, canyons, and washes in hot and dry desert regions where the land is rough and rocky, and sparsely vegetated (66 FR 8650; February 1, 2001). This subspecies is primarily restricted to the east-facing lower elevation slopes (generally below 4,600 ft (1,400 m)) of the Peninsular Ranges along the northwestern edge of the Sonoran Desert (Jorgensen and Turner 1975, p. 51; DeForge *et al.* 1997, p. 11; Rubin *et al.* 1998, p. 541; Ernest *et al.* 2002, p. 76). A wide range of topography provides a diversity of habitats and plant communities across the mountainous slopes, canyons, washes, and alluvial fans within the home range of the Peninsular bighorn sheep (Service 2000, p. 156). This diverse topography is necessary to provide shelter from the elements and predators, areas for rearing, areas used to meet thermal requirements, seasonal water and forage sources, and space for mating and movement of this subspecies.

Diverse topographic features are especially important because of the extreme temperatures Peninsular bighorn sheep must cope with in this desert region. During hot weather, desert bighorn sheep seek shade under boulders and cliffs, or move to north-facing slopes (Merritt 1974, p. 14; Andrew 1994, p. 52). In the event of inclement weather they may seek protected caves or overhangs, or move to sunny, south-facing slopes (Andrew 1994, p. 52), or slopes that are protected from strong winds. According to GIS data and occurrence records, Peninsular bighorn sheep largely utilize habitat with 20 to 60 percent slopes, broken by canyons and washes. The preference for slopes greater than 20 percent has been shown in other populations of desert sheep as well (Andrew 1994, p. 53). Nighttime bedding areas are chosen carefully according to the topography of the habitat and may be considered a limiting factor in bighorn sheep distribution (Hansen 1980, p. 78). These bedding areas are usually located along ridges and spurs with long distance visibility where bighorn sheep can escape if necessary in a matter of seconds (Hansen 1980, p. 78).

Generally, bighorn sheep primarily rely on their sense of sight to detect predators. They prefer the lower elevations of the Peninsular Ranges where the vegetation associations are less dense and provide better visibility than those at higher elevations. Research has shown that bighorn sheep will avoid habitat in which dense vegetation reduces visibility and regularly use habitat with vegetative canopy cover less than or equal to 30 percent (Risenhoover and Bailey 1985, p. 799; Etchberger *et al.* 1989, p. 906; Dunn 1996, p. 1). Bighorn sheep in the Peninsular Ranges avoid higher elevations (above 4,600 ft (1,400 m)), likely due to decreased visibility (and therefore increased predation risk) associated with the denser vegetation (chaparral and conifer woodland) found at higher elevations (Service 2000, p. 10).

Along with occupying open habitat, bighorn sheep also use very steep, precipitous terrain for predator evasion (Service 2000, p. 6). Bighorn sheep use their climbing abilities rather than speed to escape from predators, and mountainous slopes of greater than or equal to 60 percent (escape habitat) are steep enough to provide this function (Andrew 1994, p. 57; Dunn 1996, p. 1; McKinney *et al.* 2003, p. 1231; Service 2000, p. 6). Very steep escape habitat is also used for lambing (Service 2000, p. 6). As parturition approaches, ewes seek isolated sites (escape terrain with slopes

60 percent or greater) with shelter and unobstructed views (Turner and Hansen 1980, p. 148), and seclude themselves from other females while finding sites to give birth (Geist 1971, p. 239; Etchberger and Krausman 1999, p. 358). Ewes usually give birth to one lamb born after an approximately 6-month gestation period (Geist 1971, p. 239; Turner and Hansen 1980, p. 146). These areas of steep and very steep terrain are vital to Peninsular bighorn sheep because lambs have increased vulnerability to predation, and these protective slopes are rarely visited by predators (Geist 1971, p. 239). Ewe groups with lambs usually stay close to escape terrain, while feeding on lower gradient slopes. Berger (1991, p. 72) reported that when feeding on bajadas (compound alluvial fans) or away from escape terrain, ewes and lambs were more than three times more vulnerable to predation. Predators of Peninsular bighorn sheep include mountain lion, bobcat, and coyote (Hayes *et al.* 2000, p. 954; 66 FR 8650).

Metapopulation Structure

Within desert mountain ranges like the Peninsular Ranges, bighorn sheep habitat is patchy, and the population structure is naturally fragmented (Bleich *et al.* 1990, p. 384). This fragmentation has led to the application of a broad landscape approach to their population ecology, grouping geographically distinct herds into metapopulations, which are networks of interacting ewe groups or subpopulations (Schwartz *et al.* 1986, pp. 182–183; Bleich *et al.* 1990, p. 386). This approach considers long-term viability not of individual subpopulations, but rather of entire metapopulations; thus both genetic and demographic factors are considered. Decreasing population sizes can lead to decreasing levels of heterozygosity that may have negative demographic effects through inbreeding depression (Lande 1988, p. 1,456) and loss of adaptability. A small amount of genetic exchange among herds by movements of males can counteract inbreeding and associated increases in homozygosity that might otherwise develop within small, isolated populations (Schwartz *et al.* 1986, p. 185). Males have larger home ranges and have a much greater tendency than females to explore new areas, which they may do in search of females during the mating season. If geographic distances between female groups within metapopulations are not extreme (greater than 31 miles (mi) 50 kilometers (km) (Witham and Smith 1979, p. 24)), and no insurmountable barriers exist, movement by males occurs readily. If movement is precluded by human-constructed

obstacles, populations will become isolated and the metapopulation structure dismantled.

A study of Peninsular bighorn sheep distribution and abundance by Rubin *et al.* (1998, p. 545) concluded that ewes exhibit a fragmented distribution within the Peninsular Ranges making up at least eight ewe groups or subpopulations. It is suggested that although the distribution of these ewe groups could be considered naturally fragmented, construction and use of roads through bighorn sheep habitat may have increased fragmentation within the Peninsular Ranges because ewes avoided crossing highways (Rubin *et al.* 1998, p. 547). Ewes show strong gregarious and philopatric behavior (faithful to natal home range), which limits their dispersal abilities (Boyce *et al.* 1999, p. 99; Service 2000, p. 10). Movement of ewes between ewe groups appears infrequent, but direct observation and aerial-telemetry locations and genetic analysis revealed ram movement between up to three ewe groups (Boyce *et al.* 1999, p. 99; Rubin *et al.* 1998, pp. 543–544). Substructuring also can occur within single herds (ewe groups) of bighorn sheep (Festa-Bianchet 1986, pp. 327–330; Andrew *et al.* 1997, pp. 74–75; Rubin *et al.* 1998, pp. 543–548). Such substructuring is defined by separate home range patterns. Although demonstrated more with females, it can occur in both sexes.

Another important long-term process in metapopulation dynamics is the balance between rates of natural extinction and colonization among subpopulations. Colonization rates must exceed extinction rates for a metapopulation to persist (Hanski and Gilpin 1991, pp. 8–9). In recent history this balance has not occurred for Peninsular bighorn sheep due to fragmentation, disease, predation, and low recruitment (Rubin *et al.* 1998, pp. 545–547; Rubin *et al.* 2002, p. 803–805). In addition to fragmentation, remaining subpopulations consist of small, isolated groups of bighorn sheep. Small groups are more vulnerable to extirpation due to random naturally occurring events, disease, or predation because of their small population size. Local extinction of small subpopulations can be prevented by occasional immigrants from neighboring subpopulations (rescue effect) (Brown and Kodric-Brown 1977, p. 445).

Because of the metapopulation structure of the Peninsular bighorn sheep population, it is important for genetic exchange and the conservation of the subspecies to ensure space for movement and connectivity between

ewe groups. Furthermore, maintaining connectivity within the metapopulation will help safeguard against local extinctions of the remaining subpopulations.

Food

A wide range of forage resources and vegetation associations are required by Peninsular bighorn sheep to meet annual and drought-related variations in forage quality and availability (Hansen 1980, p. 76). Valley floors, rolling hills, and alluvial fans and washes with productive soils provide seasonal vegetation and water resources important to the Peninsular bighorn sheep. In a mountainous environment like the Peninsular Ranges, temperature and soil moisture vary widely with slope and elevation. This causes variation in plant growth throughout this subspecies' habitat on a seasonal basis. Peninsular bighorn sheep need to have access to the seasonal abundance of plant life at various elevations to maximize resources and survive in the desert environment. Berger (1991, p. 70) found that bighorn sheep adjusted their feeding ranges to exploit more nutritive portions of their home ranges, such as bajadas, early in the season when high protein grasses were emerging. Due to the high energetic costs of pregnancy and lactation, ewes are especially dependent on areas with nutritious forage to increase success of rearing offspring (Service 2000, p. 8). Berbach (1987, p. 97) reported that when ewes were confined to an enclosure and prevented from using all vegetation associations during late gestation and early lactation, they and their lambs died of malnutrition. During the reproductive season for Peninsular bighorn sheep, ewe foraging is typically concentrated on specific sites, such as alluvial fans, bajadas, and washes, where more productive, wetter soils support greater herbaceous growth than steeper, drier, rockier soils (Service 2000, p. 8). There is a tendency for plants that dry out during summer months on the mountain sides to remain green longer (and thus more nutritious, higher in protein, and more easily digested) because groundwater is generally closer to the surface and in greater quantity. Furthermore, the greater soil moisture supports a suite of nutritious plants that do not grow on the dry mountain sides. Therefore, washes and alluvial fans play an important role in allowing desert bighorn sheep to acquire quality forage during the heat of summer months and through times of drought.

In a study of Peninsular bighorn sheep, Scott (1986, p. 21) found that

diets were dominated by shrub species (64 to 76 percent), with grasses and forbs species making up a smaller portion of the diet (19 to 30 percent and 2 to 6 percent, respectively). In the following section, plant nomenclature has been updated to conform to treatments in Hickman (1993). Common names generally conform with those given in Hickman (1993) and/or Abrams *et al.* (1992–1960). Cited scientific names are retained in brackets for ease of reference. Foraging studies by Scott (1986, p. 21) and Cunningham (1982, p. 31) noted that Peninsular bighorn sheep preferentially feed on different plants seasonally. Shrubs such as *Ambrosia dumosa* (burro bush), *Caesalpinia virgata* [*Hoffmannseggia microphylla*] (small-leaved Hoffmannseggia), *Hyptis emoryi* (desert lavender), *Sphaeralcea* spp. (globemallow), and *Simmondsia chinensis* (joboba) are a primary food source year round; grasses such as *Aristida adscensionis* (sixweeks threewain) and *Bromus rubens* (red brome) along with cacti *Opuntia* spp. (cholla) are a primary food source in the fall; forbs such as *Plantago* spp. (woolly plantain), *Plantago ovata* [*insularis*] var. *fastigiata* (woolly plantain), and *Ditaxis neomexicana* (common ditaxis) are a primary food source in the spring. However, Peninsular bighorn sheep are generalist foragers, and will browse on a wide variety of plant species depending on seasonal availability. Other plants reportedly consumed by Peninsular bighorn sheep include *Ephedra* spp. (Mormon tea), *Agave deserti* (desert agave), *Quercus* spp. (scrub oak), *Phoradendron californicum* (desert mistletoe), *Eriogonum fasciculatum* (California buckwheat), *Prunus fremontii* (desert apricot), *Acacia greggii* (catclaw), *Prosopis juliflora* (mesquite), *Krameria grayi* (ratany), and *Malosma laurina* (laurel-leaf sumac) (Browning and Monson 1980, p. 88).

Water

In the Peninsular Ranges, the presence of perennial water is known to be a limiting factor only during prolonged droughts or summers without significant thunderstorm activity (Service 2000, p. 156). Water sources are most valuable to bighorn sheep if they occur in proximity to escape terrain with good visibility (Service 2000, p. 9). However, bighorn sheep have been observed to travel at least 10 mi (16 km) from sources of perennial water. According to Service biologists familiar with the subspecies, bighorn sheep usually visit a water source every 2 to 3 days, but it is not unusual for them to drink more often. During the hot

summer months, desert bighorn sheep typically stay close to reliable sources of water and drink large quantities of water at a time. It has been hypothesized that desert bighorn sheep can survive without a permanent water source, although this view is not widely accepted (Turner and Weaver 1980, p. 104). In desert ranges like the Peninsular Ranges, rainwater can collect in natural collection tanks and potholes in the rock and provide seasonal or perennial water sources. Natural springs also provide a reliable source of water for Peninsular bighorn sheep. Desert sheep also rely on consuming vegetation, including cacti, to meet water requirements when standing water sources are scarce (Turner and Weaver 1980, p. 102). Water is especially important to lactating ewes, as they need sufficient water to produce milk. Water sources contribute greatly to the Peninsular bighorn sheep's ability to survive the hot and dry summer months.

Primary Constituent Elements for the Peninsular Bighorn Sheep

Within the geographical area occupied by the Peninsular bighorn sheep at the time of listing, we must identify the PCEs that may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies, we have determined that the Peninsular bighorn sheep's PCEs are:

(1) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups.

(2) Presence of a variety of forage plants, indicated by the presence of shrubs (e.g., *Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (e.g., *Aristida* spp., *Bromus* spp.) and cacti (e.g., *Opuntia* spp.) that provide a source of forage in the fall, and forbs (e.g., *Plantago* spp., *Ditaxis* spp.) that provide a source of forage in the spring.

(3) Steep, rugged, slopes (60 percent slope or greater) (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide secluded space for lambing as well as terrain for predator evasion.

(4) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible

plants can be more readily found during times of drought and lactation and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups, adjacent mountain ranges, and important resources areas, such as foraging areas and escape terrain.

(5) Intermittent and permanent water sources that are available during extended dry periods and that provide relatively nutritious plants and drinking water.

This proposed revision to currently designated critical habitat for the Peninsular bighorn sheep is designed for the conservation of PCEs necessary to support the life history functions that are the basis for our proposal and the areas containing those PCEs.

We propose units for designation based on sufficient PCEs being present to support at least one of the subspecies' life history functions. For this subspecies, all of the units proposed contain all of the PCEs and support the multiple essential life history functions identified above.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the features that are essential to the conservation of the subspecies and that may require special management considerations or protection. We have also considered how revising the current critical habitat designation for the Peninsular bighorn sheep highlights habitat that needs special management considerations or protection.

Peninsular bighorn sheep habitat and the PCEs upon which the sheep depends are threatened by the direct and indirect effects of: Development and expansion of urban areas; human disturbance related to recreation; construction of roadways and power lines; and mineral extraction and mining operations.

The development and expansion of urban and associated industrial areas threaten Peninsular bighorn sheep and their habitat through direct and indirect effects. Habitat loss (especially in canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses threaten the Peninsular bighorn sheep throughout its range (63 FR 13134; March 18, 1998). The cities that occur along the eastern boundary of proposed revised critical habitat, from the base of the San Jacinto and Santa Rosa Mountains to the Salton Sea area (Units

1 and 2A), continue to grow. Development adjacent to and within Peninsular bighorn sheep habitat affects the quality and quantity of lower elevation habitat and associated vegetation, alluvial fans, and water sources (PCEs 1, 2, 4, and 5). By 2000, at least 18,500 ac (7,490 ha) of suitable Peninsular bighorn sheep habitat had been lost to urbanization and agriculture along the urban interface between the cities of Palm Springs and La Quinta (Service 2000, p. 38). Much of the lost habitat consisted of low elevation alluvial fans and washes that provided important sources of nutrients to ewes when they are rearing their lambs (PCE 2 and 4) (66 FR 8650; February 1, 2001). Moreover, in the northern Santa Rosa Mountains, from 1991 to 1996, 34 percent of adult mortalities appear to have been directly caused by urbanization (66 FR 8650; February 1, 2001). Five Peninsular bighorn sheep were killed by cars; five died from feeding on toxic, nonnative ornamental plants; and one was strangled in a wire fence (DeForge and Ostermann 1997, p. 1).

Continued urban and commercial development within the range of Peninsular bighorn sheep could fragment the Peninsular bighorn sheep metapopulation into isolated groups too small to maintain long-term viability. Maintenance of genetic diversity allows small ewe groups like those in the Peninsular Ranges to persist. The inability of rams and occasional ewes to move between groups erodes the genetic fitness of isolated groups (PCE 1 and 4) (63 FR 13134; March 18, 1998). Special management considerations or protection may be needed to alleviate the effects of development on Peninsular bighorn sheep habitat, especially lower elevation habitat, alluvial fans, and areas of possible ewe group connectivity near urban areas. This protection could be accomplished by controlling the expansion of urban, industrial, and agricultural development into these areas.

In the Peninsular Ranges (Units 1, 2 and 3), increased activity and disturbance adjacent to, and within Peninsular bighorn sheep habitat are adversely affecting bighorn sheep by altering their normal behavior. This altered behavior can lead to abandonment of habitat and prevent use of preferred habitat, including lambing areas, water sources, and foraging areas, and cause negative physiological effects (PCE 1, 2, 3, 4, and 5) (66 FR 8650; 63 FR 13134). A variety of human activities, such as hiking, mountain biking, horseback riding, camping, hunting, livestock grazing, and use of

aircraft and off-road vehicles, have the potential to disrupt normal bighorn sheep social behaviors. Special management considerations or protection may be needed to alleviate the effects of human activity and disturbance to Peninsular bighorn sheep. Restricting human use of trail systems and natural areas during lambing season and exclusionary fencing around urban areas may reduce human effects on Peninsular bighorn sheep behavior.

Roadways and power line structures occur in, and are proposed for construction within, Peninsular bighorn sheep habitat. Two major highways run through the Peninsular Ranges and fragment bighorn sheep habitat. In the northern portion of the Peninsular Ranges, State Route 74 runs through the Santa Rosa Mountains (Unit 2A). Further south, State Route 78 cuts through habitat between the San Ysidro Mountains and Pinyon Mountains (Unit 2B). These roadways have degraded habitat and have generally impeded the movement of Peninsular bighorn sheep (especially ewes) between ewe groups in the surrounding areas (PCE 1, 2, 3, 4, and 5) (Rubin *et al.* 1998, p. 547), which can erode the genetic fitness of isolated groups (63 FR 13134; March 18, 1998). However, some movement has been documented across State Route 74 (Service 2004, pp. 1–2). Epps *et al.* (2005, p. 1035) showed that nuclear genetic diversity of desert bighorn sheep populations was negatively correlated with the presence of human-made barriers (highways), which essentially eliminated dispersal. Furthermore, in some portions of their range, collisions with automobiles can be a significant cause of Peninsular bighorn sheep mortality (DeForge and Ostermann 1997, p. 1). The construction of power lines and associated structures may also degrade and fragment bighorn sheep habitat. Currently, a large power line (Sunrise Powerlink) is proposed for construction through Unit 2B along Highway 78. Special management considerations or protection may be needed to alleviate the effects of roadway and power line structures on Peninsular bighorn sheep and their habitat. Future construction of roadways and power lines should be avoided, and if unavoidable, should be constructed in a way that minimizes effects to habitat and allows for continued connectivity among ewe groups.

Mining operations occur within southern portions of the habitat used by Peninsular bighorn sheep. Mining activities and associated facilities threaten Peninsular bighorn sheep by causing the loss of vegetation structure

required for foraging activities and destroying habitats used for escape, bedding, lambing, or connectivity between ranges (PCE 1, 2, 3, 4, and 5). Disturbance could modify the sheep's behavior or cause bighorn sheep to flee an area. Mining occurs within the habitat of Peninsular bighorn sheep in Units 2B and 3. Special management considerations or protection may be needed to alleviate the effects of mining operations on Peninsular bighorn sheep habitat. Further mining operations should avoid to the maximum extent possible, areas considered essential to Peninsular bighorn sheep conservation.

Criteria Used To Identify Critical Habitat

All proposed revised critical habitat units are within areas that we have determined were occupied at the time of listing, and that contain sufficient PCEs to support the life history functions essential for the conservation of the subspecies. Lands were proposed for designation based on sufficient PCEs being present to support the life processes.

We used the following data to delineate proposed revised critical habitat: (1) Areas known to be occupied at the time of listing (1998) and currently occupied; (2) areas within the ewe group distribution (subpopulations) boundaries identified by Rubin *et al.* (1998); (3) areas where occupancy data points indicate repeated Peninsular bighorn sheep use, but which were not captured within the ewe groups distribution boundaries identified by Rubin *et al.* (1998); and (4) areas that contain the PCEs required by the subspecies as determined from aerial imagery and GIS data on vegetation, elevation, and slope.

We also gathered information from our files, staff biologists, the California Department of Fish and Game, the Bighorn Institute, and Dr. Ester Rubin. Our proposed revision to critical habitat is designed to capture ewe groups; lambing areas; foraging areas, including alluvial fans; water sources; ram groups; and areas used for associated herd (male, female, and young) movements and migrations.

We delineated the proposed revised critical habitat boundaries using the following steps:

(1) As a first step in the delineation process, we mapped ewe group areas from Rubin *et al.* (1998) over GIS imagery of the Peninsular Ranges to delineate the distribution of ewe groups in the proposed revised critical habitat. We consider Rubin *et al.* (1998) to be the best available data on Peninsular bighorn sheep ewe group distribution.

Rubin *et al.* (1998) examined the population structure, distribution, and abundance of Peninsular bighorn sheep in California using observational data from radio-collared and uncollared male (ram) and female (ewe) sheep between 1971 and 1996. This is the only data we are aware of that identifies the distribution of ewe groups and subgroups within the Peninsular Ranges.

(2) To ensure that Rubin *et al.* (1998, pp. 539–561) still accurately represents the boundaries of the ewe groups and to capture possible ram movement, we compared the ewe group delineation from Rubin *et al.* (1998, pp. 539–561) with all occupancy data collected since the time of listing on GIS imagery maps. We then expanded the ewe group delineation to include areas where occupancy data points indicate repeated Peninsular bighorn sheep use and recent sheep movements (post Rubin *et al.* 1998, pp. 539–561), and areas that contain the PCEs for Peninsular bighorn sheep. In particular, we expanded the northernmost ewe group delineation (San Jacinto Mountains) to include the area north of Chino Canyon where (1) we have evidence of recent ewe and ram movements and (2) the Bighorn Institute has released, and continues to release, captive-born sheep to help recover this subspecies. We also expanded the southernmost ewe group delineation (Carizzo Canyon area) to the south to capture water sources (PCE 5), including habitat near the Interstate 8-State Route 98 split, where there are consistent, recent sightings of uncollared Peninsular bighorn sheep.

(3) We then examined all pre-listing occurrence data in our files to determine if our revised critical habitat missed any areas of historical repeated Peninsular bighorn sheep use. We identified an area of historical repeated use that was occupied at the time of listing between two ewe subgroups documented in Rubin *et al.* (1998, pp. 539–561) as (1) Santa Rosa Mountains east of State Route 74 (Martinez Canyon) and (2) Santa Rosa Mountains east of State Route 74 (south). Use of this area is consistent with the Rubin *et al.* (1998, pp. 539–561) demographic study, which indicated possible connectivity between these subgroups through this area. This area is important in light of genetic findings by Boyce *et al.* (1999, pp. 99–106) that indicate ewe groups within these ranges maintain genetic connectivity, probably through male-mediated nuclear gene flow. Based on the importance of this area for connectivity between subgroups, we expanded the proposed revised critical habitat boundaries to include areas

where occupancy data points indicate historically occupied habitat. Since the number of occurrence data points in historically occupied areas is relatively small, we delineated the unit boundaries in these areas to follow the boundaries of the PCEs, such as elevations below 4,600 ft (1,400 m), areas with 30 percent canopy cover or less, escape terrain, alluvial fans, washes, and water sources immediately adjacent to the identified ewe groups.

(4) As a final step in refining our delineation, we closely examined our revised units to ensure they capture all of the PCEs to support life history functions essential for the conservation of the subspecies. Where appropriate, we expanded the boundaries to capture the extent of an alluvial fan or water source (PCE 4 or 5, respectively). We also removed areas that we determined do not contain the PCEs or otherwise do not contain suitable Peninsular bighorn sheep habitat, such as areas above 4,600 ft (1,400 m) elevation (PCE 1), areas containing conifer woodland with canopy cover greater than 30 percent (PCE 1), and slopes less than 20 percent (PCE 1), unless those areas overlapped specifically with Rubin *et al.*'s (1998, pp. 539–561) ewe group distributions and had documented use by Peninsular bighorn sheep.

On May 22, 2007, Drs. Esther Rubin and Walter Boyce, in cooperation with Steve Torres and Chris Stermer of the California Department of Fish and Game, submitted a draft predictive habitat model for bighorn sheep in the Peninsular Ranges. We did not adopt this predictive habitat model to delineate critical habitat because the model was submitted in draft form, prior to final steps of model validation and peer review, and model development was based on just two years of Global Positioning System (GPS) data (Rubin 2007, p. 2); nevertheless, the model supports our proposed delineation. Areas we are designating roughly fall within the upper level habitat suitability classes derived from the preliminary model.

When determining the proposed revisions to critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the Peninsular bighorn sheep. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this

proposed revision to critical habitat have been excluded by text in the proposed rule and are not proposed for designation as revised critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the subspecies or primary constituent elements in adjacent critical habitat.

Summary of Proposed Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision to the areas we designated as critical habitat for the Peninsular bighorn sheep on February 1, 2001 (66 FR 8650). The main differences include the following:

(1) The 2001 final rule used a generalized methodology for delineating critical habitat that resulted in the designation of one critical habitat unit for Peninsular bighorn sheep totaling 844,897 ac (341,919 ha) (66 FR 8650; February 1, 2001). This proposed revision is based on a more specific methodology that resulted in three critical habitat units including approximately 384,410 ac (155,564 ha) of land in Riverside, San Diego, and Imperial counties, California, a reduction of 460,487 ac (186,355 ha) from the 2001 final rule (66 FR 8650). The areas included in this proposed revised critical habitat are almost entirely within the boundaries of the existing (2001) critical habitat. There are approximately 72 ac (29 ha) of BLM land in Unit 3 that are outside the boundary of the 2001 critical habitat.

The reduction in total area from the 2001 final critical habitat designation is primarily the result of using a revised methodology to delineate critical habitat in this proposed revision. In our 2001 final critical habitat designation, we delineated critical habitat based on the methodology used in the Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (Service 2000).

In developing this proposed revision, we reexamined the methodology outlined in the 2000 recovery plan and the 2001 critical habitat designation, and updated that methodology based on the best available information to identify areas essential for the conservation of the subspecies (see “Criteria Used To Identify Critical Habitat” section). Since publication of the 2000 recovery plan and the 2001 critical habitat designation, more specific and up-to-date information has become available regarding habitat use by Peninsular bighorn sheep and areas containing the features essential to the conservation of this subspecies. New information indicates that many areas included in the 2001 critical habitat

designation do not support the features essential for the conservation of the Peninsular bighorn sheep and/or otherwise contain unsuitable habitat for the subspecies. For example, the 2001 final rule included high elevation (above 4,600 ft (1,402 m)), densely vegetated, and forested habitat that is inappropriate for sheep use in the San Jacinto, Santa Rosa, and Vallecito Mountains. The differences between the generalized methodology applied in the 2001 critical habitat designation and the methodology used in this proposed rule, including our reasons for revising the approach, are outlined below.

The recovery plan generally used two criteria, the presence of escape terrain and unobstructed view, as key habitat requirements when delineating the areas essential to Peninsular bighorn sheep with little consideration of the presence of the PCEs required by this subspecies. In this proposed revision, we have considered all five of the revised PCEs in delineating proposed revised critical habitat which results in a more precise determination of essential habitat (see "Primary Constituent Elements for the Peninsular Bighorn Sheep" and "Criteria Used to Identify Critical Habitat" sections).

Additionally, little consideration was given to occurrence data in the recovery plan methodology and specific ewe group distributions, resulting in expanses of critical habitat in the 2001 designation in which we have little to no occurrence records that would indicate sheep use those areas. For example, we have occupancy data dating back to 1940, yet extensive areas along the western and southern boundary of the 2001 designation contain little to no documented sheep use. In light of all the recent research efforts and occupancy data, we are not including those lands in this proposed revision as we have determined that those lands are not essential to the conservation of Peninsular bighorn sheep. Because a detailed vegetation map was not available at the time of the recovery plan, a team of biologists flew the entire western boundary in a helicopter and visually assessed vegetation associations (Service 2000, p. 159). The western boundary was determined by consensus and recorded by GPS from the helicopter position every ten seconds (Service 2000, p. 159). A 0.5 mi (0.8 km) buffer was added to this line to account for the advent of fire suppression (Service 2000, p. 160). In determining the western boundary of essential habitat in this proposed revision, we used vegetation maps that cover the entire range of the Peninsular

bighorn sheep, along with detailed aerial photography, expert opinion, and sheep use data to delineate boundaries, which we have determined more precisely captures the areas essential to the subspecies.

Like our methodology for this proposed revision, the 2001 methodology used a minimum slope criterion of 20 percent to delineate essential habitat; however, a 0.5 mi (0.8 km) buffer was included around slopes of greater than or equal to 20 percent (Service 2000, p. 158). This proposed rule does not include a buffer zone area around habitat determined to be essential to the subspecies.

In summary, we consider the recent data and methodology used in this proposed revision to more accurately and specifically delineate the areas essential to the Peninsular bighorn sheep. The methods used in the 2000 recovery plan and the 2001 critical habitat designation resulted in a more inclusive delineation of essential habitat due to limited data. Application of the revised methodology, based on the best available information, identified 460,487 ac (186,355 ha) of previously designated critical habitat that is not essential to the subspecies, and therefore we are not including these areas in this proposed revision to the critical habitat designation.

(2) We re-evaluated and revised the PCEs in light of the Alameda whipsnake court case (*Homebuilder's Ass'n of Northern Cal. v. U.S. Fish and Wildlife Service*, 268 F. Supp.2d 1197 (E.D. Cal. 2003)) and other relevant case law, and followed current Service guidelines and policies. The PCEs differ from those in the existing critical habitat rule in that they are reorganized into five separate PCEs for clarity. Furthermore, we have added specific information on elevational range, plant species used for foraging, and range of slopes required by the subspecies. This additional specificity was gained by evaluating the recovery plan and examining all recent sheep data, including data from radio collars and GPS collars providing precision to the identification of habitats used and preferred by Peninsular bighorn sheep. Applying the more precise PCEs to the mountain ranges inhabited by Peninsular bighorn sheep allowed us to fine tune the proposed revision to those areas containing preferred habitat for sheep use, and removing those areas unlikely to be used by Peninsular bighorn sheep.

(3) Approximately 29,924 ac (12,110 ha) of designated critical habitat were vacated in the July 31, 2006, consent decree. A portion of those acres are now

within proposed revised critical habitat. Of the 13,213 ac (5,347 ha) of vacated Agua Caliente Band of Cahuilla Indians Tribal lands, approximately 4,512 ac (1,826 ha) are now included in this proposal. However, we are proposing to exclude all Tribal lands from the final designation. Approximately 16,691 ac (6,756 ha) of mining lands at Ocotillo Mineral Material Sites and Fish Canyon Quarry property were vacated. In this proposed revision to critical habitat we are including roughly 50 percent of those vacated lands; specifically, we are including lands along the northernmost portion of the Ocotillo Mineral Material Sites property and the middle to southern portion of the Fish Canyon Quarry property. Both of these mining properties contain actively mined lands, but also contain areas in which we have recent documented use by Peninsular bighorn sheep and areas that meet the criteria used to identify critical habitat as described above. The Desert Riders lands vacated in the consent decree (approximately 20 ac (8 ha)) are not included in this proposed revision.

Our 2001 final critical habitat rule included the statement that "* * *"; we are not aware of any information suggesting that particular areas within designated critical habitat are currently unsuitable or unused over the generational timeframe needed for the long-term conservation of bighorn sheep in the Peninsular Ranges" (66 FR 8655). However, we have reconsidered the information that was available to us at the time of the 2001 designation in light of all the information currently available to us, and we have determined that the methodology used in this proposed revision, which utilized the best available information, provides a more accurate and specific delineation of the areas essential to the Peninsular bighorn sheep, than that relied upon in the 2001 critical habitat designation.

Proposed Revisions to the Critical Habitat Designation

We are proposing four units as critical habitat for the Peninsular bighorn sheep. These units, which are almost entirely within the area included in the 2001 designation, if finalized, would replace the current critical habitat designation for the Peninsular bighorn sheep at 50 CFR 17.95(a). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Peninsular bighorn sheep. Table 1 shows the occupancy status of each unit being proposed as revised critical habitat.

TABLE 1.—OCCUPANCY STATUS OF CRITICAL HABITAT UNITS PROPOSED FOR THE PENINSULAR BIGHORN SHEEP

Unit	Occupied at time of listing?	Currently occupied?	Size of proposed revised critical habitat unit in acres (Hectares)
1. San Jacinto Mts.	Yes	Yes	15,273 (6,180 ha).
2A. N. Santa Rosa Mts.	Yes	Yes	74,998 ac (30,350 ha).
2B. S. Santa Rosa Mts. south to Vallecito Mts..	Yes	Yes	226,211 ac (91,545 ha).
3. Carrizo Canyon	Yes	Yes	67,928 ac (27,489 ha).
Total	384,410 ac (155,564 ha).

The four areas we propose as revised critical habitat are: (1) Unit 1—San Jacinto Mountains, (2) Unit 2A—North Santa Rosa Mountains, (3) Unit 2B—

South Santa Rosa Mountains south to Vallecito Mountains, and (4) Unit 3—Carrizo Canyon.

The approximate area of each proposed revised critical habitat unit is shown in Table 2.

TABLE 2.—PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE PENINSULAR BIGHORN SHEEP WITH LAND OWNERSHIP
[Area estimates reflect all land within proposed critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of proposed revised critical habitat unit in acres (Hectares)
1. San Jacinto Mts.	Tribal ¹	4,512 ac (1,826 ha).
	BLM ²	3,757 ac (1,520 ha).
	USFS ³	1,266 ac (512 ha).
	Private	5,738 ac (2,322 ha).
	Subtotal	15,273 ac (6,180 ha).
2A. N. Santa Rosa Mts.	BLM	44,669 ac (18,077 ha).
	State ⁴	16,856 ac (6,821 ha).
	Private	13,473 ac (5,452 ha).
	Subtotal	74,998 ac (30,350 ha).
2B. S. Santa Rosa Mts. south to Vallecito Mts.	BLM	16,266 ac (6,583 ha).
	State ⁵	197,509 ac (79,929 ha).
	Private	12,436 ac (5,033 ha).
	Subtotal	226,211 ac (91,545 ha).
3. Carrizo Canyon	BLM	27,762 ac (11,235 ha).
	State ⁶	35,475 ac (14,356 ha).
	Private	4,177 ac (1,690 ha).
	Local ⁷	514 ac (208 ha).
	Subtotal	67,928 ac (27,489 ha).
Total	384,410 ac (155,564 ha).

1—Tribal = Agua Caliente Band of Cahuilla Indians Reservation and Tribal Lands
 2—BLM = Bureau of Land Management
 3—USFS = United States Forest Service
 4—State = California Department of Fish and Game (CDFG) and California State Lands Commission (CSLC)
 5—State = CDFG, CSLC, and California Department of Parks and Recreation (CDPR)
 6—State = CDPR
 7—Local = City/County Park

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Peninsular bighorn sheep below.

Unit 1: San Jacinto Mountains

Unit 1 consists of approximately 15,273 ac (6,180 ha) in the San Jacinto Mountains, Riverside County. Unit 1 is generally located within an area bounded on the east by the city of Palm

Springs; bounded on the north by Windy Point and Snow Canyon; and that extends south to the northern Palm Canyon area. Land ownership within the unit includes approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians Tribal land; 3,757 ac (1,520 ha) of BLM land; 1,266 ac (512 ha) of USFS land; and 5,738 ac (2,322 ha) of private land (Table 2).

Unit 1 begins at a low elevation of about 450 ft (137 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. It is the northernmost unit proposed as revised critical habitat for the Peninsular bighorn sheep. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a

range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 1 may require special management considerations or protection to ameliorate the threats of urban and industrial development, particularly in lower elevation areas, and to decrease the direct and indirect effects of human disturbance to the Peninsular bighorn sheep and its habitat, due to the proximity of this unit to the Palms Springs area. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

This unit includes approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians (Tribe) tribal lands supporting essential Peninsular bighorn sheep habitat. We are proposing to exclude these lands from the final designation. The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Furthermore, these approximately 4,512 ac (1,826 ha) of Tribal land are currently managed by the Tribe in a manner that provides some conservation benefits to the Peninsular bighorn sheep, and are also within the plan area of the draft Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan (Tribal HCP) (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion).

This unit also includes lands within the plan area for the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP). We are considering the possible exclusion of approximately 5,738 ac (2,322 ha) of private land from the final critical habitat designation based on benefits provided to the Peninsular bighorn sheep and its PCEs by the MSCHP, which is in draft form and under review by the Service (see "Lands Covered by Management Plans " Exclusions Under Section 4(b)(2) of the Act" for a detailed discussion).

Unit 2A: North Santa Rosa Mountains

Unit 2A consists of approximately 74,998 ac (30,350 ha) in the northern Santa Rosa Mountains, Riverside

County. Unit 2A is generally located on the east-facing slopes of the northern Santa Rosa Mountains, is loosely bounded on the east by communities of the northern Coachella Valley, and extends from the Rancho Mirage area in the north to Martinez Canyon in the south. Land ownership within the unit includes approximately 44,669 ac (18,077 ha) of BLM land; 16,856 ac (6,821 ha) of land owned by the State of California; and 13,473 ac (5,452 ha) of private land (Table 2).

Unit 2A begins at a low elevation of about 50 ft (15 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 2A may require special management considerations or protection to ameliorate the threats of urban, industrial, and agricultural development, and to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat, due to the proximity of this unit to the highly developed northern Coachella Valley.

Additionally, the PCEs in this unit may require special management considerations or protection to alleviate threats to Peninsular bighorn sheep and its habitat associated with roadways; State Route 74 cuts through the midsection of this unit and may impede movement between ewe groups. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

This unit includes lands that are within the plan area for the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP). We are considering the possible exclusion of approximately 13,473 ac (5,452 ha) of private land in Unit 2A from the final critical habitat designation based on benefits provided to the Peninsular bighorn sheep habitat under this plan, which is in draft form and under review by the Service (see "Areas Considered for Exclusion Under Section 4(b)(2) of the Act" for a detailed discussion).

Unit 2B: South Santa Rosa Mountains south to Vallecito Mountains

Unit 2B consists of approximately 226,211 ac (91,545 ha) in the southern Santa Rosa Mountains, Coyote Canyon, San Ysidro Mountains, Pinyon Mountains, and Vallecito Mountains, in Riverside, San Diego, and Imperial counties. Unit 2B is generally located on the east-facing slopes of the above ranges; it is loosely bounded on the east by the Coachella Valley floor and extends from the southern Santa Rosa Mountains in the north to the Fish Creek Mountains in the south. Land ownership within the unit includes approximately 16,266 ac (6,583 ha) of BLM land; 197,509 ac (79,929 ha) of land owned by the State of California; and 12,436 ac (5,033 ha) of private land (Table 2). Portions of the Anza-Borrego Desert State Park occur within this unit.

Unit 2B begins at a low elevation of about 150 ft (45 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 2B may require special management considerations or protection to ameliorate the threats of urban, industrial, and agricultural development due to the proximity of this unit to the Coachella Valley, especially the lower elevation areas in the northeastern portions of this unit. Additionally, the PCEs in this unit may require special management considerations or protection to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat due to recreational activity. Most of this unit includes lands within Anza-Borrego Desert State Park, which is open to recreation activities. Furthermore, the PCEs in this unit may require special management considerations or protection to alleviate threats to Peninsular bighorn sheep and its habitat associated with State Route 78, which cuts through the southern portion of this unit and may impede movement between ewe groups, and mining operations at Fish Canyon Quarry. Please see the "Special Management Considerations or Protection" section of this proposed rule

for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

Unit 3: Carrizo Canyon

Unit 3 consists of approximately 67,928 ac (27,489 ha) in the Carrizo Canyon area, in San Diego and Imperial counties. Unit 3 is generally located in Carrizo Canyon and the surrounding In-Ko-Pah Mountains, Jacumba Mountains, Coyote Mountains, and Tierra Blanca Mountains; it is loosely bounded on the north, east, and west by the Coachella Valley floor. Land ownership within the unit includes approximately 27,762 ac (11,235 ha) of BLM land; 35,475 ac (14,356 ha) of land owned by the State of California; 4,177 ac (1,690 ha) of private land; and 514 ac (208 ha) of local park land (Table 2). Portions of the Anza-Borrego Desert State Park occur within this unit.

Unit 3 begins at a low elevation of about 400 ft (122 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 3 may require special management considerations or protection to decrease the direct and indirect effects of human disturbance due to recreational activity to

Peninsular bighorn sheep and its habitat. Most of this unit occurs within the Anza-Borrego Desert State Park, which is open to recreation activities. The PCEs in Unit 3 may also require special management considerations or protection to protect Peninsular bighorn sheep habitat from mining operations at Ocotillo Mineral Material Site. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

Table 3 provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but that we are proposing to exclude from the final revised critical habitat designation. Table 3 also provides reasons for the proposed exclusions.

TABLE 3.—PROPOSED EXCLUSIONS BY CRITICAL HABITAT UNIT

Unit	Statutory	Reason for proposal exclusion	Area meeting the definition of critical habitat in acres (Hectares)	Area proposed for exclusion in acres (Hectares)
1. San Jacinto Mts.	4(b)(2)	Government-to-Government Relationship ¹	4,512 ac (1,826 ha)	4,512 ac (1,826 ha).
Total	4,512 ac (1,826 ha).

¹ Government-to-Government Relationship = Secretarial Order 3206, "American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve

its intended conservation role for the species.

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, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, if we list those species or designate critical habitat. We may conduct conferences either informally or formally. We typically use

informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or 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)).

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

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

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

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

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

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

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

those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Peninsular bighorn sheep or its designated critical habitat require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Peninsular bighorn sheep. Generally, the conservation role of the Peninsular bighorn sheep critical habitat units 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, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Peninsular bighorn sheep include, but are not limited to:

(1) Actions that would significantly reduce ongoing management and conservation efforts that benefit the Peninsular bighorn sheep on public lands. Such activities could include, but are not limited to, the sale, exchange, or lease of lands managed by BLM or other

Federal agencies, and the State of California. These activities could reduce the amount of space that is available for individual and population growth and normal behavior, as well as reduce or eliminate the number and extent of sites for foraging, watering, breeding, reproduction, and rearing of offspring. These activities could also reduce the opportunities available to Federal agencies to exercise their section 7(a)(1) responsibilities to carry out programs to conserve listed species.

(2) Actions that would significantly reduce the availability of or accessibility to seasonal ranges. Such activities could include, but are not limited to, grazing, mining, and power line and road construction activities. These activities could degrade, reduce, fragment, or eliminate available foraging resources or alter current foraging activities of Peninsular bighorn sheep.

(3) Actions that would result in the significant expansion of dense vegetation communities within Peninsular bighorn sheep habitat. Such activities could include, but are not limited to, fire suppression. These activities could allow expansion of vegetation cover such that movement patterns of bighorn sheep are altered by avoidance of these areas. Tall, dense vegetation decreases visibility for bighorn sheep and provides cover for predators such as the mountain lion, a common predator of Peninsular bighorn sheep.

(4) Actions that would create significant barriers to movement. Such activities could include, but are not limited to, road construction, residential development, and resort or campground facility development or expansion. These activities could interfere with movement within and between habitats, thereby reducing the availability of habitat for foraging, watering, breeding, reproduction, sheltering, and rearing of offspring. These activities could also reduce opportunities for movement between existing populations, dispersal, and genetic interchange between ewe groups.

(5) Actions that would significantly degrade habitat or cause a disturbance to Peninsular bighorn sheep. Such activities could include, but are not limited to, recreational activities, such as off-road vehicle use, hiking, camping, rock climbing, horseback riding, and outfitter guided activities. These activities could displace animals from foraging areas, water sources, and escape terrain, and could impact the quality and quantity of forage.

Exemptions and Exclusions

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

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

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If we consider an exclusion 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 the exclusions we are considering. In addition, we are conducting an economic analysis of the impacts of the proposed critical habitat designation, which will be available for public review and comment when it is complete. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the

conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

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

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for

destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species is not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

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

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take

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

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Peninsular bighorn sheep. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also

would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the

Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

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

Benefits of Excluding Lands With Approved Management Plans

The benefits of excluding lands within approved long-term management plans (including HCPs) from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that

might be imposed by critical habitat. Many conservation plans provide conservation benefits not only to listed species, but to unlisted sensitive species as well, resulting in enhanced ecosystem management. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

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

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

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

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

We are proposing to exclude Tribal lands in Unit 1 in consideration of Secretarial Order 3206, “American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). Furthermore, we are evaluating and considering the possible exclusion of private lands in Unit 1 and 2A, which are covered under the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), under section 4(b)(2) of the Act, and may exclude them from the final revised critical habitat designation for the Peninsular bighorn sheep. With regard to the draft Coachella Valley MSHCP plan area, we are only considering private lands for exclusion at this time, while also soliciting comment on the appropriateness of excluding CDFG and BLM lands as Memorandum of Understanding (MOU) partners to the MSHCP. We are considering the possible exclusion of the areas covered by the draft MSHCP because we believe when the plan is finalized that:

- (1) The lands’ value for conservation will be preserved for the foreseeable future by existing protective actions, and
- (2) They are appropriate for exclusion under the “other relevant factor” provisions of section 4(b)(2) of the Act.

We specifically solicit comments on the inclusion or exclusion of these areas. In the paragraphs below, we provide a detailed analysis for consideration of exclusion of these lands under section 4(b)(2) of the Act.

Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Secretarial Order 3206, “American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2),

we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We have determined that approximately 4,512 ac (1,826 ha) of tribal land owned by the Agua Caliente Band of Cahuilla Indians are essential to the conservation of the Peninsular bighorn sheep, and are proposing to exclude these lands under section 4(b)(2) of the Act. In making our final decision with regard to these Tribal lands, we will be considering several factors including our relationship with the Tribe, the Tribe’s current management of Peninsular bighorn sheep habitat, and the Tribe’s ongoing cooperation with us in the development of the Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan (Tribal HCP).

The Agua Caliente Band of Cahuilla Indians highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its lands, including the habitat of endangered and threatened species. The Tribe currently implements a conservation strategy for the Peninsular bighorn sheep to protect and manage bighorn sheep habitat on Tribal lands (as set forth in the draft Tribal Habitat Conservation Plan adopted by the Tribe on or about November 11, 2002). This conservation strategy requires conservation of at least 85 percent of bighorn sheep habitat identified by the Tribe on Tribal lands and 100 percent of bighorn sheep use areas and habitat linkages identified by the Tribe on Tribal lands. These management measures provide a substantial conservation benefit to the subspecies.

In addition, we are currently working with the Tribe to develop the first Tribal multiple-species HCP in the United States. Through this cooperative effort, the Tribe has demonstrated a sustained commitment to manage its lands in a

manner consistent with the subspecies' conservation. We are currently processing the Tribe's application for a section 10(a)(1)(B) permit based on a revised draft Tribal Habitat Conservation Plan (2007), and anticipate publishing a Notice of Availability for public review in the **Federal Register** in October 2007.

The Tribal HCP area will cover approximately 36,720 ac (14,860 ha) of land, including approximately 4,512 ac (1,826 ha) in Unit 1. The Tribe's goals for conservation of Peninsular bighorn sheep are: (1) Conserving habitat within the Tribal HCP plan area (PCE 1, 2, 3, 4, and 5); (2) maintaining connectivity, preventing fragmentation, and allowing movement within key linkage areas (PCE 1 and 4); and (3) adaptively managing habitat quality and subpopulations/ewe groups to alleviate threats in the Tribal HCP plan area (Tribal HCP 2007, p. 4–8). Conservation objectives of the draft Tribal HCP for Peninsular bighorn sheep include the following: (1) Ensure implementation of the Tribal HCP is consistent with the recovery plan (Service 2000); (2) conserve a minimum of 17,692 ac (7,160 ha) of habitat within the plan area; (3) conserve 100 percent of Use Areas (areas defined by the Tribal HCP to have high functional value); (4) conserve land necessary to maintain linkages/connectivity; (5) minimize direct and indirect impacts from Covered Activities by ensuring implementation of development standards, including avoidance and minimization measures; (6) minimize impacts from recreational activities; (7) alleviate threat of disease transfer from livestock or nonnative wildlife; (8) monitor population size and mortality rates; (9) fund or undertake additional studies regarding this subspecies; (10) ensure management action thresholds are routinely assessed; (11) implement adaptive management; and (12) conserve habitat quality through plan implementation (Tribal HCP 2007, p. 4–9).

To aid in the public review of this proposed revised critical habitat, we are providing maps of the areas that we are proposing to exclude. Maps and GIS layers for areas proposed for exclusion are available from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) and on our Web site at <http://www.fws.gov/Carlsbad>.

The Benefits of Exclusion Outweigh the Benefits of Inclusion

The general benefits of critical habitat described in the "Benefits of Critical Habitat Designation" section would apply to habitat designated on Tribal

lands. Activities occurring on Tribal lands will generally involve a Federal nexus. However, as discussed above, the Tribe is aware of the value of Tribal lands to the conservation of the Peninsular bighorn sheep and currently implements management measures that contribute to the conservation of the subspecies and protect its essential habitat. Conservation measures will continue to be implemented by the Tribe regardless of whether the areas are designated as critical habitat. In light of this continued commitment by the Tribe to manage its lands in a manner that promotes the conservation of the Peninsular bighorn sheep, the designation of critical habitat would provide minimal additional benefit to the subspecies on these Tribal lands.

The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Our working relationship with the Tribe has been extremely beneficial in implementing natural resource programs of mutual interest. The benefits of excluding Agua Caliente Band of Cahuilla Indians Tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribal conservation and natural resource management plans for their lands and resources, which includes the Peninsular bighorn sheep and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the Peninsular bighorn sheep and its habitat; (3) the allowance for continued meaningful collaboration and cooperation on Peninsular bighorn sheep management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to desert ecosystems and a host of species, including the Peninsular bighorn sheep and its habitat, that might not otherwise occur.

We believe that the Tribe should be the governmental entity to manage and promote the conservation of the Peninsular bighorn sheep on its lands. We recognize and endorse the Tribe's fundamental right to provide for tribal resource management activities, including those relating to Peninsular bighorn sheep. We have determined that the identified benefits of excluding the Tribal lands from the critical habitat designation outweigh the minimal benefits of inclusion, and are proposing to exclude approximately 4,512 ac (1,826 ha) of Tribal lands in Unit 1 from

the final designation under section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of approximately 4,512 ac (1,826 ha) from the final designation of critical habitat for Peninsular bighorn sheep will not result in the extinction of the subspecies because the Tribe currently implements a conservation strategy for the Peninsular bighorn sheep that requires conservation of at least 85 percent of bighorn sheep habitat identified by the Tribe on Tribal lands and 100 percent of bighorn sheep use areas and habitat linkages identified by the Tribe on Tribal lands. In addition, working cooperatively with us, the Tribe has made substantial progress in developing its Tribal HCP. Through this cooperative effort, the Tribe has demonstrated a sustained commitment to manage its lands in a manner consistent with the subspecies' conservation. Furthermore, the area proposed for exclusion is occupied by the Peninsular bighorn sheep, and the jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 consultation process also provide assurances that the subspecies will not go extinct. The proposed exclusion of critical habitat leaves these protections unchanged from those that would exist if the proposed excluded areas were designated as critical habitat. Therefore, we have determined that the exclusion of the Tribal lands will not result in the extinction of the subspecies.

Lands Covered by Management Plans—Exclusions Under Section 4(b)(2) of the Act

When performing the required analysis under section 4(b)(2) of the Act, the existence of a management plan (HCPs as well as other types) that considers enhancement or recovery of listed species as its management standard is relevant to our weighing of the benefits of inclusion of a particular area in the critical habitat designation. In analyzing particular areas covered by management plans under section 4(b)(2) of the Act, we generally consider a number of factors including the following:

(1) Whether the plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7(a)(2) of the Act;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions will

be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP)

We believe that the Coachella Valley MSHCP, when implemented, will provide conservation strategies and measures consistent with the conservation of the Peninsular bighorn sheep. We are confident that the plan will be completed in the near future, and are considering the exclusion of non-Federal lands covered by the plan that provide for the conservation of the Peninsular bighorn sheep and its PCEs. We are requesting comments on the benefit to the Peninsular bighorn sheep and its PCEs from the conservation measures established by the Coachella Valley MSHCP.

The draft MSHCP has been in development from the mid-1990s to present. The following entities signed an MOU (Planning Agreement) to govern the preparation of the MSHCP: the Coachella Valley Association of Governments (CVAG); Cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage; County of Riverside; Service; California Department of Fish and Game; BLM; U.S. Forest Service; and National Park Service. Subsequently, the California Department of Transportation, Coachella Valley Water District, Imperial Irrigation District, Riverside County Flood Control and Water Conservation District, Riverside County Regional Parks and Open Space District, Riverside County Waste Management District, California Department of Parks and Recreation, and Coachella Valley Mountains Conservancy decided to participate in preparation of the MSHCP. The parties later amended the Planning Agreement to also address the requirements of the Natural Community Conservation Planning (NCCP) Act and prepared an NCCP pursuant to California Fish and Game Code Section 2810. The Coachella Valley Association of Governments, Coachella Valley Conservation Commission, County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Regional Parks and Open Space District, Riverside County Waste Resources Management District, City of Cathedral City, City of Coachella, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of

Palm Springs, City of Rancho Mirage, Coachella Valley Water District, Imperial Irrigation District, Coachella Valley Mountains Conservancy, California Department of Transportation, and California Department of Parks and Recreation have submitted an application to the Service for a section 10(a)(1)(B) permit under the Act.

The MSHCP area encompasses approximately 1.2 million ac (485,623 ha), of which 69,000 ac (27,923 ha) are Tribal lands and are not included in the MSHCP, leaving a total of approximately 1.1 million ac (445,154 ha) addressed by the MSHCP in Riverside County. BLM has been an official participant in the draft Coachella Valley MSHCP planning process and has committed, under their California Desert Conservation Area Plan Amendment (CDCAPA), 95 percent of their public land base within the conservation areas of the MSHCP to be managed consistent with the Coachella Valley MSHCP once it is completed.

CVAG has demonstrated a sustained commitment to develop the MSHCP to comply with section 10(a)(1)(B) of the Act, the California Endangered Species Act, and the State's NCCP program. On April 21, 2006, the Service published a notice of availability of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the MSHCP (71 FR 20719). On March 30, 2007, the Service published a notice of availability of a supplement to the Final EIS for the MSHCP (72 FR 15148).

The MSHCP adopted the Peninsular bighorn sheep habitat model described in the 2000 recovery plan for this subspecies (Service 2000). Accordingly, the MSHCP area includes 172,811 ac (69,934 ha) of modeled Peninsular bighorn sheep habitat. These 172,811 ac (69,934 ha) include the approximately 10,761 ac (4,354 ha) we are proposing in Unit 1 and the approximately 74,998 ac (30,350 ha) we are proposing in Unit 2A. The draft MSHCP proposes to ensure conservation of a minimum of 97 percent of all modeled habitat for Peninsular bighorn sheep as part of the preferred alternative reserve design that includes large areas of suitable habitat (CVAG 2007, p. 9–261). Approximately 78 percent of the proposed conserved modeled habitat are within Existing Conservation Lands and will be managed as part of the Reserve System (CVAG 2007, p. 9–261); the remaining 19 percent will also be conserved according to the draft MSHCP (CVAG 2007, p. 9–261). Conservation objectives of this draft MSHCP include: (1) Ensuring conservation of important

habitat (PCE 1, 2, 3, 4, and 5); (2) ensuring connectivity by preventing fragmentation and maintaining biological corridors and linkages within essential habitat to allow dispersal, provide for population fluctuation, and enhance genetic diversity (PCE 1 and 4); and (3) ensuring conservation of habitat quality through biological monitoring and adaptive management (PCE 1, 2, 3, 4, and 5) (CVAG 2007, p. 9–261).

According to the draft MSHCP, disturbance to Peninsular bighorn sheep with implementation of the plan is expected to be low because: (1) Conserved habitat areas are large enough to maintain self-sustaining populations of Peninsular bighorn sheep and incorporate key habitat elements for the subspecies; (2) implementation of the MSHCP is consistent with the recovery strategy delineated in the 2000 recovery plan; (3) implementation of the conservation objectives to protect habitat for this subspecies will provide connectivity; and (4) lands in the MSHCP reserve system would be managed and monitored to address significant edge effect problems, human disturbance, fragmentation, impacts from exotic species, and other stressors to Peninsular bighorn sheep (CVAG 2007, p. 9–261).

Although not yet completed and implemented, CVAG has made significant progress in the development of its MSHCP to meet the requirements outlined in section 10(a)(1)(B) of the Act. In light of the Service's confidence that CVAG will reach a successful conclusion to its MSHCP development process, we are evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land within their preferred alternative reserve design from the final revised critical habitat designation for Peninsular bighorn sheep depending on the progress made on the draft MSHCP between now and the publication of the final rule. We are requesting comments on the benefits to the Peninsular bighorn sheep and its PCEs from the conservation measures established by the MSHCP.

Included within the MSHCP plan area are BLM lands, outside of the Coachella Valley Preserve System, which we are soliciting comment on the appropriateness of excluding from the final revised critical habitat designation based on BLM's official participation in the draft Coachella Valley MSHCP planning process and commitment under their CDCAPA to manage their lands consistent with the Coachella Valley MSHCP once it is completed. We are also soliciting comment on the appropriateness of excluding CDGF

lands within the MSHCP plan area based on their involvement with the Coachella Valley MSHCP.

Provisions of the Coachella Valley MSHCP Specific to Peninsular Bighorn Sheep

In general, we find that the benefits of critical habitat designation on lands within pending HCPs that cover those species are small, while the benefits of excluding such lands from designation of critical habitat are substantial. We are evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land within CVAG's MSHCP preferred alternative reserve design area from the designation of critical habitat. The evaluation process involves determining whether the benefits of excluding these lands from Units 1 and 2A outweigh the benefits of including these lands. We expect the PCEs required by Peninsular bighorn sheep to benefit by the conservation measures outlined in the MSHCP and as described above. In summary, these conservation measures include: Conservation of habitat and implementation of the MSHCP consistent with the recovery plan (Service 2000); preservation of essential habitat and connectivity; biological monitoring and adaptive management; and minimization of disturbance and edge effects. These specific conservation actions, avoidance and minimization measures, and management for Peninsular bighorn sheep and PCEs, if implemented, are expected to exceed any conservation value that could be provided as a result of regulatory protections afforded through a critical habitat designation.

Designation of critical habitat alone does not achieve recovery or require management of those lands identified in the critical habitat rule. The exclusion of these lands that we are currently evaluating and considering for possible exclusion from the final critical habitat designation would help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP. The benefits of excluding these lands from critical habitat, should the MSHCP be finalized and implemented, are expected to outweigh the minimal benefits of including these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of Peninsular bighorn sheep. Such educational benefits can still be accomplished from materials provided on our Internet website and through the overall designation process,

including the notice and public comment period, which will occur whether or not these particular areas are designated.

Economics

We are preparing an analysis of the economic impacts of proposing revised critical habitat for the Peninsular bighorn sheep. 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://carlsbad.fws.gov>, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**). We may exclude areas from the final revised rule based on the information in the economic analysis.

Peer Review

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

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any request for hearings. We must receive your request for a public hearing within 45 days after the date of publication in the **Federal Register**. Send your request to the person named in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel

legal and policy issues. However, based on information available from the previous designation, we do not anticipate that it will have an annual effect on the economy of \$100 million or more or to affect the economy in a material way. To determine the economic consequences of designating the specific area as critical habitat, we are preparing a draft economic analysis of this proposed action, which will be available for public comment. This economic analysis also will be used to determine compliance with E.O. 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, E.O. 12630, and E.O. 13211.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A-4, September 17, 2003). Under Circular A-4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

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

We will announce the availability of the draft economic analysis in the **Federal Register** and in local newspapers so that it is available for public review and comments. At that time, the draft economic analysis will also be available on the Internet at <http://carlsbad.fws.gov>, 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 (RFA: 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must

publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended 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, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under 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, we will announce availability of the draft economic analysis of the proposed revised designation in the **Federal Register** and reopen the public comment period for the proposed revised designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act

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

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that

"would impose an enforceable duty upon State, local, or 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 onto State governments.

(b) Due to current public knowledge of the subspecies' protection, the prohibition against take of the subspecies both within and outside of the areas proposed in this rule for designation and the fact that the vast majority of the areas proposed in this rule are currently designated as critical

habitat, we do not believe that this proposed rule will significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for the Peninsular bighorn sheep in a takings implications assessment. The takings implications assessment concludes that this proposed revised designation of critical habitat for the Peninsular bighorn sheep does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. Critical habitat is already designated for the Peninsular bighorn sheep. If finalized, this proposal to revise the designated critical habitat will result in a significant decrease in the area designated. Thus, the designation of revised critical habitat for the Peninsular bighorn sheep would not impose any additional regulatory 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 because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the areas proposed for designation to assist the public in understanding the habitat needs of the Peninsular bighorn sheep.

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

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

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit Court (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Clarity of the Rule

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

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified Tribal lands that meet the definition of critical habitat for the Peninsular bighorn sheep, and have included them in this proposal.

However, we are proposing to exclude all Tribal lands from the final critical habitat designation under section 4(b)(2) of the Act (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion). We will continue to coordinate with the Tribe during the designation process.

Energy Supply, Distribution, or Use

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

Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to designate revised critical habitat for the Peninsular bighorn sheep is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

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

Author

The primary author of this package is Justin Shoemaker 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 § 17.11(h), revise the entry for "Sheep, bighorn" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Sheep, Peninsular bighorn.	<i>Ovis canadensis nelsoni</i> .	U.S.A. (western conterminous States), Canada (south-western), Mexico (northern).	U.S.A. (CA) Peninsular Ranges.	E	634	17.95(a)	NA.
*	*	*	*	*	*	*	*

3. In § 17.95(a), revise the entry for Bighorn Sheep (Peninsular Ranges)(*Ovis canadensis*) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Bighorn Sheep (Peninsular Ranges)
(*Ovis canadensis nelsoni*)

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

(2) The primary constituent elements of critical habitat for the Peninsular bighorn sheep are:

(i) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups.

(ii) Presence of a variety of forage plants, indicated by the presence of shrubs (e.g., *Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (e.g., *Aristida* spp., *Bromus* spp.) and cacti (e.g., *Opuntia* spp.) that provide a source of forage in the fall, and forbs (e.g., *Plantago* spp., *Ditaxis* spp.) that provide a source of forage in the spring.

(iii) Steep, rugged, slopes (60 percent slope or greater) (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide secluded space for lambing as well as terrain for predator evasion.

(iv) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible plants can be more readily found during times of drought and lactation and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups,

adjacent mountain ranges, and important resources areas, such as foraging areas and escape terrain.

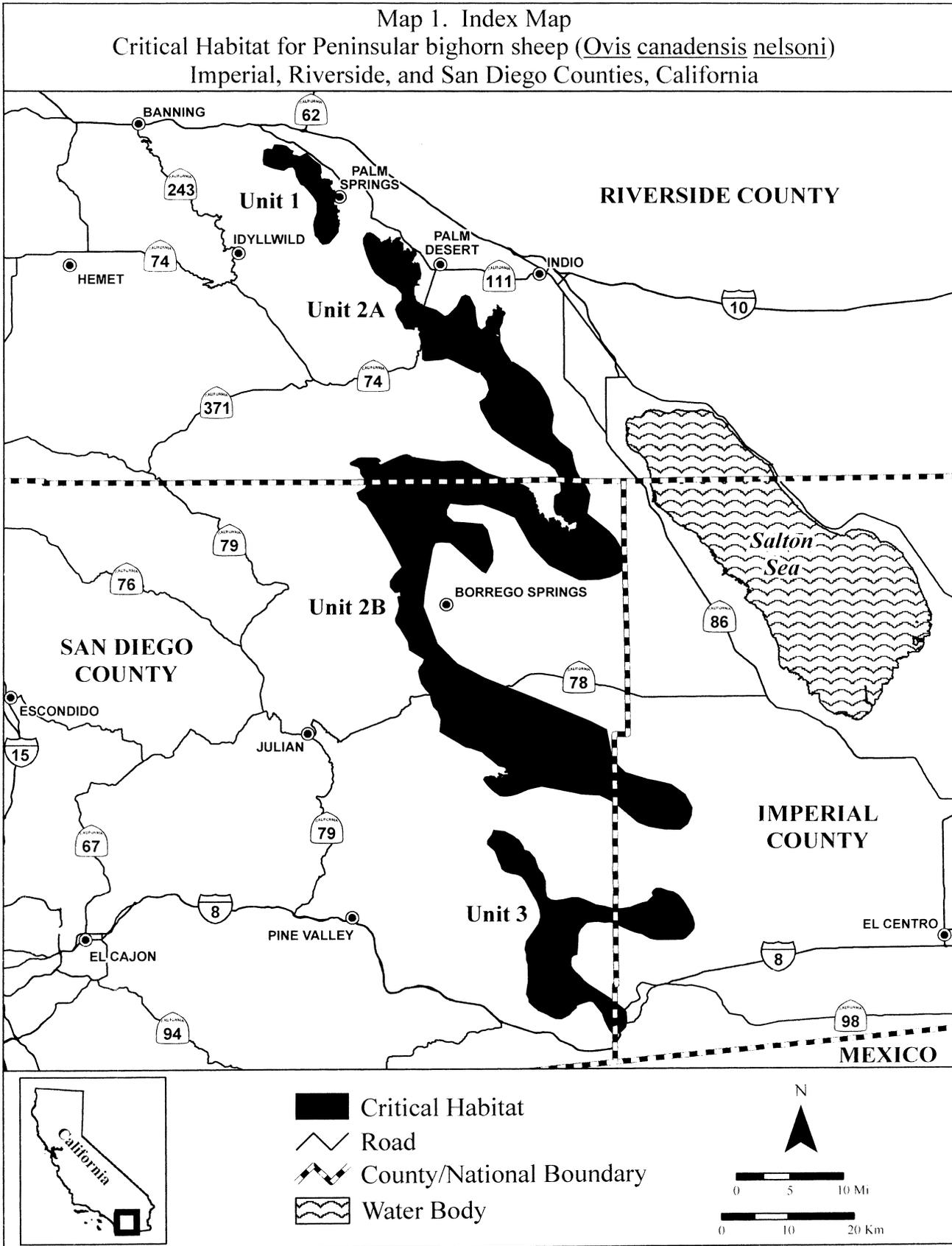
(v) Intermittent and permanent water sources that are available during extended dry periods and that provide relatively nutritious plants and drinking water.

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

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

(5) Note: Index map of critical habitat units for the Peninsular bighorn sheep (Map 1) follows:

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(6) Unit 1: San Jacinto Mountains, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Desert Hot Springs, Palm Springs, and San Jacinto Peak, and White Water. Land bounded by the following

Universal Transverse Mercator (UTM) North American Datum of 1927

(NAD27) coordinates (E, N): 534134,

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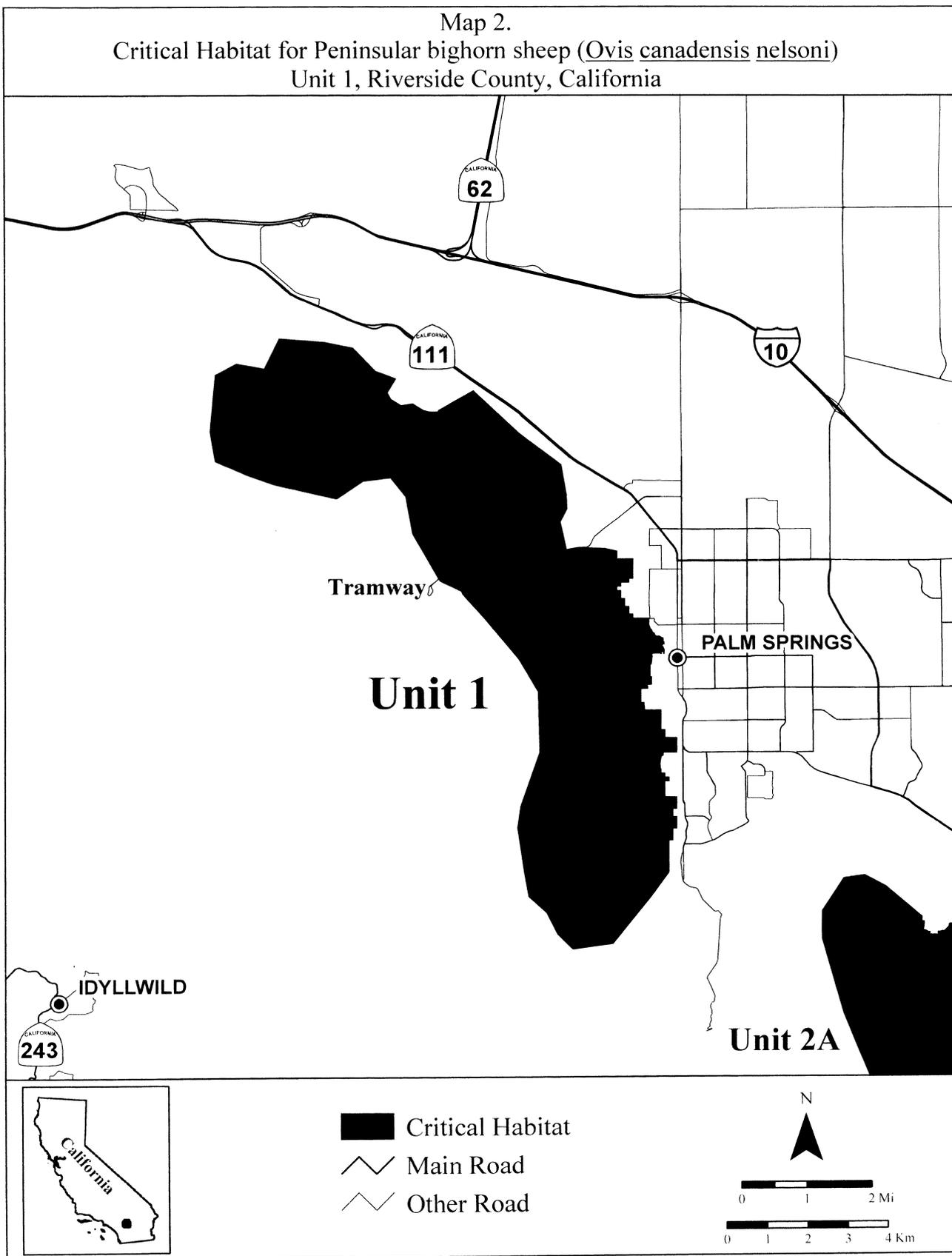
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(ii) Note: Map of Unit 1, San Jacinto
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BILLING CODE 4310-55-P



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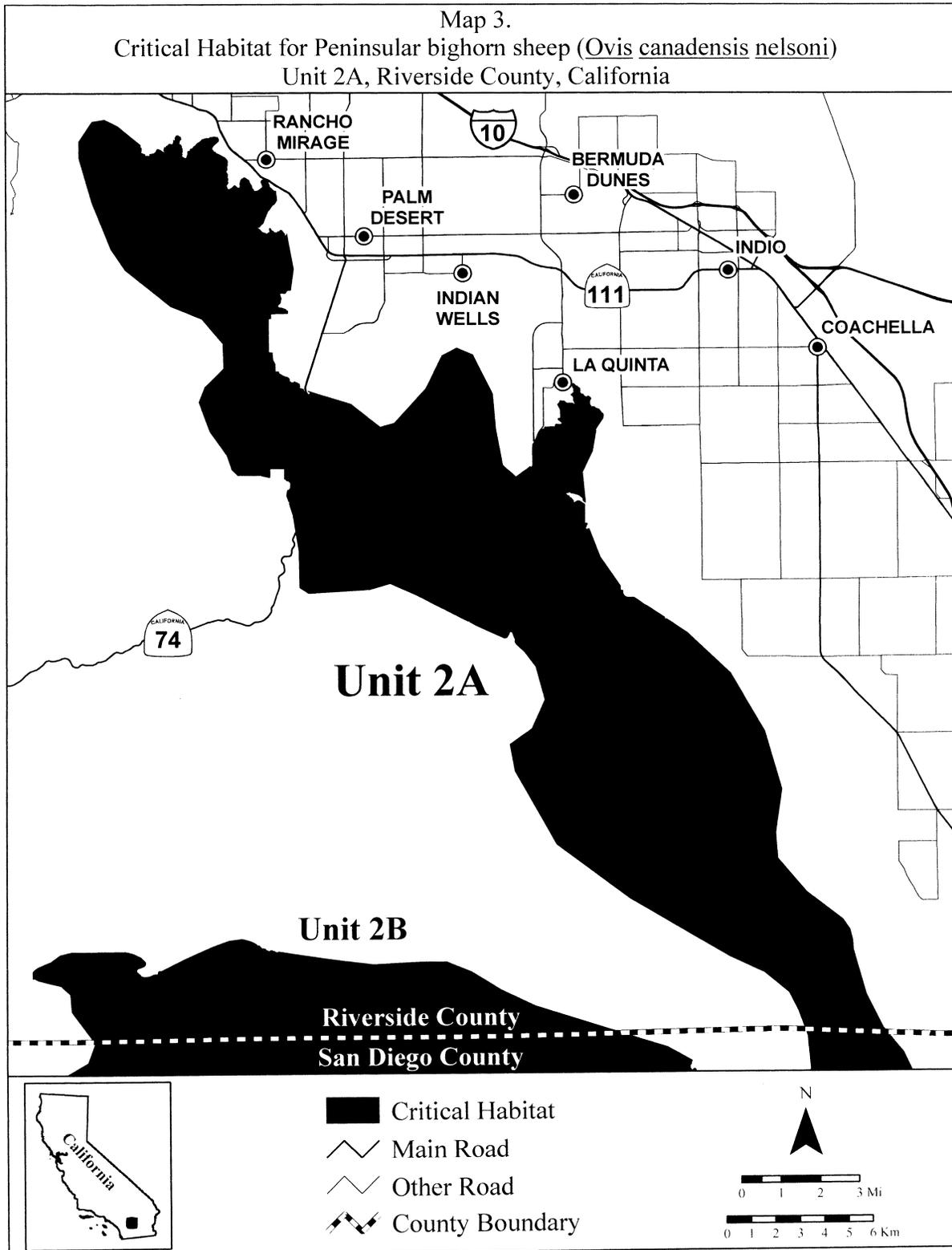
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(ii) Note: Map of Unit 2A, North Santa
Rosa Mountains (Map 3) follows:

BILLING CODE 4310-55-P



(8) Unit 2B: South Santa Rosa Mountains south to Vallecito Mountains, Riverside, San Diego, and Imperial Counties, California.

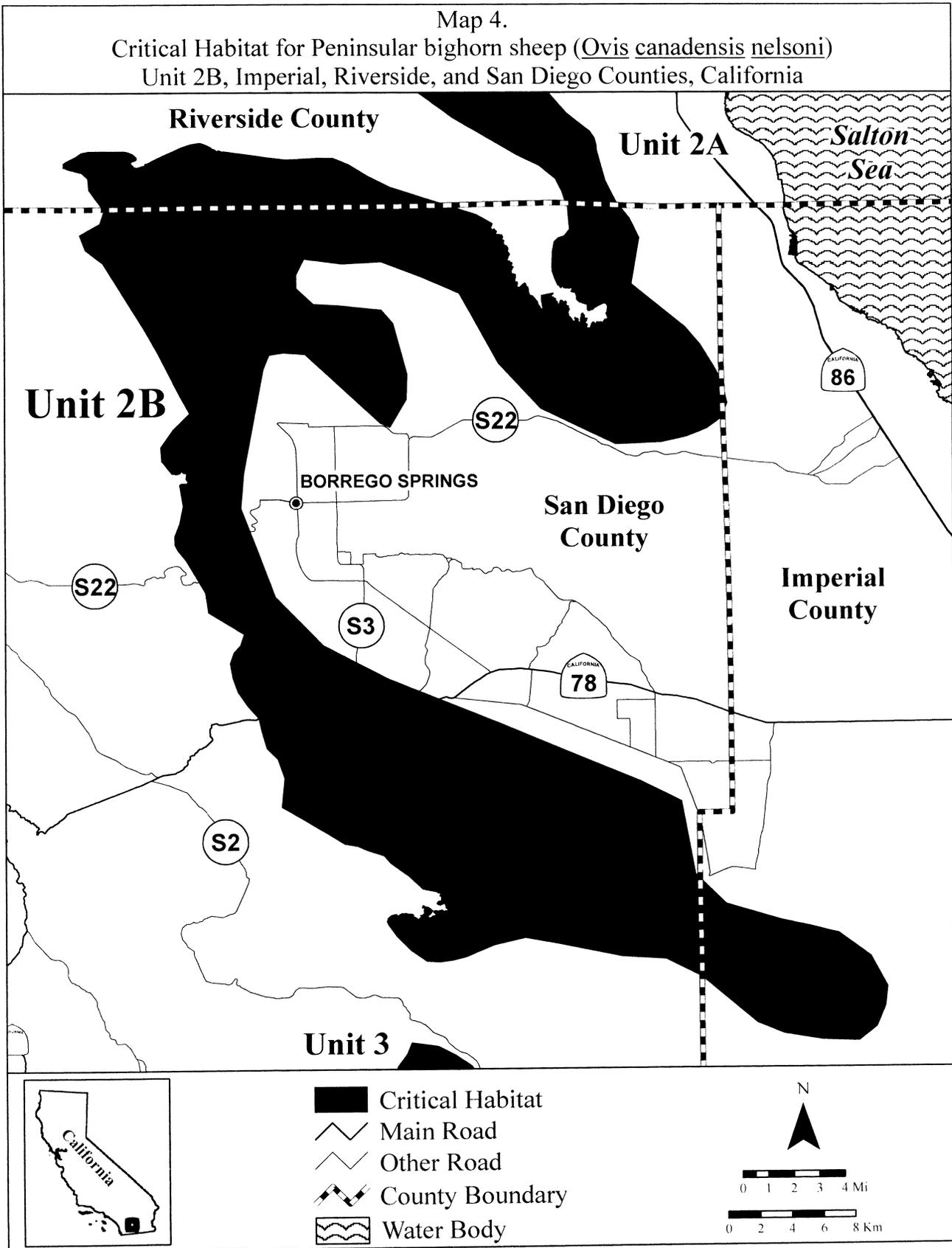
(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Borrego Mountain, Borrego Mountain SE, Borrego Palm Canyon, Borrego Sink, Bucksnot Mountain, Carrizo Mountain NE, Clark Lake, Clark Lake NE, Collins Valley, Earthquake Valley, Fonts Point, Harper Canyon, Plaster City NW, Rabbit Peak, Seventeen Palms, Tubb Canyon, and Whale Peak. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 552772, 3702586; 552772, 3702567; 552801, 3702567; 552801, 3702539; 552829, 3702539; 552829, 3702511; 552914, 3702511; 552914, 3702482; 552943, 3702482; 552943, 3702454; 552971, 3702454; 552971, 3702426; 552999, 3702426; 552999, 3702397; 553113, 3702397; 553113, 3702369; 553170, 3702369; 553170, 3702340; 553198, 3702340; 553198, 3702312; 553255, 3702312; 553255, 3702284; 553311, 3702284; 553311, 3702255; 553340, 3702255; 553340, 3702284; 553368, 3702284; 553368, 3702312; 553453, 3702312; 553453, 3702284; 553538, 3702284; 553538, 3702255; 553567, 3702255; 553567, 3702227; 553624, 3702227; 553624, 3702199; 553652, 3702199; 553652, 3702227; 553709, 3702227; 553709, 3702255; 553717, 3702255; 554616, 3702119; 556163, 3701891; 557619, 3701709; 559531, 3701800; 560669, 3701800; 561670, 3701390; 562899, 3700617; 564310, 3699934; 569738, 3698190; 570758, 3697602; 570758, 3697546; 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(ii) Note: Map of Unit 2B, South Santa Rosa Mountains south to Vallecito Mountains (Map 4) follows:

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(9) Unit 3: Carrizo Canyon, San Diego and Imperial Counties, California.

(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Carrizo Mountain, In-Ko-Pah Gorge, Jacumba, Painted Gorge, Sombrero Peak, and Sweeney Pass.

Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927

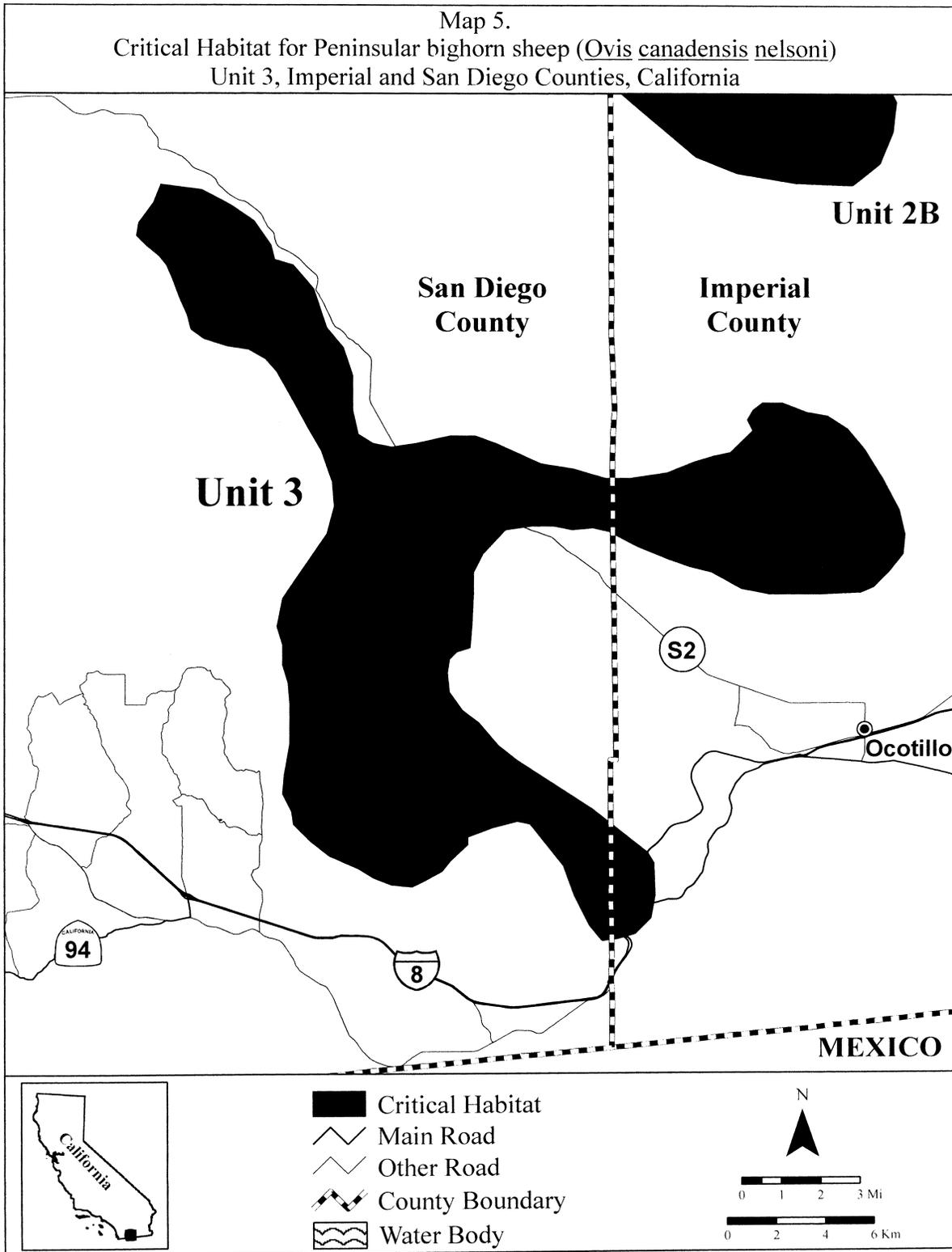
(NAD27) coordinates (E, N): 574159, 3634261; 574922, 3634108; 575915, 3634261; 577290, 3634566; 578359, 3634566; 579199, 3634261; 580039, 3633879; 581032, 3633421; 582406, 3633192; 583705, 3632810; 584697, 3632810; 586225, 3633039; 587370, 3633497; 588134, 3633726; 588821, 3633879; 589738, 3634795; 589508, 3635253; 589738, 3635635; 590119, 3635941; 590959, 3635941; 591952, 3635559; 592792, 3635406; 593632, 3634871; 594320, 3634031; 595083, 3632810; 595771, 3631511; 596000, 3630519; 595923, 3629679; 595312, 3628915; 594702, 3628304; 594167, 3628075; 592411, 3627998; 591189,

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(ii) Note: Map of Unit 3, Carrizo Canyon (Map 5) follows:

BILLING CODE 4310-55-P



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Dated: September 28, 2007.

Todd Willens,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 07-4959 Filed 10-9-07; 8:45 am]

BILLING CODE 4310-55-C

APPENDIX D-3
BLM PUBLIC SCOPING MEETING
MAY 22, 2002
TRANSCRIPTION FROM AUDIO TAPE

**BLM PUBLIC SCOPING MEETING
UNITED STATES GYPSUM COMPANY
EXPANSION/MODERNIZATION PROJECT**

May 22, 2002

El Centro Board of Supervisors Chambers

El Centro, California

(Transcription from Audio Tape)

Jurg Heuberger:

Okay it is after 7:00 so we have given everybody an opportunity to arrive here, we'll get started. First of all good evening ladies and gentlemen. I appreciate everybody's attendance here tonight. Tonight's meeting here in the County Board of Supervisors Chambers, this May 22, 2002, 7:00 p.m. The purpose of the meeting is a public scoping meeting for the United States Gypsum Company expansion and modernization project. The purpose of which the meeting tonight is to discuss or to listen to the public comments regarding the environmental impact report and the environmental impact statement that the County of Imperial and the Bureau of Land Management _____ will be preparing. In the back of the room as you came in there should have been some sign in sheets and also some information and I would ask that if you had not signed in that if you would not mind doing so that you please do so at some point before you leave. Also during this presentation if you have any comments to make I would ask that you jump to one of the two microphones at the front of the room here, the 2 podiums and speak to the microphone so that the tape recording of this meeting will pick you up clearly. We also ask that you please state your name and preferably spell your name and state your address for the record so that in the event that you wish for us to send you some information we can decipher from the tape if we need to the information we might have missed elsewhere. Let me first introduce a couple of people up here with me and then turn this over to my left over on this side - Linda Self, representative from BLM and to my right Mr. David Brown from Resource Design Technology, the consultant retained by the County of Imperial in cooperation with BLM to prepare the EIS/EIR. Mr. Brown will pretty much lead the meeting tonight and make some comments and also I would like to introduce the representatives that will be presenting on behalf of the applicant information which includes I believe an overhead and all of the information that you see around here are also available for public review. Sitting in the front is Mr. John Bowman, an attorney representing the United States Gypsum and Bill Castrey sitting sort of in the back or standing up. To my understanding they will pretty much lead the applicant's presentation and probably also have some comments to make along the way. Again we appreciate everyone's attendance. I am sorry I can't see all of you, but the board does, but you are more than welcome to come up at the appropriate time and present us your comments and depending upon how many commenter's we have, we'll certainly afford everyone a time to speak, however we will also reserve the right to cut your dissertation off if it looks like its going to be too lengthy to where someone

	<p>else may not have an opportunity to speak. So we ask that if you have the same comments to make that have already been made, we certainly welcome ditto or whatever terminology you wish to use to reiterate what somebody else may have already said. But everybody will get an opportunity to speak as we go through this. Again on behalf of the County of Imperial my name is Jurg Heuberger. I guess I should have said that first for those of you who don't know me. I am Planning Director for the county and I guess that makes me the responsible person in charge of this project, having said that I am going to let Mr. Brown go through his format and process a little bit and then we'll allow an opportunity for Mr. Bowman and Mr. Castrey to present the project.</p>
<p>Mr. Brown:</p>	<p>Thank you, I always like to get a feel for the audience and their familiarity with the process. There are a number of faces I recognize from the CEQA scoping meeting that we had back in January; if I could get a quick show of hands -- how many people are new to scoping for this project, were not involved in the CEQA scoping meeting -- I see a couple of new faces, at least four people, five people -- that's great -- and how many people have participated previously in a NEPA/CEQA process? Most of us -- good part. Well I won't bore you too much with this, but I do like to remind everybody of what we're trying to accomplish during a public scoping process. Public scoping has been a part of the NEPA process even more than the CEQA process for a number of years through Council on environmental quality guidance and the purpose of that process is to obtain early input by the public on the scope of the issues to be addressed in the document. NEPA traditionally does that through the scoping process even more strongly than CEQA which works through an initial study but does distribute public notices and asks for input also early in the process. The purpose of the environmental review process that we are engaging in, we've been engaged in since the CEQA process started in January and the federal process which was initiated on May 1st with circulation of the notice of the federal register is to analyze the potential impacts of the project that's proposed in front of us and to develop recommendations that would reduce or avoid significant negative impacts from the project. Under NEPA this process is primarily a public and agency disclosure process and acknowledgement of those impacts. The review process is triggered when a project requires a discretionary governmental approval in that the governmental body will invoke or make a decision. In BLM's case it's probably the district manager of this region or sometimes it's the CBCA office out of Riverside; in the County it's the Planning Commission or Board of Supervisors has the decision as to whether or not the project should be granted its permanent land-use entitlements. It's important to note that the EIR or the EIS is not a decision document in that it does not recommend approval or denial. It's a technical document. It's an analytical document that evaluates a project and the impacts that could arise from that project. It's a tool. This meeting then is to gather public input, then publications and federal registers; there have</p>

	<p>been publications directly to state agencies, through the county process, now at the federal agencies, also directly they are being consulted but we are attempting to get public input as part of this meeting and that period will continue through the 10th of June to receive public comment into the BLM. The format of tonight's meeting is that first we're going to ask the applicant to spend a few moments to present the project that it is proposing and then I'm going to talk again a few minutes about the environmental review process a little bit more specifically as it pertains to this project and then we'll open it up for public comment. So at this time, if U.S. Gypsum would like to tell us a little bit about their project.</p>
<p>John Bowman:</p>	<p>Thank you Mr. Brown, Mr. Heuberger and yourself. My name is John Bowman and as Mr. Heuberger has indicated, I'm with the law firm that is outside legal counsel for U.S. Gypsum on this project and, in just a couple of minutes I'm going to turn the podium over to Bill Castrey. Bill is the manager of U.S. Gypsum's Plaster City Plant and Bill is going to walk you all through the various components of the project that is the subject of this EIR/EIS. But we think it would be useful if I maybe spend just a couple of minutes and provide all of you with a little bit more background as to how we end up here this evening. Part of the project includes the modernization and expansion of the Plaster City Plant. That particular part of the project was formally proposed back in, I think, early 1998 and at that time the county made a determination that the project as proposed did not have a potential significant impact on the environment and therefore issued what's called a negative declaration. That determination was challenged in court by the Sierra Club. The Sierra Club brought a lawsuit claiming that an environmental impact report was required. Eventually it reached its way to trial court. The trial court here in El Centro did uphold the county's determination; ruled that that determination was correct under CEQA. At that time, U.S. Gypsum proceeded with construction of the Plaster City improvements as it was legally allowed to do. Meanwhile, however, the Sierra Club had filed an appeal and took its appeal to the California Court of Appeal of the Fourth District and eventually the Court of Appeal did issue a ruling which overturned the trial court decision. The Court of Appeal found that there was evidence in the record that there are at least potential impacts in two areas. One, potentially impacts on ground water in the Ocotillo area, and two, in terms of traffic generation. And for that reason, the Court of Appeal ruled that an EIR was required under the California Environmental Quality Act. By that time, however, the plant expansion had basically been completed -- substantially completed at that point. So that component of the project, as you'll hear, has basically been implemented and is up and running. The project has since been described more broadly to include other components that you're going to be hearing about in just a little bit and of course includes a variety of governmental approvals including a federal approval by the BLM for basically a right of way for the water pipeline. And that's where we have a NEPA trigger and that's why we're preparing a joint</p>

	<p>document at this point, an EIR/EIS. What's important to understand and I'll make one last point before I turn it over to Bill, it's important to understand that because of the unique situation where we find ourselves with part of the project essentially already been implemented, the baseline for purposes of environmental review for this EIR/EIS will be the physical conditions that existed in 1998; what we use typically is the physical conditions that exist when you start your EIR/EIS process. We feel its been back dated essentially because of the history that I just outlined for you so for an impacts analysis perspective, it will compare the impacts of the project basically in the conditions that existed in 1998. So with that background I'd like to turn it over to Bill and I think he has a Powerpoint presentation.</p> <p>Bill, if you want to come on this side of the microphone you're more than welcome to do so because . . . I don't mind you standing with your back to us but it might be easier for you to speak to the audience.</p>
<p>Bill Castrey:</p>	<p>Good evening. I want to thank the Imperial County and the BLM for the opportunity to make this presentation tonight. I'd like to start by introducing myself. My name is Bill Castrey. I work for the United States Gypsum Company and have been the plant manager at the Plaster City facility for over the past three years. I've worked with the company -- I've worked with the company for almost 22 years and actually started with the company at Plaster City back in 1980. The company has moved me around a little bit but I've been back to Plaster City three different times and actually lived at the company site in the company village for three years when my wife and I first were married and so have been very much involved with the plant for quite awhile.</p> <p>As an overview I want to first give a brief plant history, cover what the existing operations were before the expansion and then a brief overview of the areas where the expansion has occurred and as John said, there's a few places that are still to occur.</p> <p>The operations at this location really start as the result of gypsum being discovered in 1920 out in Fish Creek Mountains. From that a gypsum processing plant was built at Plaster City. That location was fit because it was closest to the location of then commercial railroad and to main highways for transportation. To transport the gypsum rock, a narrow gauge industrial railroad was built that we still use today. From the Fish Creek Mountains it's 26 miles to the plant. All of this was previously owned and operated by the Pacific Portland Cement Company. In 1945 U.S. Gypsum took ownership and then began operating the plant in 1946. Soon after the purchase we built a gypsum board machine which we refer to as the No. 1 Board Machine. It essentially made our standard products of 1/2" and 5/8" thickness. In 1956 there was a need for more specially type products such as our water resistant board and for 2 ft. width products with different thicknesses and so a similar but smaller and slower machine was built that could handle those kind of products.</p>

Since the No. 1 machine has had several equipment improvements but were only small incremental increases over the years to meet the ever increasing demand for homes and commercial buildings. There was really a need to modernize and expand our facilities as we tried to meet our market demands, which include LA, San Diego, Arizona, Las Vegas and even into Colorado on some of our products. We also include some of our products that go into Mexicali and into the Baja region. The demand for our products has increased and so there is a need to meet that demand.

The slower, smaller specialty machine costs continued to rise and with the increase in our competition and the need to continue to be competitive in the market, there was a need to improve our overall infrastructure so that we can make lower cost product and continue to be competitive.

We have since spent roughly \$120 million at this location to install a new state of the art manufacturing line. It is probably the most technically advanced gypsum operation in the world, with a lot of USG technology and know-how put into it. As soon as we had the machine up and running, we shut down the old high-cost No. 2 machine, and it has been completely removed as of this time. So there's no way that we'll be able to operate that machine again. We've gone from an operation that employed roughly 325 employees at its capacity to our current level of operation where we now have 410 employees and we are still not at our full capacity. The new line has the capability of producing 800 million square feet a year when we are at full capacity and at its full efficiency, which we are not there yet. And when you look at the first 10 years of operation of this facility, of this new expansion, it is estimated that we will increase to the local economy in the range of \$424 million.

Some of the changes that were needed for the expansion is the new production facility which we refer to as the No. 3 Board Machine and an expanded warehouse in order to handle the additional board capacity and shipments. Previously we had a rock storage area that was uncovered and open to the environment. Now we have a covered rock storage area to control dust and is used for any emergency needs due to problems with our industrial railroad or at the quarry.

There was a relocation of a switch for the San Diego/Imperial Valley Railroad that was moved as part of this expansion and the UP Railroads, also their easement was changed and their track was moved to make room for the expansion. The facility is designed to recover all waste product that is manufactured there as well as the opportunity to begin to reclaim the pile that we have that has been built there for the last 50 years. And so there is essentially no waste going out of the plant other than your normal paper and office type waste that goes out of most plants. All board is being reclaimed at our plant.

	<p>In order to meet the needs of this additional capacity at the plant we had to increase the rock production at the quarry. Part of that was a new crusher that has been installed. We will also be updating the quarry reclamation plan and we've expanded our rock storage at the quarry, our covered rock storage also, to put it under, to also control dust. And it allows us for better efficient loading to our industrial narrow gauge railroad.</p> <p>There is also a need at the quarry for a new water well for dust suppression on our haul roads at the quarry. Our current well production is not enough to keep up with our needs to maintain that dust suppression.</p> <p>Other items that are still needed to be addressed as part of this scope and that were not part of the major expansion project is to replace the 15 year old water line that comes from our Ocotillo water wells. We continue to have leaks out in the desert and obviously that's not very efficient use of the water and we would like to replace that line so that we can conserve that water and it is also recognized that we will see us using water as part of this capacity when we are at full capacity of right at 767 acre feet per year at full capacity.</p> <p>The last item that needs to be addressed in the scope is the possibility of installing a co-generation facility for production of heat that we can use in our kiln and electrical power.</p> <p>To summarize, the reason we did this is we needed to meet the demand for new family home construction, home repair and remodeling, as well as commercial businesses in our market areas. We needed to remain price competitive and cost effective. This expanded facility will enable us to continue our long tradition of strong, stable employment for the people of the Imperial Valley and the county. That's all I have. Thank you.</p>
Bowman:	<p>I'd like to point out that we do have graphics -- 4 or 5 graphics here [inaudible] if you haven't had a chance to look at them, please feel free to take a closer look; the purpose of these diagrams is really just again to help you understand the nature of the project in its regional setting. Obviously in the draft EIR/EIS [inaudible] probably a few months down the road there will be many more maps and many more diagrams that will [inaudible] the environmental setting in relationship between project and the various; this is really just [inaudible] perspective [inaudible]. Feel free to come up and take a closer look.</p>
Jurg:	<p>Thank you John and thank you Bill. That was the presentation that you guys had, right, there's no other presentation right now?</p>
Bowman:	<p>That's correct.</p>
Jurg:	<p>Thank you. In that case, Mr. Brown, you're going to go through the basic CEQA/NEPA procedures?</p>

Brown:

Yes. The steps in the process that were engaged in are the following: Right now we're involved in determining the relevant issues. Again we have done some of that under the CEQA process. We're now engaged under the federal process with federal agencies determining relevant issues of concern. We then move into a period of draft EIR/EIS preparation wherein we establish the existing conditions as were mentioned. Some of those are as they were in 1998; some of them we are backtracking for the plant as to what those conditions were; we then analyze the environmental impacts of the project whether those components are constructed or not, that the project in its totality is evaluated and determine measures that could reduce or avoid any of the environmental impacts that are identified. Alternatives to the project are also evaluated in terms of identified impacts and methods to reduce those impacts. At that point we'll issue a draft document for public review and everybody gets a chance to write in comments, tell us what we missed your point and need to elaborate on and we evaluate all of those comments and then prepare a final EIR which can take the form of revisions to sections of the draft EIR, can take the form of explaining, clarifying what the draft EIR meant where more explanation is needed or simply giving responses to the comments explaining for the particular comment or where the information is to be found or so forth.

Following that the county and the BLM consider the environmental document as to whether it has adequately evaluated and disclosed the environmental consequences of the project and at that point on the county side the EIR is certified and it escapes me what BLM's process is called at the moment, and that is certified -- the R.O.D. is issued, I guess that moves right into the decision I was trying to separate the decision on the environmental document itself, that it has done its job and adequately discloses the circumstances and then the decisions are made actually after that. The county, for example, has to find that the document has done its job and then a decision is rendered. And I make that point because of what I said earlier where this document is not the decision document; it's simply one piece of information that's used by the agencies.

The county and the BLM had identified a full range of issues for us to evaluate as part of this document. Those are listed in the public information packet that you have with some details below them. I'll mention just briefly the major subject areas and those are hydrology and water quality, air quality, transportation, circulation, biology, geology, paleontology, public health and safety, acoustics, recreation and scenic, cultural resources, hazardous materials and land use. We've received a number of comments from the scoping that we have already had under CEQA. Some of you already participated; submitted both verbal and written comments. Those have all been compiled and we have a running list of the comments that have been raised and will continue to expand that to keep track of all the issues that are submitted from the federal agencies as those come in. So I only

	<p>mention that in that if you have commented on those issues before, we heard you and those will be considered through this process.</p> <p>The preliminary schedule at this point is I mentioned the BLM scoping period ends June 10th. We're moving in to the final stages up to that point of draft the EIR evaluations and then write up and in the summertime with the draft EIR perhaps issued in August or September. Public agency and review comment would happen over the next six to eight weeks following that and following that would go into the final EIR preparation period that I mentioned.</p> <p>At this point, unless there is anything that I've missed...</p>
Jurg:	<p>Before we go just for the decision process, excuse me, at the county level this project will ultimately ask for the final EIR has been prepared and ready for consideration the county's processes that will go before the Imperial County Planning Commission meets here on the 2nd and 4th Wednesday of every month in this room; that meeting will be noticed but it is in this room at a date and time yet to be determined. Typically a project of this type can be approved or denied by the Planning Commission; however, there is an appeal from the Planning Commission's decision to the Board of Supervisors unless there is a legislative action required, the Board of supervisors does not automatically hear these items; they will hear it only on an appeal. So the notices that you will need to look for or be on the mailing list for will be for the Planning Commission for the county. Just to alert you to that fact so that when you see those notices or if you'd like to get direct mail notice and you are not on our list for some reason please let us know, we will put you on that list. Certainly your sign-in sheet has the right amount of information will be used as also providing notice, but if your sign-in list can't be read, I'm sorry, we can't mail it to you and you know, that's the way it is. So, I think at this point in time, Linda, you didn't want to make any comments ...</p>
Linda:	<p>I don't have anything.</p>
Jurg:	<p>Thank you. Again, this is going to be a public comment period which essentially means that we will take your comments and we would like you to come to the microphone in any order you would like. Please feel free to take either microphone but please speak into the microphone because this recording system is not the best in the world and we do ask that you state your name clearly. Preferably also spell it and give us your address as well and proceed to give us your comments. And again, as I said, we will certainly allow an adequate amount of time but we'd like to make sure that everyone has an opportunity to address it. So, you know, I will reserve the right to terminate your discussion if it seems like it will take the rest of the night and nobody else can speak. So whoever wants to dare to be first, now's your chance.</p>

	<p>Surely someone's going to say something.</p> <p>[inaudible]</p> <p>That doesn't mean you get all night, but okay.</p>
James Ricker:	<p>My name is James Ricker; I'm speaking as a private citizen tonight. And because I'm first I don't really have a lot to say. I am concerned that this EIR address social justice issues; I'm concerned that the outreach for the scoping process reach people of color, people who speak Spanish, people who live in Mexico. The water from which the will, the Ocotillo clarity wells, ground water is part of the, at least at its southern half, goes into Mexico. I feel that issue should be addressed with whatever -- with the Mexican authorities, water authorities and environmental authorities, possibly the DEEC, the border environmental agencies, and I feel that a socioeconomic analysis should be part of the EIR process telling us all how many jobs, how long the jobs will last and how well they're paying for the people of Imperial County, who deserve good jobs. The air quality issues should be addressed, especially considering the prison right down the street. Those guys don't get to move out of the way and I feel that's an important issue that probably hasn't been looked at too closely. I think that's all for me. Thanks.</p>
Jurg:	<p>Thank you Mr. Ricker.</p> <p>[inaudible]</p>
Terry Weiner:	<p>Hi. My name is Terry Weiner. I live at 4544 Maryland Street, San Diego, California 92116 and I'd like to speak to you as a lover of the desert, and one of the big issues I think for me is the fact that the fish and wildlife service has designated critical habitat in Imperial County for the endangered big horn sheep and from what I understand reading the BLM notice about this project is that your expansion of your quarry will definitely go into big horn sheep habitat. I too applaud you for being such a long-term good employer for Imperial County but we have to figure out a way for you to continue to do business without endangering the few remaining sheep. I understand that the quarry would dig down into the wash that will effect the water that flows down to an area, San Sebastian Marsh which has the endangered desert pup fish which again is a species that is about to go bye-bye and we can't afford to lose an inch more of its wetland habitat. The other issue I've been hearing about is, and we hear about it all throughout the desert is the ground water issue. Desert aquifers are ancient and they're being stressed all over the desert and people have to realize that in Imperial County the general plan calls for limiting population growth because they want to protect the aquifer from being downdrafted and from what I understand the downdraft is alarming in the Ocotillo/Coyote Wells aquifer and your statement that you're going to go from 400 acre feet to 767 acre feet annually I don't think is justifiable, especially when Imperial County has approved transfer of water</p>

	<p>to Imperial County for industrial uses, I think you definitely ought to use water from the Colorado river. I know you have to treat it, but so what. This is fossil aquifer water in Ocotillo that needs to be protected. You know, you can make a good profit but we want to see a cost analysis of just how much profit you'll lose by having to treat Colorado river water.</p> <p>I'm also following the proposed listing of the flattailed horned lizard whose habitat has been stated you'll be effecting by this quarry expansion. So I believe that any decisions in the draft EIR stage should be postponed until the Fish & Wildlife Service in December has decided whether or not to list this as threatened species because it's going to need, as it does now, to have its habitat protected from anymore degradation.</p> <p>I'm also interested in the fact that NEPA you know is a public process and I don't think one scoping meeting is enough to give the people in the Imperial County and other areas who enjoy the desert and who want to see big horn and the flat tailed horned lizard and the wilderness area protected, they need a chance to list some of their issues too. This expansion is going to effect Fish Creek Wilderness area so you must address the quality of wilderness area; quality of the wilderness, which will be impacted by this expansion and Imperial County being a non-attainment air basin, every time I come, not today, but when we were coming over the mountains from San Diego, the air was pretty clear except in the south over towards Mexicali, but generally speaking I can be anywhere in Anza Borrego or up in the mountains and I can see the plumes of dust from Plaster City factory for 20 miles and that needs to be addressed in detail, how many tons of particulate pollutants are gonna increase, although it sounds like you've made some good strides with covering over some of the processing -- that sounds great.</p> <p>But I would like you to have another scoping meeting so I can get people -- the people in Borrego Springs and the Anza Borrego State Park people are doing a new general plan -- they're first general plan right now and I'm sure they'd like to hear about how this expansion is going to effect the state park whose boundary isn't very far away, although I know it's over 300 feet, but not too far away from expansion and the dust and the noise is certainly going to effect the quality of the park experience. Thank you.</p>
Jurg	<p>Now can I ask you a question for clarification -- I thought I heard you say something and I may have misunderstood you -- think you made a statement about the County has approved the transfer of water, or something to that effect.</p>
Terry Weiner:	<p>I'm sorry, I didn't speak very clearly on that -- I saw your face on that. What I understand is that it is approved -- Imperial Irrigation District has approved the use of Colorado River water for industrial uses in Imperial County. This is all aside from any water transfers to any other county.</p>

Jurg:	Okay, I think I understand you. Thank you.
Jurg:	Come on up, we don't bite.
	[inaudible]
Richard Dennison:	I'm Richard Dennison. I live in San Diego at 3814 Boone St. I'm gonna be living at 960 Sage Road here within about 4 years so I'm very concerned about the water that we're pulling out of my son's well. Making sure that its quality is still there for generations on. I say ditto the gentlemen and the lady that just spoke. One of my concerns was that what happens to this water that they're taking outside of the Ocotillo area to use for dust control; what's gonna happen if that drops down below a point that affects the basin that we're using. I guess I'm selfish because I'm concerned about the water quality for our wells and I hope it remains usable. Thank you.
Jurg:	Thank you Mr. Dennison and thank you for your ditto comment.
Harriet Allen:	<p>Thank you for the opportunity to speak. I'm Harriet Allen. I live at 3750 Elcanto Drive in Spring Valley. I have been working on desert issues for many years. In fact, the other day I uncovered a 1977 letter which I had written to the governor regarding the air quality problems associated with the coal fired power plant to be located in Plaster City. So, Plaster City has been in the news for a long time and the air pollution was noticeable what, 30 some years ago, and we have not improved it. As a matter of fact, in a recent newspaper article, both congressman Fillner and Hunter expressed concerns about the air quality in Imperial County due to the new power plants that were going in Mexicali related to the Baja pipeline. So goes a long way back the people who have been concerned about this area. I speak as an individual today, but I'm going to start out with some comments that my engineering husband raised after your scoping meeting the last time. You probably have addressed them completely and we'll be looking for the timelines and so forth as to the waste material that is behind the Plaster City plant. It's highly visible from Highway 8; it looks like it's longer than the old building site and the question that an engineer raises is what kind of a management does Gypsum have that allows so much waste from a process? Apparently about 10% of that waste pile can be absorbed in a single batch, but that leaves 90% of the waste still in the pile which would appear that the pile is going to keep going faster than recycling by reprocessing can take care of. We wonder if the waste is being stored for future use and this is not a politic thing to say but when the gypsum supply diminishes there would be a good market for recycled gypsum. We don't know whether the stockholders know . . . [END OF FIRST TAPE SIDE A -- NOTHING ON SIDE B]</p> <p>[BEGIN TAPE 2]</p>

... be a good market for recycled gypsum. We don't know whether the stockholders know of this excessive waste from the product line or not. We're not into that kind of thing. But I think that the whole waste situation and recycling statements have been made tonight we need to get a handle on it. We need timelines on when that waste pile is going to go down to a level which meets modern production standards and we wonder if by any chance that waste pile can be reduced. I'm referring the matter to groups like Habitat for Humanity, President Carter's group, who helps build homes for the low income people. It might be that they could use some of those pieces of good wallboard that are out there. We have a social obligation to some of our people. Okay, most of these are other concerns have been covered already. I presume both the county and the BLM are working on all the factors that are included in the lawsuit; I won't go into that. My second main concern is the impact of the expansion on Anza Borrego Desert State Park. Probably the largest state park in the country; the most diverse; highly visited. A part of the bio-international, international biosphere reserve; a national natural landmark; and very visible in this area. Fish Creek and the elephant trees are tourist points; they're hiking points; they're meditation points; they're valuable to the park visitors and how can we put a monetary price on inspiration? One group in Anza Borrego, the Anza Borrego Foundation, since 1967 has been dedicating its time and money to acquire private in holdings within Anza Borrego State Park. In 1967 there were over 67,000 acres of private in holdings; it's down to around 25 and it's all been private money. The Natural History Association, a different group, has many hikes and tours and features in the Fish Creek areas and its tributaries. Oil Peak, all of the places that converge on the expansion area. I am not sure if the county of Imperial has studied the roads situation. I know that San Diego County probably has some jurisdiction over the roads leading into Fish Creek which is on the San Diego side of the border. The state park has responsibility and liability. And how does a visitor in Anza Borrego going to know when they step onto a piece of Gypsum property; at that point, Gypsum then becomes liable. I think that the vision that the county has made between San Diego County, Imperial County, between Imperial County and the Anza Borrego State Park, has to be addressed. There have to be findings not only in the draft but in the final EIS/EIR section 15125 requires an investigation of the vicinity of the project and it's quite explicit; NEPA has similar requirements under adjacent jurisdictions. I didn't bring my library so I don't know its number but I'm -- I think it can be identified easily. I'm extremely concerned about the visual impact of expansion, of these rock storage places that will be under roof. Anza Borrego is noted for its amenities and not by its industrial thing. The peak power that involves Fish Creek, the wilderness area, the Fish Creek wilderness, within as far as I can tell from past papers from peak power, would be on the east side, up above your railroad. There's a lot of work to do in this facility and you can't sweep it under the rug. We won't let you.

	I think that that's all I'm going to talk to you today. You might want to check with the regular chamber of commerce to see what they think with their tourist industry. And the cumulative impact will have to be addressed. The mitigations, the stipulations of the U.S. Fish & Wildlife Service for endangered species. There are three overlays here as I understand it. Of animals, not to mention plants. So we hope that the draft will address these things so we don't have to keep coming back and getting supplementals, so forth and so on. Thank you for letting me spout off.
Jurg:	Thank you ma'am, before you leave, just one clarification.
Harriet Allen:	Yes Mr. Heuberger.
??	I wasn't quite clear what you meant by the peak power?
Harriet Allen:	Peak power? You mentioned coal generation along someplace. Peak power is the facility that would be up on Whale Peak. Whale Peak? My geography just flew out the door. But it's above your railroad, around the curve from the quarry. We have the papers on it. The documents. It's the one where they pump power up -- water up; store it; then when they need a lot of energy somewhere they drop the water down and hold it until they can pump it up again. It's a rather exotic process. Thank you.
??	Thank you.
Edith Harmon:	<p>Edith Harmon; and I'm speaking tonight as an individual because I only had one hour of sleep last night and I want to make sure that I don't make technical mistakes in what I'm saying.</p> <p>Ocotillo. And I've lived in the Ocotillo area since 1975 and been familiar and working in Imperial County since 1974 in western Imperial County. Involved in a lot of research on groundwater issues, as I'm sure the county is well aware and wildlife issues; doing a lot of research on wildlife. I was involved in the preparation of the scoping comments for CEQA which were submitted by Sierra Club as a protective counsel and the center for biological diversity and at the request of Mr. Brown the consultant the comments were submitted in three bound volumes totaling 819 pages. Included one copy of everything that these organizations had submitted that we could find since 1993 when the first proposal for the U.S. Gypsum expansion came along and comments that were submitted following the filing of the lawsuit in January of 1991 because after that point the County started talking about the expansion of the quarry lot mergers and so every set of comments that was submitted at every opportunity through I think 2001 and I have found even some more so there are quite a lot of issues that have been raised and addressed because some of the people in the room, probably from Ocotillo and may not be familiar with the issues; this project involved two separate ground water basins. One is the Ocotillo/Coyote Wells Groundwater Basin</p>

which supplies domestic water to the residents of Ocotillo and No Mirage and Yuha and the overlying about 15,000 acres of private land; the majority of land over that groundwater basin on the U.S. side is in fact public lands that belong to all of us that are managed by the Bureau of Land Management. The rights of way that are being proposed by U.S. Gypsum would go through public lands managed by BLM and regardless, there's two options for the factory to use water. One is from to continue siphoning an unspecified, unmonitored amount of water from the Ocotillo Basin and I don't know if there is a flow meter on the well but there certainly should be a flow meter on each of the three wells that are pumping from the Ocotillo Basin and the amount that's being pumped from each well should be disclosed. The date and size and capacity of each well should be included. Those three wells are located very close together between the communities of Ocotillo and No Mirage and there's a very large cone of depression that extends throughout most of the private property in the basin centered at the U.S. Gypsum pumping point. The basin has its terminus in the Laguna Salvia in Mexico and our understanding is that there is indeed development on the Mexican side.

At one point in the early 1990's there was a proposal to pump about 1000 acre feet of groundwater from around Sunrise Butte for agricultural purposes and the draw down that was done in that study was pretty amazing, the amount of water that was going to be drained out. I would encourage that this study, because of the controversy and the fact that U.S. Geological Survey has been gathering data and monitoring since 1975, with fewer wells being monitored now than were originally monitored, all those wells should be remonitored both for water level and water quality and I believe there should be an independent analysis, groundwater analysis, and I would urge that that study be independent evaluation, be contracted and done by David Huntley, who used to be the county's groundwater consultant. He was the consultant on groundwater issues for both San Diego County and Imperial County, and he is very much familiar with the issues in this groundwater basin and served as the County's expert witness in litigation to prevent or to stop the export of potable groundwater to Mexico. And the export of potable groundwater to Mexico was a small fraction of what U.S. Gypsum proposes to use. So the concerns of U.S. Gypsum's operation are far more and I would note that the public that wasn't at the meeting before, if you read the decision of the appellate court, the court pointed out that the documents that were prepared by U.S. Gypsum _____ study originally could not substantiate - there was no production to indicate, that could substantiate U.S. Gypsum's asserted highest annual usage, which is a claim of 760 acre feet a year. I think the public deserves to know what the production records were for the time and the estimated water usage for that. There is a technology, it's a no ___ technology -- there is no reason to disturb the surface of the ground; no dig technology is being used to install pipe and water system; you can get the information from the internet; there's any number of companies that's being used worldwide and when you're talking about putting a right-of-way

for water resource through public lands it should be no-dig technology; one more reason why using Colorado river from the west side main canal, which is only four miles away is much more appropriate, and the right-of-way -- it was in the early 1980's when Texas Industries, the Creole Corporation, wanted to put a cement plant out to the northwest of Plaster City, the Board of Supervisors was not willing to approve the use of 250 acre feet of groundwater at that time for industrial purposes and at that time BLM and Imperial Irrigation District did whatever was necessary in terms of paperwork and my understanding there was by act of Congress, the boundaries of Imperial Irrigation District were extended out to past to the west of Plaster City so that Colorado river water could be used for industrial purposes for both the Plaster City site and the Creole Corporation. The County general plans specifically states that with regard to the Ocotillo/Coyote roles groundwater resource that the County would be working with Plaster City and Imperial Irrigation District to secure Colorado river water for industrial purposes rather than continue to use potable groundwater for industrial purposes.

The groundwater basin at the Fish Creek Quarry, and I should add first of all the map that you've got, the vicinity map, is dated 1992, which is two years before the passage of the California Desert Protection Act. That map shows an inaccurate location and boundary for the U.S. Naval Facility and it does not disclose the location of any of the wilderness area, including the Fish Creek Wilderness area which surrounds, pretty much surrounds the quarry site. The EIR/EIS should eliminate this map that's being shown and use a current map. AAA provides a map of Imperial County which shows the location of the quarry, the rail line and all the wildernesses and navel reserve lands, and I'm assuming that that information came to AAA from BLM and that the boundaries are probably correct, or at least certainly more correct than that map.

With regard to the quarry operation, I find it very troubling that U.S. Gypsum would want to go, what I've heard, a hundred feet deep into the Fish Creek wash. I don't know what the standing water table in that area is but I understand that there are radio collared Peninsular Big Horn Sheep in that area right now. One of the issues that has to be addressed since it is an endangered species and the area for expansion and the area that is being sought for patenting, in other words, to get the land from BLM to private land, is all in critical habitat for the Big Horn Sheep and I believe that the patenting issue should address the impacts of a transfer of federal land for mining purposes on this land is in critical habitat and that habitat is a wash being used by a species with really a fairly small population and very sensitive. If the wash is diverted that will have impacts on subsurface infiltration and possible migration of groundwater to which ends up in the San Sebastian Marsh and the Felipe Creek critical habitat for desert pup fish. Water does not seep into the swirls; either way it depends a lot on the subsurface geology, so if you're talking about diverting the creek or

backfilling or whatever, you're talking about changing the existing topography in the way in which groundwater or rainfall is going to seep in to the area. I think there needs to be consistent water quality samples and I don't know whether this has been done in the water that's the source for the critical habitat for desert pupfish, but monitoring ought to be done now and continuously on a regular basis at least quarterly. There are real issues as to the quality and quantity of water available for desert pupfish. If you go deep into the wash and you're below the groundwater table, there's a potential for dewatering of that portion of the groundwater basin. It's my understanding that the groundwater basin that feeds into the San Sebastian marsh and the _____ creek area has not been detailed; certainly detailed the same way the Ocotillo basin has been; there's been some monitoring but there needs to be a complete hydro-geological study of that basin and I would urge that that be also independently reviewed by Dr. David Huntley.

But the water quality issue -- so at the quarry we have two endangered species issues, each one the quarry operations has a potential to impact critical habitat and the very survival of animals that are using their area. I think the quarry operation needs to look at severely restricting the hours and the manner of operation, the types of lighting, the times of blasting; if this is an area that's important during a lambing season and for use by the ewes and the lambs; I've just been reading through the recovery plan for _____ big horn sheep and there are specific issues addressed to mining. And I think that needs to be looked at.

In terms of -- for the quarry I would like a tour of the quarry before the end of next week, before the comment deadline, so I can see for myself what's going on out there. I would request that during that site visit that there be someone from U.S. Fish & Wildlife service and someone from the office of mine reclamation, perhaps somebody from the California Department of Fish & Game; I would like to see the quarry in the presence of some really knowledgeable people whose agencies have a responsibility, a mandatory duty to comment on varying aspects of this project as affects their jurisdiction. And I think that would be very useful. It's pretty difficult to go wandering around on patented land that's already private without permission. The unpatented land technically one could get to, but I feel it's much better to see the site with people either from the company, with BLM and with state and federal people. So I would make that specific request. And while I'm at it, as another specific request, I request that the transcript of this meeting be made available on the internet or BLM website so that responsible parties for responsible agencies with a duty to respond can find out what has been said by the public and the presentation that's been made by the County and the responsible party for doing the draft EIR/EIS, so those who were not here can hear for themselves what was going on.

Where was I. The quarry operation; there's a concern, given the quarrying and also the .. there's a growing body of published material on the impacts of

dust -- fine dust and particulate matter interfering with the sunlight getting through the _____; interfering with photosynthesis; I think there needs to be an evaluation of what during this particularly strong drought period increased accumulation of dust from the vegetation that's really important to the big horn sheep is doing to the health of the sheep, whether it's rams, ewes or lambs. If we're seeing a significant reduction in the quality of forage it may be effecting the reproductive success of the species and that needs to be covered in detail and I hope that whoever the biologists is that are looking at these issues have some specific expertise on the species that they're looking at.

In terms of dust, whether its from the quarry or the factory site, and at times when the particulate matter is really bad in the air there's like a low underlay, almost looks like snow, as I go down Interstate 8. I'm assuming the light that's below the dark air pollution is fine particulates that are leaving the Plaster City site. I think that there needs to be a study looking at the impacts of dust on vegetation that produces the seed for the harvester ants which are the main source of food for the Flat Tailed Horned Lizard. The project goes through two Flat Tailed Horned -- between two Flat Tailed Horned Lizard management areas -- the West Mesa management area and West Mesa ACEC and the Yuha management area and ACEC. I would also add that the Ocotillo/Coyote Wells Groundwater Basin also underlies significant portion of critical habitat for all the Peninsular Big Horn Sheep and some of the wash vegetation is there. If the groundwater level declines below the root zones, the unusual plant assemblage, the mesquite _____ or the wash vegetation, there's a possibility of the decline of those populations or depth of the root if the water goes too far. So I think that's an issue that has to be addressed by BLM because these lands are on public lands. Critical habitat.

I might add something that's real interesting -- please let me do this and don't stop me. I found when I went through the county files a memo called "Background U.S. Gypsum" -- it was submitted as Exhibit 116; it was describing the court impacts and it talks about the order of the superior court following the appellate court decision -- the 4th Appellate Court decision. An EIR was ordered to be prepared and fully not all the issues were before the Appellate Court because of the way the project had been piecemealed before, but one of the other things that the Superior Court had in its decision was revocation of the permits for the Plaster City facility. I want to read one section in here on ramifications.

"Revoking Building Permits." This is an unusual step insofar that the construction is nearly done. No one seems to know exactly what revoking will accomplish. One possibility would be for the Sierra Club to then request the county to order the demolition of all work done to date which will be the

standard requirement for any project built without a permit. Next best case is that the permits will be revoked and USG will be ordered not to use the buildings pending completion of the EIR. The best case is that USG is allowed to continue to operate even though the construction technically does not have permits."

This document has a footer at the bottom that says "JLY Gypsum Summary One" and I'm assuming that JLY is county assistant county counselor; I'm not sure what the position is now, it's Jan Yeager, who prepared this, and this document was prepared before U.S. Gypsum filed for bankruptcy, so right now it was submitted as part of the documents in our earlier submission that the appellate court put things on hold pending the proceedings and completion of bankruptcy proceedings. I think the EIR/EIS needs to have a full discussion and disclosure of what the bankruptcy proceedings, how they have altered the whole EIR/EIS process and the significance of what it means to comply with the county's requirements for building permits. I'd like to know when U.S. Gypsum, and this was a voluntary filing -- I've read the Securities & Exchange Commission filings for the past four years -- one of the notes in the SEC filing from U.S. Gypsum was that environmental litigation would not affect the operations of the company. Great. There was an ongoing lawsuit and it didn't affect because the company filed for bankruptcy and that's not the way things are supposed to be done. So I'd like to know when bankruptcy proceedings are going to be completed and why the U.S. Gypsum and Plaster City operation felt a need to file for bankruptcy, particularly given the financial information that was provided on the paperwork that the company supplied to BLM about annual sales of wallboard. If my memory is correct it was \$2 billion, with a B, a year. And I don't understand why a company that has that kind of sales needs to go through bankruptcy. I think the EIR/EIS should also include full disclosure of the taxpayer subsidies from Imperial County to this company.

Again, there should be a flow meter on each and every well and that should be regularly monitored. The last time I believe I asked I was told that to date U.S. Gypsum has not put a flow meter on and does not know how much water is being siphoned from the wells in Ocotillo.

I would assert that there are several water rights that go with public lands and the critical habitat for desert pupfish. There's a court case on the Devil's Hole pupfish and again one needs to look very carefully at the operations of the quarry on water quality and availability to the pupfish. There's a public trust issue associated with each groundwater basin and the uses of the water from that basin.

	I guess that's sort of it for right now. There will be additional comments I'll be submitting and I suspect other organizations will be submitting and can I get a date for a tour of the quarry now, or who do I have to call to find out when and where I'm going to be able to get a tour of the U.S. Gypsum quarry?
Jurg:	I would suggest you contact United States Gypsum Company; it's not one of the purviews of the county to request tours. I request that this be done after the meeting or tomorrow; it's not part of . . .
Edith Harmon:	I'm suggesting if Mr. Bowman -- are you the appropriate person? Or . . .
Jurg:	You can deal with Mr. Castrey or whoever. [inaudible]
Edith Harmon:	But I just want to let you know that when there have been proposals at the Mesquite Mine, whether it's for expansion or landfill or the proposed Clamas/Imperial project and _____ mine, there've always been the opportunities for public tours of the site and the ability for the public to see . . .
Jurg:	And I don't think we've said there wasn't the opportunity, we're just not in a position tonight to grant you a tour of property we don't own either.
Edith Harmon:	I know, I'm just telling you that I, it's very useful to the public.
??	I think Mr. Bowman's expressed that the company's willing to talk to you about a tour; he may not be the one to do that; it may be Mr. Castrey or whoever from the plant that has to arrange that and I don't know if he's still here or not; I saw him earlier but he may be . . . he stepped out for a minute. Okay, thank you. Anyone else wish to make a comment? [inaudible] Well could we wait and see if there's anybody else? In case that one more comment takes an hour and they have an opportunity? Anyone else that wishes to make a comment at this time? Alright Edith, one more comment.
Edith Harmon	I did get a call, an answering machine call, and returned the call, got a call from someone from the ___[Quitfom]___ Tribe whom I'm assuming that there is a concern about the archeological and cultural resources. I think it's critically important that every aspect of this project look at offsite impacts

	<p>more than just very short limit away from the actual footprint of the project and when it comes to archeological or cultural resources and biological resources that you be sure that things are done at the right time and that there be knowledgeable people and for archeological and cultural resources that means knowledgeable people from this area, whether it's Jayva Moreloff or whether it's tribal members, the Quitfom Tribe has a trained archeologist, Laurie Kachura and he is certified and qualified; there are other tribal members that have expressed great concern and I think that that be done and these issues come because of problems that BLM faced and the county faced with regard to the proposed Glamis gold Imperial project; an inadequate archeological and cultural resources survey was done it was criticized from all directions and as a result of that there had to be another revised draft EIR/EIS. Also the biological resource review, botanical review on that project was done by a consultant from Colorado who came down at the wrong time of the year to do the plant survey and couldn't even find gypsum weed which even Ed Hasty the BLM state director agreed you could identify at 55 miles an hour going down the road, so it was woefully inadequate technical study because they were done by people who were not here at the right time of the year and in fact, on the biological resources study, the survey was done in January but the cover date was May, which really misled people unless you read through the fine print, so I would encourage you please be careful.</p>
<p>Jurg:</p>	<p>Okay, thank you.</p> <p>Okay, I'm going to make one last call to see if anyone wishes to come forward and make any comments, because if not, we're going to close the meeting, so, I'll give you about 15 seconds to think about it. Come on up and state your case.</p> <p>Well I don't see a mad rush for the microphone so I'm gonna assume that you've all had an opportunity. Certainly I would hope none of you would think you didn't have the opportunity. On behalf of the County of Imperial, on behalf of the United States government, the Bureau of Land Management office and on behalf of the company, we would like to thank . . .</p>
<p>Edith Harmon:</p>	<p>I have one more question; [inaudible] the IRS [inaudible] postmark . . .</p>
<p>Jurg:</p>	<p>You have the wrong department; this is the BLM, not the IRS . . . if you want to send us a check though, we'll consider it postmarked, but other than that, let's proceed.</p> <p>Again, as I was saying, just that we should note that as part of that, that it says on the introduction page, [inaudible] comments cannot be received by BLM by fax but they can receive them by email, so we do have that other way of getting comments to them.</p>

	Yes sir.
??	Will there be an adequate noticing in San Diego and possibly a newspaper [inaudible] the draft EIR/EIS?
Jurg	<p>There will be noticing; I'm not going to debate with you whether it's adequate or not because for that I'd have to consult a whole bunch of attorneys and we'd never agree, so let's just say it's going to be noticed.</p> <p>Any other questions that we can answer?</p> <p>Alright, once again if you haven't signed in, we would kindly ask that you do so; if you'd like to be on the mailing list to get notices, please make sure that we can read your name, mailing address and feel free at any time if you do have comments or questions you can email them to the County of Imperial or to the BLM office. Do not mail them to our consultants. They're not authorized to accept them on our behalf. You need to send the information to us either at the County of Imperial or the Planning Department or the Bureau of Land Management at their South Fourth Street address, and again, I thank every one of you for attending tonight, for making your comments and please take note of the notices that will be published and/or sent out and at that time avail yourselves to make comments on the draft document when it comes out for public comment.</p> <p>And again, thank you very much for being here tonight.</p>