

of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

#### *IV. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements*

46. The Notice sets out in detail, and seeks comment on, various proposals to modify the Commission's existing Local Competition and Broadband reporting program. Pursuant to the current reporting program, certain providers of broadband services and of local telephone services must complete FCC Form 477, which collects data on their deployment of those services. Since the adoption of the reporting program, providers have reported data twice and the Commission has issued its *Second Report on Advanced*

*Telecommunications Capability* based in significant part on the data collected through this program. Thus, the Notice seeks comment, in light of these experiences, on ways that the Commission might improve this data gathering effort. The Notice asks whether certain measures to gain additional data might assist the Commission in its efforts to understand the degree and status of deployment of broadband services, without imposing an undue burden on reporting providers. For example, the Notice seeks comment on possible revisions to FCC Form 477 that might more precisely capture distinctions between the deployment of broadband services to residential and business users. Similarly, the Notice seeks comment on whether we should revise the form so that providers report the actual subscribership by zip code, in lieu of the current requirement that providers report a list of zip codes where broadband service is being delivered. Further, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. In addition to seeking comment on the types of data to be reported, the Notice seeks comment on whether to adjust the current reporting thresholds, whether the Commission should alter its confidentiality procedures for data collected, whether it would be appropriate to alter the frequency of filing, and whether there are additional steps that the Commission might take to promote additional analyses of the data. The Notice asks commenters to document, insofar as possible, the burdens that are imposed by our current

requirements and the additional burdens that would be imposed by more detailed reporting requirements.

#### *I. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

48. As mentioned previously, the Notice seeks comment, in light of our experiences since the adoption of the reporting program, on ways that we might improve this data gathering effort. The Notice asks whether there is additional data that would enhance the Commission's ability to understand the status and degree of broadband and local telephone service deployment. At the same time, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. This proposal would reduce burdens on all respondents, including any small entities that must report under the program. Among the alternatives considered in the Notice that might affect small entities is a proposal by Iowa Telecom seeking to create an exemption for "mid-size LECs \* \* \* which serve primarily rural communities." Small entities are specifically encouraged to comment on such an exemption. The Notice seeks comment on whether the burdens imposed on smaller providers by our reporting requirements outweigh the benefits of these requirements. At the same time, the Commission also asks whether access to more complete information about broadband subscribership in rural areas—areas that are often served by smaller telephone and cable companies—might enable us to better fulfill the congressional directive to assess the state of deployment of broadband services to all Americans. The Notice expressly states the Commission's desire and intention to work closely with service providers, including small entities, to minimize burdens wherever possible, particularly

for smaller providers that may have limited resources.

#### *VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

49. None.

#### *VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

50. None.

#### **Ordering Clauses**

51. Pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this [notice], with all attachments, is hereby [adopted].

52. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

#### **List of Subjects**

##### *47 CFR Parts 1 and 43*

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

##### *47 CFR Part 20*

Communications common carriers.

Federal Communications Commission.

**Shirley Suggs,**

*Chief, Publications Branch.*

[FR Doc. 01–3787 Filed 2–14–01; 8:45 am]

**BILLING CODE 6712–01–U**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018–AH83**

#### **Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chorizanthe robusta* var. *robusta* (Robust Spineflower)**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe robusta* var. *robusta* (robust spineflower). Approximately 660 hectares (1,635 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling any future habitat conservation plans. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

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

You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493, Portola Road, Suite B, Ventura, California 93003.

You may also send comments by electronic mail (e-mail) to [robustsf@fws.gov](mailto:robustsf@fws.gov). See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

## Background

*Chorizanthe robusta* var. *robusta*, also known as robust spineflower and Aptos spineflower, is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey Counties. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

Like other spineflowers, *Chorizanthe robusta* var. *robusta* is branched from the base and subtended by a rosette of basal leaves. The overall appearance of *C. r.* var. *robusta* is that of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has an erect to spreading or prostrate habit, with large individuals reaching 50 centimeters (cm) (20 inches (in.)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious (translucent) margins on the lobes of the involucre (circle or collection of modified leaves surrounding a flower cluster) or head that subtend the white- to rose-colored flowers. The aggregate of flowers (heads) tend to be 1.5 to 2.0 cm (0.6 to 0.8 in.) across in diameter and distinctly aggregate. *Chorizanthe robusta* var. *robusta* is one of two varieties of the species *Chorizanthe robusta*. The other variety (*Chorizanthe robusta* var. *hartwegii*), known as Scotts Valley spineflower, is restricted to the Scotts Valley area in the Santa Cruz Mountains. The range of *Chorizanthe robusta* var. *robusta* partially overlaps with *Chorizanthe pungens* var. *pungens* (Monterey spineflower), another closely related taxon in the Pungentes section of the genus, in southern Santa Cruz County. *Chorizanthe pungens* var. *pungens* is a threatened species and *Chorizanthe robusta* var. *robusta* is an endangered species; for a detailed description of these related taxa, see the Draft Recovery Plan for the Robust Spineflower (Service 2000) and references within this plan. We are proposing critical habitat for *Chorizanthe pungens* var. *pungens* and *Chorizanthe robusta* var. *hartwegii* separately but concurrently with this proposal.

*Chorizanthe robusta* var. *robusta* is a short-lived annual species. It germinates during the winter months and flowers from April through June; although pollination ecology has not been studied for this taxon, pollinators observed include leaf cutter bees (megachilids), at

least 6 species of butterflies, flies, and sphecids wasps (Randy Morgan, biologist, Soquel, California, pers. comm. 2000). Each flower produces one seed; depending on the vigor of the individual plant, dozens, if not hundred of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed is collectable through August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucre spines, which attach the seed to passing animals. While animal vectors most likely facilitate dispersal between colonies and populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

The locations where *Chorizanthe robusta* var. *robusta* occurs are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains. *Chorizanthe robusta* var. *robusta* is currently known from a total of seven sites. Two sites are located on active coastal dunes, while the other five sites are located inland from the immediate coast in sandy openings within scrub, maritime chaparral, or oak woodland habitats. All of these habitat types include microhabitat characteristics that are favored by *C. r.* var. *robusta*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes or interior fossil dunes is apparently unimportant. Second, these sites are relatively open and free of other vegetation; sandy soils tend to be nutrient-poor, which limits the abundance of other herbaceous species that can grow on them. However, if these soils have been enriched, either through the accumulation of organic matter or importation of other soils, these sandy soils may support more abundant herbaceous vegetation which may then compete with *C. r.* var. *robusta*. Management of the herb cover, either through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C. r.* var. *robusta* does not occur under dense stands, but will occur between more widely spaced shrubs.

According to information included in the California Natural Diversity Data Base (CNDDDB), *Chorizanthe robusta* var. *robusta* once ranged from Alameda County, on the eastern side of San Francisco Bay, south to northern

Monterey County—a range of 160 kilometers (100 miles). The identity of the Alameda collections, however, is still unresolved; Reveal and Hardham (1989) noted that these collections may be more closely related to other spineflowers in the *Pungentes* section of the genus, but that resolution is unlikely since the Alameda population was last collected in 1948. Other historic collections were made from Colma in San Mateo County, Los Gatos and San Jose in Santa Clara County, and several locations in Santa Cruz and Monterey counties.

Other collections of putative *Chorizanthe robusta* var. *robusta* have been made from northern Monterey County and from one location near Soledad. Barbara Ertter (1990, *in litt.* 1997) has suggested that these collections may form a separate morphological “phase,” whose ultimate taxonomic affinities lay either with *Chorizanthe pungens* var. *pungens* or *Chorizanthe robusta* var. *robusta*. For purposes of this rule, these collections are recognized as belonging to *C. r.* var. *robusta*.

The current distribution of *Chorizanthe robusta* var. *robusta* is restricted to coastal and near-coastal sites in southern Santa Cruz County and northern Monterey County, ranging from Pogonip Park in the city of Santa Cruz, southeast to coastal dunes between Marina and Seaside that were formerly part of Fort Ord. With the discovery of two new populations in the year 2000, a total of seven populations are now known to exist. There is a high likelihood that other populations will be discovered in the future.

At Pogonip Park, two colonies occur on sandy soils derived from the Santa Margarita sandstone formation; one colony is growing in sandy openings within a mixed forest community (CNDDDB 2000; S. Baron, *in litt.* 1999a). Within the city of Santa Cruz, near where Highway 1 crosses Carbonera Creek, (referred to as the Branciforte site) a population occurs in a field that supports grassland species, including *Avena barbata* (wild oats), *Vulpia* sp. (vulpia), *Lupinus* sp. (sky lupine), *Eschscholzia californica* (California poppy), *Conyza* sp. (telegraph weed), *Navaretia atractylodes* (navaretia), and *Erodium* sp. (filaree) (R. Morgan, pers. comm. 2000). At the Aptos site, *Chorizanthe robusta* var. *robusta* occurs in an opening within maritime chaparral on inland marine sand deposit (CNDDDB 2000). At the Freedom site, *C. r.* var. *robusta* occurs in a grassy opening within maritime chaparral and oak woodland (Dean Taylor, Jepson Herbarium, Berkeley, CA, *in litt.* 2000).

At the Buena Vista site, *C. r.* var. *robusta* occurs on sandy soils in openings within oak forest and maritime chaparral (S. Baron, *in litt.* 1999b). The Buena Vista site also supports the endangered Santa Cruz long-toed salamander (*Ambystoma californiense*).

At Sunset State Beach, *Chorizanthe robusta* var. *robusta* is found at the base of backdunes in openings of coastal scrub, including *Eriophyllum staechadifolium* (seaside woolly sunflower), *Artemisia pycnocephala* (coastal sagewort), *Ericameria ericoides* (mock heather), and *Baccharis pilularis* (coyote bush) (CNDDDB 2000). *Chorizanthe pungens* var. *pungens* grows in a band parallel to the *C. r.* var. *robusta*, in the foredunes along the beach (CNDDDB 2000). In 1992, a population of *C. r.* var. *robusta* was discovered on the coastal dunes between Marina and Seaside, in the course of surveys performed in preparation for the transfer of Department of Defense lands formerly known as Fort Ord to the California Department of Parks and Recreation; this same stretch of dunes also supports the threatened *C. p.* var. *pungens* and the threatened western snowy plover (*Charadrius alexandrinus nivosus*) (U.S. Army Corps of Engineers (ACOE) 1997). The distribution of suitable habitat on coastal dunes is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that increase in cover over time. Individual colonies of *C. r.* var. *robusta*, found in gaps between stands of scrub, shift in distribution and size over time.

Portions of the coastal dune, coastal scrub, grassland, chaparral, and oak woodland communities that support *Chorizanthe robusta* var. *robusta* have been eliminated or altered by recreational use, conversion to agriculture, and urban development. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* spp. (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species.

#### Previous Federal Action

On May 16, 1990, we received a petition from Steve McCabe and Randall Morgan of the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) as endangered. Based on a 90-day finding

that the petition presented substantial information indicating that the requested action may be warranted (55 FR 46080), we initiated a status review of this taxon. During that time we also reviewed the status of *Chorizanthe robusta* var. *robusta*. We proposed endangered status for the *C. r.* var. *robusta* on October 24, 1991 (56 FR 55107). The final rule, published on February 4, 1994, (59 FR 5499) listed *C. robusta*, inclusive of var. *robusta* and var. *hartwegii*, as endangered.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe robusta* was listed, inclusive of var. *robusta* and var. *hartwegii*, we found that designation of critical habitat for *Chorizanthe robusta*, inclusive of var. *robusta* and var. *hartwegii*, was prudent but not determinable and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta*, inclusive of var. *robusta* and var. *hartwegii*, within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity v. Babbitt* (Case No. C99–3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to propose critical habitat for *Chorizanthe robusta* var. *robusta* by January 15, 2001. Because the two varieties of *Chorizanthe robusta* are geographically and ecologically separated, proposed critical habitat designations have been developed separately. This proposed rule addresses critical habitat for *Chorizanthe robusta*

var. *robusta*. A proposed critical habitat designation for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) is being proposed concurrently.

### Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “\* \* \* the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are

found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

Our regulations state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.” (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a

primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

### Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Chorizanthe robusta* var. *robusta*. This information included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1979), recent biological surveys and reports, our draft recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits, either cursory or more extensive, at five of the seven locations (Pogonip, Freedom, Buena Vista, Sunset

State Beach, and dunes at former Fort Ord).

Each of the critical habitat units includes areas that are unoccupied by *Chorizanthe robusta* var. *robusta*. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Chorizanthe robusta* var. *robusta* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may either favor the presence of *Chorizanthe robusta* var. *robusta* or not; (2) the way the current distribution of *Chorizanthe robusta* var. *robusta* is mapped can be variable, depending on the scale at which patches of individuals are recorded (e.g. many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon.

#### Primary Constituent Elements

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

Little is known about the specific physical and biological requirements of *Chorizanthe robusta* var. *robusta* beyond that described in the Background section of this proposed rule. Based on the best available information at this time, the primary

constituent elements of critical habitat for *C. r.* var. *robusta* are:

(1) sandy soils associated with active coastal dunes and inland sites with sandy soils;

(2) plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, and oak woodland communities, and have a structure such that there are openings between the dominant elements (e.g. scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta*;

(4) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *robusta*;

(5) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(6) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

We selected critical habitat areas to provide for the conservation of *Chorizanthe robusta* var. *robusta*, at the two coastal sites and five inland sites where it is known to occur. Historic locations for which there are no recent records of occupancy (within the last 25 years) were not proposed for designation. At a number of these sites, including Alameda in Alameda County, Colma in San Mateo County, and Los Gatos and San Jose in Santa Clara County, the plant has not been seen for approximately 100 years; this, combined with the consideration that these locations have been urbanized, leads us to conclude that a critical habitat designation would be inappropriate for these sites.

We considered proposing critical habitat in two areas where *Chorizanthe robusta* var. *robusta* has been documented within the last 25 years, but not within the last few years. The first is at Manresa State Beach, just seaward from the community of La Selva Beach in Santa Cruz County. *Chorizanthe robusta* var. *robusta* was observed near the entrance to the Beach in 1979, but it has not been seen since then and may be extirpated (CNDDDB 2000). However, Manresa State Beach is being proposed as critical habitat for *Chorizanthe pungens* var. *pungens*. Should that final critical habitat designation include Manresa State Beach, the designation may afford benefits to *C. r.* var. *robusta* through increased awareness of the importance of this habitat, particularly if the *C. r.*

var. *robusta* is found to still persist at this site.

The second area where *Chorizanthe robusta* var. *robusta* has been documented within the last 25 years is an area north of the community of Soquel in Santa Cruz County, and bounded by Paul Sweet Road to the west, Rodeo Gulch Road to the east, and as far north as Mountain View Road. Collections from this area were made in 1936, 1960, and 1977; although this area has undergone some scattered development, much of the area remains rural, and populations of *C. r.* var. *robusta* may persist in this area. However, due to the size of this area and our lack of information needed to delineate boundaries more specifically, we are not proposing critical habitat in this area at this time.

We do not believe that critical habitat designation, in this proposed rule, will be sufficient to conserve *Chorizanthe robusta* var. *robusta*, a species in danger of extinction due to the precariously few sites where it is still extant. The draft recovery plan for *C. r.* var. *robusta* (Service 2000) proposes as a recovery task “the reestablishment of populations within the historic range of the species if appropriate habitat can be located”. The task of locating appropriate habitat, which would entail developing a predictive model based on habitat characteristics (similar to, but more detailed than, the constituent elements described in this proposed rule), followed by field surveys and coordination with other agencies, has not yet been initiated. Once these data have been gathered and the recovery plan is finalized, we may revisit critical habitat designation for this species, if appropriate.

The long-term probability of the survival and recovery of *Chorizanthe robusta* var. *robusta* is dependent to a great extent upon the protection of existing population sites, and of maintaining ecologic functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example dune dynamics at the coastal sites, and fire disturbance at inland site) that maintain the openness of vegetative cover upon which the species depends. Threats to the habitat of *Chorizanthe robusta* var. *robusta* include: residential development, recreational use, and the introduction of non-native species (February 4, 1994; 59 FR 5499). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *C. r.*

var. *robusta*. Given the species' need for an open plant community structure and the risk of non-native species, we believe that these areas may require special management considerations or protection.

In our delineation of the critical habitat units, we believed it was important to designate all the known areas where *Chorizanthe robusta* var. *robusta* occurs. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations. We also included habitat for *C. r.* var. *robusta* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes. Each mapping unit contains habitat that is occupied by *C. r.* var. *robusta*; none of the mapping units are comprised entirely of unoccupied habitat. Some units were mapped with a greater precision than others, based on the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of certain mapping units will be refined.

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe robusta* var. *robusta*, using information from the California Natural Diversity Data Base (CNDDB 2000), recent biological surveys and reports, our draft recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5' quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using a combination of (1) Public Land Survey (PLS) coordinates of township, range, and section; (2) known landmarks and roads; and (3) a protracted PLS grid system used to infill grid coordinates within Spanish land grant areas where actual PLS does not exist.

In selecting areas of proposed critical habitat, we made an effort to avoid

developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe robusta* var. *robusta*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. r.* var. *robusta*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

#### Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of the *Chorizanthe robusta* var. *robusta*. Critical habitat being proposed for *C. r.* var. *robusta* includes seven units that currently sustain the species. This proposed critical habitat is essential for the conservation of the species because the geographic range that *C. r.* var. *robusta* occupies has been reduced to so few sites that the species is in danger of extinction (56 FR 55107). The areas being proposed as critical habitat are either along the coast (Sunset State Beach and the dunes at former Fort Ord), or are at inland sites ranging from Pogonip Park southeast to the Buena Vista property in southern Santa Cruz County, and include the appropriate dune, scrub, maritime chaparral, or oak woodland habitat that include the sandy openings which support *Chorizanthe robusta* var. *robusta*.

A brief description of each critical habitat unit is given below:

##### Unit A: Pogonip Unit

Unit A consists of sandy openings within mixed forest habitat within Pogonip Park in the city of Santa Cruz. Of the 166-ha (411-acre) unit, 100 ha (248 ac) are owned and managed by the city; a portion of the remaining 66

adjacent hectares (163 ac) are owned by the University of California, and the remainder are privately owned.

##### Unit B: Branciforte Unit

Unit B consists of an old field/grassland unit within the city limits of Santa Cruz. The 5 ha (11-ac) unit is privately owned.

##### Unit C: Aptos Unit

Unit C consists of sandy openings within maritime chaparral. The 32-ha (78-ac) unit is comprised entirely of private lands.

##### Unit D: Freedom Unit

Unit D consists of grasslands and sandy areas in openings within maritime chaparral and oak woodland. This 3.8-ha (9.5-ac) unit is comprised of local agency lands (Aptos High School District) and private lands.

##### Unit E: Buena Vista Unit

Unit E consists of grasslands within maritime chaparral and oak woodland on the Buena Vista parcel. The 75-ha (185-ac) unit is comprised entirely of private lands. The Service has prepared a proposal to allow addition of the Buena Vista parcel into the Ellicott Slough National Wildlife Refuge (Service 1998b); however, its future disposition is uncertain.

##### Unit F: Sunset Unit

Unit F consists of coastal dune habitat, and is identical to critical habitat that is being proposed for the *Chorizanthe pungens* var. *pungens*. All of this 53-ha (132-ac) unit is within Sunset State Beach.

##### Unit G: Marina Unit

Unit G consists of coastal dune habitat on the dunes at former Fort Ord, and is south of Marina State Beach and north of Del Monte. All this 326-ha (804-ac) unit consists of former Fort Ord lands that are being transferred to the California State Parks system.

The approximate areas of proposed critical habitat by land ownership are shown in Table 5. Lands proposed are under private, City, and State jurisdiction, with Federal lands including lands managed by the DOD at former Fort Ord.

TABLE 5.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)<sup>1</sup>, OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe robusta* VAR. *robusta* BY LAND OWNERSHIP.

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
A. Pogonip .....	20 ha (50 ac) .....	45 ha (115 ac) .....	100 ha (250 ac) .....	.....	165 ha (410 ac)
B. Branciforte .....	.....	5 ha (10 ac) .....	.....	.....	5 ha (10 ac)
C. Aptos .....	.....	30 ha (80 ac) .....	.....	.....	30 ha (80 ac)

TABLE 5.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)<sup>1</sup>, OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe robusta* VAR. *robusta* BY LAND OWNERSHIP.—Continued

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
D. Freedom .....		2 ha (6 ac) .....	2 ha (4 ac) .....		4 ha (10 ac)
E. Buena Vista .....		75 ha (185 ac) .....			75 ha (185 ac)
F. Sunset .....	55 ha (130 ac) .....				55 ha (130 ac)
G. Marina .....				325 ha (805 ac) .....	325 ha (805 ac)
Total .....	75 ha (180 ac) .....	157 ha (396 ac) .....	102 ha (254 ac) .....	325 ha (805 ac) .....	659 ha (1,635 ac)

<sup>1</sup> Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

### Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal

authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for the *Chorizanthe robusta* var. *robusta* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions

not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Chorizanthe robusta* var. *robusta* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy native dune, scrub, maritime chaparral, and oak woodland communities, including but not limited to inappropriately managed livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the Army Corps of Engineers or permits from Housing and Urban Development, military activities of the Department of Defense on their lands or lands under their jurisdiction, the release of authorization of release of biological control agents by the Department of Agriculture, regulation by the Environmental Protection Agency of activities affecting point source pollution discharges into waters of the U.S., authorization of Federal grants or loans, and land acquisition by the Service's Refuges Division. These



actions would be subject to the section 7 consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. Several other species that are listed under the Act occur in the same general areas as *Chorizanthe robusta* var. *robusta*. *Chorizanthe pungens* var. *pungens* occurs in close proximity to *Chorizanthe robusta* var. *robusta* at Sunset State Beach and the dunes at former Fort Ord; sand gilia (*Gilia tenuiflora* ssp. *arenaria*) occurs at Sunset State Beach and the dunes at former Fort Ord; western snowy plover occurs at Sunset State Beach and the dunes at former Fort Ord; and the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) occurs on the Buena Vista property.

We have prepared a proposal to allow addition of the Buena Vista parcel into the Ellicott Slough National Wildlife Refuge (Service 1998). At this time, the parcel remains in private ownership and its future disposition is uncertain. However, should the parcel be acquired by the Service in the future, this action would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503/231-6131, FAX 503/231-6243).

#### **Relationship To Habitat Conservation Plans**

Currently, there are no HCPs that include *Chorizanthe robusta* var. *robusta* as a covered species. However, we believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *C. r.* var. *robusta* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and

habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *C. r.* var. *robusta*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *C. r.* var. *robusta* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

#### **Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

#### **Public Comments Solicited**

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

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section

4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Chorizanthe robusta* var. *robusta* habitat, and what habitat is essential to the conservation of the species and why;

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

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Chorizanthe robusta* var. *robusta* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) The methods we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to [robustsf@r1.fws.gov](mailto:robustsf@r1.fws.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [1018-AH83] and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805-644-1766. Please note that the Internet address "[robustsf@r1.fws.gov](mailto:robustsf@r1.fws.gov)" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There



also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Peer Review

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

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing

and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### Clarity of the Rule

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

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in

considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as “jeopardy” under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal “sponsorship” in their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF *Chorizanthe robusta* VAR. *robusta* LISTING AND CRITICAL HABITAT DESIGNATION.

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Federal Activities Potentially Affected <sup>2</sup> .....	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation

TABLE 2.—IMPACTS OF *Chorizanthe robusta* VAR. *robusta* LISTING AND CRITICAL HABITAT DESIGNATION.—Continued

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Private or other non-Federal Activities Potentially Affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for <i>Chorizanthe robusta</i> var. <i>robusta</i> by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation

<sup>1</sup> This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands.

We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

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

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is

not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as a result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as a result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated on Table 1 (see "Proposed Critical Habitat Designation" section), we have proposed to designate property owned by Federal, State, and County governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act.;

(6) Authorization of Federal grants or loans; and

(7) The potential acquisition of the Buena Vista parcel by the Service's Refuges Division. Potentially, some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant,

permit, or other Federal authorization. As discussed in above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current, applicable restrictions of the Act remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act* (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations should occur regardless of the critical habitat designation. We will evaluate through our economic analysis any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000, et seq.):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the

extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease current restrictions on private property concerning this plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

#### Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe robusta* var. *robusta* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the

conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe robusta* var. *robusta*.

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

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

#### National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### 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) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Chorizanthe robusta* var. *robusta* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644-1766).

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

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

#### Proposed Regulation Promulgation

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

#### PART 17—[AMENDED]

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

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

2. In § 17.12(h), remove the entry for *Chorizanthe robusta* (incl. vars. *robusta* and *hartwegii*) and add the following, in alphabetical order under "FLOWERING PLANTS" to the List of Endangered and Threatened Plants to read as follows:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Chorizanthe robusta</i> <i>var. robusta.</i>	Robust Spineflower	U.S.A. (CA) .....	Polygonaceae— Buckwheat.	T		17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding an entry for *Chorizanthe robusta* var. *robusta* in alphabetical order under Polygonaceae to read as follows:

**§ 17.96 Critical habitat—plants.**

\* \* \* \* \*

(b) *Single-species critical habitat—Flowering plants.*

Family Polygonaceae: *Chorizanthe robusta* var. *robusta* (robust spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey counties, California, on the maps below.

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

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) Plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta*;

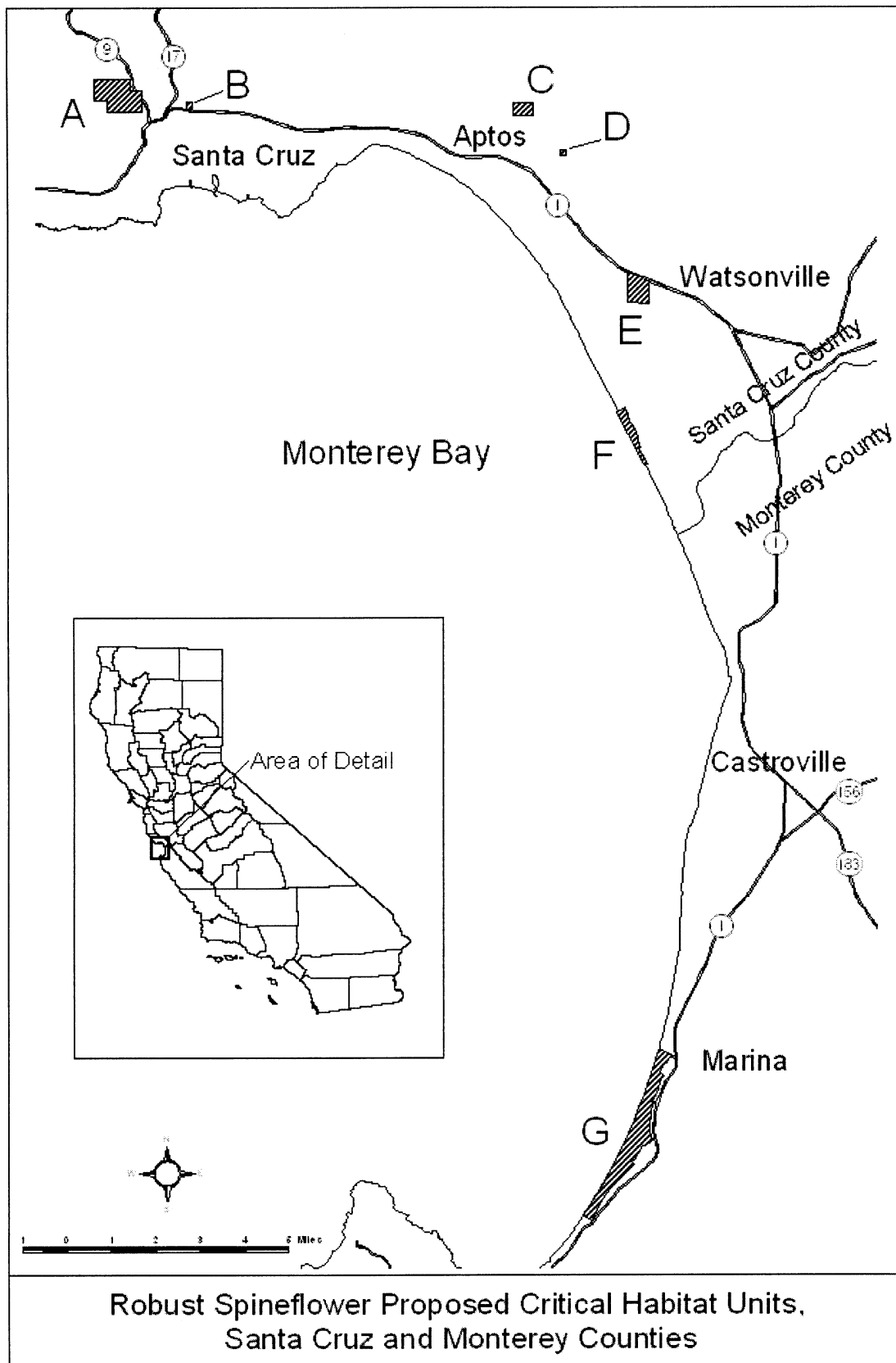
(iv) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *robusta*;

(v) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(vi) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

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

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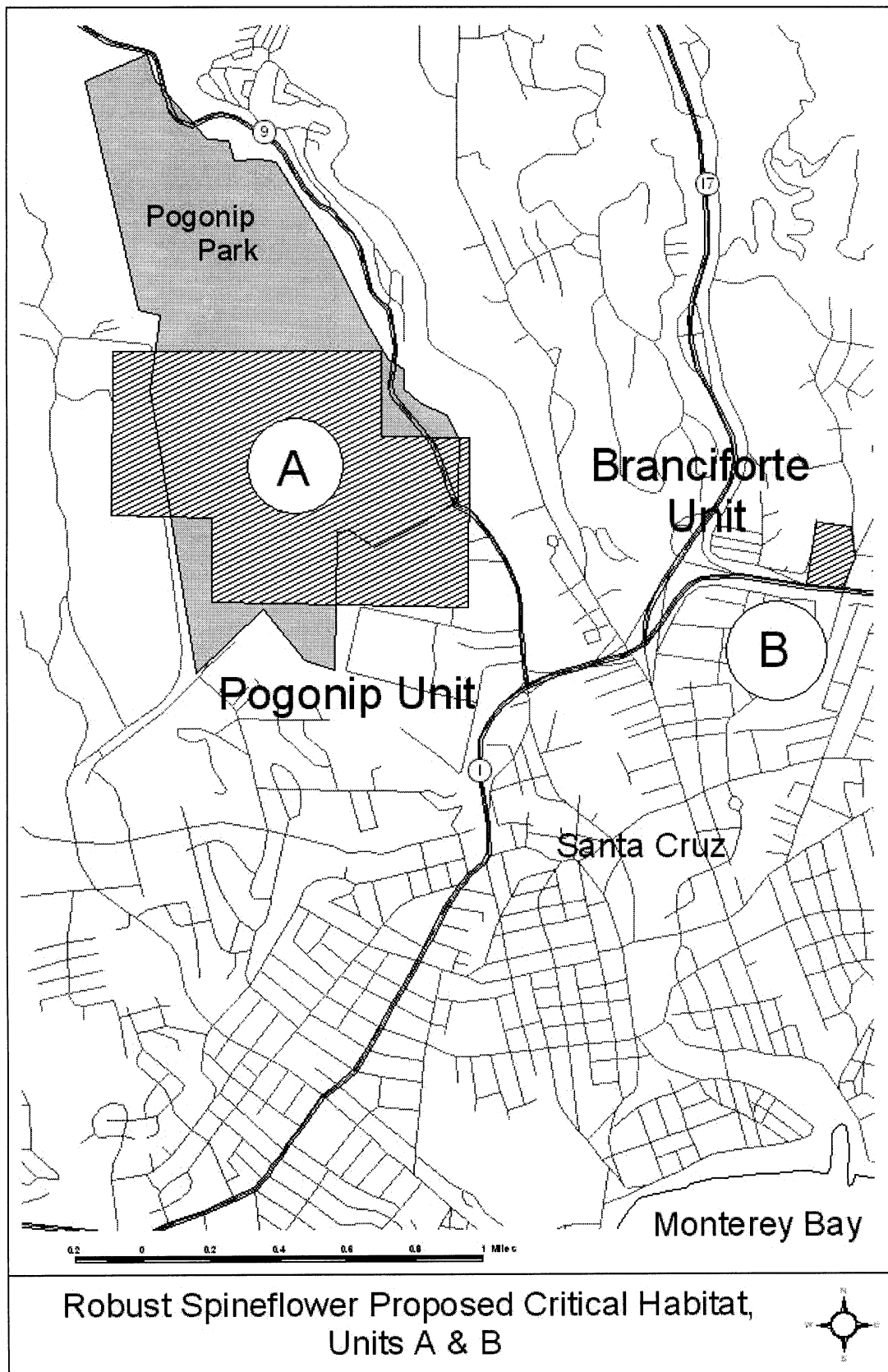


*Map Unit A (Pogonip)*: Santa Cruz County, California. From USGS 7.5' quadrangle map Santa Cruz, California. The following lands within the Canada del Rincon en El Rio San Lorenzo de Santa Cruz Land Grant: T. 11 S., R. 2 W., S.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{2}$  and S.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$ , Mount Diablo Principal Meridian, sec. 2 (protracted); T. 11 S., R. 2 W., N.E.  $\frac{1}{4}$  of

N.W.  $\frac{1}{4}$  and N.E.  $\frac{1}{4}$ , Mt. Diablo Principal Meridian, sec. 11 (protracted); W.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$ , Mt. Diablo Principal Meridian, sec. 12 (protracted); bounded on the north by State Highway 9.

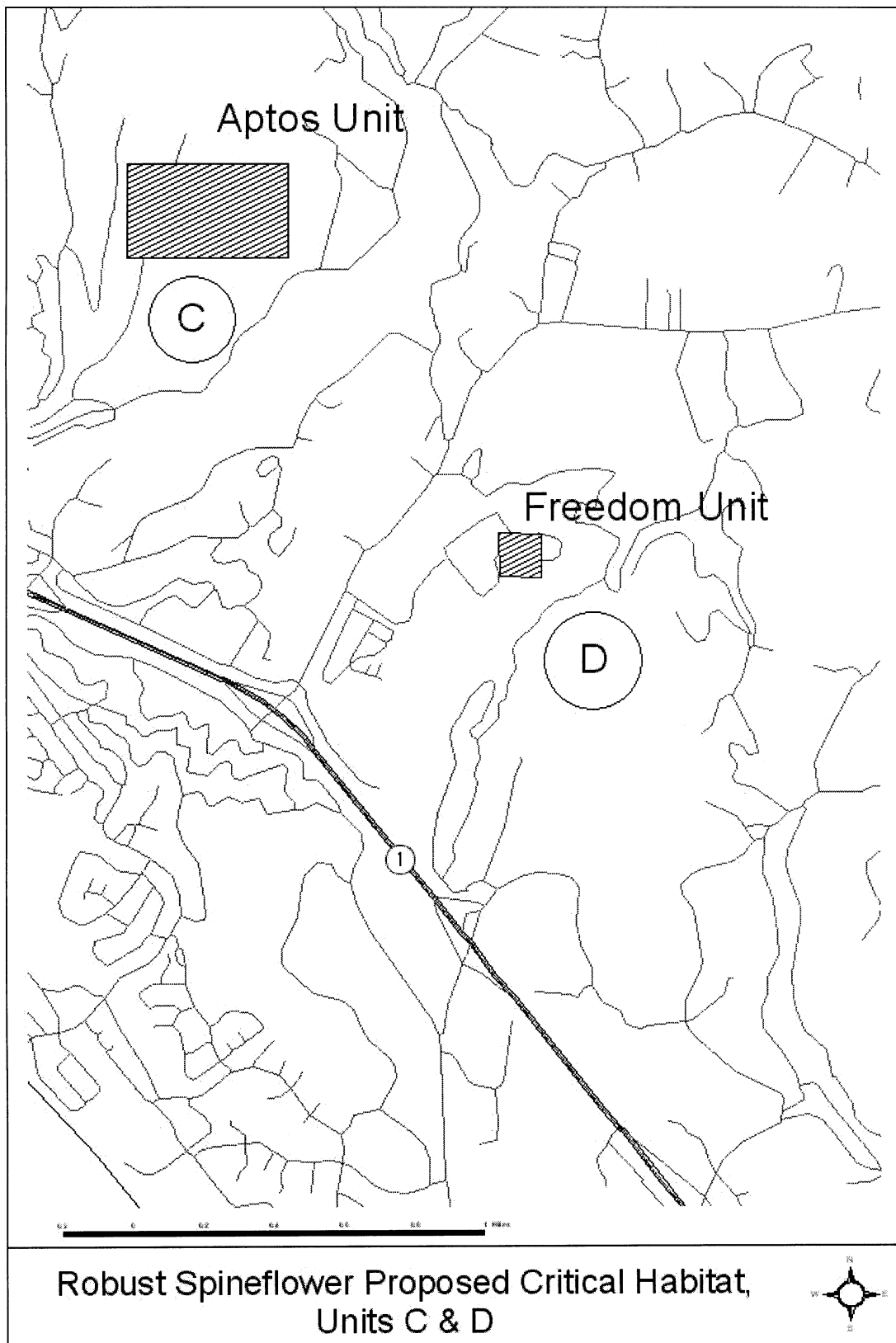
*Map Unit B (Branciforte)*. Santa Cruz County, California. From USGS 7.5' quadrangle map Santa Cruz, California. Lands within: T. 11 S., R. 1 W., Mt.

Diablo Principal Meridian, sec. 7; bounded on the west by Branciforte Creek, on the south by Highway 101, on the east by Market Street and Isbel Drive, and on the north by an east-west trending line connecting the terminus of Lee Street (west side of Branciforte Creek) to Isbel Drive.





<i>Map Unit C (Aptos).</i> Santa Cruz County, California. Santa Cruz County, California. From USGS 7.5' quadrangle map Soquel, California. The following lands within the Aptos Land Grant: T.	11 S., R. 1 E., S½ of the N.E.¼, Mt. Diablo Principal Meridian, sec. 8 (protracted). <i>Map Unit D (Freedom).</i> Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West,	California. The following lands within the Languna de los Calabasas and Aptos Land Grants: T. 11 S., R. 1 E., N.E.¼ of S.W.¼ of N.E.¼, Mt. Diablo Principal Meridian, sec. 16 (protracted).
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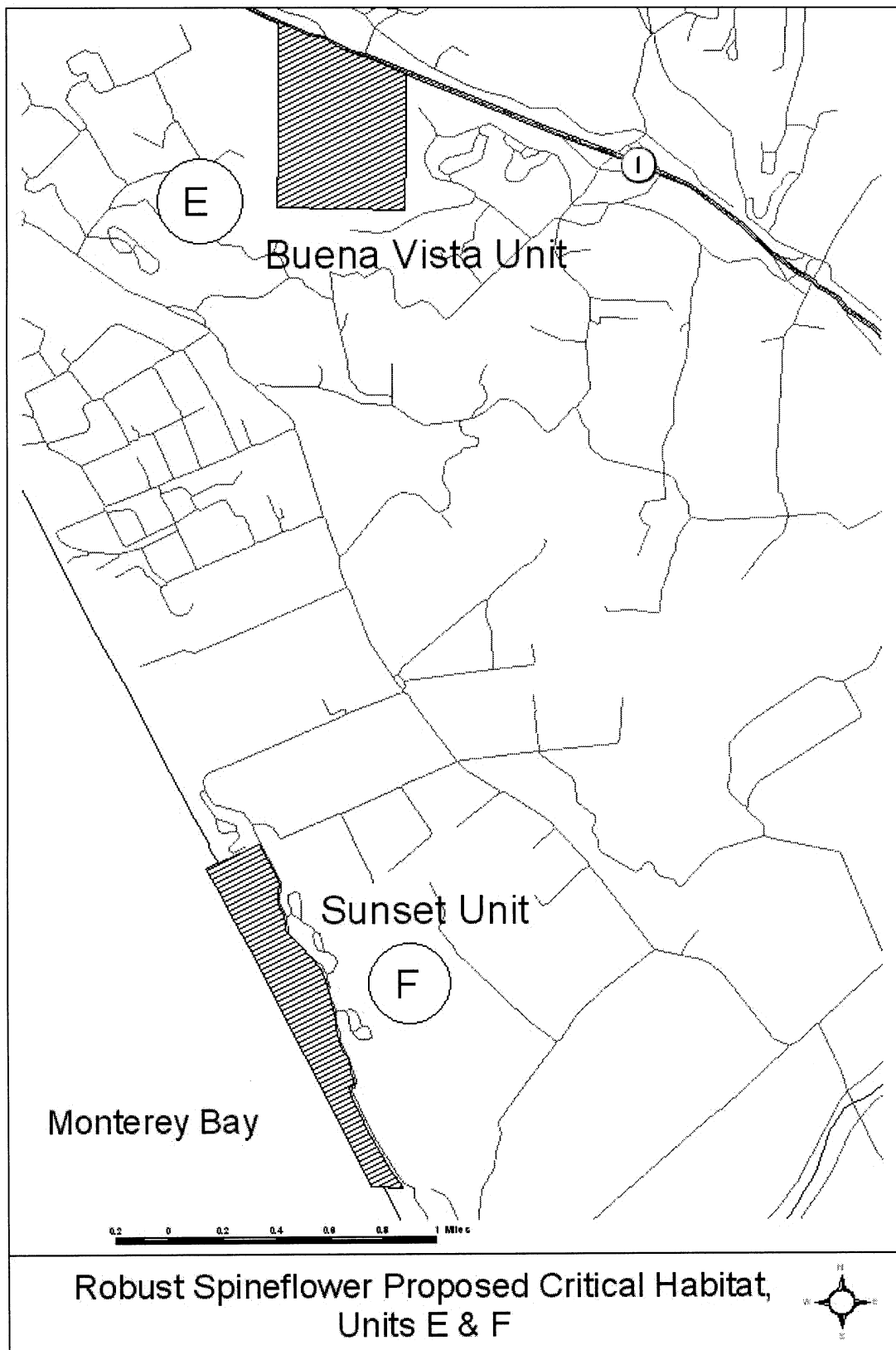


*Map Unit E (Buena Vista).* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. The following lands within the San Andreas Land Grant: T. 11 S., R. 1 E., N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$ , and N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$ , Mt.

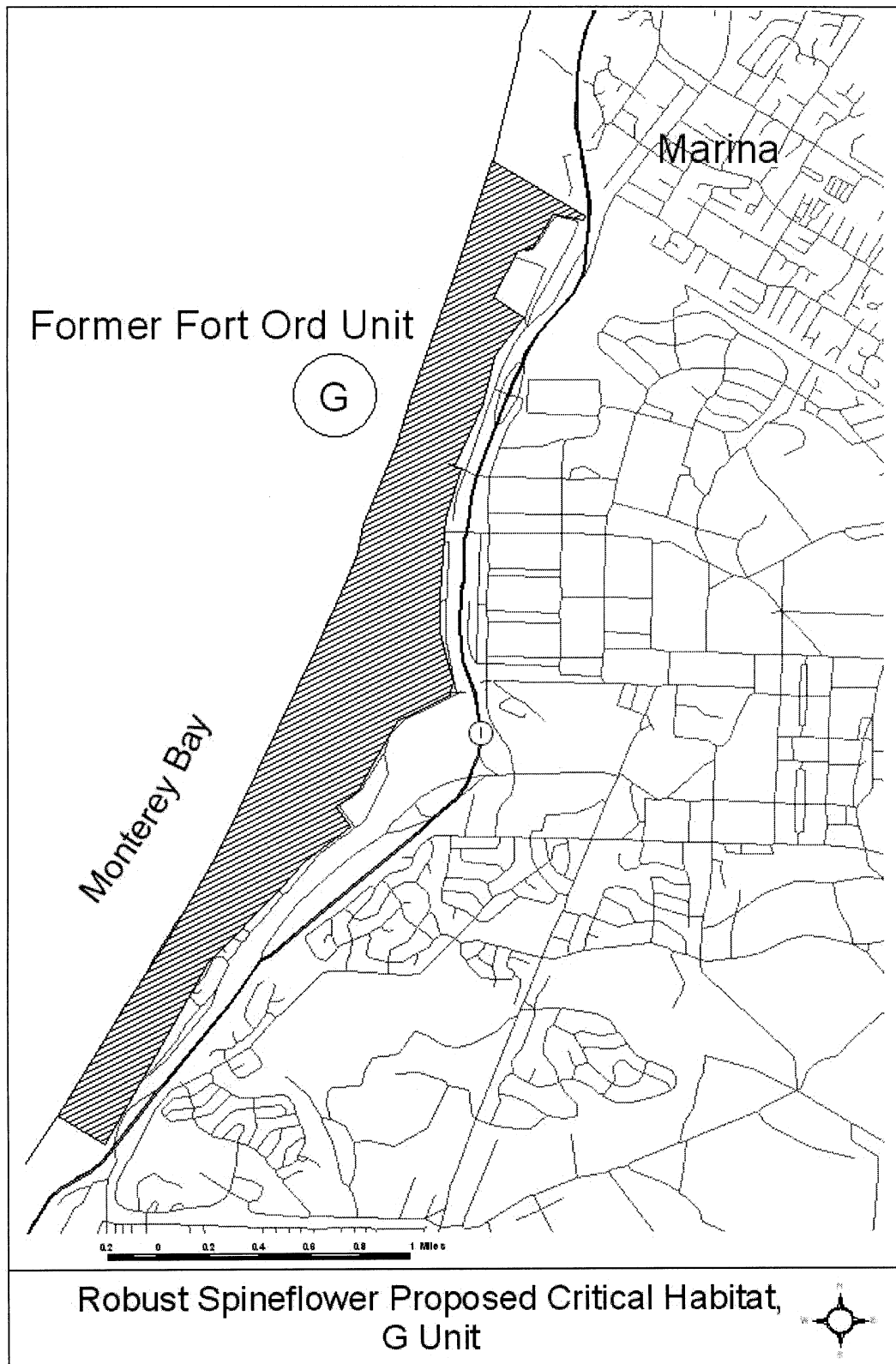
Diablo Principal Meridian, sec. 35 (protracted).

*Map Unit F (Sunset).* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. Lands within: T.12 S., R.1 E., Mt. Diablo Principal Meridian, secs. 14 and 23; bounded at the N. by Sunset State Beach at Monte Vista Way, N.W.

along Monte Vista Way to Shell Road; S.E. 2.33 km (1.45 mi) along Shell Road, W. at the point at which Shell Road veers E. and then W. to mean high water, N.W. along mean high water 2.17 km (1.35 mi) to a point perpendicular to the boundary of Sunset State Beach; proceeding N.E. to point of beginning.



<i>Map Unit G (Marina).</i> Monterey County, California. From USGS 7.5' quadrangle maps Marina and Seaside, California. The following lands within the former Ft. Ord beaches: From the	northern boundary of former Fort Ord, S. about .8 km (0.5 mi) along the Southern Pacific Railroad to its intersection with Beach Range Road, S. about 5.6 km (3.5 mi) along Beach Range	Road to its terminus; S. to the southern boundary of former Fort Ord, W. to the mean high tide line, N. along the mean high tide line to the northern boundary of former Fort Ord.
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Dated: January 16, 2001  
**Kenneth L. Smith.**  
*Assistant Secretary for Fish and Wildlife and  
Parks.*  
[FR Doc. 01-1837 Filed 2-14-01; 8:45 am]  
BILLING CODE 4310-55-C