
ECONOMIC EFFECTS OF CRITICAL HABITAT DESIGNATION FOR WILLOWY MONARDELLA

Prepared For

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I EXECUTIVE SUMMARY

The U.S. Fish & Wildlife Service (Service) identified 2,539 acres of land containing physical and biological features essential to the conservation of willow monardella. The Service is proposing to designate 115 acres of land as critical habitat. Almost all of the areas identified as containing features essential to the conservation of the species are exempt from designation under 4(a)(3) of the Act, are already identified and conserved as open space, or are covered by a Habitat Conservation Plan. The analysis concludes that designation of critical habitat for willow monardella will result in negligible economic impacts.

II BACKGROUND

On November 9, 2005, the U.S. Fish & Wildlife Service (Service) proposed critical habitat for willow monardella, *Monardella linoides* ssp. *viminea*, pursuant to the Endangered Species Act of 1973.¹ For this economic analysis, a total of 2,539 acres of essential habitat, all in San Diego County, are examined. This report quantifies the economic effects associated with the proposed designation of critical habitat. It does so by taking into account the cost of conservation-related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed boundaries.

This information is intended to assist the Secretary in determining whether the benefits of excluding particular areas from the designation outweigh the biological benefits of including them.² In addition, this information allows the Service to address the requirements of Executive Orders 12866 and 13211, and the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).³ This report also complies with direction from the U.S. 10th Circuit Court of Appeals that “co-extensive” effects should be included in the economic analysis to inform decision-makers regarding which areas to designate as critical habitat.⁴

II.1 IDENTIFIED HABITAT

The Service identified nine habitat units with known occurrences of willow monardella. In identifying areas as critical habitat, the Service considered those physical and biological habitat features that are essential to the conservation of the species. These

¹ 70 FR 67956.

² 16 U.S.C. §1533(b)(2).

³ Executive Order 12866, “Regulatory Planning and Review,” September 30, 1993; Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” May 18, 2001; 5 U.S.C. §§601 *et seq*; and Pub Law No. 104-121.

⁴ In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed CHD, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Ass’n v. U.S.F.W.S.*, 248 F.3d 1277 (10th Cir. 2001)).

essential features are referred to as the species' primary constituent elements (PCEs). Areas that do not contain any PCEs are not considered critical habitat, whether or not they occur within a mapped critical habitat unit. The primary constituent elements for willow monardella are as follows:

1. Coarse, rocky, sandy alluvium on terraced floodplains, benches, stabilized sandbars, channel banks, and sandy washes along and within the ephemeral drainages that provide space for growth, reproduction, and dispersal;
2. Ephemeral drainages where water flows only after peak seasonal rains and major flooding events and periodically scours riparian vegetation and redistributes alluvial material by eroding and developing stream channels, benches, and sandbar and thus maintains necessary dynamic habitat processes for the species; and
3. Coastal sage and riparian scrub with an open and semi-open canopy and little or no herbaceous understory situated along ephemeral drainages and adjacent floodplains to ensure that the subspecies receives adequate sunlight for nutrient uptake for photosynthesis.

Table 1: Ownership of Nonexempt Habitat divides each habitat unit by ownership and status in the proposed rule (proposed, exempt, or excluded.) Unit 2 is completely within the Marine Corps Air Station Miramar, and is therefore exempt from critical habitat under section 4(a)(3) of the Act. With the exception of Unit 1, all remaining units are proposed to be excluded from the final designation under section 4(b)(2) of the Act.

II.2 THREATS

In its final listing rule, the Service identified several threats to willow monardella:⁵

- Trampling/grazing;
- Invasive plant species;
- Off-road vehicles;
- Urbanization;
- Mining; and
- Alteration of hydrology.

The economic effects of the proposal on these activities are discussed in section IV.1.

III ANALYTICAL FRAMEWORK

This economic analysis considers both the economic efficiency and distributional effects that may result from species and habitat protection. Economic efficiency effects generally reflect "opportunity costs" associated with the commitment of resources required to accomplish species and habitat conservation. Efficiency losses also include reductions in

⁵ 60 FR 54938.

surplus levels resulting from economic activities such as land development. Similarly, the costs incurred by a Federal action agency to consult with the Service under section 7 represent opportunity costs of habitat conservation.

This analysis also addresses the distribution of impacts associated with the designation, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information may be used to determine whether the effects of the designation unduly burden a particular group or economic sector. For example, while habitat conservation activities may have a small impact relative to the national economy, individuals employed in a particular sector of the regional economy may experience a significant level of impact. The difference between economic efficiency effects and distributional effects, as well as their application in this analysis, are discussed in greater detail below.

III.1 EFFICIENCY EFFECTS

At the guidance of the Office of Management and Budget (OMB) and in compliance with Executive Order 12866 “Regulatory Planning and Review,” Federal agencies measure changes in economic efficiency in order to discern the implications on a societal level of a regulatory action. For regulations specific to the conservation of willowy monardella, efficiency effects represent the opportunity cost of resources used, or benefits foregone, by society as a result of the regulations. Economists generally characterize opportunity costs in terms of changes in producer and consumer surplus in affected markets.⁶

In some instances, compliance costs may provide a reasonable approximation of the efficiency effects associated with a regulatory action. For example, a lead Federal agency may enter into a consultation with the Service to ensure that a particular activity will not adversely modify critical habitat. The end result of the consultation may be a small amount of additional mitigation for on-site impacts of the proposed activity. The cost of the additional mitigation would have been spent on alternative activities if the proposed project not been designated critical habitat. In the case that compliance activity is not expected to significantly affect markets – that is, not result in a shift in the quantity of a good or service provided at a given price, or in the quantity of a good or service demanded given a change in price – the measurement of compliance costs provides a reasonable estimate of the change in economic efficiency.

More generally, where habitat protection measures are expected to significantly impact a market, it may be necessary to estimate changes in producer and consumer surpluses. For example, a designation that precludes the development of large areas of land may shift the price and quantity of housing supplied in a region. In this case, changes in economic efficiency (i.e., social welfare) can be measured by considering changes in producer and consumer surplus in the real estate market.

⁶ For additional information on the definition of “surplus” and an explanation of consumer and producer surplus in the context of regulatory analysis, see Gramlich, Edward M., *A Guide to Benefit-Cost Analysis* (2nd Ed.), Prospect Heights, Illinois: Waveland Press, Inc., 1990; and U.S. 240-R-00-003, September 2000, available at <http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html>.

III.2 DISTRIBUTIONAL AND REGIONAL ECONOMIC EFFECTS

Measurements of changes in economic efficiency focus on the net impact of conservation activities, without consideration of how certain economic sectors or groups of people are affected. Thus, a discussion of efficiency effects alone may miss important distributional considerations. OMB encourages Federal agencies to consider distributional effects separately from efficiency effects.⁷ This analysis considers several types of distributional effects, including impacts on small entities and impacts on energy supply, distribution, and use.

III.3 SCOPE OF THE ANALYSIS

This analysis identifies those economic activities believed to most likely threaten the listed species and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the proposed critical habitat. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation.^{8,9}

Coextensive effects may also include impacts associated with overlapping protective measures of other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation. We note that in past instances, some of these measures have been precipitated by the listing of the species and impending designation of critical habitat. Because habitat conservation efforts affording protection to a listed species likely contribute to the efficacy of the critical habitat designation, the impacts of these actions are considered relevant for understanding the full effect of the proposed designation. Enforcement actions taken in response to violations of the Act, however, are not included.

III.3.1 Sections of the Act Relevant To the Analysis

The analysis focuses on activities that are influenced by the Service through sections 4, 7, 9, and 10 of the Act. Section 4 of the Act focuses on the listing and recovery of endangered and threatened species, as well as critical habitat designation. According to

⁷ U.S. Office of Management and Budget, "Circular A-4," September 17, 2003, available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

⁸ In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed CHD, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Assn v. U.S.F.W.S.*, 248 F.3d 1277 (10th Cir. 2001)).

⁹ In 2004, the U.S. 9th Circuit invalidated the Service's regulation defining destruction or adverse modification of critical habitat (*Gifford Pinchot Task Force v. United States Fish and Wildlife Service*). The Service is currently reviewing the decision to determine what effect it (and to a limited extent *Center for Biological Diversity v. Bureau of Land Management* (Case No. C-03-2509-SI, N.D. Cal.)) may have on the outcome of consultations pursuant to section 7 of the Act.

section 4, the Secretary is required to list species as endangered or threatened “solely on the basis of the best available scientific and commercial data.”¹⁰

The protections afforded to threatened and endangered species and their habitat are described in sections 7, 9, and 10 of the Act, and economic impacts resulting from these protections are the focus of this analysis:

Section 7 of the Act requires Federal agencies to consult with the Service to ensure that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the species’ designated critical habitat. The administrative costs of these consultations, along with the costs of project modifications resulting from these consultations, represent compliance costs associated with the listing of the species and the designation of critical habitat.¹¹

Section 9 defines the actions that are prohibited by the Act. In particular, it prohibits the “take” of endangered wildlife, where “take” means to “harass, harm, pursue, or collect, or to attempt to engage in any such conduct.”¹² The economic impacts associated with this section manifest themselves in sections 7 and 10. While incidental take permits are not issued for plant species, the Service is obligated to ensure that proposed activities adequately minimize impact to species.

Under section 10(a)(1)(B) of the Act, an entity (e.g. a landowner or local government) may develop a Habitat Conservation Plan (HCP) for an endangered animal species in order to meet the conditions for issuance of an incidental take permit in connection with the development and management of a property.¹³ The requirements posed by the HCP may have economic impacts associated with the goal of ensuring that the effects of incidental take are adequately minimized and mitigated. The designation of critical habitat does not require completion of an HCP; however, the designation may influence conservation measures provided under HCPs. While HCPs are not developed solely for plant species, if listed plants occur in the area subject to the HCP, the Service must consider whether the proposed activities adversely affect or jeopardize the continued existence of the plant species.

III.3.2 San Diego Multiple Species Conservation Program

The Multiple Species Conservation Program (MSCP) is a comprehensive habitat conservation planning program for southwestern San Diego County. Completed in March, 1998—seven months prior to the listing of willow Monardella—the MSCP Plan

¹⁰ 16 U.S.C. §1533.

¹¹ The Service notes, however, that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, has invalidated the Service’s regulation defining destruction or adverse modification of critical habitat. The Service is currently reviewing the decision to determine what effect it (and to a limited extent *Center for Biological Diversity v. Bureau of Land Management* (Case No. C-03-2509-SI, N.D. Cal.)) may have on the outcome of consultations pursuant to section 7 of the Act.

¹² 16 U.S.C. §1538 and 16 U.S.C. §1532.

¹³ U.S. Fish and Wildlife Service, “Endangered Species and Habitat Conservation Planning,” <http://endangered.fws.gov/hcp/>.

targets 171,917 acres of open space for conservation within the planning area, including over half of all remaining natural habitat areas (167,667 acres) and 4,250 acres of other open spaces (such as disturbed and agricultural lands) that contribute to conservation objectives. It aims to conserve a network of habitat and open space, protecting biodiversity and enhancing the region's quality of life, while simultaneously providing an economic benefit by reducing constraints on future development and decreasing the costs of compliance with Federal and State laws protecting biological resources.¹⁴ The Service either has completed or anticipates completing a Section 7 consultation for each of the 12 subarea plans that compose the MSCP to ensure the MSCP and its subarea plans will not jeopardize covered species or destroy or adversely modify any critical habitat that may be designated for covered species. Willoway monardella is covered under the plan and nearly all lands proposed for critical habitat are within the MSCP.

The Multi-Habitat Planning Area (MHPA) is the San Diego's planned habitat preserve within the MSCP subarea. The MSCP is the regional program through which the MHPA will be assembled as each participating jurisdiction implements their portion of the MSCP.

MSCP personnel were interviewed concerning the economic effects of monitoring and management for monardella. While they could not provide a per-unit assessment of costs, they estimated that between \$10,000 and \$12,000 are expended annually to monitor monardella. Management occurs on a sporadic basis according to the availability of funding; the last active management took place in 2003 at a cost of roughly \$10,000 to \$15,000. Finally, there volunteers perform some management and weed control.¹⁵

III.3.3 Other Relevant Protection Efforts

The protection of listed species and habitat is not limited to the Act. Other Federal agencies, such as the Army Corps of Engineers, as well as State and local governments, may also seek to protect the natural resources under their jurisdiction.¹⁶

In general, economic impacts will be evaluated regardless of whether or not species protection measures required by the Act are also required by other Federal agencies or State and local governments. The impacts of these protection measures are “co-extensive” with or attributable to the species’ listing and critical habitat designation. Examples of the type of regulations that fall into this category include but are not limited to the California Environmental Quality Act (CEQA) and section 404 of the Clean Water Act.

¹⁴ "MSCP Plan Summary", <http://www.sandiego.gov/planning/mscp/summary/index.shtml>

¹⁵ Personal communication with Melanie Johnson, biologist, City of San Diego, April 5, 2006.

¹⁶ For example, the Sikes Act Improvement Act (Sikes Act) of 1997 requires Department of Defense (DOD) military installations to develop Integrated Natural Resources Management Plans (INRMPs) that provide for the conservation, protection, and management of wildlife resources (16 U.S.C. §§ 670a - 670o). These plans must integrate natural resource management with the other activities, such as training exercises, taking place at the facility.

III.3.4 Time Frame

The analysis examines activities taking place both within and adjacent to the proposed designation. It estimates impacts based on activities that are “reasonably foreseeable,” including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20-year time frame, beginning on the day that the current proposed rule becomes available to the public.

III.3.5 Benefits

Under Executive Order 12866, OMB directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions.¹⁷ OMB’s Circular A-4 distinguishes two types of economic benefits: *direct benefits and ancillary benefits*. Ancillary benefits are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking.¹⁸

In the context of critical habitat designation, the primary purpose of the rulemaking (i.e., the direct benefit) is the potential to enhance conservation of the species. The published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency’s part to conduct new research.¹⁹ *Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.*

Critical habitat designation may also generate ancillary benefits. Critical habitat aids in the conservation of species specifically by protecting the primary constituent elements on which the species depends. To this end, critical habitat designation can result in maintenance of particular environmental conditions that may generate other social benefits aside from the preservation of the species. That is, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region. While they are not the primary purpose of critical habitat, these ancillary benefits may result in gains in employment, output, or income that may offset the direct, negative impacts to a region’s economy resulting from actions to conserve a species or its habitat.

It is often difficult to evaluate the ancillary benefits of critical habitat designation. To the extent that the ancillary benefits of the rulemaking may be captured by the market through an identifiable shift in resource allocation, they are factored into the overall economic impact assessment in this report. For example, if decreased off-road vehicle use

¹⁷ Executive Order 12866, *Regulatory Planning and Review*, September 30, 1993.

¹⁸ U.S. Office of Management and Budget, “Circular A-4,” September 17, 2003, available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

¹⁹ U.S. Office of Management and Budget, “Circular A-4,” September 17, 2003, available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

to improve species habitat leads to an increase in opportunities for wildlife viewing or hiking within the region, the local economy may experience an associated measurable, positive impact. Where data are available, this analysis attempts to capture the *net* economic impact (i.e., the increased regulatory burden less any discernable offsetting market gains), of species conservation efforts imposed on regulated entities and the regional economy.

IV RESULTS OF THE ANALYSIS

This section examines each unit of proposed critical habitat for potential economic impacts.

IV.1 UNIT 1 (SYCAMORE CANYON)

Unit 1 is the only unit which is not exempted or proposed for exclusion. It consists of 115 acres on the eastern border of MCAS Miramar, within the city of Santee. 114 acres of Unit 1 are anticipated to be part of a future open space preserve of the Fanita Ranch residential development project. Fanita Ranch is a proposed 2,600 acre development near the city of Santee, CA. Under the current proposal, one half of the project site would be developed into approximately 1,380 homes, and the remaining half, roughly 1,400 acres, would be preserved as open space.

Willow monardella occurs near riparian corridors within the proposed open space preserve. The project's developers stated that while the presence of monardella was a factor in the decision to set land aside, other regulatory burdens such as the City of Santee's General Plan open space requirement would have resulted in the creation of the preserve even it were not present. Minor components of the open space plan have been redesigned in response to monardella, such as rerouting walking trails away from known populations of the plant. These resulted in negligible, unquantifiable additional costs. Active management will be performed for monardella and other threatened or endangered species in the preserve, primarily in the form of removal of exotic or invasive species. Although project developers were not able to isolate management costs for monardella, overall management costs for the preserve are estimated at \$80 per acre per year in perpetuity.²⁰

The remaining acre of Unit 1 is owned by the Padre Dam Municipal Water District. The water district's land is covered by a natural community conservation plan (NCCP) and is not intended for development.²¹

²⁰ Personal communication with Jim Whalen, developer, Fanita Ranch, April 13, 2006.

²¹ Personal communication with Mary Lindquist, right-of-way agent, Padre Dam Municipal Water District, February 13, 2006.

IV.2 UNIT 3 (SYCAMORE, WEST SYCAMORE & SPRING CANYONS)

Unit 3 consists of five subunits spanning two canyons on the eastern border of MCAS Miramar, near Mission Trails Regional Park. It encompasses a total of 207 acres of public and private land and is proposed for exclusion.

IV.2.1 Units 3A, 3B, and 3C (Sycamore Canyon)

These subunits consist of a mix of private and county lands. Unit 3A contains 30 acres of county land and 45 acres of private land connected to the northeast corner of MCAS Miramar. Units 3B and 3C are southeast of 3A and encompass 9 and 10 acres of private land, respectively. The county-owned land was acquired on January 1, 1997 and conserved as part of the county's Metro-Lakeside-Jamul segment of the MSCP subarea plan.²² All of the lands in units 3A, 3B, and 3C fall within the reserve design of the MHPA. They are topographically unsuitable for development and far removed from existing city infrastructure; development would entail a high degree of leapfrogging. Therefore, no development is foreseeable within the units over the next 20 years.

IV.2.2 Unit 3D (West Sycamore Canyon)

This subunit is west of subunit 3A along the northern border of MCAS Miramar and consists of 10 acres of city land. The city acquired the land from General Dynamics on December 31, 1997 and conserved it. Designation will not affect future development because none is allowed in this conserved area.²³

IV.2.3 Unit 3E (Spring Canyon)

This subunit consists of 98 acres of private land along the southeast border of MCAS Miramar, and six acres of city land. The city land was acquired and conserved on May 1, 2004. According to Service personnel, the privately-owned land is planned for complete conservation. Until then, willowy monardella will be protected through the City of San Diego's subarea planning process to protect narrow endemic species.²⁴ Thus, designation will not affect future development because none is planned for this existing and anticipated conservation area.

IV.3 UNIT 4 (SAN CLEMENTE CANYON)

This unit consists of nine acres owned by the city of San Diego. The unit is on the northern border of MCAS Miramar south of Pomerado Road, and a majority of the unit is within the MHPA. The city placed the land under a conservation easement on March 17, 1997, and designation will not affect future development.²⁵

²² County of San Diego HabiTrac database.

²³ City of San Diego HabiTrac database.

²⁴ Personal communication with Tannika Engelhard, biologist, Carlsbad Field Office, Fish and Wildlife Service, February 7, 2006.

²⁵ City of San Diego HabiTrac database.

IV.4 UNIT 5 (ELANUS CANYON)

This unit consists of 13 acres of city of San Diego land, south of Highway 52 along the southern border of MCAS Miramar. The city placed the land under a conservation easement on March 17, 1997, and designation will not affect future development.²⁶

IV.5 UNIT 6 (LOPEZ CANYON)

This unit consists of 77 acres in the city of San Diego, north of Mira Mesa Blvd. 57 acres are owned by the city, and the remainder is private. The land was conserved through its inclusion into them MHPA baseline system of preserves on March 1, 1997.²⁷

IV.6 UNIT 7 (MARRON VALLEY)

This unit consists of 42 acres of city and state lands near the Mexican border. The city land was conserved as part of the 2,600 acre Marron Valley mitigation bank, established on December 10, 1999.²⁸ The state land was conserved on January 1, 1997 through acquisition and incorporation into South County segment of the MSCP.²⁹ Designation will not affect future development.

IV.7 UNIT 8 (OTAY LAKES)

This unit consists of 146 acres of land southeast of Otay Lake. The unit is part of a larger tract of land that was acquired for the purpose of conservation by the State of California on December 31, 2003. The total expenditure was \$19.5 million, including contributions by the State Coastal Conservancy and CalTrans. Service personnel noted that the purchase was motivated by the presence of many threatened and endangered species on the property, and that negligible costs should be attributed specifically to the conservation of monardella.³⁰

IV.8 UNIT 9 (OTAY MOUNTAIN)

This unit consists of 67 acres of land managed by the Bureau of Land Management within the Otay Mountain Wilderness. Concerning this unit, the Service noted in its critical habitat proposal that

“The Wilderness Act of 1964³¹ restricts vehicles, new developments, chainsaws, mountain bikes, leasing, and mining from the wilderness area. Grazing is permitted within the wilderness area; however, no grazing allotments currently exist.”

²⁶ *ibid*

²⁷ *ibid*

²⁸ *ibid*

²⁹ County of San Diego HabiTrac database.

³⁰ Personal communication with Susan Wynn, biologist, U.S. Fish and Wildlife Service, April 10, 2006.

³¹ 16 U.S.C. 1131 et seq.

Accordingly, no economic impacts are foreseeable for this unit.

V SECONDARY ECONOMIC EFFECTS

Federal guidelines require additional analysis of potential effects on the energy industry and small businesses.

V.1 IMPACTS ON THE ENERGY INDUSTRY

Pursuant to Executive Order 13211, Federal agencies are required to submit a summary of the potential effects of regulatory actions on the supply, distribution, and use of energy, assuming those actions meet certain criteria outlined by the OMB.³²

- Reductions in crude oil supply in excess of 10,000 barrels per day;
- Reductions in fuel production in excess of 4,000 barrels per day;
- Reductions in coal production in excess of 5 million tons per year;
- Reductions in natural gas production in excess of 25 million mcf per year;
- Reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity;
- Increases in energy use required by the regulatory action that exceed any of the thresholds above;
- Increases in the cost of energy production in excess of one percent;
- Increases in the cost of energy distribution in excess of one percent; or
- Other similarly adverse outcomes.

Since the entire proposed habitat and excluded lands are either anticipated to be conserved or already conserved, none of these criteria are met.

V.2 IMPACTS ON SMALL BUSINESSES

According to the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, Federal agencies must determine if proposed legislation will have a “significant economic impact on a substantial number of small

³² U.S. Office of Management and Budget, “Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies,” July 13, 2001.

entities.”³³ Because there are no virtually no foreseeable economic effects of the proposed rule, there will be little to no effects on small businesses.

³³ EPA, “Revised Interim Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act,” 29 March 1999, p.11.

Table 1: Ownership of Nonexempt Habitat

Unit	Subunit	Ownership	Acres Proposed	Acres Excluded
1		Private	114	
		Water Districts	1	
<i>Unit Total</i>			115	
3	A	County		30
	A	Private		45
	B	Private		9
	C	Private		10
	D	City of San Diego		10
	E	Private		98
	E	City of San Diego		6
<i>Unit Total</i>				207
4		City of San Diego		9
<i>Unit Total</i>				9
5		City of San Diego		13
<i>Unit Total</i>				13
6		City of San Diego		57
		Private		19
<i>Unit Total</i>				77
7		California Department of Fish and Game		14
		City of San Diego		28
<i>Unit Total</i>				42
8		California Department of Fish and Game		17
		City of Chula Vista		6
		Private		123
<i>Unit Total</i>				146
9		Bureau of Land Management		67
<i>Unit Total</i>				67
Total			115	560