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Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Allium munzii* (Munz's Onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley Crownscale); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2012-0008;
4500030114]

RIN 1018-AX42

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Allium munzii* (Munz's Onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley Crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Allium munzii* (Munz's onion) under the Endangered Species Act. In total, approximately 98.4 acres (39.8 hectares) for *A. munzii* in Riverside County, California, fall within the boundaries of the critical habitat designation. We are not designating any critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale).

DATES: This rule becomes effective on May 16, 2013.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760-431-9440; facsimile 760-431-5901.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <http://www.fws.gov/carlsbad>, <http://www.regulations.gov> at Docket No. FWS-R8-ES-2012-0008, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we have developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office, or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and

Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760-431-9440; facsimile 760-431-5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this rule. On April 17, 2012, we published in the **Federal Register** a combined proposed rule for revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior*. We are now issuing this final rule concerning the designations of critical habitat for those two endangered plants.

The basis for our action. Under the Endangered Species Act, we are required to designate critical habitat for any endangered or threatened species. We must base our designation on the best available scientific data after taking into consideration economic, national security, and other relevant impacts. The Secretary may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

*This rule designates final critical habitat for *Allium munzii* only.* We are designating approximately 98.4 acres (ac) (39.8 hectares (ha)) of critical habitat for *A. munzii* in Elsinore Peak Unit, which is located near Elsinore Peak in the Santa Ana Mountains of western Riverside County, California. This rule does not designate final critical habitat for *Atriplex coronata* var. *notatior*.

The Secretary is exercising his discretion to exclude approximately 790 ac (320 ha) of previously proposed critical habitat for *Allium munzii* and 8,020 ac (3,246 ha) of previously proposed critical habitat for *Atriplex coronata* var. *notatior*. We have determined that the benefits of exclusion outweigh the benefits of inclusion for lands previously proposed as critical habitat within areas covered under the Western Riverside County Multiple Species Habitat Conservation Plan, the Rancho Bella Vista Habitat Conservation Plan, and the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement.

Peer reviewer and public comment. We sought comment from independent specialists to ensure that our designations are based on scientifically sound data and analyses. We invited these peer reviewers to comment on our conclusions in the proposed revised rule. We also considered all comments

and information we received during the comment periods.

Background

This is a final rule concerning the designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior*. It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of *A. munzii* and *A. c.* var. *notatior*, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975). For information on *A. munzii* and *A. c.* var. *notatior* critical habitat, refer to the proposed rule to designate revised critical habitat for *A. munzii* and *A. c.* var. *notatior* published in the **Federal Register** on April 17, 2012 (77 FR 23008). Information on the associated draft economic analysis (DEA) for the proposed rule to designate revised critical habitat was published in the **Federal Register** on September 11, 2012 (77 FR 55788).

The document is structured to address the taxa separately under each of the sectional headings that follow, where appropriate.

Previous Federal Actions—*Allium munzii*

The final listing rule for *Allium munzii* provides a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of listing, we concluded that designation of critical habitat for *A. munzii* was not prudent because such designation would not benefit the species. On June 4, 2004, we published a proposed rule to designate 227 ac (92 ha) of critical habitat for *A. munzii* on Federal land (Cleveland National Forest) in western Riverside County, California (69 FR 31569). On June 7, 2005, we published a final rule designating 176 ac (71 ha) of the proposed land as critical habitat for *A. munzii* (70 FR 33015).

On March 22, 2006, we announced the initiation of the 5-year review for *Allium munzii* and the opening of a 60-day public comment period to receive information (71 FR 14538). The *A. munzii* 5-year review was signed on June 17, 2009, and found that no change was warranted to the endangered status of *A. munzii*.

On October 2, 2008, a complaint was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity (*CBD v. Kempthorne*, No. 08-CV-01348 (S.D.

Cal.) challenging our final critical habitat designation for *Allium munzii*. In an order dated March 24, 2009, the U.S. District Court for the Central District of California, Eastern Division, adopted a stipulated settlement agreement that was entered into by all parties. The agreement stipulated that the Service would reconsider critical habitat designations for both *A. munzii* and *Atriplex coronata* var. *notatior*, and submit to the **Federal Register** proposed revised critical habitat determinations for both plants by October 7, 2011. An extension for the completion of the proposed and final determinations was granted on September 14, 2011, with the proposed revised rule then due to the **Federal Register** on or before April 6, 2012, and the final revised rule on or before April 6, 2013. The combined proposed revised rule was published on April 17, 2012 (77 FR 23008).

On September 11, 2012, the document making available the DEA and reopening the public comment period for the combined proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* was published in the **Federal Register** (77 FR 55788). This final rule complies with the March 24, 2009, and September 14, 2011, court orders.

Previous Federal Actions—*Atriplex coronata* var. *notatior*

The final listing rule for *Atriplex coronata* var. *notatior* provides a description of previous Federal actions through October 13, 1998 (63 FR 54975), including proposed critical habitat in 1994 (59 FR 64812; December 15, 1994). At the time of the final listing rule in 1998, the Service withdrew the proposed critical habitat designation based on the taxon's continued decline and determined that designation of critical habitat was not prudent, indicating that no benefit over that provided by listing would result from such designation (63 FR 54991; October 13, 1998).

On October 6, 2004, we published a proposed rule to designate critical habitat for *Atriplex coronata* var. *notatior* and identified 15,232 ac (6,167 ha) of habitat that met the definition of critical habitat (69 FR 59844). However, we concluded in the 2004 proposed rule under section 4(b)(2) of the Act that the benefits of excluding lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) outweighed the benefits of including them as critical habitat. On October 13, 2005, we published a final critical habitat determination for *A. c.* var. *notatior* (70 FR 59952); there was no

change from the proposed rule. We concluded that all 15,232 ac (6,137 ha) of habitat meeting the definition of critical habitat were located either within our estimate of the areas to be conserved and managed by the approved Western Riverside County MSHCP on existing Public/Quasi-Public (PQP) lands (preexisting natural and open space areas), or within areas where the plan would ensure that future projects would not adversely alter essential hydrological processes, and therefore all areas were excluded from critical habitat under section 4(b)(2) of the Act.

On October 2, 2008, a complaint was filed against the DOI and the Service by the Center for Biological Diversity (*CBD v. Kempthorne*, No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat determinations for *Allium munzii* and *Atriplex coronata* var. *notatior* (see Previous Federal Actions—*Allium munzii* section above for a detailed account of this lawsuit and settlement agreement). As noted above, an extension for the completion of the new proposed and final determinations was granted. The combined proposed rule for the two plants was published on April 17, 2012 (77 FR 23008).

On May 25, 2011, we announced the initiation of the 5-year review for *Atriplex coronata* var. *notatior* and the opening of a 60-day public comment period to receive information (76 FR 30377). The 5-year review was signed on August 17, 2012, and found that no change was warranted to the endangered status of *A. c.* var. *notatior* (Service 2012b).

On September 11, 2012, the document making available the DEA and reopening the public comment period for the combined proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* was published in the **Federal Register** (77 FR 55788). This final rule complies with the March 24, 2009, and September 14, 2011, court orders.

Summary of Changes from Proposed Rule

(1) In our document that made available the DEA and reopened the comment period on the April 17, 2012, proposed rule (September 11, 2012; 77 FR 55788), we revised our proposed designation of critical habitat for *Allium munzii* to clarify primary constituent elements (PCEs) (2)(i)(B) and (2)(ii) regarding elevations necessary for conservation of *A. munzii*. We stated in the proposed rule that *A. munzii* is found in Riverside County, California, generally between the elevations of 1,200 to 2,700 feet (ft) (366 to 823

meters (m)) above mean sea level. *Allium munzii* has been observed in Riverside County (Elsinore Peak Unit, identified in the proposed rule as Unit 3—Elsinore Peak) at an elevation ranging from 3,200 to 3,500 ft (975 to 1,067 m). The PCE (2)(i)(B) (numbered as “1(b)” in the Primary Constituent Elements section below) is now defined as “Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level,” and PCE (2)(ii) (numbered as “2” in the Primary Constituent Elements section below) is now defined as “Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.” This correction did not change this unit's critical habitat boundaries for *A. munzii*.

(2) We reevaluated land management within proposed Subunit 1A for *Allium munzii*. A portion of this subunit (2.3 ac (0.9 ha)) is located within a Core Reserve established under the Stephens' Kangaroo Rat (SKR) Habitat Conservation Plan (HCP) and is not within lands covered by the Lake Mathews Multispecies Habitat Conservation Plan, as was described in the proposed revised rule. *Allium munzii* is not a covered species under the SKR HCP in this Core Reserve. However, this portion of proposed Subunit 1A is found within the Lake Mathews-Estelle Mountain Reserve, which is considered PQP (Public-Quasi Public) lands in the Western Riverside County MSHCP (collectively, this reserve is part of the Western Riverside County MSHCP Existing Core “C”). The management actions and conservation objectives for *A. munzii* established within the permitted Western Riverside County MSHCP provide for the conservation and management of *A. munzii* in the Lake Mathews-Estelle Mountain Reserve (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below for additional details). The remainder of proposed Subunit 1A (0.5 ac (0.2 ha)) is located within the Western Riverside County MSHCP boundary and is subject to conservation measures established for *A. munzii*, including narrow endemic plant species survey requirements and the project review process (Dudek and Associates 2003, pp. 6–28–6–29) (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below). Thus, the entirety of proposed Subunit 1A is subject to the

conservation measures established for *A. munzii* under the Western Riverside County MSHCP.

(3) We reevaluated the jurisdiction of HCPs for proposed *Allium munzii* Subunit 4B—Skunk Hollow, which we described in the proposed rule as 74.8 ac (30.3 ha). Approximately 67.1 ac (27.2 ha) of this proposed subunit lies within the boundaries of the Rancho Bella Vista HCP. The remaining 7.7 ac (3.1 ha) are found on lands covered by the Western Riverside MSHCP, with 7.3 ac (2.95 ha) designated as PQP lands and 0.4 ac (0.16 ha) as Additional Reserve Lands (see *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section below for more details). The boundaries and total acreage for proposed Subunit 4B—Skunk Hollow have not changed from the proposed rule, but we revised the appropriate table to reflect the two different conservation plans for this proposed subunit.

Critical Habitat

Background

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

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

(a) Essential to the conservation of the species and

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

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

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

Critical habitat receives protection under section 7 of the Act through the

requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat (collectively referred to as “adverse modification”). The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of an adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid adverse modification of critical habitat.

Under section 3(5)(A)(i) of the Act’s definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that provide for a species’ life-history processes.

Under section 3(5)(A)(ii) of the Act’s definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not within the geographical area occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat

designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

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

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

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may

affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

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

Allium munzii

We derive the specific physical or biological features essential to the conservation of *Allium munzii* from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to revise critical habitat published in the **Federal Register** on April 17, 2012 (77 FR 23008), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

We have determined that *Allium munzii* requires the following physical or biological features: (1) Native perennial and annual grassland communities, open coastal sage or Riversidean sage scrub, and occasionally cismontane juniper

woodlands found on clay soils at locally wetter sites on level or slightly south- and north-facing sloping (10–20 degrees) areas at elevations from 1,200 to 3,500 ft (366 to 1,067 m); (2) microhabitats within areas of suitable clay soils or areas of smaller discrete pockets of clay within other soil types that receive or retain more moisture than surrounding areas (due to factors such as exposure, slope, and subsurface geology); (3) sites for reproduction that contain clay or rocky loam soils; and (4) habitats found within native and, in some areas, nonnative plant communities that occur across the Riverside-Perris area (Perris Basin physiogeographic region) and within a portion of the southern Santa Ana Mountains (Elsinore Peak).

Atriplex coronata var. *notatior*

We derive the specific physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior* from studies of this taxon's habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to revise critical habitat published in the **Federal Register** on April 17, 2012 (77 FR 23008), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

We have determined that *Atriplex coronata* var. *notatior* requires the following physical or biological features: (1) Alkali vernal pools and floodplains that receive seasonal inundation, (2) a hydrologic regime that includes seasonal and large-scale flooding in combination with slow drainage in alkaline soils with low nutrient loads, and (3) natural floodplain processes that provide conditions that stimulate the germination of *A. c.* var. *notatior*.

Primary Constituent Elements (PCEs)

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior* in areas within the geographical area occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical or biological features that provide for a species' life-history process and, under the appropriate circumstances as described in the *Criteria Used to Identify Critical Habitat* section, below, are essential to the conservation of the species.

Allium munzii

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to *Allium munzii* are:

(1) Clay soil series of sedimentary origin (for example, Altamont, Auld, Bosanko, Porterville), clay lenses (pockets of clay soils) of those series that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (for example, Cajalco, Las Posas, Vallecitos):

(a) Found on level or slightly sloping landscapes or terrace escarpments;

(b) Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level;

(c) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(d) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

(e) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub, or occasionally in cismontane juniper woodlands; or

(2) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.

Atriplex coronata var. *notatior*

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the taxon's life-history processes, we determine that the PCEs specific to *Atriplex coronata* var. *notatior* are:

(1) Wetland habitat, including floodplains and vernal pools:

(a) Associated with native vegetation communities, including alkali playa, alkali scrub, and alkali grasslands; and

(b) Characterized by seasonal inundation or localized flooding, including infrequent large-scale flood events with low nutrient loads; and

(2) Slow-draining alkali soils including the Willows, Domino, Traver, Waukena, and Chino soil series with:

(a) Low permeability;

(b) Low nutrient availability; and

(c) Seasonal ponding and evaporation. *Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection.

Allium munzii

A detailed discussion of threats to *Allium munzii* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 31569, June 4, 2004; 70 FR 33015, June 7, 2005), the *A. munzii* 5-year review signed on June 17, 2009 (Service 2009), and the proposed revised rule for designation of critical habitat (77 FR 23008; April 17, 2012). Actions and development that alter habitat suitable for the species or affect the natural hydrologic processes upon which the species depends could threaten the species.

The physical or biological features essential to the conservation of *Allium munzii* all face ongoing threats that may require special management considerations or protection. Threats that may require special management considerations or protection of the physical or biological features include:

(1) Loss or degradation of native plant communities, such as grassland, open coastal sage scrub, and cismontane juniper woodlands, due to urban development, agricultural activities, and clay mining (PCEs 1 and 2);

(2) Disturbance of clay or other occupied soils by activities such as off-road vehicles (ORV) and fire management (PCEs 1 and 2);

(3) Invasion of nonnative plant species (PCEs 1 and 2); and

(4) Long-term threats including climatic variations such as extended periods of drought (PCE 1) (63 FR 54982–54986, October 13, 1998; 69 FR 31571, June 4, 2004; 70 FR 33023, June 7, 2005; Service 2009, pp. 10–22).

Special management considerations or protection may be needed to ensure the long-term existence of clay soil integrity within habitats that support the physical or biological features essential to the conservation of *Allium munzii*. These include:

(1) Protection of habitat from urban development or destruction to maintain integrity of clay soils,

(2) Reduction of land conversion to agricultural uses and reduction of

disking or dryland farming to maintain native habitats,

(3) Management and control of invasive nonnative plants to provide open areas for growth and reproduction, and

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats.

Atriplex coronata var. *notatior*

A detailed discussion of threats to *Atriplex coronata* var. *notatior* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 59844, October 6, 2004; 70 FR 59952, October 13, 2005), the proposed revised rule for designation of critical habitat (77 FR 23008; April 17, 2012), and the *A. c.* var. *notatior* 5-year review signed on August 17, 2012 (Service 2012b). Actions and development that alter habitat suitable for *A. c.* var. *notatior* or affect the natural hydrological processes upon which it depends could threaten the taxon. The physical or biological features essential to the conservation of *A. c.* var. *notatior* may require special management considerations or protection to reduce or eliminate the following threats:

(1) Loss of alkali vernal plain habitat (including alkali playa, alkali scrub, alkali vernal pool, alkali annual grassland) and fragmentation as a result of activities such as urban development, manure dumping, animal grazing, agricultural activities, ORV activity, weed abatement, and channelization (PCEs 1 and 2);

(2) Indirect loss of habitat from the alteration of hydrology and floodplain dynamics (diversions, channelization, excessive flooding) (PCEs 1 and 2);

(3) Competition from nonnative plants (PCE 1); and

(4) Long-term threats, including water pollution, climatic variations, and changes in soil chemistry and nutrient availability (PCE 1) (63 FR 54983, October 13, 1998; 69 FR 59847, October 6, 2004; 70 FR 59966, October 13, 2005; Service 2012b, pp. 15–30).

Special management considerations or protection may be needed to ensure the long-term existence of alluvial soil integrity within habitats that support the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior*. These include:

(1) Protection of habitat, including underlying soils and chemistry, from development or destruction;

(2) Protection of floodplain processes to maintain natural, seasonal flooding regimes;

(3) Reduction of land conversion to agricultural uses and reduction of diskings and dryland farming to maintain native habitats;

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats; and

(5) Implementation of manure and sludge dumping ordinances to maintain soil chemistry.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of these taxa. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the taxa. We are not designating any areas outside the geographical area occupied by *Allium munzii* and *Atriplex coronata* var. *notatior* because we consider those areas to be of sufficient quality, extent, and distribution to provide for the conservation of these taxa. We believe that the present quality habitat has, by survey, the demonstrated capacity to support self-sustaining occurrences of these taxa and that these areas containing the physical or biological features essential to the conservation of the species are dispersed in its range in a manner that provides for the survival and recovery of these taxa. We have designated as critical habitat some specific areas within the geographical range currently occupied by *A. munzii*, but that were not known to be occupied at the time of listing. However, based on the best available scientific information, the life history of the plant (see Background section of proposed revised rule; 77 FR 23008, April 17, 2012), and the limited survey efforts prior to listing, we determined that these specific areas are within the geographical area occupied by the species at the time of listing.

We reviewed the final critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* (70 FR 33015, June 7, 2005; 70 FR 59952, October 13, 2005, respectively), information from State, Federal, and local government agencies, and from academia and private organizations that have collected scientific data on the taxa. We also used the information provided in the 5-year reviews for *A. munzii* and *A. c.* var. *notatior* (Service

2009; Service 2012b). Other information we used for the final rule includes: California Natural Diversity Database (CNDDDB) (CNDDDB 2011a; CNDDDB 2011b); reports submitted during consultations under section 7 of the Act; analyses for individual and regional HCPs where *A. munzii* and *A. c.* var. *notatior* are covered species; data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; information received from local species experts; published and unpublished papers, reports, academic theses, or surveys; Geographic Information System (GIS) data (such as species population and location data, soil data, land use, topography, aerial imagery, and ownership maps); and peer review comments and other correspondence with the Service from recognized experts. We analyzed this information to determine the specific areas within the geographical area occupied by the taxa at the time of listing that contain the physical or biological features essential to the conservation of *A. munzii* and *A. c.* var. *notatior*.

Allium munzii

Allium munzii occurs in relatively small population sizes, has a narrow geographic range (western Riverside County), and exhibits high habitat specificity, all of which make it vulnerable to land use changes. According to the Western Riverside County MSHCP, *A. munzii* is considered a narrow endemic plant species, a plant species that is highly restricted by its habitat affinities, edaphic requirements, or other ecological factors (Dudek and Associates 2003, pp. Def/Acr-ix and 6–28). Based on examination of soil maps for western Riverside County, Boyd (1988, p. 2) concluded that much of the scattered clay soil areas in the Riverside-Perris area were heavily disturbed and estimated up to an 80 to 90 percent loss of potential *A. munzii* habitat in 1988.

We conducted a spatial analysis using a GIS-based approach to determine the percent of mapped clay soils (Altamont, Auld, Bosanko, Porterville) that were converted or lost to agricultural or urban land uses in the Riverside-Perris area (based on 2007 land use GIS data). This is a conservative approach given that smaller pockets of clay soils are not shown on coarse-scale soil maps and may have been lost since the completion of the Riverside County soil map in 1971. We estimated that approximately 32 percent of these clay soils remain within suitable *Allium munzii* habitats (or a 67 percent loss) due to urban and agricultural development on plant

communities associated with *A. munzii*, which includes both known and unknown locations of *A. munzii* populations. Based on the narrow endemism of this species, its reliance on clay soil types that are limited in geographic range in western Riverside County, and our estimated loss of 67 percent of these soils to urban or agricultural development, we believe that all of the proposed units and subunits represent the entire current range for this species.

The specific areas proposed as critical habitat include some areas within the present range of the species that had not yet been identified as occupied at the time of listing. We have determined that these areas are within the geographical area occupied by *A. munzii* at the time of listing based on the species life history and habitat requirements (see Background section in the proposed revised rule; 77 FR 23008, April 17, 2012) and the following: (1) Locations of plants reported or detected since listing in 1998 are in close proximity (less than 1 mi (1.5 km)) to previously known locations, and (2) of the 10 new Element Occurrences (EOs) found within the California Natural Diversity Database (CNDDDB) (herbarium records and survey reports maintained by the California Department of Fish and Wildlife) reported since early 1980s surveys by Boyd (1988), 6 are within previous known occupied geographic regions of the greater Perris Basin (Temescal Canyon-Gavilan Hills/Plateau, Murrieta-Hot Springs areas) and the other 4 locations were found after surveys in the early 1990s within the Elsinore Peak (Santa Ana Mountains) and Domenigoni Hills regions. Additionally, we believe this currently occupied habitat was occupied at the time of listing given the species' naturally discontinuous distribution and occupation of microhabitats; the difficulty of accurately surveying for individual plants given the dormant (underground) phase of its life cycle prior to detection; and its restriction to small areas of clay soils in western Riverside County within the proposed units and subunits.

For defining critical habitat units, we looked at elevation (1,200 to 3,500 ft (366 to 1,067 m) above mean sea level (AMSL)), soil types (primarily clay soils), spatial distribution of 17 CNDDDB-defined EOs from CNDDDB (CNDDDB 2011a), 1 location identified by Ellstrand not included in the CNDDDB database (Ellstrand 1993, 1994) (proposed EO 24, as mentioned in the Spatial Distribution, Historical Range, and Population Size section for *Allium munzii* in the proposed revised rule; 77 FR 23008, April 17, 2012), rare plant

monitoring survey results from Western Riverside County Regional Conservation Authority (RCA) (Western Riverside County RCA 2006, 2007, 2008, 2009, 2010, and 2011), and other surveys.

To identify several unit and subunit boundaries for the proposed revised critical habitat, we consulted a species expert with considerable field experience in surveying for *Allium munzii*. Given the difficulty in observing individual plants due to the timing of inflorescence, stage of growth, and large areal extent (as discussed in the Background section of the proposed revised rule; 77 FR 23008, April 17, 2012), Boyd (2011a, pers. comm.) recommended expanding the area surrounding an observation of a location of plants (either a group or just a few individuals) to capture additional individual plants that might not have been observed. Based on extensive field experience (approximately 30 years) with *A. munzii*, Boyd (2011a, pers. comm.) recommended including a 100-m (328-ft) roughly circular area (or 50-m (164-ft) radius) to define the unit or subunit boundaries. Because *A. munzii* is strongly associated with clay soils (which are often found as pockets of small scattered (but discrete) clay lenses that are typically too small to be identified on coarse-soil soil maps (see the Habitat and Soil Preferences section for *A. munzii* in the proposed revised rule; 77 FR 23008, April 17, 2012)), we used Boyd's recommendation of expanding the boundaries of observed plant locations to capture unobserved individuals in defining critical habitat units and subunits. Specifically, we used the Soil Conservation Service (now Natural Resources Conservation Service) soil mapping unit (2.47 ac or 1 ha) to refine Boyd's recommended radius of 164 to 183 ft (50 to 56 m). The 183-ft (56-m) radial distance translates into a 2.43-ac (0.98-ha) area, which is approximately equal to the soil mapping unit of 2.47 ac (1 ha). This methodology accounts for both potentially unobserved plants associated with CNDDDB-defined EOs in areas of clay or rocky-sandy loam soils as well as encompassing the unmapped pockets of clay soil. In conjunction with the reported EOs, survey reports, and aerial photographs, this approach represents the best available information regarding areas currently occupied by *A. munzii* that contain the physical or biological features essential to the conservation of the species and therefore accurately defines the unit and subunit polygons.

The following sources were used to define microhabitats (i.e., depressional areas that retain moisture) for *Allium munzii*, which included using

underlying geology, slope, and aspect of hillsides within open areas of native and nonnative plant communities:

(1) For evaluating microtopography, including slope, aspect, and elevation, we used: (a) Digital elevation model (DEM) data from U.S. Geological Survey's (USGS) EROS Data Center, and (b) USGS 1:24,000 digital raster graphics (USGS topographic maps).

(2) For evaluating vegetative communities, spatial arrangement of these communities, and presence of disturbance or development, we used: (a) U.S. Department of Agriculture (USDA) National Agriculture Imagery Program (NAIP) aerial photography for 2010, and (b) ArcGIS online I3 Imagery Prime World 2D, validating conclusions made from examining these two satellite imagery data layers using high resolution Google Earth imagery.

(3) For subsurface geology, we used the USGS (2004) GIS layer of the Preliminary Digital Geologic Map of the Santa Ana, 1:100,000 quadrangle.

We acknowledge that the extent of the geographic areas surveyed and the survey methodologies may differ within and among the recorded plant locations from year to year (see discussion regarding the detectability of this species in the Background section of the proposed revised rule; 77 FR 23008, April 17, 2012). Based on the above GIS analysis, the 5 units, three of which we divided into 13 subunits, that we proposed as critical habitat for *Allium munzii* were the following: (1) Gavilan Hills (6 subunits), (2) Temescal Valley (4 subunits), (3) Elsinore Peak, (4) South Perris and Bachelor Mountain (3 subunits), and (5) North Domenigoni Hills (detailed descriptions for these proposed units and subunits can be found in the proposed revised rule; 77 FR 23008, April 17, 2012). All of the proposed units and subunits are within the present geographical range of the species and are currently occupied.

Atriplex coronata var. *notatior*

Atriplex coronata var. *notatior* is endemic to the San Jacinto, Perris, Menifee, and Elsinore Valleys of western lowland Riverside County, and is restricted to highly alkaline, silty-clay soils (59 FR 64813; December 15, 1994). At the time of listing, 12 populations of *A. c.* var. *notatior* were known (corresponding to the CNDDDB EOs at the time), 11 of which were associated with two general locations (the San Jacinto and Old Salt Creek floodplains). We grouped the 12 CNDDDB EOs and results from other surveys into four general locations and developed boundaries and proposed three critical habitat units

based on the geographic locations of observed plants.

All of the proposed units are within the geographical area occupied by *Atriplex coronata* var. *notatior* at the time of listing. These units contain the physical or biological features that are essential to the conservation of this taxon and may require special management considerations or protection.

Atriplex coronata var. *notatior* was described in our 1998 listing rule within three geographical areas in western Riverside County (63 FR 54975; October 13, 1998). All three proposed units are within the geographical area occupied by the taxon at the time of listing. This range includes records of 15 EOs now recorded in the CNDDDB database (CNDDDB 2011b) and other survey data. To define critical habitat units, we examined the following information:

(1) Slow-draining alkali soils (Willows, Domino, Traver, Waukena, and Chino soil series) with low permeability.

(2) Seasonal and large-scale flood events (or ponded water) and subsequent scouring to create bare soils, as illustrated in historical aerial photographs.

(3) Spatial distribution of the EOs recorded in the CNDDDB database (CNDDDB 2011b).

(4) Plant monitoring survey results from Western Riverside County RCA (2007, 2008, 2009, 2010, and 2011) and other surveys.

We recognize that the geographic extent surveyed and survey methodologies may differ within and among the locations of individual or groups of plants from year to year (see discussion regarding the detectability of this species in Background section in the proposed revised rule; 77 FR 23008, April 17, 2012). Based on the above analysis we defined the following three proposed units for *Atriplex coronata* var. *notatior*: (1) Floodplain of the San Jacinto River from the San Jacinto Wildlife Area (including Mystic Lake) to Railroad Canyon Reservoir, (2) Upper Salt Creek, and (3) Alberhill Creek (detailed descriptions for these proposed units can be found in the proposed revised rule; 77 FR 23008, April 17, 2012). All units are within the present geographical range of the taxon and are currently occupied.

Other Factors Involved With Delineating Critical Habitat

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other

structures, including related infrastructure, because such lands lack physical or biological features for *Allium munzii* and *Atriplex coronata* var. *notatior*. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this rule. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R8-ES-2012-0008, on our Internet sites <http://www.fws.gov/carlsbad/>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Because the Secretary is exercising his discretion to exclude all areas proposed as critical habitat for *Atriplex coronata* var. *notatior*, we are not designating critical habitat for that taxon. We are designating as critical habitat for *Allium munzii* lands that we have determined are within the geographical area occupied at the time of listing, are currently occupied, and contain the physical or biological features essential to the conservation of *A. munzii* that support the species' life-history processes and may require special management considerations or protection.

The unit described below contains all of the identified elements of the physical or biological features and supports the life processes for *Allium munzii*.

Final Critical Habitat Designation

Allium munzii

We are designating one unit as critical habitat for *Allium munzii*. This one unit is the Elsinore Peak Unit (identified as "Unit 3—Elsinore Peak" in the proposed rule). The approximate area of

this critical habitat unit is shown in Table 1. As discussed below in the Exclusions Based on Other Relevant Impacts section, we have determined that, for the lands proposed as revised critical habitat in Unit 1—Gavilan Hills,

Unit 2—Temescal Valley, Unit 4—South Perris and Bachelor Mountain, and Unit 5—North Domenigoni Hills and their subunits, the benefits of exclusion outweigh the benefits of inclusion within areas covered under the Western

Riverside County MSHCP, the Rancho Bella Vista HCP, or the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR ALLIUM MUNZII
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership in acres (hectares)		Size of unit in acres (hectares)
	Federal	State	
Elsinore Peak Unit	63.1 ac (25.5 ha)	35.3 ac (14.3 ha)	98.4 ac (39.8 ha)
Total	98.4 ac (39.8 ha)		98.4 ac (39.8 ha)

We present a brief description of this unit and the reasons why it meets the definition of critical habitat for *Allium munzii* below.

Elsinore Peak Unit

Elsinore Peak Unit consists of 98.4 ac (39.8 ha). About two-thirds (63.1 ac (25.5 ha)) of the Elsinore Peak unit is contained within the Cleveland National Forest, and one-third is a 35.3-ac (14.3-ha) inholding under State of California (State Lands Commission) ownership within the Western Riverside County MSHCP Conservation Area. The Elsinore Peak Unit represents the most southwestern extent of the range of *Allium munzii* and is the highest recorded elevation (3,300 to 3,500 ft (1,006 to 1,067 m)) for this species (Boyd and Mistretta 1991, p. 3). Many of the locations of *A. munzii* found on the Cleveland National Forest portion of this unit have been described as the least disturbed of known locations (Boyd and Mistretta 1991, p. 3), and are also unusual in that they are found on cobble deposits with thinner Bosanko clay soils (PCE 2) (Boyd and Mistretta 1991, p. 3). In 1991, Boyd and Mistretta (1991, p. 2) reported three stands of *A. munzii* at Elsinore Peak, each with more than 1,000 individual plants, the largest estimated at 5,000 plants. Nine localities were observed in a 2008 survey, with populations ranging from 5 to 100 plants (K. Drennen 2011, pers. comm.). A 2010 survey at Elsinore Peak was conducted by Boyd (2011b, pers. comm.) with approximately 23 general point localities recorded on lands owned and managed by both the U.S. Forest Service and the State Lands Commission. The Elsinore Peak Unit is within the geographical area occupied at the time of listing. The subsurface and surface elements that define this subunit, including clay soils, sloping hillsides, and microhabitats, provide the

physical or biological features essential to the conservation of *A. munzii*.

The U.S. Forest Service and the State Lands Commission are not permittees under the Western Riverside County MSHCP. As only discretionary actions under the control of a permittee are covered activities under the Western Riverside County MSHCP, land use activities implemented by these two entities are not considered covered activities under the plan. In addition, the lands owned and managed by the State Lands Commission within this critical habitat unit are not included as part of the conceptual reserve design of the Western Riverside County MSHCP, nor are these considered PQP lands.

As outlined in the *Special Management Considerations or Protection* section above, several threats have been identified for *Allium munzii*. For *A. munzii* populations within Elsinore Peak Unit, threats identified at the time of listing included road grading, ORV activity, and nonnative annual grasses (63 FR 54987; October 13, 1998). Recreational activity and invasive species were identified as the two main threats to *A. munzii* on U.S. Forest Service land in the 2005 Final Environmental Impact Statement prepared for the Cleveland National Forest Land Management Plan (U.S. Forest Service (USFS) 2005, p. 160). A species management guide for *A. munzii*, completed in 1992, identified a number of management actions to help alleviate these threats, including construction of fencing and barriers to protect populations from ORV activity (Winter 1992, p. 10). Fencing, including a gate, was installed to protect plant populations, and boulders were placed along the roadway leading to Elsinore Peak to restrict ORV activity and other traffic (hikers and mountain bikers) in sensitive areas. This has reduced, but not eliminated, the impacts from ORV and other recreational activities to the

population of *A. munzii* plants located on U.S. Forest Service land within this critical habitat unit (M. Thomas 2011, pers. comm.). In addition to the above activities, wildfire protection, including the use of fire retardant, may also impact the physical or biological features essential to the conservation of *A. munzii*. Therefore, the essential physical or biological features on the Forest Service lands within this unit may require special management considerations or protection. For the portion of the unit located on lands managed by the State Lands Commission, the essential physical or biological features may require special management considerations or protection to address threats to *A. munzii* resulting from ORV activity or invasive, nonnative annual grasses (CNDDDB 2011a, p. 14). We are unaware of any current conservation actions being implemented for the benefit of *A. munzii* populations found on lands owned and managed by the State Lands Commission within this critical habitat unit.

Atriplex coronata var. *notatior*

We are not designating any critical habitat for *Atriplex coronata* var. *notatior*. All areas proposed as revised critical habitat in Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek (8,020 ac (3,246 ha)) are being excluded from designation. As discussed below in the Exclusions Based on Other Relevant Impacts section, we have determined that, for these lands, the benefits of exclusion outweigh the benefits of inclusion within areas covered under the Western Riverside County MSHCP.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund,

authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to adversely modify critical habitat. Under the statutory provisions of the Act, we determine adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

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

adversely affect, listed species or critical habitat.

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

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

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

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

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may adversely modify critical habitat include those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Allium munzii*. As

discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

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

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Allium munzii*. These activities include, but are not limited to:

(1) Actions that would disturb or alter clay soils. Such activities could include, but are not limited to, recreational or other ORV use; fire management, including clearing of vegetation for fuel management; and fire retardant use on U.S. Forest Service lands. These actions could degrade or reduce habitat necessary for the growth and reproduction of *Allium munzii*.

(2) Actions that would result in the loss of clay soils. Such activities could include, but are not limited to, development, including structures and related infrastructure (such as roads), that require a permit under section 404 of the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*). These actions could reduce or eliminate habitat necessary for the growth and reproduction of *Allium munzii*.

(3) Actions that would significantly alter water movement within microhabitats of clay or rocky-sandy loam soils. Such activities could include, but are not limited to, federally funded road construction that results in channelization or impoundment of water. These actions may lead to changes in water flows that could degrade or eliminate habitat necessary for the growth and reproduction of *Allium munzii*.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

There are no Department of Defense lands with a completed INRMP within the proposed revised critical habitat designations. Therefore, we are not exempting lands from this final designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part

of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *Allium munzii* and *Atriplex coronata* var. *notatior*, the benefits of critical habitat include public awareness of the two taxa's presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *A. munzii* and *A. c.* var. *notatior* due to the protection from adverse modification of critical habitat. In practice, a Federal nexus exists only on Federal land or for projects undertaken, funded, or requiring authorization by a Federal agency. For these two taxa, the most likely Federal

nexus would be the issuance of a section 404 permit under the CWA.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized, how the plan provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, the Secretary will not exclude it from the designation.

Allium munzii

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat units (Unit 1—Gavilan Hills, Unit 2—Temescal Valley, Unit 3—Elsinore Peak, Unit 4—South Perris and Bachelor Mountain, and Unit 5—North Domenigoni Hills) and their subunits were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary is exercising his discretion to exclude the following areas from critical habitat designation for *Allium munzii*: Unit 1—Gavilan Hills, Unit 2—Temescal Valley, Unit 4—South Perris and Bachelor Mountain, and Unit 5—North Domenigoni Hills. Table 2 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat and those that are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 2—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT, AND AREAS EXCLUDED FROM ALLIUM MUNZII CRITICAL HABITAT DESIGNATION BY UNIT AND SUBUNIT

Unit and subunit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 1. Gavilan Hills .....	.....	114.7 ac (46.4 ha)	114.7 ac (46.4 ha)
1A. Estelle Mountain	Western Riverside County MSHCP	2.8 ac (1.1 ha)	2.8 ac (1.1 ha)
1B. Dawson Canyon	Western Riverside County MSHCP	4.8 ac (1.9 ha)	4.8 ac (1.9 ha)
1C. Gavilan Plateau	Western Riverside County MSHCP	42.2 ac (17.1 ha)	42.2 ac (17.1 ha)
1D. Ida-Leona	Western Riverside County MSHCP	4.5 ac (1.8 ha)	4.5 ac (1.8 ha)
1E. Northeast Alberhill	Western Riverside County MSHCP	58 ac (23.5 ha)	58 ac (23.5 ha)
1F. North Peak	Western Riverside County MSHCP	2.4 ac (1.0 ha)	2.4 ac (1.0 ha)
Unit 2. Temescal Valley .....	.....	481 ac (195 ha)	481 ac (195 ha)
2A. Sycamore Creek	Western Riverside County MSHCP	12.3 ac (5.0 ha)	12.3 ac (5.0 ha)
2B. De Palma Road	Western Riverside County MSHCP	12.8 ac (5.2 ha)	12.8 ac (5.2 ha)
2C. Alberhill Mountain	Western Riverside County MSHCP	300.5 ac (121.5 ha)	300.5 ac (121.5 ha)
2D. Alberhill Creek	Western Riverside County MSHCP	155.4 ac (62.8 ha)	155.4 ac (62.8 ha)
Unit 3. Elsinore Peak .....	.....	98.4 ac (39.8 ha)	.....
Unit 4. South Perris and Bachelor Mountain .....	.....	186.8 ac (75.6 ha)	186.8 ac (75.6 ha)
4A. Scott Road	Western Riverside County MSHCP	32.6 ac (13.3 ha)	32.6 ac (13.3 ha)
4B. Skunk Hollow	Rancho Bella Vista HCP;	67.1 ac (27.2 ha)	67.1 ac (27.2 ha)
.....	Western Riverside County MSHCP	7.7 acres (3.1 ha)	7.7 ac (3.1 ha)
4C. Bachelor Mountain	Southwestern Riverside County Multi-species Reserve.	79.3 ac (32.1 ha)	79.3 ac (32.1 ha)
Unit 5. North Domenigoni Hills	Southwestern Riverside County Multi-species Reserve.	8.2 ac (3.3 ha)	8.2 ac (3.3 ha)
Total .....	.....	889 ac (360 ha)	790 ac (320 ha)

Note: Area sizes may not sum due to rounding.

Atriplex coronata var. *notatior*

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat units, Unit 1—San Jacinto River, Unit

2—Upper Salt Creek, and Unit 3—Alberhill Creek, were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary is exercising his discretion to exclude the following areas from critical habitat designation for *Atriplex coronata* var. *notatior*: Unit 1—

San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek. Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 3—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT AND EXCLUDED FROM ATRIPLEX CORONATA VAR. NOTATOR CRITICAL HABITAT DESIGNATION BY UNIT

Unit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 1. San Jacinto River	Western Riverside County MSHCP	7,039 ac (2,849 ha)	7,039 ac (2,849 ha)
Unit 2. Upper Salt Creek	Western Riverside County MSHCP	874 ac (354 ha)	874 ac (354 ha)

TABLE 3—AREAS MEETING THE DEFINITION OF CRITICAL HABITAT AND EXCLUDED FROM ATRIPLEX CORONATA VAR. NOTATOR CRITICAL HABITAT DESIGNATION BY UNIT—Continued

Unit	Applicable partnership or conservation plan	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
Unit 3. Alberhill Creek	Western Riverside County MSHCP	107 ac (43 ha)	107 ac (43 ha)
Total .....	.....	8,020 ac (3,246 ha)	8,020 ac (3,246 ha)

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a DEA of the proposed critical habitat designation (Industrial Economics, Incorporated [IEC] 2012a). The draft analysis, dated August 3, 2012, was made available for public review from September 11, 2012, through October 11, 2012 (77 FR 55788; September 11, 2012). Following the close of the comment period, a final analysis (dated December 12, 2012) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEC 2012b).

The intent of the final economic analysis (FEA) is to evaluate the potential economic impacts associated with the designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notator*. The economic impact of the final critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the taxa (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the taxa. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the taxa. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since these taxa were listed, and forecasts both

baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1998 (63 FR 54975; October 13, 1998), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because this time frame includes activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The FEA quantifies and evaluates the incremental economic impacts of *Allium munzii* and *Atriplex coronata* var. *notator* conservation efforts associated with the following categories of activity: (1) Development, (2) agricultural operations, (3) transportation, (4) fire management, (5) mining, (6) recreational activities, (7) flood control, and (8) utilities.

Total present value impacts anticipated to result from the designation of all areas proposed as critical habitat for *Allium munzii* are \$75,000 over the first 20 years following the designation, assuming a 7 percent discount rate (\$81,000 assuming a 3 percent discount rate). The total present value impacts anticipated to result from the designation of the Elsinore Peak Unit (Unit 3 in the proposed rule) are

estimated to be \$25,000 assuming a 7 percent discount rate (\$28,000 assuming a 3 percent discount rate). For the areas being excluded from critical habitat for *A. munzii*, present value impacts are \$51,000 assuming a 7 percent discount rate (\$53,000 assuming a 3 percent discount rate) (IEC 2012b, ES–9).

Total present value incremental impacts in those areas being excluded from critical habitat for *Atriplex coronata* var. *notator* are estimated to be \$74,000, assuming a 7 percent discount rate (\$97,000 assuming a 3 percent discount rate (IEC 2012b, p. ES–9). For both plants, all incremental costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations and re-initiation of consultations for existing management plans (IEC 2012b, p. 4–2).

No areas are being excluded based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at <http://www.fws.gov/carlsbad> or <http://www.regulations.gov>.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notator* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and

impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

As described below, we have evaluated the management and protection provided by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement. These plans:

(1) Are complete and provide the same or better level of protection from adverse modification of *Allium munzii* and *Atriplex coronata* var. *notatior* habitat than that provided through a consultation under section 7 of the Act;

(2) Support a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Provide conservation strategies and measures consistent with currently accepted principles of conservation biology.

The Secretary is exercising his discretion to exclude all permittee-owned or controlled lands proposed as critical habitat for the two taxa that fall within the boundaries of the Western Riverside County MSHCP and the Rancho Bella Vista HCP, and all non-Federal lands proposed as critical habitat for *Allium munzii* that are in the Southwestern Riverside County Multi-species Reserve and covered by the Cooperative Management Agreement (see the *Rancho Bella Vista Habitat Conservation Plan* and *Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement* sections below).

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP is a multispecies conservation program

designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the plan area. The Western Riverside County MSHCP addresses 146 listed and unlisted "covered species," including *Allium munzii* and *Atriplex coronata* var. *notatior*, which are further considered as "Covered Species Adequately Conserved"; that is, those where the species objectives are met and are provided take authorization through the Natural Community Conservation Planning (NCCP) Permit (Dudek and Associates 2003, Section 9.2 and Table 9–3). On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004). In accordance with the procedure described in the Western Riverside County MSHCP Implementing Agreement (IA), the permit has been amended to add two newly incorporated cities (Jurupa Valley and Eastvale) within the Western Riverside County MSHCP boundary, for a current total of 24 permittees.

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands (ARL)) to complement the approximate 347,000 ac (140,426 ha) of preexisting natural and open space areas (PQP lands) in the plan area. These PQP lands include those under the ownership of public agencies, primarily the U.S. Forest Service and the Bureau of Land Management (BLM), as well as permittee-owned or controlled open-space areas managed by the State of California and Riverside County. Collectively, the ARL and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of the ARL is not mapped or precisely delineated (hard-lined) in the Western Riverside County MSHCP. Instead, the configuration and composition of the ARL are described in text within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area. The ARL lands are being acquired and conserved as part of the ongoing implementation of the Western Riverside County MSHCP.

Section 5.2 of the Western Riverside County MSHCP defines management activities to be implemented by reserve managers and a reserve management oversight committee (with priorities identified by those entities) to carry out species objectives and provide for

biological values identified in section 3.2 of the plan (Dudek and Associates 2003, p. 5–3). Management actions are defined at two levels within the Western Riverside County MSHCP—habitat- or landscape-based management activities and species-specific management activities (Dudek and Associates 2003, p. 5–3). Species-specific management activities defined for *Allium munzii* state that reserve managers are to manage known and future occurrences of this species to reduce threats related to competition with nonnative plant species, clay mining, off-road vehicle use, and discing activities (Dudek and Associates 2003, p. 5–31). For *Atriplex coronata* var. *notatior*, the Western Riverside County MSHCP management actions include: (1) General Management Measure 4 (maintenance and management of wetland habitat (Dudek and Associates 2003, p. 5–5)) and (2) a requirement for reserve managers to ensure that habitat supports [conservation] functions within the Western Riverside County MSHCP Conservation Area by maintaining and enhancing the floodplain processes of the San Jacinto River, Mystic Lake, and upper Salt Creek, including intermittent flooding and periodic pooling, with particular emphasis to preventing alteration of hydrology and floodplain dynamics, farming, fire and fire suppression activities, off-road vehicle use, and competition from nonnative plant species (Dudek and Associates 2003, p. 5–32).

Species-specific conservation objectives are defined for *Allium munzii* and *Atriplex coronata* var. *notatior* in the Western Riverside County MSHCP. Conservation objectives for *A. munzii* include:

(1) Conserve at least 21,260 ac (8,603 ha) of suitable habitat to include at least 2,070 ac (838 ha) of clay soils;

(2) Conserve at least 13 localities (populations within Elemental Occurrences (EOs) as defined in the California Natural Diversity Data Base (CNDDB)) within the Temescal Valley and the southwestern portion of the plan area; and

(3) Conduct Narrow Endemic Plan Species surveys as discussed below (Dudek and Associates 2003, pp. 9–126–9–127).

Conservation objectives identified in the Western Riverside County MSHCP for *Atriplex coronata* var. *notatior* include:

(1) Conserve at least 6,900 ac (2,792 ha) of suitable habitat including grasslands, playas, and vernal pools;

(2) Conserve the Alberhill Creek locality and three core areas located

along the San Jacinto River and in the upper Salt Creek drainage;

(3) Conduct surveys as discussed below;

(4) Conserve the floodplain along the San Jacinto River consistent with objective 1, including maintaining floodplain processes; and

(5) Conserve the floodplain along Salt Creek, generally in its existing condition, including maintaining floodplain processes (Dudek and Associates 2003, pp. 9–137–9–138).

Allium munzii

In our analysis of the effects to *Allium munzii* of the issuance of the Western Riverside County MSHCP permit, we acknowledged that specific conservation objectives would be provided in the Western Riverside County MSHCP to ensure that suitable habitat and known populations of *A. munzii* would persist (Service 2004, p. 326). To this effect, for narrow endemic species such as *A. munzii*, the Western Riverside County MSHCP states:

“The MSHCP is a Criteria-based plan, focused on preserving individual species through Conservation. Conservation is based on the particular habitat requirements of each species as well as the known distribution data for each species. The existing MSHCP database does not, however, provide the level of detail sufficient to determine the extent of the presence or distribution of Narrow Endemic Plant Species within the MSHCP Plan Area. Since Conservation planning decisions for these species will have a substantial effect on the status of these species, additional information regarding the presence of these species must be gathered during the long-term implementation of the MSHCP to ensure that appropriate Conservation of these species occurs” (Dudek and Associates 2003, p. 6–28).

The Western Riverside County MSHCP defines *Allium munzii* as a narrow endemic plant species and requires surveys for this species as part of the review process for public and private projects in certain areas where one or more permittees have discretionary authority for project approval (Dudek and Associates 2003, pp. 6–28–6–29). These surveys are required for all public and private projects where appropriate habitat is present (Dudek and Associates 2003, Figure 6–1, pp. 6–29–6–30) and include seven proposed critical habitat units or subunits, and portions of five other proposed critical habitat subunits for *A. munzii*. Where survey results are positive, project proposals with the potential to affect a narrow endemic plant species are subject to avoidance, minimization, and mitigation strategies (Dudek and Associates 2003, p. 6–29). In addition, the Western Riverside

County MSHCP indicates that, for narrow endemic plant species populations identified as part of this survey process (including *A. munzii*), impacts to 90 percent of those portions of the property that provide for long-term conservation value for these species will be avoided until it is demonstrated that conservation objectives (discussed above) are met (Dudek and Associates 2003, p. 6–38). The information from these surveys is to be used to prioritize areas for acquisition into the Western Riverside County MSHCP (Service 2004, p. 28). Surveys conducted from 2005 through 2011 have confirmed nine extant populations within 13 CNDDDB-defined EOs (Western Riverside County Regional Conservation Authority 2011, p. 31). These 9 populations are part of the 13 populations (localities) identified for conservation under management activities and species-specific conservation objectives within the Western Riverside County MSHCP (Dudek and Associates 2003, pp. 9–126–9–127), as noted above.

We stated in our biological opinion (analysis of effects) of the Western Riverside County MSHCP that:

- (1) All 16 known localities (or CNDDDB-defined EOs) would be included in the Conservation Area;
- (2) We anticipated that occurrences determined to be important to the overall conservation of the species will be considered for inclusion in the Additional Reserve Lands; and
- (3) At least some of the avoided areas may be maintained as open space habitat (Service 2004, p. 327).

In addition, the Western Riverside County MSHCP identified two CNDDDB-defined EOs partially within the Conservation Area (EOs 2 and 9) and two that are currently located outside the Conservation Area (EOs 5 and 16) that will be added to the Conservation Area. Finally, as noted above, the Western Riverside County MSHCP provides flexibility for criteria refinement, such that if an area is currently outside the reserve design defined by the Western Riverside County MSHCP, but is later determined to be important for conservation, then it could be added to the reserve as ARL or Acquisition Lands.

Atriplex coronata var. *notatior*

In addition to the management actions and conservation objectives listed above, which apply within the approximately 8,020 ac (3,246 ha) proposed as critical habitat for *Atriplex coronata* var. *notatior*, surveys are also required for *A. c.* var. *notatior* in conjunction with the Western Riverside

County MSHCP implementation (Dudek and Associates 2003, p. 6–63). For *A. c.* var. *notatior*, these additional surveys are required within suitable habitat in areas defined by the boundaries of the Criteria Area (Dudek and Associates 2003, Figure 6–2, p. 6–64). Of the approximately 8,020 ac (3,246 ha) proposed as critical habitat, approximately 7,620 ac (3,084 ha) are within this Criteria Area and subject to the additional survey requirements. As with narrow endemic plant species, in locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the identified species will be avoided until the species-specific conservation objectives for these species are met (Dudek and Associates 2003, p. 6–65). We stated in our analysis of the effects of the Western Riverside County MSHCP that this provides the flexibility to include those locations that contain large numbers of individuals or are determined to be important to the conservation of *A. c.* var. *notatior* in the ARL (Dudek and Associates 2003, p. 6–70; Service 2004, p. 353).

Under the Western Riverside County MSHCP, surveys for *Atriplex coronata* var. *notatior* are required every 8 years to verify occupancy for at least 75 percent of known locations. If a decline in distribution below this threshold is observed, management activities are triggered, as appropriate, to meet the species-specific objectives identified in the plan (Dudek and Associates 2003, Table 9.2; Service 2004, p. 355). Surveys conducted by the Western Riverside County Regional Conservation Authority (RCA) from 2006 to 2010 confirmed two of four CNDDDB-defined EOs within the three proposed critical habitat units (Units 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek) (Western Riverside County RCA 2011, p. 33). These two locations are two of the three core areas located along the San Jacinto River and the upper Salt Creek drainage that were identified for conservation under management activities and species-specific conservation objectives within the Western Riverside County MSHCP (Dudek and Associates 2003, pp. 9–137–9–138), as noted above. The Alberhill Creek locality has not yet been surveyed.

In the 1998 final listing rule for *Allium munzii* and *Atriplex coronata* var. *notatior*, the present or threatened destruction, modification, or curtailment of their habitat or range, including urban development, agriculture, and clay mining for *A. munzii*, and agriculture, urban

development, alteration of hydrology for *A. c.* var. *notatior*, were identified as the primary threats to these taxa (63 FR 54982, October 13, 1998; Service 2009, 2012b). The Western Riverside County MSHCP helps to address these threats to *A. munzii* and *A. c.* var. *notatior* through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of these taxa (Dudek and Associates 2003, pp. 9–126–9–127, 9–137–9–138).

In summary, the Western Riverside County MSHCP provides a comprehensive habitat-based approach to the protection of covered species, including *Allium munzii* and *Atriplex coronata* var. *notatior*, by focusing on lands identified as important for the long-term conservation of its covered species and through the implementation of management actions for conserving those lands, as outlined in the management actions and conservation objectives listed above (Western Riverside County RCA *et al.* 2003, p. 51).

The Benefits of Inclusion—*Western Riverside County MSHCP*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* and *Atriplex coronata* var. *notatior* by triggering additional review and conservation through other Federal laws. Review of Federal actions

affecting designated critical habitat units would consider the importance of this habitat to the two plants and the protections required for the taxa and their habitats.

Federal laws other than the Act that are most likely to afford protection to designated critical habitat for *Allium munzii* include the National Forest Management Act (NFMA; 16 U.S.C. 1600 *et seq.*) and, to a lesser degree, the CWA. Projects requiring a review under the NFMA or the CWA that are located within critical habitat or are likely to affect critical habitat would create a Federal nexus and trigger section 7 consultation under the Act. The NFMA requires the U.S. Forest Service to incorporate provisions to support and manage plant and animal communities for diversity and long-term rangewide viability of native species into its Land and Resource Management Plans. Consultation with the U.S. Forest Service would likely be triggered by any revision to the Land and Resource Management Plan for the Cleveland National Forest, where *A. munzii* is found. Examples of potential projects that could trigger consultation as a result of CWA include projects that require a section 404 CWA permit in areas near the washes or on terraces within washes or drainages occupied by *A. munzii*. However, a jurisdictional delineation would likely be required to evaluate the regulatory involvement of the U.S. Army Corps of Engineers.

Similarly, Federal laws other than the Act most likely to afford protection to designated critical habitat for *Atriplex coronata* var. *notatior* include the CWA. Projects requiring a review under the CWA that are located within critical habitat or are likely to affect critical habitat would create a Federal nexus and trigger section 7 consultation under the Act. Examples of potential projects that could trigger consultation as a result of CWA include activities that require a section 404 CWA permit within floodplains associated with wetland habitats, which may also require a jurisdictional delineation to evaluate the regulatory involvement of the U.S. Army Corps of Engineers.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—*Western Riverside County MSHCP*

The benefits of excluding from designated critical habitat the approximately 636 ac (257.4 ha) of proposed critical habitat for *Allium munzii* and 8,020 ac (3,246 ha) of proposed critical habitat for *Atriplex coronata* var. *notatior* that are within the boundaries of the Western Riverside County MSHCP are significant and include: (1) Continued and strengthened effective working relationships with all Western Riverside County MSHCP jurisdictions and stakeholders in implementing the conservation management objectives for these taxa and their habitats identified in the Western Riverside County MSHCP, described above, and promoting the conservation of these taxa and their habitats; (2) encouragement of other entities within the range of *A. munzii* and *A. c.* var. *notatior* to complete HCPs; and (3) encouragement of additional HCP and other conservation plan development in the future on other private lands for other federally listed species.

Implementation of the Western Riverside County MSHCP has resulted in the acquisition of 487 ac (197 ha) of land within the Upper and Lower San Jacinto River and Upper Salt Creek geographical locations of *Atriplex coronata* var. *notatior*, which are located within proposed critical habitat (Unit 1—San Jacinto River and Unit 2—Upper Salt Creek). These areas were added to the existing conserved lands and are now incorporated into the Western Riverside County MSHCP Reserve (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). Two of these parcels were recently purchased with HCP Land Acquisition Grant Program funds authorized under section 6 of the Act (M. Woulfe 2011a and 2011b, pers. comm.). Since 2004, only 10 ac (4 ha) of habitat in the Upper Salt Creek areas have been lost (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). These actions provide support for the effectiveness of the Western Riverside County MSHCP in reducing the threats to *A. c.* var. *notatior* and in addressing the special management considerations or protections necessary to ensure the long-term existence of the physical or biological features essential to the conservation of this taxon.

In the case of plants such as *Allium munzii* and *Atriplex coronata* var. *notatior*, we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan is voluntary. In

contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including: (1) Narrow endemic plant species, such as *A. munzii*; and (2) those with limited geographic distribution and specialized habitat and management requirements, such as *A. c. var. notatior*, through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Western Riverside County MSHCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by Riverside County to protect *A. munzii* and *A. c. var. notatior* under this plan.

Excluding lands within the Western Riverside County MSHCP from the critical habitat designation will also sustain and enhance the working relationship between the Service and Riverside County. The willingness of the county and its partners to work with the Service on innovative ways to manage federally listed species will continue to reinforce those conservation efforts and our partnership, both of which contribute significantly toward achieving recovery of *Allium munzii* and *Atriplex coronata* var. *notatior*.

By excluding approximately 8,656 ac (3,503 ha) of land within the boundaries of the Western Riverside County MSHCP from critical habitat designation, we are encouraging new partnerships with other landowners and jurisdictions to protect *Allium munzii* and *Atriplex coronata* var. *notatior* as well as other listed species. Our ongoing partnerships with Riverside County, the larger regional Western Riverside County MSHCP participants, and the landscape-level multiple species conservation planning efforts they promote are essential to achieve long-term conservation of *A. munzii* and *A. c. var. notatior*. We consider this voluntary partnership in conservation vital to our understanding of the status of species on non-Federal lands and necessary for us to implement recovery actions such as habitat protection and

restoration, and beneficial management actions for species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Western Riverside County MSHCP*

We have reviewed and evaluated the exclusion of approximately 8,656 ac (3,503 ha) of land within the boundaries of the Western Riverside County MSHCP. We have created close partnerships with Riverside County and other stakeholders through the development of the Western Riverside County MSHCP, which incorporates protections and management objectives (described above) for *Allium munzii* and *Atriplex coronata* var. *notatior* and the habitats upon which the taxa depend for growth and reproduction. The conservation strategy identified in the Western Riverside County MSHCP, along with our close coordination with Riverside County and other stakeholders, addresses the identified threats to *A. munzii* and *A. c. var. notatior* and the geographical areas that contain the physical or biological features essential to their conservation. Our partnership with Riverside County helps ensure implementation of the protections and management actions identified within the Western Riverside County MSHCP. Therefore, the relative benefits to either *Allium munzii* or *Atriplex coronata* var. *notatior* of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Western Riverside County MSHCP and State and Federal laws. The Western Riverside County MSHCP provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and *A. c. var. notatior*, and that help achieve recovery of these taxa through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Western Riverside County MSHCP boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii* and *Atriplex coronata* var. *notatior*. The framework for the regional Western Riverside County MSHCP was developed over a 6-year period and has been in place since 2004. The Western Riverside County MSHCP requires the implementing agency, the Western Riverside County RCA, to prepare and submit a report of its annual activities.

These annual reports include an overview of the plan, a summary of habitat gains, and a review of the management activities of the Western Riverside RCA, management of property, and management of the reserves. The activities of the biological monitoring program are also included in this annual report. The reporting for these activities is available to the public on the Internet at: <http://www.wrc-rca.org/>. In addition, the previous rulemaking for these taxa has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and *A. c. var. notatior*, and the location of areas containing the physical or biological features essential to the conservation of these taxa.

Within the Lake Mathews-Estelle Mountain Reserve, Riverside County is implementing other outreach and educational activities. For example, “Endangered Species Act Day” is sponsored by the Riverside County Habitat Conservation Agency, and the Service has been an active participant and partial funder for this event. These actions, collectively, provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *Allium munzii*, as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Lake Mathews-Estelle Mountain Reserve.

Exclusion of these lands from both *Allium munzii* and *Atriplex coronata* var. *notatior* critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Western Riverside County MSHCP. These partnerships are focused on conservation of multiple species, including *A. munzii* and *A. c. var. notatior*, and secure conservation benefits for the taxa that will contribute to the species’ recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships help foster future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of designating areas covered by the Western Riverside County MSHCP as critical habitat and balancing the benefits of excluding those areas from

critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—Western Riverside County MSHCP

We have determined that the exclusion of approximately 636 ac (257.4 ha) of land from the final designation of critical habitat for *Allium munzii* and the entire 8,020 ac (3,246 ha) of land proposed as critical habitat for *Atriplex coronata* var. *notatior* within lands covered under the permitted Western Riverside County MSHCP will not result in the extinction of *A. munzii* or *A. c.* var. *notatior*. Management actions and species-specific conservation objectives identified in the Western Riverside County MSHCP for the two taxa and their habitats provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of these taxa. In our 2004 biological opinion, the Service determined that implementation of the Western Riverside County MSHCP is not likely to jeopardize the continued existence of *A. munzii* or *A. c.* var. *notatior* (Service 2004, pp. 327, 356).

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation the following proposed units or subunits:

- For *Allium munzii*, Unit 1—Gavilan Hills, including all subunits (1A–1F) (114.7 ac (46.4 ha)); Unit 2—Temescal Valley including all subunits (2A–2D) (481 ac (194.5 ha)); Subunit 4A (32.6 ac (13.3 ha)) of Unit 4—South Perris and Bachelor Mountain; and a portion of Subunit 4B (7.7 ac (3.1 ha)) of Unit 4—South Perris and Bachelor Mountain.
- For *Atriplex coronata* var. *notatior*, all land within Unit 1—San Jacinto River, Unit 2—Upper Salt Creek, and Unit 3—Alberhill Creek (8,020 ac (3,246 ha)).

All of these proposed units or subunits are encompassed within lands covered under the Western Riverside County MSHCP.

Rancho Bella Vista Habitat Conservation Plan

A portion of proposed Subunit 4B—Skunk Hollow for *Allium munzii* is found within a smaller, individual HCP, the Rancho Bella Vista HCP, which was approved prior to the Western Riverside County MSHCP through a separate section 10(a)(1)(B) permit and

authorized Pacific Bay Properties to develop the 798-ac (323-ha) site that included 102.3 ac (41.4 ha) of native habitat (Service 2004, p. 66). Within this subunit, 67.1 ac (27.2 ha) of the proposed 74.8 ac (30.3 ha) in Subunit 4B—Skunk Hollow are located within the conserved lands defined by the Rancho Bella Vista HCP and are designated as natural open space or conserved habitat (Service 2000). The remaining areas of proposed Subunit 4B—Skunk Hollow are identified as PQP (7.3 acre (2.95 ha) and ARL (0.4 ac (0.16 ha)) lands within the Western Riverside County MSHCP. Those areas are addressed in the *Western Riverside County Multiple Species Habitat Conservation Plan* section above.

Long-term management of the Rancho Bella Vista HCP conservation lands includes the following activities:

- (1) Control access and, where necessary, limit access by people, vehicles, and domestic pets to conserved habitats and preclude access to highly sensitive resources.
- (2) Monitor target species, including *Allium munzii*, and provide species management of all covered species.
- (3) Identify and rank, in order of priority, opportunities for habitat restoration and enhancement within the conserved habitats.
- (4) Monitor conserved lands for the occurrence of nonnative invasive plants and animals and provide the prompt control of such species.
- (5) Map the locations of nonnative plant species within and immediately adjacent to conserved habitats and schedule for removal, monitoring, or control as necessary.
- (6) Develop a fire management program in consultation with the County of Riverside Fire Marshal and wildlife agencies to minimize impacts to conserved habitats from fire management programs and adjacent land uses.
- (7) Develop public information materials and programs including:

- (a) A brochure that describes the natural resources, areas of special interest, and prohibited activities within conserved habitats;
- (b) A landscape and fuel break planning brochure for homeowners and homeowner associations located adjacent to conserved habitats; and
- (c) Nature trails along or through portions of conserved habitats (provided impacts are avoided or mitigated) (Service 2000, pp. 4–5).

Benefits of Inclusion—Rancho Bella Vista HCP

The primary effect of designating any particular area as critical habitat is the

requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* by triggering additional review and conservation through other Federal laws. Review of Federal actions affecting designated critical habitat units would consider the importance of this habitat to *A. munzii* and the protections required for the species and its habitat.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—Rancho Bella Vista HCP

The benefits of excluding from designated critical habitat the 67.1 ac (27.2 ha) of proposed critical habitat for *Allium munzii* that are within the boundaries of the Rancho Bella Vista HCP are significant and include: (1) Continued and strengthened effective working relationship with the Rancho Bella Vista HCP permittee in implementing the conservation management objectives for *A. munzii* and its habitat identified in the Rancho Bella Vista HCP, described above, and promoting the conservation of this species and its habitat; (2) encouragement of other entities within

the range of *A. munzii* to complete HCPs; and (3) encouragement of additional HCP and other conservation plan development in the future on other private lands for other federally listed species. In addition, because the lands that comprise the Rancho Bella Vista HCP are now encompassed within the boundaries of the Western Riverside County MSHCP, we see the continued and strengthened effective working relationships with the larger Western Riverside County MSHCP and its jurisdictions and stakeholders in promoting the conservation of *A. munzii* and its habitat as an important benefit of exclusion of this portion of proposed Subunit 4B—Skunk Hollow.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Rancho Bella Vista HCP*

We have reviewed and evaluated the exclusion of approximately 67.1 ac (27.2 ha) of land within the boundaries of the Rancho Bella Vista HCP for *Allium munzii*. The benefits of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Rancho Bella Vista HCP and under the Act. The Rancho Bella Vista HCP provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and help achieve recovery of this species through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Rancho Bella Vista HCP boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii*. As an example, the Rancho Bella Vista Park, which includes both active and passive uses of the area, includes a nature trail through portions of conserved habitats and an interpretive, educational display for the larger Skunk Hollow area. These actions provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *A. munzii*, as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Rancho Bella Vista HCP. In addition, the previous rulemaking for this species has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and the

location of areas containing the physical or biological features essential to the conservation of the species.

In the case of plants such as *Allium munzii*, we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan is voluntary. In contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including narrow endemic plant species such as *A. munzii*, through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Rancho Bella Vista HCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by the permittee to protect *A. munzii* under this plan.

Exclusion of these lands from critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Rancho Bella Vista HCP. These partnerships are focused on conservation of multiple species, including *Allium munzii*, and secure conservation benefits for the taxa that will contribute to the species' recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships aid in fostering future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of specifying areas covered by the Rancho Bella Vista HCP as critical habitat and balancing the benefits of excluding these areas from critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—*Rancho Bella Vista HCP*

We have determined that the exclusion of 67.1 ac (27.2 ha) within lands covered under the permitted Rancho Bella HCP from the final designation of critical habitat for *Allium munzii* will not result in the extinction of *A. munzii*. Conservation measures identified in the Rancho Bella Vista HCP for *A. munzii* and its habitat provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of *A. munzii*. In our 2000 biological opinion, the Service determined that implementation of the Rancho Bella Vista HCP would not likely jeopardize the continued existence of *A. munzii* (Service 2000, p. 41).

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation for *Allium munzii* the portion of proposed Subunit 4B—Skunk Hollow (67.1 ac (27.2 ha)), which is encompassed within lands covered under the Rancho Bella Vista HCP.

Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement

Subunit 4C—Bachelor Mountain (79.3 ac (32.1 ha)) and Unit 5—North Domenigoni Hills (8.2 ac (3.3 ha)) proposed as critical habitat for *Allium munzii* are contained within the Southwestern Riverside County Multi-species Reserve (Reserve), which was created in 1992, prior to the listing of *A. munzii*, as a mitigation measure for impacts resulting from the Diamond Valley Lake Reservoir. The Reserve comprises about 13,000 ac (5,261 ha), approximately 9,400 ac (3,804 ha) of which are owned by the Metropolitan Water District, 2,500 ac (1,012 ha) by the Riverside County Habitat Conservation Agency, 360 ac (146 ha) by the Bureau of Land Management (BLM), and 600 ac (243 ha) by the Riverside County Parks and Open Space District (Service 2004, p. 61), which manages the Reserve. The Reserve is located within the area north of Lake Skinner and south of Diamond Valley Lake, and includes the Domenigoni Mountains and South Hills (Service 2004, p. 61).

The Reserve is managed through a cooperative management agreement; the Service is a party to this agreement and a member of the five-member committee that makes management decisions (Monroe *et al.* 1992, Appendix B). Management strategies defined for the entire Reserve include:

(1) Protection of habitat from human disturbance through fencing, construction of fire breaks, and patrols to prevent unauthorized access;

(2) Activities to promote the recovery of native plant and animal communities by managing fire and controlling grazing; and

(3) Management for biodiversity, including maintaining a mosaic of different-aged habitats to meet the needs of many species (Monroe *et al.* 1992, pp. ES-5-ES-6).

The 2008 Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10), developed in order to meet management goals for the Reserve, identifies specific enhancement and monitoring goals, objectives, and strategies for *Allium munzii*. These include: (1) Estimating area occupied by *A. munzii* within the Reserve by mapping each occupied area annually, (2) estimating individual plants within the known populations, and (3) enhancing habitat suitability within occupied areas by annually removing thatch and biomass from nonnative vegetation and determining the efficacy of each treatment (Moen 2008, Appendix 10, pp. 1-2).

Benefits of Inclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat designation can also result in ancillary conservation benefits to *Allium munzii* by triggering additional review and conservation through other Federal laws. Review of Federal actions affecting designated critical habitat units would consider the importance of this habitat to *A. munzii* and the protections required for the species and its habitat.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species.

Benefits of Exclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

The benefits of excluding from designated critical habitat the 87.5 ac (35.4 ha) of proposed critical habitat for *Allium munzii* within the Reserve are significant and include:

(1) Continued and strengthened effective working relationships with the signatories to the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement and other interested stakeholders in implementing the conservation management objectives for *A. munzii* and its habitat identified in the Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10), described above, and promoting the conservation of this species and its habitat; (2) encouragement of other entities within the range of *A. munzii* to complete cooperative management agreements; and (3) encouragement of additional conservation plan development in the future on other private lands for other federally listed species. In addition, because the lands that comprise the Reserve are encompassed within the boundaries of the Western Riverside County MSHCP as PQP lands, we see the continued and strengthened effective working relationships with the larger Western Riverside County MSHCP and its jurisdictions and stakeholders in promoting the conservation of *A. munzii* and its habitat as an important benefit of exclusion of proposed Subunit 4C—Bachelor Mountain and Unit 5—North Domenigoni Hills.

Benefits of Exclusion Outweigh the Benefits of Inclusion—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

We have reviewed and evaluated the exclusion of approximately 87.5 ac (35.4 ha) of proposed critical habitat for *Allium munzii* that are within the boundaries of the Reserve established through the Southwestern Riverside County Reserve Cooperative Management Agreement. The benefits of including these lands in the designation are small because the regulatory and ancillary benefits that would result from critical habitat designation are almost entirely redundant with the conservation benefits already afforded through the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement and under the Act. The Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement provides for significant conservation and management of the geographical areas that contain the physical or biological features essential to the conservation of *A. munzii* and help achieve recovery of this species through the objectives as described above.

We also conclude that the educational benefits of designating critical habitat within the Reserve boundaries would be negligible because there have been several opportunities for public education and outreach related to *Allium munzii*. Although the majority of the Reserve is not open to the public, three trails are available during certain times of the year for hiking and horseback riding activities. These trails provide additional opportunities to educate the public about the location of, and efforts to conserve, the physical or biological features essential to the conservation of *A. munzii*, as well as other efforts to conserve endangered plants (including *A. munzii*) and wildlife, within the Reserve. In addition, the previous rulemaking for this species has provided the opportunity for public review and comment on documents that provided information on the biology and habitat requirements of *A. munzii* and the location of areas containing the physical or biological features essential to the conservation of the species.

Exclusion of these lands from critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement. These

partnerships are focused on conservation of multiple species, including *Allium munzii*, and secure conservation benefits for the species that will lead to recovery, as described above, beyond those that could be required under a critical habitat designation. Furthermore, these partnerships aid in fostering future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands. We have determined that these benefits are significant.

After consideration of the relevant impact of specifying areas within the Reserve as critical habitat and balancing the benefits of excluding these areas from critical habitat against the benefits of including them, we have determined that the significant benefits of exclusion outweigh the benefits of critical habitat designation in these areas.

Exclusion Will Not Result in Extinction of the Species—*Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement*

We have determined that the exclusion of 87.5 ac (35.4 ha) of lands managed under the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement from the final designation of critical habitat for *Allium munzii* will not result in the extinction of *A. munzii*. Conservation measures identified in the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement (Monroe *et al.* 1992, Appendix B) and the 2008 Southwestern Riverside County Multi-species Reserve Management Plan (Moen 2008, Appendix 10, pp. 1–2) for *A. munzii* and its habitat provide significant benefits to the geographical areas containing the physical or biological features essential to the conservation of *A. munzii*.

Based on the above discussion, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation for *Allium munzii* proposed Subunit 4C—Bachelor Mountain (79.3 ac (32.1 ha)) and Unit 5—North Domenigoni Hills (8.2 ac (3.3 ha)), which are encompassed within lands managed under the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* during two comment

periods. The first comment period associated with the publication of the proposed rule (77 FR 23008; April 17, 2012) opened on April 17, 2012, and closed on June 18, 2012. We also requested comments on the proposed revised critical habitat designations and associated DEA for the two taxa during a comment period that opened September 11, 2012, and closed on October 11, 2012 (77 FR 55788; September 11, 2012). We did not receive any requests for a public hearing during these comment periods. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods.

During the first comment period, we received seven comment letters, three from peer reviewers, three from State and local agencies (one of these letters was a duplicate), and one from the public directly addressing the proposed revised critical habitat designations. During the second comment period, we received three agency comment letters (again, one of these letters was a duplicate) addressing the proposed revised critical habitat designations or the DEA. No public comments were received during the second comment period. All substantive information provided during comment periods has either been incorporated directly into the final determinations for both taxa or addressed below. Comments we received are grouped into general issues specifically relating to the proposed revised critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior*.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with *Allium munzii* and *Atriplex coronata* var. *notatior*, the geographic region in which the two plants occur, and conservation biology principles relevant to the two plants. We received responses from all three peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior*. The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule as discussed in more detail below. Peer reviewer comments are addressed in the following summary

and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* We received comments from two peer reviewers regarding our exclusion process under section 4(b)(2) of the Act. One reviewer recommended that the Service weigh the benefits of inclusion versus exclusion by thoroughly analyzing the implementation and conservation success of the relevant HCPs and make a determination whether or not to exclude based on specific conditions applicable to that unit or subunit. A second reviewer stated that species exclusions should be made on a case-by-case basis and the proposed rule needs to outline a stronger case for exclusion.

Our Response: The Secretary's decision regarding whether to exercise his discretion to exclude areas from critical habitat is not made in the proposed rule, but in the final rule. In the proposed rule, we provided the then available information regarding potential exclusions to allow the peer reviewers and the public an opportunity to comment. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of designating a particular area as critical habitat, unless the failure to designate will result in the extinction of the species. Before the Secretary exercises his discretion to exclude any area from critical habitat, he carefully weighs the benefits of exclusion of an area from critical habitat versus the benefits of inclusion of an area in critical habitat.

In the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this final rule, we provide additional discussion of the implementation of the Western Riverside County MSHCP and other conservation plans and partnerships and why we believe, for the areas excluded from final designation, these plans adequately provide for the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior*, and their habitats. This section also fully discusses the benefits of inclusion and exclusion for these areas and the reasons why the Secretary is exercising his discretion to exclude the areas from final critical habitat designation.

(2) *Comment*: Two peer reviewers provided recommendations on how the proposed revised critical habitat units should be defined in order to address essential habitat. Specific comments were provided by one peer reviewer regarding our proposed designation of critical habitat for Subunits 2D—Alberhill Creek and 4C—Bachelor Mountain for *Allium munzii*, who also recommended a detailed review of proposed subunits within Estelle Mountain and Temescal Wash, stating that the expansion of urban development and other activities in this region warrant additional evaluation of all areas that might be potentially essential habitat for this species.

Our Response: We reviewed our methods for determining subunit boundaries, occupancy, and the presence of the physical or biological features essential to the conservation of the two plants. As described above in the *Criteria Used to Identify Critical Habitat* section for *Allium munzii*, we conducted a spatial analysis using a GIS-based approach to determine the percent of mapped clay soils (Altamont, Auld, Bosanko, and Porterville) that were converted or lost to agricultural or urban land uses in the Riverside-Perris area (based on 2007 land use GIS data). Based on the narrow endemism of this species, its reliance on clay soil types that are limited in geographic range in western Riverside County, and our estimated loss of 67 percent of these soils to urban or agricultural development, we determined that all of the proposed units and subunits represent the present geographical area containing the physical or biological features essential to the conservation of this species that may require special management considerations or protection. For *Atriplex coronata* var. *notatior*, we improved our mapping methodology from previous delineations to more accurately define the critical habitat boundaries that better represent those areas that possess the physical or biological features essential to the conservation of this taxon using soils, elevation, and spatial configuration based on updated plant location information. Thus, we delineated boundaries using an intersection of seasonal ponding or flooding (and resulting bare soils), as observed in historical and recent aerial photographs (Riverside County Flood Control District photos from 1962, 1974, 1978, 1980, and 2010), with *A. c.* var. *notatior* soil preferences (using soil maps from Knecht 1971). This delineation also includes the CNDDDB-defined EOs and

locations of individual plants reported from other surveys.

In addition, we note that the areas proposed as critical habitat in the proposed revised rule may not include all of the habitat that may eventually be determined as necessary for the recovery of *Allium munzii* (or *Atriplex coronata* var. *notatior*), and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act. These protections and conservation tools will continue to contribute to recovery of both taxa.

Per the peer reviewer's specific comments on Subunits 2D—Alberhill Creek and 4C—Bachelor Mountain for *Allium munzii*, we confirmed that Subunit 2D—Alberhill Creek as defined in the proposed rule contains Altamont cobbly clay soil (PCE 1), and not alkaline soils. We also reevaluated proposed Subunit 4C—Bachelor Mountain and concluded that the subunit boundaries were created appropriately using the defined PCEs for this species.

(3) *Comment*: All three peer reviewers provided editorial comments, corrections, and recommendations for changes to the Background section (description, biology and life history, habitat and soil preferences, spatial distribution, historical range, and population size) of the proposed rule.

Our Response: We appreciate the suggestions and clarifying information provided by the peer reviewers and the opportunity to incorporate the best available scientific information into the final rule. We provide a summary of these clarifications below based on the peer review comments. However, this information has not altered our determinations or delineation of critical habitat units for *Allium munzii* or *Atriplex coronata* var. *notatior*. In addition, the information provided by the peer reviewers is related to a section of the proposed revised rule that is not repeated in this final rule. However, we have made use of this information in other sections of this final rule, where appropriate, and will similarly use this information in future actions related to the two taxa.

• The references used in the description heading of our Background section in the proposed rule for both *A. munzii* and *A. c.* var. *notatior* have been

updated with the 2012 publication of *The Jepson Manual: Vascular Plants of California*, second edition (University of California Press, Berkeley, California). The proposed rule cited both the McNeal (2012) for the treatment of the family Alliaceae, which includes *A. munzii*, described within pages 1289–1297 of the second edition, but we also cited an earlier published review of this species (McNeal 1992). The Taylor and Wilken (1993) citations for *A. c.* var. *notatior* are now Zacharias (2012) for the treatment of the family Chenopodiaceae, which includes *A. c.* var. *notatior*, described within pages 629–638 of the second edition.

• In our Habitat and Soil Preferences section for *A. munzii*, we received a clarification from one peer reviewer of our reference to the mesic (wet) clay soils in which this species is found. As noted by this reviewer, these soils are subject to hot dry summers that are characteristic of Mediterranean climate found in southern California and are dry much of the year.

• As noted by one peer reviewer, the geographical description of the range of *A. munzii* in Riverside County is better described as a narrow endemic plant that is discontinuously distributed across the Riverside-Perris area (Perris Basin physiogeographic region) and within a portion of the southern Santa Ana Mountains (Elsinore Peak). We have incorporated this description into this final rule, as appropriate.

• Two peer reviewers indicated that the term Upper Salt Creek should be used in place of Old Salt Creek in the Background or other sections where it occurs in the proposed rule; the latter geographic name is apparently an outdated term used to describe early locations of *A. c.* var. *notatior*.

• One peer reviewer recommended that we discuss the importance of clonal populations for *A. munzii*. We note that all known bulb- and corm-forming plant taxa are expected to exhibit a clonal population structure derived from the vegetative reproduction of the bulbs or corms. However, we did not consider it necessary to discuss this in the Background section of the proposed rule as it does not change our criteria or methodology for designating critical habitat.

• Based on peer review comment we received on the Background section of the proposed rule regarding our habitat description for *A. c.* var. *notatior*, we are providing the following information due to confusion in terms that have been used to describe the habitats and locations where this taxon is found. *Atriplex coronata* var. *notatior* is found in several herbaceous vegetation

alliances and associations (Klein and Evens 2005, pp. 60–62; Sawyer *et al.* 2009, pp. 871–872, 939–940), as well as shrubland alliances (Klein and Evens 2005, p. 237) of western Riverside County. Alliances are considered generic units of vegetation based on a dominant or diagnostic species presence, whereas associations are subdivisions of alliances based on characteristic understory or associated taxa (Klein and Evens 2005, p. 9). *Atriplex coronata* var. *notatior* is associated with herbaceous vegetation identified as: *Centromadia* (as *Hemizonia*) *pungens* subsp. *laevis* Unique Stands, *Hordeum depressum* Alliance, *Lasthenia californica* Alliance, *Plagiobothrys leptocladus* Unique Stands, and Vernal Alkali Plain, Vernal Alkali Playa, and Vernal Pool Habitats (Klein and Evens 2005, pp. 254, 256, 260, 267, 274). It is also associated with the shrubland alliance *Suaeda nigra* (as *moquinii*) Alliance (Klein and Evens 2005, p. 238). Sawyer *et al.* describes vegetation on a State-wide basis and, unlike Klein and Evens, these descriptions are not based directly on survey results. Sawyer *et al.* (2009, pp. 850, 871, 940) recognize some of these vegetation types as *Centromadia* (*pungens*) Herbaceous Alliance, *Deinandra fasciculata* Herbaceous Alliance, and *Lasthenia californica-Plantago erecta-Festuca* (as *Vulpia*) *microstachys* Herbaceous Alliance. The two references cited above accommodate the known habitats associated with *A. c.* var. *notatior*, such as alkali plain, alkali playa, and vernal pool habitats, as described in the proposed rule, but generally do not include sage scrub. However, the nomenclature for habitat descriptions may differ between these two references and previously cited references.

(4) *Comment:* We received a comment from one peer reviewer on our discussion in the Background section for *Atriplex coronata* var. *notatior* in the proposed revised rule regarding surveys for this taxon along the San Jacinto River in 2000. The commenter stated that soil amendments in this area since those surveys have impacted *A. c.* var. *notatior*; therefore, these earlier surveys do not accurately represent the current population status of this taxon.

Our Response: We acknowledge the comment and the information provided as to activities that may have impacted populations of *Atriplex coronata* var. *notatior* in proposed Unit 1—San Jacinto River. As noted in the proposed rule, there have been no other comprehensive surveys for this taxon since the time of listing to estimate current population status. We used the best available

information when determining the areas that meet the definition of critical habitat. We used a number of sources of information to define the boundaries for proposed Unit 1—San Jacinto River based on the physical or biological features essential to the conservation of this taxon, including, but not limited to, the results from the survey conducted in 2000.

(5) *Comment:* Two peer reviewers provided comments regarding our discussion in the Background section for *Atriplex coronata* var. *notatior* in the proposed revised rule clarifying other co-occurring native and nonnative *Atriplex* taxa as well as the seed viability of *A. c.* var. *notatior*.

Our Response: We appreciate the information provided by the peer reviewers regarding other *Atriplex* taxa and seed viability. As appropriate, we have incorporated this information into sections of this rule, and will similarly use this information in future actions related to this taxon.

(6) *Comment:* One peer reviewer indicated that the PCEs for *Atriplex coronata* var. *notatior* appeared to be accurately described.

Our Response: We appreciate the comment on this section of the rule, which was revised from the previous proposed rule (2004) to better reflect the PCEs for this taxon.

(7) *Comment:* Two peer reviewers provided comments on the *Special Management Considerations or Protection* section of the proposed rule. One reviewer indicated that the manure dumping along the San Jacinto River should be more thoroughly discussed in the proposed rule, stating that this activity is the greatest threat to *Atriplex coronata* var. *notatior*. The second peer reviewer indicated that a more thorough analysis of management considerations for both taxa should have been included in this section, and that the critical habitat unit and subunit descriptions should include more detail in order to evaluate management issues within the units and subunits.

Our Response: We appreciate the concerns of the peer reviewers relative to impacts to *Atriplex coronata* var. *notatior* from soil amendment activities along the San Jacinto River. The issue of soil amendments, including manure dumping, was discussed in the proposed rule (Unit 1—San Jacinto River, 77 FR 23027–23028; April 17, 2012) and in our 2008 and 2012 5-year reviews for *A. c.* var. *notatior* (Service 2008, pp. 6–10, 16; Service 2012b, pp. 17, 19). In our proposed rule, we also provided a discussion of the specific threats for proposed critical habitat units for *A. c.* var. *notatior* in our

Proposed Revised Critical Habitat Designation section (77 FR 23027–23029; September 11, 2012). A summary of these threats was provided in the *Special Management Considerations or Protection* section of the proposed rule (77 FR 23018; September 11, 2012). The peer reviewer's comment has also been provided to Service biologists overseeing implementation of conservation measures for *A. c.* var. *notatior* that are identified in the Western Riverside County MSHCP.

(8) *Comment:* We received one comment on the Summary of Changes section. The commenter noted our discussion of the transplantation of some populations of *Allium munzii* within the proposed Subunit 2A—Sycamore Creek and requested that the proposed designation describe policies and procedures for allowing transplantation or reseeding of both taxa and how they would meet the criteria for conserving both these species and their habitats.

Our Response: In our proposed critical habitat rules, we generally do not provide specifics on State laws or conservation measures implemented for endangered plants as a result of previous section 7 consultations. A discussion of existing Federal and State regulatory mechanisms for both taxa can be found in our final listing rule (63 FR 54975; October 13, 1998).

(9) *Comment:* Two peer reviewers commented on the maps included in the proposed rule identifying the units and subunits of critical habitat. Both reviewers recommended that the Service provide to the peer reviewers more detailed overlays that better describe the proposed revised critical habitat boundaries in order to better evaluate the proposed areas.

Our Response: The maps in the proposed rule were prepared for publication in the **Federal Register**, and were prepared in accordance with Code of Federal Regulations (CFR) (at 50 CFR 17.94(b), 424.12(c), and 424.16(b) and (c)(1)(ii)) for publishing textual and mapping descriptions of proposed critical habitat boundaries in the **Federal Register**. However, detailed spatial data for the critical habitat units for these taxa and other endangered or threatened species within the jurisdiction of the Carlsbad Fish and Wildlife Office are available to the public in number of ways: (1) Through a zip file that can be downloaded at our Web site, (2) by visiting the Field Office directly, or (3) through a CD mailed directly to the requester. In the future, we will notify peer reviewers of the locations of this more detailed spatial

data during our peer review request process.

(10) *Comment*: Two peer reviewers provided comments expressing their disappointment in the areas identified in the proposed rule for consideration of exclusion within the Western Riverside County MSHCP area as critical habitat, for both *Allium munzii* and *Atriplex coronata* var. *notatior*. One peer reviewer stated that, as of 2012, 8 years after the Western Riverside County MSHCP was signed, there was little real on the ground conservation, protection, or management for *A. c.* var. *notatior*. Another peer reviewer stated that the proposed designation does not document how these plans would conserve or manage these proposed critical habitat areas and does not address the issue of the long-term viability of these proposed subunits, including maintaining hydrological processes.

Our Response: As noted in our response to Comment 1 above, the Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impacts if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. We concluded that the benefits of exclusion outweigh the benefits of inclusion for lands covered under the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside Multi-species Reserve Cooperative Management Agreement. A detailed discussion for this determination is provided in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above. Specifically, we noted in that section that three parcels of lands within the proposed critical habitat designation for *A. c.* var. *notatior* have been purchased since 2004, and have been incorporated into the Western Riverside County MSHCP Reserve and, since 2004, only 10 ac (4 ha) of habitat in the Upper Salt Creek areas have been lost (Service 2012a; Carlsbad Fish and Wildlife Office, GIS Analysis). These actions provide support for the effectiveness of the Western Riverside County MSHCP in reducing the threats to *A. c.* var. *notatior* and in addressing the special management considerations or protections necessary to ensure the long-term existence of the physical or

biological features essential to the conservation of this taxon.

In the case of plants such as *Allium munzii* and *Atriplex coronata* var. *notatior*, we also consider that including conservation measures to protect listed plants and their habitats in an HCP or other conservation plan (where no Federal nexus exists) is voluntary. In contrast to listed wildlife species, the Act does not prohibit take of listed plants, and an incidental take permit under section 10 of the Act is not required to authorize impacts to listed plants. For this reason, we actively support and encourage the voluntary inclusion of measures to protect listed plants and their habitats in an HCP or other conservation plan by plan proponents. The prospect of potentially avoiding a designation of critical habitat for a plant provides a meaningful incentive to plan proponents to extend protections for plants and their habitat under a conservation plan. Achieving comprehensive, landscape-level protection for plant species, including (1) narrow endemic plant species, such as *A. munzii*, and (2) those with limited geographic distribution and specialized habitat and management requirements, such as *A. c.* var. *notatior*, through their inclusion in regional conservation plans, provides a key conservation benefit for these taxa. Our consideration of the Western Riverside County MSHCP under section 4(b)(2) of the Act acknowledges the voluntary, proactive conservation measures undertaken by Riverside County to protect *A. munzii* and *A. c.* var. *notatior* under this plan.

Also included in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above is a summary of the management actions defined in the Western Riverside County MSHCP to be implemented for the two taxa that provide for conservation of the physical or biological features essential to the conservation of the taxa, including maintaining and enhancing the floodplain processes of the San Jacinto River, Mystic Lake and upper Salt Creek hydrological processes located within Unit 1—San Jacinto River and Unit 2—Upper Salt Creek for *A. c.* var. *notatior*.

(11) *Comment*: One peer reviewer recommended that the proposed rule should have provided greater consideration of populations of *Atriplex coronata* var. *notatior* along the San Jacinto River floodplain that occupy intact alkali habitat because of concerns regarding changes in land uses in certain areas along the San Jacinto River. More specifically, the populations that occur within the San

Jacinto Wildlife Area on these soils may provide an important seed source for the lower portions of the San Jacinto River.

Our Response: We appreciate the comment and the recommendation for proposed Unit 1—San Jacinto River. In defining the proposed critical habitat boundaries for Unit 1—San Jacinto River unit, including the area contained within the San Jacinto Wildlife Area, we evaluated the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior*, including PCE 2, the alkaline soils (primarily the Willows soil series) that are found in this region, and PCE 1, wetland habitat including floodplains and vernal pools. We determined that Unit 1—San Jacinto River provides habitat and hydrological conditions (PCE1b) that can serve as a potential seed source for areas downstream from the San Jacinto Wildlife Areas. As noted in our response to Comment 2 above, the identification of the areas meeting the definition of critical habitat in the proposed revised rule may not include all of the habitat that may eventually be determined to be necessary for the recovery of *A. c.* var. *notatior*, and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act.

(12) *Comment*: One peer reviewer stated that the [draft] economic analysis of the proposed revised critical habitat designation should have been provided concurrently with the publication of the proposed rule.

Our Response: We published our proposed critical habitat rule in accordance with regulations in effect at the time of publication (50 CFR 424.19). On August 24, 2012, Service and the National Marine Fisheries Service published in the **Federal Register** a proposed rule to amend our implementing regulations at 50 CFR 424.19 to clarify the instructions for making information available to the public, considering the impacts of critical habitat designations, and considering exclusions from critical habitat (77 FR 51503). These changes are being proposed as directed by the President's February 28, 2012, memorandum, which directed the Secretary of the Interior to revise the regulations implementing the Act to provide that a DEA be completed and

made available for public comment at the time of publication of a proposed rule to designate critical habitat. That August 24, 2012, proposed rule accepted public comments for 60 days, ending October 23, 2012. The comment period on the August 24, 2012, proposed rule was then reopened from November 8, 2012, to February 6, 2013 (77 FR 66946; November 8, 2012), to allow all interested parties additional time to review and comment on that proposed rule. The proposed revised critical habitat designation was developed prior to the publication of this proposed amendment to our implementing regulations, and the proposed amendment has not been finalized; therefore, we followed the past practice of making available the DEA after the proposed designation of critical habitat had published.

Public Comments

(13) *Comment:* We received one public comment during the first comment period supporting the exclusion of lands from the critical habitat designations on the basis of operative HCPs described in the proposed rule as long as the plans are functioning properly and are designed to achieve recovery goals, but the commenter noted that non-permittees should not have this benefit. In addition, this commenter suggested that the Service, in our exclusion analysis, should evaluate whether a non-permittee can “interfere” with a permittee’s ability to achieve the HCP’s conservation goals and objectives for *Allium munzii* and *Atriplex coronata* var. *notator*, asking whether the Service can foresee any non-participating entities in the plan area with such potential for interference. Further, the commenter suggested that our exclusion determinations for these HCPs under section 4(b)(2) of the Act should not focus on the Western Riverside County MSHCP Implementing Agreement (which the commenter stated required the Federal Government to exclude its covered areas from critical habitat designation), but rather on an analysis that accounts for interfering actions of non-permittees that holds permittees “harmless” against any additional funding or mitigation for future critical habitat designations beyond those already contained within the HCP.

Our Response: We appreciate the comment supporting our consideration of exclusions under section 4(b)(2) of the Act based on implementation of the Western Riverside County MSHCP and other conservation plans and partnerships. In the Exclusions Based on Other Relevant Impacts section of

this rule, we discuss implementation of the Western Riverside County MSHCP and other conservation plans and partnerships, and the provisions in these plans that provide significant benefits for the conservation of *Allium munzii* and *Atriplex coronata* var. *notator* and their habitats.

However, our analysis did not focus on the IA for the Western Riverside County MSHCP, and we note that the IA, as described in the public comment, does not *require* the Federal Government to exclude from critical habitat those areas managed and controlled under this HCP. Moreover, we cannot anticipate non-participating entities nor reasonably conduct a specific analysis that accounts for potential interfering actions of non-permittees and their non-covered activities relative to implementation of the Western Riverside County MSHCP or other HCPs that are described in the proposed rule. Under the IA, the implementation responsibility of the Western Riverside County MSHCP is held by the Western Riverside County Regional Conservation Authority and the other permittees. In addition, the Service’s Biological and Conference Opinion for the issuance of the Western Riverside County MSHCP permit under section 10(a)(1)(B) of the Act contains a provision for reinitiation of consultation if, for example, new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the opinion (Service 2004).

Comments From Local Agencies

(14) *Comment:* Two local agencies provided comment letters in the first public comment period supporting our exclusion under section 4(b)(2) of the Act of all permittee-owned or controlled lands that fall within the boundaries of the Western Riverside County MSHCP. Specifically, one commenter supports the exclusions of lands within the Western Riverside County MSHCP because it fosters important and beneficial relationships for creating future HCPs for conserving species habitat.

Our Response: We appreciate the comment supporting our consideration of exclusions under section 4(b)(2) of the Act. The Secretary may exercise his discretion to exclude an area from critical habitat designation under section 4(b)(2) of the Act if he concludes that the benefits of excluding an area outweigh the benefits of designation. Areas are not excluded based solely on the existence of management plans or other conservation measures; however, we acknowledge the existence of a plan

may reduce the benefits of including an area in the critical habitat designation to the extent that the protections provided under the plan may be comparable with conservation benefits of the critical habitat designation. Moreover, in some cases the benefits of exclusion in the form of sustaining and encouraging partnerships that result in on the ground conservation of listed species may outweigh the incremental benefits of inclusion. In this case, we agree with the commenter that excluding areas covered by the Western Riverside County MSHCP will foster our partnership. We have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude these areas from final critical habitat designation.

(15) *Comment:* One local agency stated that existing or proposed drainage facilities operated and maintained by the Riverside County Flood Control and Water Conservation District within permittee-owned or -controlled lands within the boundaries of the Western Riverside County MSHCP would be negatively impacted if included in the critical habitat designation, and recommended that existing and proposed flood control facilities should be clearly excluded as proposed critical habitat. The commenter also stated that the existing manmade drainage features and structures do not contain some or all of the PCEs essential to the conservation of *Allium munzii* or *Atriplex coronata* var. *notator*.

Our Response: As described above in the *Criteria Used to Identify Critical Habitat* section, when determining critical habitat boundaries, we made every effort to avoid including developed areas and related infrastructure because these lands lack the physical or biological features necessary for the conservation of *Allium munzii* and *Atriplex coronata* var. *notator*. To identify existing flood control features, proposed critical habitat unit boundaries were determined at an appropriate scale (1:4000 or less) using 2010 U.S. Department of Agriculture (USDA) National Agriculture Imagery Program aerial photography. No existing artificial canals are located within proposed critical habitat units or subunits for *A. munzii*. For *A. c.* var. *notator*, we removed existing artificial canals when mapping proposed critical habitat, to the extent practicable. Any such lands

that are inadvertently left inside the critical habitat boundaries due to the scale of mapping required for publication in the Code of Federal Regulations have been excluded by text in the proposed and final rules and are not designated critical habitat. However, we are not designating critical habitat for *A. c. var. notatior*. We did not receive a map from this commenting agency identifying specific locations of proposed flood control facilities.

(16) *Comment*: One local agency, a permittee of the Western Riverside County MSHCP, stated that the plan provides several species-specific, regional objectives to ensure the long-term conservation of *Allium munzii* or *Atriplex coronata* var. *notatior*. In addition, the commenter stated that because they and other permittees are subject to applicable provisions of the plan, including the requirement to contribute mitigation funding to help accomplish the regional conservation objectives, they and other permittees will ensure that the two plant taxa will be conserved on a regional basis as intended when the Service authorized the final Western Riverside County MSHCP.

Our Response: As discussed in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of both the proposed revised rule and this final revised rule, the Western Riverside County MSHCP provides a comprehensive, habitat-based approach to the protection of covered species, including *Allium munzii* and *Atriplex coronata* var. *notatior*, by focusing on lands essential to the long-term conservation of the covered species and appropriate management of those lands (Western Riverside County Regional Conservation Authority *et al.* 2003, p. 51). In addition, the Western Riverside County MSHCP includes management actions and specific conservation objectives for both *A. munzii* and *A. c. var. notatior*. We agree with the commenter's conclusion that these objectives were based on a landscape-level approach to conservation and management, and provide ongoing protection and monitoring to these taxa and their habitats that benefit their long-term conservation. We have determined that the benefits of exclusion outweigh the benefits of inclusion for permittee-owned or -controlled lands within the Western Riverside County MSHCP boundaries, and the Secretary is exercising his discretion to exclude lands these areas from final critical habitat designation.

(17) *Comment*: Two local agencies stated that designating new critical habitat within the Western Riverside County MSHCP boundaries for *Allium munzii* or *Atriplex coronata* var. *notatior* would create duplicative regulatory efforts or redundant regulation with negligible, if any, benefits to the two taxa. Further, one of these commenters indicated that designating critical habitat for *A. munzii* or *A. c. var. notatior* within the Western Riverside County MSHCP area would undermine future support of this HCP, while excluding these lands fosters important and beneficial relationships for creating and implementing HCPs that conserve species and their habitats.

Our Response: We appreciate the comments and have considered them in our analysis under section 4(b)(2) of the Act of the areas covered by the Western Riverside County MSHCP. In this final rule, we have determined that the benefits of exclusion outweigh the benefits of inclusion for lands covered by the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude these areas from final critical habitat designation. Please see the discussion in the Exclusions Based on Other Relevant Impacts section.

(18) *Comment*: Two local agencies provided comments specific to the IA for the Western Riverside County MSHCP. One commenter cited section 14.10 of the IA, which states, in part, that "The USFWS agrees that, to the maximum extent allowable after public review and comment, in the event that a Critical Habitat determination is made for any Covered Species Adequately Covered, and unless the USFWS finds that the MSHCP is not being implemented, lands within the boundaries of the MSHCP will not be designated as Critical Habitat." The other commenter stated the IA prohibits the Service from changing its position, and changed conditions do not exist nor have any changed conditions been cited by the Service since 2005 that would necessitate or allow the Service to now designate critical habitat for the two taxa on Western Riverside County MSHCP lands.

Our Response: The IA does not preclude critical habitat designation within the plan area (Dudek 2003, p. 6–109; Western Riverside County RCA *et al.* 2003, p. 51). Consistent with our commitment under the IA, and after public review and comment on the proposed revised rule to designate critical habitat for *Allium munzii* and

Atriplex coronata var. *notatior*, we performed a balancing analysis for the areas covered by the Western Riverside County MSHCP under section 4(b)(2) of the Act. We determined through our analysis that the benefits of excluding lands owned and controlled by permittees under the Western Riverside County MSHCP outweigh the benefits of designating these areas, and the Secretary is exercising his discretion to exclude these areas from critical habitat designation. (See the discussion in *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section above for a detailed discussion of this exclusion analysis).

(19) *Comment*: One local agency commented that if new critical habitat was designated in Riverside County, the final rule should provide clear guidance related to section 7 consultations that provides written documentation of compliance with the Western Riverside County MSHCP from a permittee so as to allow the Service to either make a "no effect" determination or consult informally and in streamlined manner with the permittee. The commenter added that additional mitigation beyond that required by the Western Riverside County MSHCP should not be required.

Our Response: In this final rule, we have designated revised critical habitat in Riverside County only for *Allium munzii*, Elsinore Peak Unit, which is within the general boundaries of the previous designation at this location (70 FR 33015; June 7, 2005). As noted in the Final Critical Habitat Designation section above, 35.3 ac (14.3 ha) of the Elsinore Peak Unit, or about 36 percent, are owned and managed by the California State Lands Commission. The remaining 63.1 ac (25.5 ha) are owned and managed by the U.S. Forest Service. Neither of these agencies are permittees of the Western Riverside County MSHCP. As noted in our FEA, any future section 7 consultations would likely only apply to activities on Federal lands (IEC 2012, pp. 4–5 (Exhibit 4–3), 4–9–4–10, 4–11).

(20) *Comment*: One local agency urged the Service to exclude all areas covered by the Western Riverside County MSHCP from designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* based on protections afforded the two taxa and their habitat by provisions contained within the Western Riverside County MSHCP. The commenter submitted text from the Western Riverside County MSHCP summarizing the landscape-level conservation, site-specific considerations for known locations of these species, and species-specific

management considerations for other locations in support of the plan's ability to provide superior and comprehensive protections for *A. munzii* or *A. c.* var. *notatior* and their habitats.

Our Response: See our response to Comments 10 and 14 above.

(21) *Comment:* One local agency stated that they agree with the Service's prior assessments of exclusion of critical habitat for the two taxa (proposed and final critical habitat rules) noting that the Service has already found that the Western Riverside County MSHCP is sufficient for the conservation and recovery of the two taxa in these assessments, and that excluding the Western Riverside County MSHCP area is consistent with these prior exclusions of areas within the MSHCP for numerous other species' critical habitat designations.

Our Response: Section 4(b)(2) of the Act requires us to make critical habitat decisions on the basis of the best available scientific and commercial information at the time the rule is made. Therefore, when designating critical habitat, if the Secretary exercises his discretion to conduct a weighing analyses under section 4(b)(2) of the Act, it is based on the best scientific and commercial information then available, not on decisions made in previous critical habitat rules. As described in our *Criteria Used to Identify Critical Habitat* section above, in determining which areas meet the definition of critical habitat, we considered information provided in our 5-year reviews for *Allium munzii* and *Atriplex coronata* var. *notatior*; CNDDDB records; reports submitted during consultations under section 7 of the Act; analyses for individual and regional HCPs where *A. munzii* and *A. c.* var. *notatior* are covered species; data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; information received from local species experts; published and unpublished papers, reports, academic theses, or surveys; GIS data (such as species population and location data, soil data, land use, topography, aerial imagery, and ownership maps); and previous peer review comments and other correspondence with the Service from recognized experts, some of which has been published since the 2005 critical habitat designations.

(22) *Comment:* One local agency referenced a letter from the Pacific Southwest Regional Director (dated May 21, 2011) to the Western Riverside County RCA, quoting from the letter that "no critical habitat will be designated within the MSHCP unless there are

compelling reasons . . ." The commenter states that there is no compelling reason for designating critical habitat for *Allium munzii* or *Atriplex coronata* var. *notatior* within the boundaries of the Western Riverside County MSHCP because the plan and its IA are being implemented and provide protections for the species and their habitat within the plan area.

Our Response: The Western Riverside County MSHCP and its IA indicate that exclusion of permittee-owned and -controlled lands from critical habitat is likely, but these are not guaranteed assurances. As described in a recent court decision (*Bear Valley Mutual Water Co. et al. v. Salazar et al.*, SACV 11-01263 (C.D. Cal., decided October 17, 2012)), if these assurances were construed to be so rigid, then they might be beyond the Service's authority because this interpretation would excuse the Service's congressionally mandated duty under section 4 of the Act. Regardless, we have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP, and, based on the discussion of the Western Riverside County MSHCP under the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships*, the Secretary is exercising his discretion to exclude lands covered by the Western Riverside County MSHCP from final critical habitat designation.

(23) *Comment:* One local agency stated that if areas in Riverside County are included in the final revised critical habitat rule, an economic analysis should evaluate both tangible and intangible economic costs associated with the conflicts between the final rule and approved Western Riverside County MSHCP.

Our Response: As described in the Final Critical Habitat Designation section of this final rule, we are designating critical habitat only for *Allium munzii* on lands that are owned and managed by non-permittees of the Western Riverside County MSHCP. In addition, we determined in our FEA (IEC 2012b) that any economic costs for critical habitat designations for either taxon would be restricted to administrative costs for any new or reinitiated consultations.

(24) *Comment:* One local agency that maintains and operates a supplemental public water supply system for the southern California coastal plain expressed concern over our proposed designation and likely effects to its operation of water transmission and storage facilities on or adjacent to areas proposed as critical habitat for *Allium*

munzii and *Atriplex coronata* var. *notatior*. The commenter stated that the repair and maintenance of these facilities will require access to areas identified in the proposed critical habitat designation in order to maintain safe and efficient operation of the system. Therefore, the agency requested that we exclude all lands covered by the Western Riverside County MSHCP, the Southwestern Riverside County MSHCP, and the Lake Mathews MSHCP/NCCP within the following unit and subunits: Subunit 4B—Skunk Hollow, Subunit 4C—Bachelor Mountain, and Unit 5—North Domenigoni Hills for *A. munzii*, and Unit 1—San Jacinto River and Unit 2—Upper Salt Creek for *A. c.* var. *notatior*.

Our Response: We appreciate the information provided by the agency regarding its mission and need for access to maintain and operate this public water supply system. In this final rule, we have weighed the benefits of exclusion against the benefits of inclusion for lands covered by the Western Riverside County MSHCP and the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement, and the Secretary is exercising his discretion to exclude lands within these areas from final critical habitat designation (see our analysis in the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this rule). This exclusion includes all of the proposed critical habitat units and subunits for *Allium munzii* and *Atriplex coronata* var. *notatior* identified in the agency's comment.

(25) *Comment:* One local agency requested that we exempt all of a public agency's operational rights-of-way from our critical habitat designation process based on their need to maintain and operate a public water supply system.

Our Response: Under the Act, exemptions from critical habitat are provided only under section 4(a)(3). Specifically, the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical

habitat is proposed for designation.” The lands requested for exemption do not fall within this definition. However, the rights-of-way areas identified by the public agency are within areas that are being excluded (not exempted) from final critical habitat designation (see our response to Comment 24).

(26) *Comment:* One local agency commented on the September 11, 2012, publication (77 FR 55788) regarding our correction in elevation for PCEs 2(i)(B) and (2)(ii) for *Allium munzii*, particularly its relationship to our proposed critical habitat designation of Elsinore Peak Unit (Unit 3—Elsinore Peak of the proposed rule). The agency stated that the September 11, 2012, publication (77 FR 55788) revised the previously reported boundaries for the unit, and requested that these “newly identified lands” be considered for exclusion based on previous comments provided for the April 17, 2012, proposed rule (77 FR 23008).

Our Response: The September 11, 2012, publication did not revise the boundaries of any proposed critical habitat units or subunits for *Allium munzii* (77 FR 55790). The proposed revision only provided a correction to the textual description of the upper elevation for these two PCEs. The proposed Elsinore Peak Unit (Unit 3) boundary did not change as a result of this correction. As to the comment requesting consideration for exclusion of the Elsinore Peak Unit (based on comments previously submitted by this commenter regarding the Western Riverside County MSHCP, see Comments 14, 17, and 20 above), we indicated in our proposed rule that Elsinore Peak Unit (Unit 3) contains lands owned and managed by the U.S. Forest Service or the California State Lands Commission. As discussed in the Final Critical Habitat Designation section (for *A. munzii*) of this final rule, the U.S. Forest Service and the State Lands Commission are not permittees under the Western Riverside County MSHCP; therefore, land use activities implemented by these entities are not considered covered activities under the plan. Only discretionary actions under the control of a permittee are covered activities under the Western Riverside County MSHCP. In addition, the lands owned and managed by the State Lands Commission within this critical habitat unit are not included as part of the conceptual reserve design of the Western Riverside County MSHCP. In this final rule, we have not excluded areas within Elsinore Peak Unit from critical habitat designation under section 4(b)(2) of the Act.

Public Comments on the Draft Economic Analysis

(27) *Comment:* One local agency commented on our discussion of clay mining activities and protections afforded to *Allium munzii* under the Western Riverside County MSHCP (see DEA (IEC 2012a, pp. 3–5–3–6, 4–1) and 77 FR 55791, September 11, 2012). The commenter disagreed with our determination that there is some dispute as to whether local permittees have jurisdiction over clay mining for the plan as described in our DEA. The commenter stated that clay mining in new areas not subject to vested rights is covered by the Western Riverside County MSHCP through the local jurisdictions’ discretionary authority for reviewing those mining activities.

Our Response: As described in section 3.3 of the DEA, the analysis assumes mining activities will be covered under the Western Riverside County MSHCP in cases where local jurisdictions within the plan area require land use permits. This is consistent with the statement provided in the comment. Any new mining operation proposed within lands covered by the Western Riverside County MSHCP would be required to go through Riverside County’s review process and would be subject to the provisions of the Western Riverside County MSHCP. However, entities who have existing permits are considered exempt from the requirements of the Western Riverside County MSHCP. It is our understanding that Riverside County will make the determination as to the appropriate category for a mining operation. Regardless, the DEA finds that future mining activity is unlikely to occur within proposed critical habitat and does not estimate any incremental impacts to mining activities as a result of critical habitat designation. The FEA includes a note in response to this comment indicating that, in most cases, clay mining is expected to be a covered activity under the Western Riverside County MSHCP (IEC 2012b, p. 3–6).

(28) *Comment:* One local agency stated that the final rule should consider our determination in the DEA that critical habitat designation in Elsinore Peak Unit (proposed Unit 3—Elsinore Peak) (which the commenter stated contains some Federal lands and California State Land Commission lands outside the jurisdiction of the Western Riverside County MSHCP) would not change the outcome of anticipated consultations for ORV regulation or U.S. Forest Service land management plans. The commenter stated that the Service should find that there is no benefit to designating lands within Elsinore Peak

Unit as critical habitat for *Allium munzii*.

Our Response: As a point of clarification to this comment, all lands within the Elsinore Peak Unit are owned and managed by either the U.S. Forest Service or the State Lands Commission. As for our determination of critical habitat designation for Elsinore Peak Unit, please see our response to Comment 26 and discussion in this final rule under the Final Critical Habitat Designation section.

(29) *Comment:* One local agency commented on our determination of administrative costs for future section 7 consultations within areas covered by the Western Riverside County MSHCP. Specifically, the commenter cited our discussions in the DEA regarding the need for reinitiation of our biological opinion for the Western Riverside County MSHCP, our costs for this reinitiation, and our factoring of these costs into the incremental costs for the proposed critical habitat designations. The commenter stated that these monetary costs add needless red tape and waste where an existing plan (that is, the Western Riverside County MSHCP) already conserves habitat in the same manner provided under section 7 consultations, and therefore adequately protects *Allium munzii* and *Atriplex coronata* var. *notatior*.

Our Response: The commenter is correct that the DEA estimates solely administrative impacts associated with the designation of proposed revised critical habitat for both taxa. The DEA notes in section 3.3 that lands subject to the Western Riverside County MSHCP were then being considered for exclusion as a result of the baseline protections afforded the plants. See our responses to Comments 10 and 14 above regarding our exclusion analysis for the Western Riverside County MSHCP.

(30) *Comment:* One local agency commented specifically on the DEA discussion of section 7 consultation requirements (Appendix C). The commenter stated that designating critical habitat will essentially result in no change to the consultation process in the proposed critical habitat units because all units are considered occupied and because Federal agencies and project proponents are already required to consult with the Service to ensure actions “authorized, funded, or carried out will not jeopardize the continued existence of” *Allium munzii* and *Atriplex coronata* var. *notatior*.

Our Response: The commenter is correct that conservation measures requested by the Service following the designation of critical habitat are, in most cases, likely to be substantially the

same as those requested under the baseline (IEC 2012a, p. 4–2). However, the DEA states that a conservative approach was taken to capture a small level of uncertainty in future consultations where a more extensive effort may be necessary to ensure that a project avoids adverse modification of critical habitat (IEC 2012a, p. ES–8). This would result in an overestimation of these costs (IEC 2012a, p. 4–19). Nevertheless, the DEA (IEC 2012a, p. 4–8) states that the assumption was made that the outcome of a section 7 consultation is unlikely to be affected by the presence of critical habitat, and that direct incremental impacts are likely to be limited to minor administrative costs associated with addressing adverse modification in section 7 consultations.

(31) *Comment:* One local agency commented on our determination of actions that might trigger an analysis of adverse modification versus those that might be required as “additional conservation measures” in a section 7 consultation. The commenter stated that our identification of these potential adverse modification actions should be more than speculation. Further, the commenter stated that the identified conservation measures are already being implemented under the requirements of the Western Riverside County MSHCP. The commenter therefore believes that the final rule should indicate that there is no benefit to designating critical habitat in the Western Riverside County MSHCP area and that the Western Riverside County MSHCP area should be excluded from the critical habitat designations for both *Allium munzii* and *Atriplex coronata* var. *notatior*.

Our Response: Our determination of actions that may require an adverse modification analysis under section 7(a)(2) of the Act are not speculative. We evaluated threats that may require special management considerations or protection of the physical or biological features for both taxa (see the Critical Habitat section above) to identify these activities.

Section 3.3 of the DEA lists general conservation efforts undertaken for activities covered by the Western Riverside County MSHCP, including those described in the comment. The overlap in conservation efforts required by the Western Riverside County MSHCP and those potentially recommended to avoid adverse modification of critical habitat leads to the conclusion in the DEA that critical habitat will have a limited incremental impact on activities covered by the Western Riverside County MSHCP.

We have weighed the benefits of exclusion against the benefits of

inclusion for lands covered by the Western Riverside County MSHCP. Based on the discussion of the Western Riverside County MSHCP under the *Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships* section of this rule, the Secretary is exercising his discretion to exclude lands covered by the Western Riverside County MSHCP from final critical habitat designation.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not

have a significant economic impact on a substantial number of small entities. Because no critical habitat is being designated for *Atriplex coronata* var. *notatior*, we are certifying that the final critical habitat determination for that taxon will not have a significant economic impact on a substantial number of small entities. Additionally, in this final rule, we are certifying that the critical habitat designation for *Allium munzii* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (for example, development, agricultural operations, transportation, fire management, mining, recreational activities, flood control, and utilities). We apply the “substantial number” test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.” Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat

designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Allium munzii* and *Atriplex coronata* var. *notatior*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the "Adverse Modification" Standard* section).

In our FEA of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the incremental impacts of the designation of critical habitat for *Allium munzii*. The analysis is based on the estimated incremental impacts associated with the rulemaking as described in Chapters 1 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Development, (2) agricultural operations, (3) transportation, (4) fire management, (5) mining, and (6) recreational activities.

For *Allium munzii*, our FEA estimated incremental administrative costs for section 7 consultations to review projects covered by existing conservation plans; re-initiated programmatic consultations for all existing conservation plans and agreements; one new formal consultation with the U.S. Forest Service; and one programmatic consultation for revisions to the Cleveland National Forest Land Management Plan Strategy (IEC 2012b, p. A-4). The FEA determined that the following activities are not expected to affect small entities: (1) Review of projects covered by existing conservation plans, (2) re-initiations of three existing conservation plans and agreements, and (3) section 7 consultations involving the U.S. Forest Service (IEC 2012, p. A-4-A-6). However, incremental impacts

associated with the remaining re-initiation of section 7 consultation for the Western Riverside County MSHCP may be borne by small entities, and thus were the focus of the FEA threshold analysis.

The FEA presented information on both the number of small entities that may be affected and the magnitude of the expected impacts. Total third-party costs to the 24 permittees of the Western Riverside County MSHCP for re-initiating the consultation of the Western Riverside County MSHCP were estimated at \$6,900 (IEC 2012b, p. ES-18). If those costs are spread across all 24 permittees, the per-entity one-time impact is \$270 (IEC 2012b, p. A-8). This is not anticipated to present a significant impact to any of the seven small jurisdictions. Even if we applied the most conservative assumption that all of the third-party costs are borne by a single small entity, the one-time impact is 0.2 percent of reported annual revenues (IEC 2012b, p. A-8).

In summary, we considered whether this designation would result in a significant economic impact on a substantial number of small entities. Based on the above reasoning and information in the economic analysis, we are certifying that the designation of critical habitat for *Allium munzii* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. Our FEA states that the designation of critical habitat for *Allium munzii* is anticipated to result in minor third-party administrative costs of \$875 to Southern California Edison (IEC 2012b, p. A-10). This impact is unlikely to increase the cost of energy distribution in excess of one percent.

Thus, based on information in the economic analysis, energy-related impacts associated with *Allium munzii* conservation activities within critical habitat are not expected. As such, the designation of critical habitat for this species is not expected to significantly affect energy supplies, distribution, or

use. Because we are not designating any critical habitat for *Atriplex coronata* var. *notatior*, the final critical habitat determination for this taxon will not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not adversely modify critical habitat under section 7. While non-Federal entities

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

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would 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 FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects; however, none of the entities potentially affected are considered to be small governments. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Allium munzii* in a takings implications assessment. Because we are not designating critical habitat in this final rule for *Atriplex coronata* var. *notatior*, we did not include an analysis for this taxon in the takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that this designation of critical habitat for *A. munzii* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. We did not receive any comments from these agencies. Because we are not designating critical habitat in this final rule for *Atriplex coronata* var. *notatior*, the final critical habitat determination for this taxon will not impose any restrictions additional to those currently in place. The designation of critical habitat in areas currently occupied by *Allium munzii* is not expected to impose additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat for *A. munzii* may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. The final critical habitat designation for *Allium munzii* is defined by the map or maps, as

modified by any accompanying regulatory text, and identifies the elements of physical or biological features essential to the conservation of *A. munzii* within the designated areas to assist the public in understanding the habitat needs of the species.

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

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

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and

to make information available to tribes. We determined that there are no tribal lands within the geographical area occupied by *Allium munzii* or *Atriplex coronata* var. *notatior* at the time of listing that contain the physical or biological features essential to the conservation of the taxa, and no tribal lands outside the geographical area occupied by *A. munzii* and *A. c.* var. *notatior* at the time of listing that are essential for the conservation of the two taxa. Therefore, we are not designating critical habitat for *A. munzii* on tribal lands. No critical habitat is designated for *A. c.* var. *notatior* in this final rule.

References Cited

A complete list of all references cited is available on the Internet at [http://](http://www.regulations.gov)

www.regulations.gov and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Carlsbad Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we 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, 1531–1544, and 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entry for “*Allium munzii*” under “FLOWERING PLANTS” in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Allium munzii</i>	Munz's onion	U.S.A. (CA)	Alliaceae	E	650	17.96 (a)	NA

- 3. Amend § 17.96(a) as follows:
- a. Under Family Liliaceae, remove the designation of critical habitat for “*Allium munzii* (Munz’s onion)”; and
- b. Add Family Alliaceae and a designation of critical habitat for “*Allium munzii* (Munz’s onion)”.

The addition reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Alliaceae: *Allium munzii* (Munz’s onion)

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Allium munzii* consist of two components:

(i) Clay soil series of sedimentary origin (for example, Altamont, Auld, Bosanko, Porterville), clay lenses (pockets of clay soils) of those series

that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (for example, Cajalco, Las Posas, Vallecitos);

(A) Found on level or slightly sloping landscapes or terrace escarpments;

(B) Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level;

(C) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(D) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

(E) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub or

occasionally in cismontane juniper woodlands; or

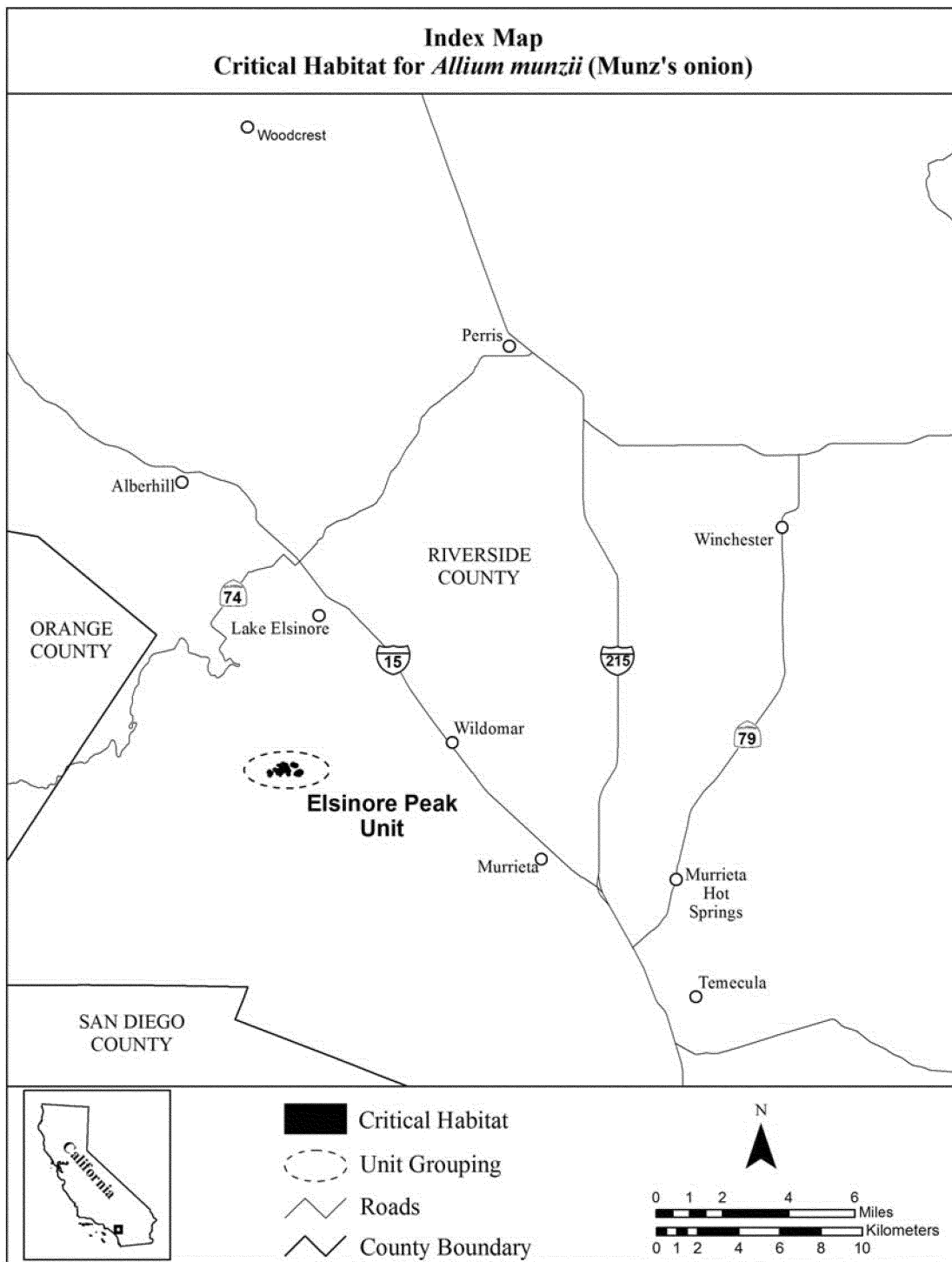
(ii) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and related infrastructure, and the land on which they are located existing within the legal boundaries on May 16, 2013.

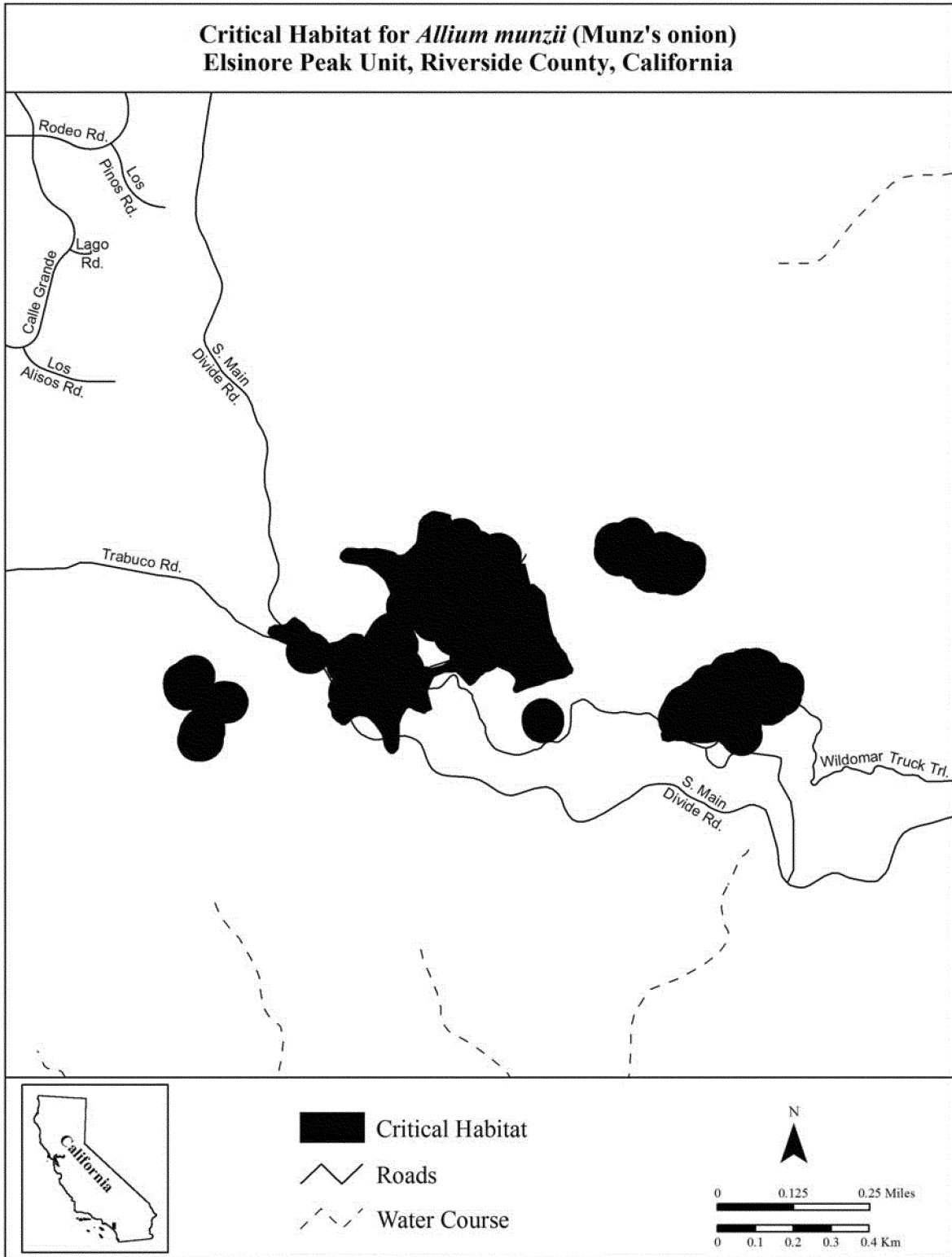
(4) *Critical habitat map units.* Data layers defining map units were created using a base of USDA digital orthophotos of Riverside County, California. Critical habitat units were then defined using Universal Transverse Mercator (UTM) Zone 11, North American Datum (NAD) 1983 coordinates.

(5) Index map follows:

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(6) Elsinore Peak Unit, Riverside County, California. Map of Elsinore Peak Unit, follows:



* * * * *

Dated: March 28, 2013.

Rachel Jacobsen,

Principal Deputy, Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013-08364 Filed 4-15-13; 8:45 am]

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