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Dated: January 16, 2001

**Kenneth L. Smith,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01-1836 Filed 2-14-01; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AH82****Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Polygonum hickmanii* (Scotts Valley Polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Polygonum hickmanii* (Scotts Valley polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Approximately 125 hectares (310 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

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

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

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

Road, Suite B, Ventura, California, 93003.

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

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

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

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

**SUPPLEMENTARY INFORMATION:****Background**

*Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are endemic to Purisima sandstone and Santa Cruz mudstone in Scotts Valley in the Santa Cruz Mountains. *Chorizanthe robusta* var. *hartwegii* was listed as endangered on February 4, 1994 (59 FR 5499). *Polygonum hickmanii* was proposed as endangered on November 9, 2000 (65 FR 67335).

*Polygonum hickmanii* is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals and three inner tepals and are found in the axils of the bracteal leaves. The plant flowers from late May to August. Seed production ranges from a few dozen in a typical individual to as many as two hundred in a particularly robust individual (R. Morgan, pers. comm. 1998). Although pollination for this species has not been studied, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual of *P. hickmanii* (Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. The nearest location of a closely related species, *P. parryi*, is at Mount Hamilton, about 48 kilometers

(km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan 1995).

*Chorizanthe robusta* var. *hartwegii* is a low-growing herb with rose-pink involucre margins confined to the basal portion of the teeth and an erect habit. The aggregate flowers (heads) are medium in size (1 to 1.5 cm (0.4 to 0.6 in.) in diameter) and distinctly aggregate. The plant germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, it is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps. Each flower produces one seed; depending on the vigor of individual plants, dozens, if not hundreds, of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated in another species of *Chorizanthe* by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed dispersal is facilitated by the involucre spines, which attach the seed to passing animals. *Chorizanthe robusta* var. *hartwegii* is one of two varieties of the species *C. robusta*. The other variety (*C. robusta* var. *robusta*), known as the robust spineflower, is known from the coast of southern Santa Cruz and northern Monterey counties and also is listed as endangered.

*Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are known from two sites about one mile apart at the northern end of Scotts Valley in Santa Cruz County, California. The plants are found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). Together they occur with other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of non-native grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of non-native grasses and herbs.

The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 245 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). The climate in the city of Santa Cruz, 13 km (8 mi) to the south, is characterized by an average of 76.7 cm (30 in.) of rain per year, and an average temperature of 14 degrees Celsius (57 degrees Fahrenheit) per year, while the city of Los Gatos, 16 km (10 mi) to the north, averages 129.9 cm (51 in.) of rain per year, and an average temperature of 15 degrees Celsius (58 degrees Fahrenheit) per year (Worldclimate 1998).

*Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are associated with a number of native herbs including *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Non-native species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; Randy Morgan, biological consultant, pers. comm. 1998). In many cases, the habitat also supports a crust of mosses and lichens (Biotic Resources Group 1998).

For purposes of this rule, a cluster of individuals of either *Polygonum hickmanii* or *Chorizanthe robusta* var. *hartwegii* will be referred to as a "colony". Because of the close proximity of many of the clusters to each other, it is uncertain whether clusters of each species biologically represent patches within a metapopulation, true colonies, or separate populations. The general location of the colonies will be referred to as a "site". Although clusters of *P. hickmanii* co-occur with *C. robusta* var. *hartwegii* at all sites, *C. robusta* var. *hartwegii* may occur without this association. Thus, of the two species, *P. hickmanii* tends to be the most restricted in distribution.

Approximately 11 colonies of *Polygonum hickmanii* occur on the 2 sites. *Chorizanthe robusta* var. *hartwegii* generally occurs at all the locations where *Polygonum hickmanii* occurs; in addition, colonies of *Chorizanthe robusta* var. *hartwegii* occur at other locations at the Glenwood site and the Polo Ranch site without *Polygonum*

*hickmanii*. The total number of colonies of *Chorizanthe robusta* var. *hartwegii* is difficult to count for several reasons: 1) depending on the scale at which colonies are mapped, a larger or smaller number of colonies may result, and 2) depending on the climate and other annual variations in habitat conditions, the extent of colonies may either shrink and temporarily disappear, or enlarge and merge into each other, thus appearing as larger but fewer colonies. Additional patches of suitable but unoccupied habitat for *Polygonum hickmanii*, *Chorizanthe robusta* var. *hartwegii*, and other wildflower field taxa have been mapped on these parcels as well (Denise Duffy and Associates 1998). However, some of these patches, as well as those patches occupied by *Chorizanthe robusta* var. *hartwegii*, were destroyed in 1999 during construction of Scotts Valley High School.

The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies of *Polygonum hickmanii* and a larger number of colonies of *Chorizanthe robusta* var. *hartwegii* that occur on two privately owned parcels of land. Colonies of both of these taxa are situated within a 4-hectare (ha) (9-acre (ac) preserve on a 19-ha (48-ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the "School District" colony (Denise Duffy and Associates 1998). Other colonies of both plants at the Glenwood site are located approximately 0.08 km (0.13 mi) to the west of the School District colony on a parcel of land owned by the Salvation Army (CNDDB 1998) and are referred to as the "Salvation Army" colonies. Additional colonies of *Chorizanthe robusta* var. *hartwegii* are located on a parcel owned by American Dream/Glenwood L.P. which is being proposed for development. On the west side of Glenwood Drive, colonies are located in proposed open space near the proposed Seacliff neighborhood; on the east side of Glenwood Drive, colonies are located in the southern portion of the parcel that is being proposed for open space (Impact Sciences 2000a).

The second site is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley; this site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. Colonies within the Polo Ranch site occur on a parcel of land owned by Greystone Homes (Lyons *in litt.* 1997). Six colonies of *Polygonum hickmanii* and a larger number of colonies of *Chorizanthe robusta* var.

*hartwegii* occur within 0.2 km (0.1 mi) of each other on the Polo Ranch site (Lyons *in litt.* 1997; Impact Sciences 2000b).

Both *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are threatened with extinction by habitat alteration due to secondary impacts of urban development occurring within close proximity. Urban development includes the recent construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Over the last decade a variety of housing proposals have been considered for two of the parcels; active proposals currently exist for both of these parcels.

The kinds of habitat alterations expected to impact *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* as a result of development include changes in the hydrologic conditions, soil compaction; increased disturbance due from humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; dumping of yard wastes; and the introduction of non-native species. The proposed preserves and open space areas intended to protect *P. hickmanii* and *C. robusta* var. *hartwegii* are inadequate for maintaining viable populations of these species (Service *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (i.e., changes in the hydrologic conditions, soil compaction, etc.), resulting in preserves that are no longer able to support the species that they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for both *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* is also increased due to the small numbers of individuals and limited area occupied by these species (Shaffer 1981). A random environmental event (e.g., fire) or human disturbance potentially could destroy all colonies occurring on a parcel, thus reducing the advantages of redundant populations and diminishing the likelihood of long-term persistence.

#### Previous Federal Action

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

information indicating that the requested action may be warranted (55 FR 46080), we initiated a status review of this taxon. On October 24, 1991 (56 FR 55107), we published a proposal to list *C. robusta* var. *hartwegii*, as an endangered species. On February 4, 1994, we published a final rule that listed *C. robusta* var. *hartwegii*, inclusive of *C. robusta* var. *robusta*, as endangered (59 FR 5499). Proposed designation of critical habitat for these taxa was believed prudent but not determinable at the time of listing. A Recovery Plan covering two insect species and four plant species from the Santa Cruz Mountains, including *C. robusta* var. *hartwegii*, was published in 1998 (Service 1998).

We first became aware of *Polygonum hickmanii* in 1992 during the course of proposing to list *Chorizanthe robusta* var. *hartwegii*. At that time, however, a name for the taxon had not formally been published, and therefore it could not be considered for Federal listing. Once the name, *Polygonum hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and determined that sufficient information existed to believe that listing might be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534). A proposal to list *P. hickmanii* as endangered was published on November 9, 2000 (65 FR 67335). At the time of the proposed listing, we determined that critical habitat for *P. hickmanii* was prudent, but deferred proposing critical habitat designation until a proposal to designate critical habitat could be developed for both *P. hickmanii* and *C. robusta* var. *hartwegii* because the two taxa share the same ecology and geographic location. Due to the ecological and geographic isolation of the two varieties of *Chorizanthe*, *C. robusta* var. *robusta* and *C. robusta* var. *hartwegii*, we are proposing critical habitat for *C. robusta* var. *robusta* separately but concurrently with this proposal.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe robusta* var. *hartwegii* was listed, we found that designation of critical habitat for the species was prudent but not determinable, and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta* (including *C. robusta* var. *hartwegii* as well as *C. robusta* var. *robusta*) and three other species within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity v. Babbitt* (Case No. C99-3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order, and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, the Service agreed to proposed critical habitat for the Scotts Valley spineflower by January 15, 2001.

#### Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or

adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as " \* \* \* the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

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

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

provide essential life cycle needs of the species.

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

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

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

critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. This information included information from the California Natural Diversity Data Base (CNDDDB 2000), soil survey maps (Soil Conservation Service 1978, 1979), recent biological surveys and reports, our recovery plan for these species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that are being proposed for designation.

#### Primary Constituent Elements

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

The long-term probability of the survival and recovery of *Chorizanthe robusta* var. *hartwegii* and *Polygonum hickmanii* is dependent upon the protection of existing population sites, and the maintenance of ecologic functions within these sites, including connectivity between colonies within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain

disturbance factors (for example, fire disturbance) that maintain the openness of plant cover that the species depend on. In addition, the small range of these two taxa makes them vulnerable to edge effects from adjacent human activities, including disturbance from trampling and recreational use, the introduction and spread of non-native species, and the application of herbicides, pesticides, and other contaminants (Conservation Biology Institute 2000).

The primary constituent elements of critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are:

- (1) Thin soils that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;
- (2) "Wildflower field" habitat that has developed on these thin-soiled sites;
- (3) A grassland plant community that supports the "wildflower field" habitat, which is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*;
- (4) Sites that allow each population to survive catastrophic events and recolonize adjacent suitable microhabitat sites;
- (5) Pollinator activity between existing colonies of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*;
- (6) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas;
- (7) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and
- (8) Sufficient integrity of the watershed above habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* to maintain edaphic and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*.

#### Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* at the only two sites where they are known to occur. The two species are currently growing on less than 0.4 ha (1 ac) of land; however, habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species

depends (e.g., the hydrologic and edaphic conditions). We believe it is important to designate the area currently occupied by the two taxa that is of sufficient size to maintain landscape scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas.

The units were mapped with a degree of precision commensurate with the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of the two mapping units will be refined. The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* using information from the California Natural Diversity Data Base (CNDDB 2000) and the other information sources listed above. These data layers were created on a base of USGS 7.5' quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. Because the areas within proposed critical habitat boundaries are portions of the San Augustin Spanish Land Grant, they have not been surveyed according to the State Plan Coordinate System. Therefore, instead of defining proposed critical habitat boundaries using a grid of township, range, and section, we defined the boundaries for the proposed critical habitat units using known landmarks and roads.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas, such as housing developments, which are unlikely to contribute to the conservation of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *P. hickmanii* and *C. robusta* var. *hartwegii*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

#### Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. Critical habitat is being proposed for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* at the only two sites where they are known to occur. We are not proposing any critical habitat units that do not contain the plants of both species. In accordance with section 3(5)(C) of the Act, we are proposing to designate critical habitat in the entire geographical area which can be occupied by the species as we find that the areas included in the proposed designation are essential to the conservation of the two species. The areas we are proposing provide the essential life cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of *C. robusta* var. *hartwegii* and *P. hickmanii*. The two areas being proposed as critical habitat are both within the city limits of Scotts Valley in Santa Cruz County, California, and include the grassland habitat that contains the smaller "wildflower field" patches. Given the threats to the habitat of these species discussed above, we believe that these areas may require special management considerations or protection.

Table 1. Approximate proposed critical habitat area (ha (ac)) by Proposed Critical Habitat Unit and land ownership. Estimates reflect the total area within critical habitat unit boundaries.

Unit	Local agency	Private
Unit 1 .....	9 ha (22 ac)	81 ha (200 ac)
Unit 2 .....	0 ha (0 ac) ...	35 ha (86 ac)

Because we consider maintaining hydrologic and edaphic conditions in these grasslands so important, the proposed critical habitat area extends outward to the following limits-(1) upslope from the occurrences of *P. hickmanii* and *C. robusta* var. *hartwegii* to include the upper limit of the immediate watershed; (2) downslope from the occurrences of *P. hickmanii* and *C. robusta* var. *hartwegii* to the point at which grassland habitat is replaced by forest habitats (oak forest, redwood forest, or mixed conifer-hardwood forest); and (3) to the boundary of existing development.

The following general areas are proposed as critical habitat (see legal descriptions for exact critical habitat boundaries).

#### Unit 1: Glenwood Site

Unit 1 consists of approximately 90 ha (222 acres) to the west of Glenwood Drive and north and northwest of Casa Way, in the City of Scotts Valley, including land owned and managed by the Salvation Army, land owned and managed by the Scotts Valley High School District as a Preserve, but excluding the rest of the High School, and to the east of Glenwood Drive, encompassing the parcel known as the Glenwood Development. All of the land proposed within this unit is privately owned.

#### Unit 2: Polo Ranch Site

The Polo Ranch site consists of approximately 35 ha (86 ac) to the east of Carbonera Creek on the east side of Highway 17 and north and northeast of Navarra Drive, in the City of Scotts Valley, known as the Polo Ranch, both in the County of Santa Cruz, California. All of the land being proposed for critical habitat designation is privately owned.

#### Effects of Critical Habitat Designation

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

Section 7 (a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a

biological opinion concluding that project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

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

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

Activities on lands being proposed as critical habitat for the *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally

funded or permitted, will not require section 7 consultation.

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

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain natural grassland communities and the "wildflower field" habitat. Such activities adverse to *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* could include, but are not limited to, vegetation manipulation such as chaining or harvesting timber in the watershed upslope from *P. hickmanii* and *C. robusta* var. *hartwegii*; maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing;

(2) Activities that appreciably degrade or destroy native grassland communities, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, or permits from Housing and Urban Development, or authorization of Federal grants or loans. Such activities would be subject to the section 7 consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a

permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a species that is proposed for listing under the Act, occurs in close proximity to *P. hickmanii* and *C. robusta* var. *hartwegii* at their western site on Salvation Army and Scotts Valley High School property.

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

#### *Relationship To Habitat Conservation Plans*

Currently, there are no HCPs that include *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* as covered species. However, we believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of these species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Polygonum hickmanii* and *Chorizanthe*

*robusta* var. *hartwegii* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

#### *Economic Analysis*

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

#### *Public Comments Solicited*

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

- (1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;
- (2) Specific information on the amount and distribution of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* habitat, and what habitat is essential to the conservation of the species and why;
- (3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;
- (4) Any economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;
- (5) Economic and other values associated with designating critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* such as those derived from non-consumptive

uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to [svpolyg&sf@r1.fws.gov](mailto:svpolyg&sf@r1.fws.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1018-AH82 and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805-644-1766. Please note that the Internet address "[svpolyg&sf@r1.fws.gov](mailto:svpolyg&sf@r1.fws.gov)" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### *Peer Review*

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

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

#### *Public Hearings*

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### *Clarity of the Rule*

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

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

*Required Determinations*

**Regulatory Planning and Review**

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

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the

environment, or other units of government. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based upon our experience with these species and their needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat.

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

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Federal Activities Potentially Affected <sup>2</sup>	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for <i>Polygonum hickmanii</i> and <i>Chorizanthe robusta</i> var. <i>hartwegii</i> by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

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

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

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

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* var. *hartwegii* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any

inconsistencies with other Federal agency actions.

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

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

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

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As

indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by local governments and private property.

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

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

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

(3) Authorization of Federal grants or loans.

Potentially some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

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

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

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

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

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

(a) We believe this rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

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

#### **Takings**

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

#### **Federalism**

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

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

#### **Civil Justice Reform**

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

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

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

#### **National Environmental Policy Act**

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

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations With Native American Tribal Governments” (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of

critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

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

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road,

Suite B, Ventura, California 93003 (805/644-1766).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h) as proposed to be amended at 65 FR 67343, November 9, 2000, revise the entry for *Polygonum hickmanii* and remove the entry for *Chorizanthe robusta* var. *hartwegii* (incl. vars. *robusta* & *hartwegii*) and add the following entry in alphabetical order under "FLOWERING PLANTS" to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Chorizanthe robusta</i> var. <i>hartwegii</i> .	* Scotts Valley Spineflower.	* U.S.A. (CA) .....	* Polygonaceae Buck- wheat.	* E	* .....	* 17.96(a)	* NA
* <i>Polygonum hickmanii</i>	* Scotts Valley Polygonum.	* U.S.A. (CA) .....	* Polygonaceae Buck- wheat.	* E	* 17.96(a)	* NA	* NA
* .....	* .....	* .....	* .....	* .....	* .....	* .....	* .....

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add paragraph (a)(2) to read as follows:

§ 17.96 Critical habitat—plants.

(a) \* \* \*

(2) California.

(i) Maps and critical habitat unit descriptions. The following paragraphs contain the legal descriptions of the critical habitat units designated for multiple plant species in the State of California. Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements described for the species in paragraph (a)(2)(ii)(A) of this section. Therefore, these features or structures are not included in the critical habitat designation.

(A) *Polygonum hickmanii*, Scotts Valley polygonum and *Chorizanthe robusta* var. *hartwegii*, Critical habitat includes the grasslands and other native plant communities upslope from them identified on the maps below and adjacent areas out to the beginning of existing development and downslope out to other plant communities, including oak woodland, redwood

forest, and mixed conifer-hardwood forest. Critical habitat units are depicted for Santa Cruz County, California, on the maps below.

Unit 1

Santa Cruz County, California. From USGS 7.5' quadrangle map Felton, California. Mt. Diablo Meridian, California. Because this area was part of the San Augustin Spanish Land Grant, it has not been surveyed according to the State Plan Coordinate System. The outer perimeter of this critical habitat unit is bounded by the following: beginning at a point west of Glenwood Drive and north of Casa Way at the southeastern corner of the Scotts Valley High School Preserve; proceeding west along the southern boundary of the Preserve until reaching the southwest corner of the Preserve; proceeding south to the southern boundary of the Salvation Army property; proceeding west along the southern boundary of the Salvation Army property until the point at which the grassland community gives way to the oak woodland community; then following the treeline in a generally northern direction, skirting around the west side of "cupcake hill" and "teacup hill"; proceeding to the point at which treeline intersects with the ridgeline on the north side of

"teacup hill", proceeding north-northeasterly along the ridgeline, essentially paralleling the eastern boundary of the Salvation Army property; proceeding to the summit of the subsequent rock outcrop; proceeding east-southeasterly to Glenwood Drive, essentially following the treeline downslope; proceeding north along Glenwood Drive to Canham Road; proceeding 0.3 km (0.2 mi) east on Canham Road; then proceeding south for approx. 0.3 km (0.2 mi), then veering southeasterly and heading toward the summit near the northern terminus of Tabor Drive; proceeding south along the western edge of the existing homesites on the west side of Tabor Drive until reaching the northern boundary of Vine Hill School; proceeding west along the northern boundary of Vine Hill School until reaching the northeast corner of Siltanen Park; proceeding south for approx. 0.2 km (0.1 mi), approaching the 90 degree bend in Vine Hill Road; proceeding west for approx. 0.2 km (0.1 mi) to Glenwood Drive; and proceeding west across Glenwood Drive for approx. 0.08 km (0.05 mi) to the southwest corner of the Scotts Valley High School Preserve. Inside of this boundary, the following is excluded from critical habitat: approximately 16 ha (40 acres) where the Scotts Valley High School is

situated, excepting the Scotts Valley High School Preserve; and the existing homesites between Glenwood Drive and the eastern boundary of the Scotts Valley High School Preserve.

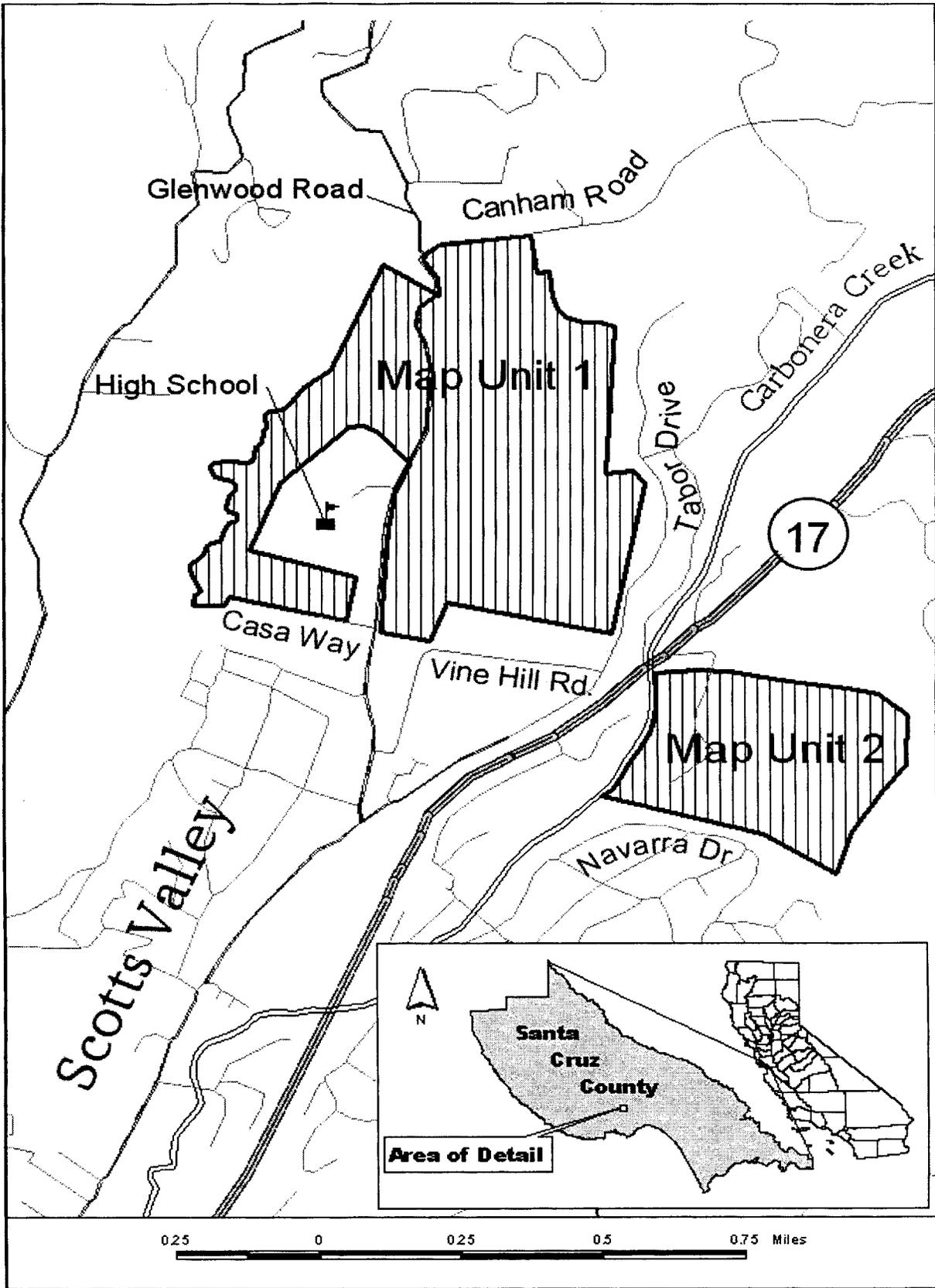
*Unit 2*

Santa Cruz County, California. From USGS 7.5' quadrangle map Laurel, California. Because this area was part of the San Augustin Spanish Land Grant, it has not been surveyed according to the State Plan Coordinate System. The outer perimeter of this critical habitat

unit is bounded by the following: beginning at Sucinto Drive; proceeding directly west to the closest point on Carbonera Creek; proceeding north-northeasterly along Carbonera Creek to the point where Carbonera Creek crosses under Highway 17; proceeding east, then slightly east-southeasterly for approx. 0.6 km (0.4 mi) following the ridgeline until reaching the summit of a hill that is 310 m (1,020 ft) in elevation; proceeding southeasterly for approx. 0.08 km (0.05 mi) to another hill that is

310 m (1,020 ft) in elevation; proceeding south along the ridgeline for approx. 0.2 km (0.1 mi) to another hill that is 320 m (1,040 ft) in elevation; proceeding south-southeasterly along the ridgeline for approx. 0.5 km (0.3 mi) to a hill that is approx. 305 m (1,000 ft) in elevation; proceeding west-northwesterly for approx. 0.2 km (0.1 mi); proceeding generally west along the northern edge of the existing homesites along Navarra Drive, to Sucinto Drive.

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(ii) *California plants—Constituent elements.*

(A) *Flowering plants.*

Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower).

Units 1 and 2, identified in the legal descriptions in paragraph (a)(2)(i)(A) of this section, constitute critical habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. Within these areas, the primary constituent elements are the habitat components that provide: (1) Thin soils that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone; (2) “Wildflower field” habitat that has developed on these

thin-soiled sites; (3) A grassland plant community that supports the “wildflower field” habitat, which is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*; (4) Sites that allow each population to survive catastrophic events and recolonize adjacent suitable microhabitat sites; (5) Pollinator activity between existing colonies of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*; (6) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along

coastal areas; (7) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and (8) Sufficient integrity of the watershed above habitat for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* to maintain edaphic and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*.

Dated: January 16, 2001.

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[FR Doc. 01–1835 Filed 2–14–01; 8:45 am]

BILLING CODE 4310–55–P