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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Revised Critical Habitat for Navarretia fossalis (Spreading Navarretia); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0038; 92210–1117–0000–B4]

RIN 1018–AW22

Endangered and Threatened Wildlife and Plants; Proposed Revised Critical Habitat for Navarretia fossalis (Spreading Navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for *Navarretia fossalis* (spreading navarretia). Approximately 6,872 acres (ac) (2,781 hectares (ha)) of habitat fall within the boundaries of the proposed revised critical habitat designation. This proposed revised designation of critical habitat is located in Los Angeles, Riverside, and San Diego Counties in southern California.

DATES: We will accept comments from all interested parties until August 10, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 27, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0039.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2009–0038; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

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:

Public Comments

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- Areas that provide habitat for *Navarretia fossalis* that we did not discuss in this proposed critical habitat rule,
- Areas containing the features essential to the conservation of *N. fossalis* that we should include in the designation and why,
- Areas not containing features essential for the conservation of the species and why, and
- Areas not occupied at the time of listing that are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the areas proposed as critical habitat, as well as their possible effects on proposed critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the primary constituent elements.

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as containing the features essential to the species' conservation.

(6) Any probable economic, national-security, or other impacts of designating particular areas as critical habitat, and, in particular, any impacts on small entities (e.g., small businesses or small governments), and the benefits of including or excluding areas that exhibit these impacts.

(7) Whether any specific subunits being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The potential exclusion of the portion of the subunit (Unit 2) being proposed as critical habitat within the jurisdiction of the City of Carlsbad Habitat Management Plan, a subarea plan under the San Diego Multiple Habitat Conservation Plan under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(9) Specific reasons whether we should exclude, under section 4(b)(2) of the Act, the subunit proposed as critical habitat within the unincorporated community of Ramona in San Diego County (Subunit 4E), an area where the County of San Diego is working on a Habitat Conservation Plan (HCP) called the ''North County Plan'' with the Service that is currently available for public review (The North County Plan is available on the Internet at: *http://www.sdcounty.ca.gov/dplu/mscp/nc.html*), and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(10) The potential exclusion of the subunits being proposed as critical habitat within the jurisdiction of the County of San Diego Subarea Plan (Subunit 3A and portions of Subunits 5B, 5F, and 5I) under the San Diego Multiple Species Conservation Plan under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(11) The potential exclusion of the subunits being proposed as critical habitat within the jurisdiction of the Western Riverside County Multiple Species Habitat Conservation Plan (Subunits 6A, 6B, 6C, 6D, and 6E) under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area would outweigh the benefits of including this area as critical habitat, and why.

(12) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

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

Our final determination concerning critical habitat for *Navarretia fossalis* will take into consideration all written comments and any additional information we receive during the comment period. These comments are included in the public record for this rulemaking and we will fully consider them in the preparation of our final determination. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition

of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat in this proposed rule. No new information pertaining to the species description, life history, ecology, or habitat of *Navarretia fossalis* was received following the 2005 final critical habitat designation for this species; summary information relevant to this species' critical habitat is provided below. This rule incorporates new information on the distribution of *N. fossalis* that was not available when we completed our 2005 final critical habitat designation for this species. For more information on *N. fossalis,* refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the designation of critical habitat for *N. fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658). Additionally, more information on this species can be found in the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998a).

Species Description

Navarretia fossalis is a low, mostly spreading or ascending, annual herb, 4 to 6 inches (in.) (10 to 15 centimeters (cm)) tall. The lower portions of the stems are mostly glabrous (bare). The leaves are soft and finely divided, 0.4 to 2 in. (1 to 5 cm) long, and spine-tipped when dry. The corolla (i.e., flower tube and petals) are white to lavender-white with linear petals and are arranged in flat-topped, compact, leafy heads. The fruit is an ovoid, 2-chambered capsule (Moran 1977, pp. 155–156; Day 1993, p. 847). The fruit of this species consists of indehiscent (i.e., not opening spontaneously at maturity to release seeds) capsules 0.08 to 0.12 in. (2 to 3 millimeters (mm)) long containing 5 to 25 seeds (Moran 1977, p. 156; Day 1993, p. 847). The seeds develop a sticky, slimy coating when wet, which may retain moisture and aid in germination (Moran 1977, p. 156).

Habitat

Navarretia fossalis grows in natural vernal pool habitat, seasonally flooded alkali vernal plain habitat (a habitat that includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland), and man-made irrigation ditches and detention basins (Bramlet 1993a, pp. 10, 14, 21–23; Ferren and Fiedler 1993, pp. 126–127; Spencer 1997, pp. 8, 13). A common feature of the *N. fossalis* habitat is its ephemerally wet, flooded, or ponded nature (i.e., habitat is wet for a portion the year and dry the remainder of the year), and in this rule, we use the term ''ephemerally wet habitats'' to refer to *N. fossalis* habitat. These habitats are periodically wet or ponded from October to May, and dry from June to September. The period of time during which these habitats pond is referred to as the ''period of inundation.'' This time period varies from year to year depending on the timing and amount of precipitation. Despite the ephemeral nature of the wetland habitat where *N. fossalis* occurs its habitat occurs and relies on ''fixed landscape features'' that include (1) mounds of soil that are interspersed with depressed areas (basins) that harbor appropriate clay soils that provide ponding opportunities during winter and spring months; or (2) flood plain areas with alkali soils that drain slowly following winter and spring rains. The ponding that *N. fossalis* requires for its growth and reproduction would not be present without this underlying topography, which is a fixed and permanent feature of the landscape. So even though the wetland habitat is ephemeral, the habitat where *N. fossalis* occurs is geographically fixed and there are only a limited number of locations that can support this species.

Life History

The life cycle of *Navarretia fossalis* begins with the germination of seeds when the habitat is in the wetland phase (i.e., flooded or ponded) during winter and spring months. In contrast to most species of Navarretia, which are unable to grow in vernal pool habitat, *N. fossalis* and other vernal pool Navarretias have indehiscent fruit/capsules. This means that the capsules that hold the seeds do not break apart when the seeds mature, and instead the seeds are held on the plant until the capsules absorb water and expand to break open the fruit after a substantial rain (Crampton 1954, pp. 233–234; Spencer and Rieseberg 1998, p. 82). After the seeds are released from the capsules, they come in contact with the wet soil and are able to germinate. This enables the seeds to germinate under favorable conditions when the habitat is inundated with the winter and spring rains. After germination, plants grow and flower in May and June as the habitat dries (Glenn Lukos Associates, Inc. 2000, p. 17). Subsequently, the plant produces fruit and senesces in the hot, dry summer months. The cycle begins again each year when the fall and spring rains begin.

In addition to the general life history for *Navarretia fossalis,* there are two important evolutionary traits that contribute to this species survival: (1) Its relatively limited seed dispersal capability; and (2) the presence of a persistent seed bank.

Navarretia fossalis has ''limited dispersal capabilities,'' which is one cause of this species' narrow distribution, and also demonstrates this species' ability to persist in occupied habitat. The seeds of *N. fossalis* are not dispersed far from the parent plant, because the seed capsules are indehiscent and do not shatter when the plants dry in the summer heat (Crampton 1954, pp. 233–234; Spencer 1997, p. 17). Instead, the seeds remain on the dried plant until heavy winter rains break up the dry plants and cause the seed capsules to open (Spencer 1997, p. 17). In a local context, the limited dispersal for *N. fossalis* is advantageous because the seeds stay in suitable habitat rather than being transported into areas that do not provide suitable habitat (Zedler 1990, pp. 130–134). As a result, the bulk of the seeds produced by *N. fossalis* stay close to the parent plants and contribute to the persistence of the species within the local area. Conversely, the limited dispersal of this species results in a decreased ability for this species to colonize new habitats. In relation to the conservation of this species, conserving occupied localities will help to conserve this species because *N. fossalis* has traits that allow it to be successful in the same habitat year after year. Additionally, putting resources towards the conservation will help prevent local extinctions, which in the case of a species with limited dispersal

capabilities, could be detrimental to the species (Spencer 1997, p. 17).

Navarretia fossalis has a persistent seed bank that makes occupied sites more valuable for conservation than potential, but unoccupied, habitat. Elam (1998, p. 182) indicates that many plants restricted to vernal pool habitat are thought to have a persistent seed bank. At one site where *N. fossalis* was salvaged, both standing plants and soil that contained plants encased in silt were collected. In germination tests, both the current crop of seeds (standing plants) and the seeds encased in silt (presumably from previous years) were viable (Wall 2004, pp. 2–3). Additional studies should be conducted to better quantify the seed bank that exists for *N. fossalis,* but we believe the currently available information demonstrates that *N. fossalis* has a persistent seed bank in occupied areas. Therefore, the preservation of the seed bank is important to the conservation of this species, primarily with native occurrences where the seed bank has built up over several years. Native occurrences contrast with translocated occurrences (where seed or plants are moved from one location to another) because in most translocations, only seed from a single year is moved and used to establish a new occurrence. In a native occurrence, seed has been deposited in the local area year after year. Therefore, native occurrences have a more varied seed bank and will more likely persist into the future.

Geographic Range and Status

Navarretia fossalis is distributed from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California, to northwestern Baja California, Mexico (Moran 1977, p. 156; Oberbauer 1992, p. 7). It is found at elevations between sea level and 4,250 feet (ft) (1,300 meters (m)) in vernal pool and seasonally flooded alkali vernal plain habitats (Day 1993, pp. 847–848; Tibor 2001, p. 229; California Natural Diversity Database (CNDDB) 2008, pp. 1–44).

In the United States, *Navarretia fossalis* is limited to Los Angeles, Riverside, and San Diego Counties in southern California. At the time of listing (1998), *N. fossalis* was known from approximately 30 occurrences, with 60 percent of the known plants concentrated in three areas: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (referred to as the Salt Creek Seasonally Flooded Alkali Plain in the current proposed revised critical habitat rule) (October 13, 1998, 63 FR 54975). In the final listing rule (October 13, 1998, 63 FR 54975), we estimated that less than 300 ac (121 ha) of habitat in the United States was occupied by this species in approximately 30 occurrences. This habitat estimate only quantified the areas where *N. fossalis* was physically found (i.e., ponded areas of ephemeral wetlands) and did not include the intermixed upland areas and local watersheds necessary to support the conservation of this species. For this reason, we have identified a much larger area as proposed critical habitat for *N. fossalis* in this rule than the 300 ac (121 ha) of occupied habitat discussed in the final listing rule for this species. Each area that we propose as critical habitat contains a current occurrence of *N. fossalis;* however, *N. fossalis* does not physically occur throughout the entirety of each area. The 6,872 ac (2,781 ha) proposed as critical habitat contains occurrences of *N. fossalis* and surrounding upland areas that contain the primary constituent elements essential to support *N. fossalis* where it physically occurs within the proposed critical habitat. For information about how this proposed critical habitat rule compares to the final critical habitat designated for this species in 2005, see the ''Summary of Changes From Previously Designated Critical Habitat'' section below.

In Mexico, *Navarretia fossalis* is limited to northwestern Baja California. At the time of listing (1998), *N. fossalis* was known from approximately nine occurrences concentrated in three areas: Along the international border, on the plateaus south of the Rio Guadalupe and north of Ensenada, and on the San Quintin coastal plain (Moran 1977, p. 156).

In this proposed rule, we use the word ''occurrence'' to refer to a specific area where *Navarretia fossalis* has been positively identified. An occurrence of *N. fossalis* is not necessarily synonymous with a population of *N. fossalis.* One occurrence may refer to several localized areas where *N. fossalis* has been found in habitat that is continuous and connected, such as the several mile stretch along the San Jacinto River in Riverside, California, where *N. fossalis* occurs intermittently (although the habitat is essentially continuous). One occurrence may also refer to only one localized area where *N. fossalis* has been found, in habitat that is isolated, such as the vernal pools at the Poinsettia Lane Commuter Station in Carlsbad, California, where the next closest occurrence is several miles (kilometers) away. The occurrences that we defined in this rule are not the same as the element occurrences described by the California Natural Diversity Database (CNDDB).

As part of this proposed revised critical habitat, we reviewed the available data on *Navarretia fossalis.* We determined that a total of 51 documented occurrences exist from the United States and that 49 of these occurrences are extant (i.e., currently supporting an occurrence of *N. fossalis*). Since this species was listed in 1998, 17 additional occurrences have been documented from survey reports and herbarium collections. We believe that the recently documented occurrences were extant at the time of listing because this species has limited dispersal capabilities, and the species can only occur in specific habitat types with fixed landscape features. (Limited dispersal is defined and discussed in detail in paragraph 3 of the ''Life History'' section. ''Fixed landscape features'' we further defined the first time we used this terminology (paragraph 1 of the ''Habitat'' section.) It is unlikely that any new occurrences were established during the relatively short, ten-year time period following the listing of this species. Instead, we believe the areas discovered to contain *N. fossalis* in the years since the listing were occupied for many years prior to listing of the species and were only recently documented due to increased number of surveys for this species. Additionally, all recently documented occurrences of *N. fossalis* are within the historical geographical range of the species. Therefore, throughout this rule we refer to all occurrences as ''occupied at the time of listing'' whether the areas were documented before or after the species was listed.

As part of our review of data on this species, we were able to get a more complete list of the past herbarium collections for *Navarretia fossalis* in Baja California, Mexico; all of which were made prior to the listing of this species. Our current list of collections from Mexico indicates that there are 12 specific locations where *N. fossalis* has been found in Baja California (Sanborn 2009, pp. 2–3). Other than the original collection information, we have no specific data on these occurrences; however, development, clay mining, and agricultural activities have been ongoing in the areas where *N. fossalis* has been found in the past (Moran 1984, pp. 175–178). We cannot make any specific conclusions about how many of these occurrences are extant, but we do think that this species is as rare in Mexico as it is in the United States and that its existence is threatened by

development, clay mining, and agricultural activities in Mexico.

Areas Needed for Conservation: Core and Satellite Habitat Areas

Details about the distribution and status of this species provide important background information for understanding the areas that we are proposing for revised critical habitat. The areas that contain the features essential for the conservation of *Navarretia fossalis* and that we are proposing as revised critical habitat in this rule are represented by core habitat areas and satellite habitat areas. Core habitat represents the most critical areas in conserving this species, including areas that contain the highest concentrations of *N. fossalis* and the largest contiguous blocks of habitat for this species. We identified four core habitat areas; three core habitat areas were identified in the listing rule (along the San Jacinto River, in the Upper Salt Creek drainage, and on Otay Mesa), and in the current revised proposed critical habitat rule, we added one additional area that we believe represents a core habitat area (Mesa de Burro on the Santa Rosa Plateau). In addition to the four core areas, *N. fossalis* occurs at several other sites that make up the range of this species; many of these sites also contain the features essential to the conservation of this species.

In this rule, we use the term ''satellite habitat areas'' to mean habitat areas that support occurrences that are smaller than those supported by the ''core habitat areas,'' but provide the means to significantly contribute to the recovery of *N. fossalis.* Satellite habitat areas provide connectivity between the core habitat areas by shortening the distances that pollen and seeds would need to be transferred, fill in gaps that would exist in the species range, if only the core habitat areas were conserved, support stable occurrences (e.g., occurrences that continue to persist in an area), and likely support genetically unique occurrences. The satellite habitat areas are generally smaller than the core habitats. However, the satellite habitat areas contain the features essential to the conservation of *N. fossalis.*

Together, the core habitat areas and satellite habitat areas represent a matrix of viable occurrences that provide the stability, resilience, and flexibility that this species requires to survive current threats and adapt to future threats that may be caused by environmental changes. Special management considerations or protection of the core habitat areas and satellite habitat areas will help with the recovery of *N. fossalis* and bring the species to the point where the protections of the Act are no longer needed.

The four core habitat areas where this species occurs are large, both in number of occupied areas and in terms of the occurrence size (greater than 3,000 plants). The core habitat areas support self-sufficient occurrences that have been resilient to human impacts at the landscape scale. These core habitat areas contain the largest occurrences of *N. fossalis,* and, therefore, the conservation of these areas and the essential features contained therein will make a substantial contribution to the recovery of this species.

We have determined, however, that the conservation of the core habitat areas alone will not be sufficient to provide for recovery of *Navarretia fossalis.* As a result, we believe that the conservation of satellite habitat areas is essential for the recovery of this species. Satellite habitats include: (1) Important peripheral occurrences of this species that are on the geographic edge of this species' distribution; (2) occurrences that are isolated from other occurrences by geographic features; and (3) areas that are nested within the distribution of this species and provide connections between the core habitat areas and other satellite habitat areas. The satellite habitat areas are dispersed throughout the range of this species. Therefore, we believe the protection and management of both core and satellite habitat areas will result in a matrix of viable occurrences and supportive habitat areas that will provide for the long-term conservation of *N. fossalis.*

Previous Federal Actions

On October 18, 2005 (70 FR 60658), we published our final designation of critical habitat for *Navarretia fossalis.* On December 19, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our designation of critical habitat for *N. fossalis* and *Brodiaea filifolia* (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.*, Case No. 07–CV–02379–W–NLS). This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *N. fossalis.* On July 25, 2008, we reached a settlement agreement, in which we agreed to reconsider critical habitat designation for *N. fossalis.* The settlement stipulated that we submit a proposed revised critical habitat designation for *N. fossalis* to the **Federal Register** for publication on or before May 29, 2009, and submit a final revised critical habitat designation to the **Federal Register** for publication on or before May 28, 2010.

Critical Habitat

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

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

(a) Essential to the conservation of the species and

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

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

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under 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, transplantation, and—in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved—regulated taking.

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

destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the Primary Constituent Elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for 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, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

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

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas occupied at the time of listing that contain the features essential to the conservation of *Navarretia fossalis.* We reviewed the approach to the conservation of *N. fossalis* provided in its recovery plan (Service 1998a, pp. 1–113, appendices), the 2005 final designation of critical habitat for *N. fossalis* (October 18, 2005, 70 FR 60658), information from State, Federal, and Local government agencies, and information from academia and private organizations that collected scientific data on the species. Other information we used for this proposed revised critical habitat includes: The CNDDB (CNDDB 2008, pp. 1–44); published and unpublished papers, reports, academic theses, surveys; Geographic Information System (GIS) data (such as species occurrence data, soil data, land use, topography, aerial imagery, and ownership maps); correspondence to the Service from recognized experts; and other information as available.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs 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, and 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.

We derived the PCEs required for *Navarretia fossalis* from its biological needs. The area proposed for designation as revised critical habitat consists of ephemeral wetland habitat for the reproduction and growth of *N. fossalis,* intermixed wetland and upland habitats that act as the local watershed to support the ephemeral wetland habitat, and the topography and soils that support ponding during winter and spring months. The methods of dispersal and pollination for *N. fossalis* are not well understood and may not be captured by this proposed revised critical habitat. Likewise, the larger watershed areas that support the ephemeral wetland habitat are difficult to define and may require hydrological data and modeling that are not available; therefore, areas beyond the local watershed are not included in this proposed critical habitat rule. The PCEs and the resulting physical and biological features essential for the conservation of *N. fossalis* are derived from studies of this species' habitat, ecology, and life history as described below, in the ''Background'' section in this proposed rule, as well as in the previous critical habitat rule (October 18, 2005, 70 FR 60658), and in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Habitats That Are Representative of the Historic Geographical and Ecological Distribution of the Species

Navarretia fossalis is restricted to temporary wetlands in southern California and northwestern Baja

California (Moran 1977, pp. 155–156; Oberbauer 1992, p. 7; Day 1993, p. 847; CNDDB 2008, pp. 1–44), and primarily associated with vernal pools and seasonally flooded alkali vernal plain habitats (Moran 1977, pp. 155–156; Bramlet 1993a, p. 10; Day 1993, p. 847; Ferren and Fiedler 1993, pp. 126–127). In Los Angeles County, *N. fossalis* is known to occur in vernal pools on Cruzan Mesa and the associated drainage of Plum Canyon. In Riverside County, *N. fossalis* is known to occur in large vernal pools with basins that range in size from 0.5 ac (0.2 ha) to 10.0 ac (4.0 ha) (e.g., CNDDB 2008, EO 43, 44), and in temporary wetlands that are described as seasonally flooded alkali vernal plain habitat along the San Jacinto River and near Salt Creek in Hemet (e.g., CNDDB 2008, EO 22, 23, 24). In San Diego County, *N. fossalis* is found in vernal pools that are smaller than those in Riverside County, ranging in size from 0.01 ac (0.005 ha) to 0.2 ac (0.09 ha) and are often found in clusters of several vernal pools referred to as vernal pool complexes (e.g., CNDDB 2008, EO 4, 14, 19). In Mexico, *N. fossalis* is known from fewer than 12 occurrences, of which the main occurrences are clustered in three areas: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977, p. 156).

Ephemeral Wetland Habitat

Despite the variation in the types of habitat where *Navarretia fossalis* is found (i.e., vernal pool habitat and seasonally flooded alkali vernal plain habitat), these ephemeral wetlands all share the same temporary nature (i.e., areas fill with water during winter or spring months and dry completely during summer and fall months). *Navarretia fossalis* depends on both the inundation and the drying of its habitat for survival. This type of ephemerally wet habitat does not support upland plants that live in a dry environment year round or wetland plants that require year round moisture to become established (Keeler-Wolf *et al.* 1998). Rather, these habitats support specialized plants, such as *N. fossalis* that are able to grow in the open niche created by the exclusion of strictly upland and wetland plants.

Navarretia fossalis primarily occurs in ephemeral wetland habitat, more specifically, vernal pool and seasonally flooded alkali vernal plain habitat (Moran 1977, pp.156–157; Bramlet 1993a, p. 10; Bramlet 1993b, p. 14; Day 1993, p. 847). Vernal pools form during the winter rains in depressions that are part of a gently sloping, undulating landscape, where soil mounds are interspersed with basins. This landscape is called ''mima-mound'' topography (Cox 1984, pp. 1397–1398), which is situated above an impervious soil layer called a ''hard pan'' or ''clay pan.'' Additionally, the final listing rule states that *N. fossalis* can occur in ditches and other artificial depressions associated with degraded vernal pool habitat (63 FR 54975, October 13, 1998; Moran 1977, p. 155).

Seasonally flooded alkali vernal plain habitat includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland components. The hydrologic regime for this habitat involves sporadic flooding (as described above) in combination with slow drainage on the alkaline soils. The habitat floods locally on a seasonal basis. Mid-range floods occur less frequently, approximately every 20 to 50 years, but are necessary to maintain the habitat by removing scrub vegetation (Roberts 2004, p. 4). During a typical, seasonal flooding period, alkali scrub vegetation expands its distribution into the deeper areas of the seasonally flooded alkali vernal plain habitat and crowds out the more ephemeral wetland species. During a large scale flooding period, standing and slow draining water remains for weeks or months and results in the death of alkali scrub vegetation. As a result, conditions become favorable for annual species (e.g., *Navarretia fossalis*) to regain and locally expand their range (Bramlet 2004, p. 8; Roberts 2004, p. 4).

Intermixed Wetland and Upland Habitats That Act as the Local Watershed

Vernal pools within a vernal pool complex are hydrologically connected to one another within the local geographical context. Seasonally flooded alkali vernal plain habitats are also hydrologically connected by flowing water. Water flows over the surface from one vernal pool to another or throughout the seasonally flooded alkali vernal plain. Due to an impervious clay layer or hard pan, water also flows and collects below ground such that the soil becomes saturated with water. The result of the movement of the water through vernal pool and seasonally flooded alkali vernal plain systems is that pools fill and hold water continuously for a number of days following the initial rainfall (Hanes *et al.* 1990, p. 51). For this reason, these hydrologic systems are best described from a watershed perspective. The local watershed associated with a vernal pool complex or seasonally flooded alkali vernal plain includes all surfaces in the surrounding area that flow into the vernal pool complex or seasonally flooded alkali vernal plain. Some hydrologic systems (e.g., the San Jacinto River, the Salt Creek Seasonally Flooded Alkali Plain) have watersheds that cover a large area and that contribute to filling and the hydrological dynamics of the system, while other hydrologic systems have very small watersheds (e.g., Carroll Canyon, Nobel Drive) and fill almost entirely from direct rainfall (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 38). It is also possible that subsurface inflows from surrounding soils within a watershed contribute to filling some vernal pools and seasonally flooded alkali vernal plains (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 48).

Topography and Soils That Support Ponding During Winter and Spring

Impervious subsurface layers of clay soils or hardpan geology, combined with flat to gently sloping topography, serve to inhibit rapid infiltration of rainwater, resulting in ponded water in vernal pools and seasonally flooded alkali vernal plains (Bramlet 1993a, p. 1; Bauder and McMillian 1998, pp. 57–59). These soils also act as a buffer to moderate the water chemistry and rate of water loss to evaporation (Zedler 1987, pp. 17–30). In Los Angeles County, the vernal pools that support *Navarretia fossalis* are found on Cieneba-Pismo-Caperton soils (Service GIS analysis). In western Riverside County, the seasonally flooded alkali vernal plain habitat that supports *N. fossalis* is found on Domino, Traver, Waukena, and Chino soils (Bramlet 1993a, p. 1, 10; December 15, 1994, 59 FR 64812). In San Diego County, the vernal pool habitat that supports *N. fossalis* is found on Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils (Service GIS analysis).

Primary Constituent Elements for Navarretia fossalis

Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area occupied by *Navarretia fossalis* at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. The physical and biological features are those PCEs laid out in a specific special arrangement and quantity determined to be essential to the conservation of the species. All areas proposed as critical habitat for *N. fossalis* were occupied at the time of listing (see the ''Geographic Range and Status'' section for a more detailed explanation) and are currently

occupied, are within the species' geographic range, and contain sufficient essential features to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of *Navarretia fossalis,* and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to *N. fossalis* are:

(1) PCE 1—Ephemeral wetland habitat. Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by the winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall. This period of inundation is long enough to promote germination, flowering, and seed production for *N. fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(2) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that results in intermittently flowing surface and subsurface water in swales, drainages, and pools that support the habitat described in PCE 1, and provide the water that allows for the inundation described in PCE 1.

(3) PCE 3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCE 2 that allow for ponding of water because they have a clay component or other property that creates an impermeable surface or subsurface layer. The properties of these soils contribute to reduced percolation and minimal run-off of water, all of which lead to supporting the habitat and period of inundation described in PCE 1. These soil types are known to include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. For *Navarretia fossalis,* the size of the ephemeral wetland habitat can vary a great deal, but the important factor (i.e., the appropriate quantity and spatial arrangement of the PCEs) in any of the subunits proposed as critical habitat is that the vernal pool or alkali playa habitat has intact and functioning hydrology and intact adjacent upland areas that ensure a functioning ecosystem. All units and subunits proposed as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for *N. fossalis.*

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the physical and biological features that are essential to the conservation of the species, and whether these features may require special management considerations or protection.

The area proposed for designation as revised critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. In all units, special management considerations or protection of the essential features may be required to provide for the sustained function of the ephemeral wetland ecosystems on which *N. fossalis* depends. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *N. fossalis.* Activities with a Federal nexus that may affect areas outside of critical habitat, such as development, agricultural activities, and road construction, are still subject to review under section 7 of the Act if they may affect *N. fossalis,* because Federal agencies must consider both effects to the plant and effects to critical habitat independently. The prohibitions of section 9 of the Act applicable to *N. fossalis* under 50 CFR 17.71 (e.g., reduce to possession or maliciously damage or destroy on Federal lands) also continue to apply both inside and outside of designated critical habitat.

Researchers estimate that greater than 90 percent of the vernal pool habitat in southern California has been converted as a result of past human activities (Bauder and McMillian 1998, pp. 56–67; Keeler-Wolf *et al.* 1998, pp. 10, 60–61, 63–64). A detailed discussion of threats to *Navarretia fossalis* and its habitat can be found in the final listing rule (October 13, 1998, 63 FR 54975), the previous critical habitat designation (October 18, 2005, 70 FR 60658), and the Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp.1–113, appendices). The features essential to the conservation of *N. fossalis* require special management considerations or protection to reduce the following threats, among others: habitat destruction and fragmentation from urban and agricultural development; pipeline construction; alteration of hydrology and floodplain dynamics; excessive flooding; channelization; water diversions; off-road vehicle activity; trampling by cattle and sheep; weed abatement; fire suppression practices (including discing and plowing to remove weeds and create fire breaks); competition from nonnative plant species; and direct and indirect impacts from some human recreational activities (October 13, 1998, 63 FR 54975; Service 1998a, p. 7).

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in areas that were occupied by the species at the time of listing and continue to be occupied today, and that contain the PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the species (see the ''Geographic Range and Status'' section for more information). We are not proposing to designate any areas outside the geographical area occupied at the time of listing. All units and subunits proposed contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for *N. fossalis.*

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of *Navarretia fossalis.* The ''Methods'' section summarizes the data used for this proposed revised critical habitat. This proposed revised rule is an effort to update our 2005 final designation of critical habitat for *N. fossalis* with the best available data. In some areas that were analyzed in 2005, we have new information that led us to either add or remove areas from this proposal to revise critical habitat.

This section provides details of the process and criteria we used to delineate proposed revised critical habitat. This proposed revised rule is the result of a progression of conservation efforts for *Navarretia fossalis.* This progression is based largely on the past analysis of the areas that are required for the conservation of *N. fossalis* as presented in the Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp.1–113, appendices), the 2005 final critical habitat designation, and new

information we obtained on the species and its distribution since listing. Table 1 shows the changes in identified essential habitat between the 1998 Recovery Plan, the 2005 final critical habitat designation, and this proposed revised critical habitat designation. The unit names used in this proposed revised critical habitat are based on the names used for management areas used in the 1998 Recovery Plan. The specific changes made to the 2005 final designation of critical habitat are summarized in the ''Summary of Changes From Previously Designated Critical Habitat'' section of this rule.

TABLE 1—AREAS IDENTIFIED AS ESSENTIAL TO NAVARRETIA FOSSALIS CONSERVATION

Location*	Recovery plan appendix	Final critical habitat (2005)	Proposed revised critical habitat (2009)
Unit 1: Los Angeles Basin-Orange Management Area			
Cruzan Mesa	F	1A	1A.
Plum Canyon	N/A	1B	1B.
Unit 2: San Diego: Northern Coastal Mesa Management Area			
Stuart Mesa, Marine Corps Base (MCB) Camp Pendleton, Recovery plan (RP)** name: Stuart Mesa.	F	4(a)(3) exemption	4(a)(3) exemption.
Wire Mountain, MCB Camp Pendleton, RP name: Wire Mountain.	F		4(a)(3) exemption.
Poinsettia Lane Commuter Station, RP name: JJ 2 Poinsettia Lane.	F	2 (partially excluded under section 4(b)(2)).	2.
Unit 3: San Diego: Central Coastal Mesa Management Area			
Santa Fe Valley (Crosby Estates)	N/A		3A.
Carroll Canyon (D 5–8)			3B.
Nobel Drive (X 5)			3C.
Large Pool southwest of runway, MCAS Miramar	N/A		4(a)(3) exemption.
EE1–2, MCAS Miramar, RP name: EE1–2, Miramar Interior.	F	4(a)(3) exemption.	
Kearny Mesa (U 19)	N/A	4(a)(3) exemption.	
New Century (BB 2), RP name: BB 2 New Century	G.		
Montgomery Field, RP name: N1–4, 6 Montgomery Field.	F	Excluded under section 4(b)(2).	3D.
Unit 4: San Diego: Inland Management Area			
San Marcos (North L 15), RP name: L 7, 8, 14–20	G.		
San Marcos (Northwest L 14), RP name: L 7, 8, 14–20	G.		
San Marcos (L 1–6), RP name: L 1–6, 9–13 San Marcos.	F	4C1	4C1.
San Marcos (L 9–10), RP name: L 1–6, 9–13 San Marcos.	F	4C2	4C2.
San Marcos (L 11–13), RP name: L 1–6, 9–13 San Marcos.	F	4D	4D.
San Marcos (North L 15), RP name: L 7, 8, 14–20	G.		
Ramona, RP name: Ramona	F.		
Ramona, RP name: Ramona T	G	4E	4E.
Unit 5: San Diego: Southern Coastal Mesa Management Area			
Sweetwater Vernal Pools (S1–3), RP name: Sweetwater Lake.	F	5A (partially excluded under section 4(b)(2)).	5A.
Otay River Valley (M2)		5B	5B.
Otay Mesa (J26), RP name: J 26 Otay Mesa	F	5C.	
Proctor Valley (R1), RP name: R Proctor Valley	F		5F.
Otay Reservoir (K3–5), RP name: K3–5 Otay River	F		5G.
K1, 2, RP name: K 1, 2, 6, 7 Otay River	G	Excluded under section 4(b)(2).	
K 6, 7, RP name: K 1, 2, 6, 7 Otay River	G.		
Western Otay Mesa vernal pool complexes, RP name: J 2, 5, 7, 11–21, 23–30 Otay Mesa/J 3 Otay Mesa.	F/G	Excluded under section 4(b)(2).	5H/5I.
Western Otay Mesa vernal pool complexes (J 32 (West Otay A + B), J 33 (Sweetwater High School)).	N/A		5H.
Eastern Otay Mesa vernal pool complexes, RP name: 23–30 Otay Mesa/J 22 Otay Mesa.	F/G	Excluded under section 4(b)(2).	5H/5I.
Eastern Otay Mesa vernal pool complexes, RP name: J 19, 27, 28E, 28W Otay Mesa.		Excluded under section 4(b)(2).	
RP name: J (undescribed)	G.		

TABLE 1—AREAS IDENTIFIED AS ESSENTIAL TO NAVARRETIA FOSSALIS CONSERVATION—Continued

Location*	Recovery plan appendix	Final critical habitat (2005)	Proposed revised critical habitat (2009)
Unit 6: Riverside Management Area			
San Jacinto River, RP name: San Jacinto	F	Excluded under section 4(b)(2).	6A.
Salt Creek Seasonally Flooded Alkali Plain, RP name: Hemet/Salt Creek.	F	Excluded under section 4(b)(2).	6B.
Wickerd Road and Scott Road Pools	N/A		6C.
Skunk Hollow, RP name: Skunk Hollow		Excluded under section 4(b)(2).	6D.
RP name: Temecula	F.		
Mesa de Burro, RP name: Santa Rosa Plateau	F	Excluded under section 4(b)(2).	6E.
Total Areas (out of 39 areas listed in this table)	27	22	27.

*This table does not include all locations that are occupied by *Navarretia fossalis.* It includes only those locations that were included in Appendix F or G of the Recovery Plan; designated, excluded, or exempt in 2005; or proposed as critical habitat in the current rule. Note: The alpha-numeric labels were applied in the recovery plan.

**RP name = Name in recovery plan, if different from the current rule.

Appendices F and G of the Recovery Plan provide information on the areas that are needed to stabilize (or prevent extinction of) *Navarretia fossalis* (Appendix F) and the areas that are needed to reclassify (or recover) *N. fossalis* (Appendix G). In Table 1, we summarized the data from the recovery plan. According to this summary, 27 locations were highlighted as areas that needed to be conserved and managed to recover *N. fossalis.* Our 2005 final rule to designate critical habitat used the Recovery Plan as the basis for designating areas as critical habitat; however, the rule included some additions and subtractions of those areas determined as essential to the conservation of *N. fossalis* in the Recovery Plan. Nine areas that the Recovery Plan identified as important were not identified in the 2005 final rule as essential to the conservation of *N. fossalis,* and four areas were added that were not highlighted in the Recovery Plan. The nine areas that were in the Recovery Plan but not included in the 2005 final rule were sites for which we did not have specific occurrence data or areas where recent surveys had not found *N. fossalis.* For these reasons, we do not believe these areas are essential to the conservation of *N. fossalis* and we did not include them in the 2005 critical habitat designation. The four areas that were added to the 2005 final rule were locations where the occurrence data indicated that these areas contained the features essential to the conservation of *N. fossalis.*

A total of 22 areas were identified in the 2005 final rule as essential to the conservation of *N. fossalis* (see Table 1). There are eight occurrences of *N. fossalis* that were highlighted in the Recovery Plan that we did not include in this proposed revised critical habitat. We do not have detailed information on these occurrences, and during recent surveys at some of these sites, *N. fossalis* has not been observed. Additionally, we included areas in this proposed revised critical habitat (based on new data) that were not highlighted in the Recovery Plan. While some of the areas are different, we believe that the non-inclusion of some areas in the Recovery Plan and the inclusion of other areas for which we have better data will achieve the overall goal of the Recovery Plan for *N. fossalis* and provide for the conservation of this species.

In this proposed revised designation of critical habitat for *Navarretia fossalis,* we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the species, and that may require special management considerations or protection. We took into account the past conservation planning that occurred for *N. fossalis* in the Recovery Plan and in the 2005 critical habitat designation. For this proposed revised rule, we completed the following steps to delineate critical habitat: (1) Compiled all available data on *N. fossalis* into a GIS database; (2) reviewed data to ensure accuracy; (3) determined which occurrences existed at the time of listing; (4) determined which areas are currently occupied; (5) defined the areas containing the features essential to the conservation of *N. fossalis* in terms of core habitat areas and satellite habitat areas; (6) determined if each occupied area represents core habitat or satellite habitat and, therefore, should be proposed as critical habitat; and (7) for both core and satellite habitat areas, mapped the specific locations that contain the essential physical and biological features (PCEs in the quantity and spatial arrangement needed to support life history functions essential for *N. fossalis*). These steps are described in detail below.

(1) We compiled all available data on *Navarretia fossalis* into a GIS database. Data on locations where *N. fossalis* occurs was based on collections and observations made by botanists (both amateur and professional), biological consultants, and academic researchers. We compiled data from the following sources to create our GIS database for *N. fossalis:* (1) Data used in the Recovery Plan and in the 2005 final critical habitat rule for *N. fossalis;* (2) the CNDDB data report for *N. fossalis* and accompanying GIS records (CNDDB 2008, pp. 1–44); (3) data presented in the City of San Diego's Vernal Pool Inventory for 2002–2003 (City of San Diego 2004, pp. 1–125, appendices); (4) the data report for *N. fossalis* from the California Consortium of Herbaria and accompanying Berkeley Mapper GIS records (Consortium of California Herbaria 2008, pp. 1–17); (5) the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) species GIS database; and (6) the Carlsbad Fish and Wildlife Office's internal species GIS database, which includes the species data used for the San Diego Multiple Species Conservation Plan (MSCP) and the San Diego Multiple Habitat Conservation Plan (MHCP), reports from section 7 consultations, and FWS observations of

N. fossalis (CFWO internal species GIS database).

(2) We reviewed the data that we compiled to ensure its accuracy. We checked each data point in our database to ensure that it represented an original collection or observation of *Navarretia fossalis.* Data that did not represent an original collection or observation was removed from our database. Secondly, we checked each data point to ensure that it was mapped in the correct location. Data points that did not match the description for the original collection or observation were remapped in the correct location or removed from our database.

(3) We determined which occurrences existed at the time of listing. We concluded that all known occurrences, except for a single occurrence translocated after this species was listed, were extant at the time of listing. We drew this conclusion because *Navarretia fossalis* has limited dispersal capabilities. We believe that the documentation of additional occurrences after the species was listed was due to an increased effort to survey for this species. Therefore, except on the single occasion where this species was translocated to a new location, all of the areas that we know of for this species were occupied prior to the time this species was listed. In other words, we do not believe that this species has naturally colonized any new areas since it was listed.

(4) We determined which areas are currently occupied. For areas where we had past occupancy data for *Navarretia fossalis,* we assumed the area is currently occupied unless: (a) Two or more rare plant surveys conducted during the past 10 years did not find *N. fossalis* (providing the surveys were conducted in years with average rainfall and during the appropriate months to find this species (March, April, and May); or (b) the site was significantly disturbed since the last observation of the species at that location.

(5) We defined the areas necessary for conservation of *N. fossalis* in terms of ''core habitat areas'' and ''satellite habitat areas.'' See the ''Areas Needed for Conservation: Core and Satellite Habitat Areas'' section in this rule for definitions of these areas.

(6) We determined if each occupied area represents core habitat or satellite habitat, and, therefore, should be proposed as critical habitat. In the final listing rule (63 FR 54975, October 13, 1998), we stated that 60 percent of the known occurrences of *Navarretia fossalis* are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (referred to as the Salt Creek Seasonally Flooded Alkali Plain in this proposed rule). These three areas represent core habitat for *N. fossalis.* In addition to these three core habitat areas, Mesa de Burro in Riverside County represents core habitat for this species due to the large size of the occurrence observed there in 2008 and because of the large amount of intact vernal pool habitat on this mesa. In total, we identified four core habitat areas for *N. fossalis.* These four areas represent large, interconnected ephemeral wetlands. Large occurrences of *N. fossalis* are currently present in these four areas, but there have been significant impacts to these areas in the form of habitat fragmentation, nonnative plant invasion, agricultural activities, and recreational use. These four core habitat areas are essential to the conservation of *N. fossalis* because the conservation of these areas will anchor the overall conservation effort for this species. Additionally, the conservation of these four areas will sustain the largest occurrences of *N. fossalis* and allow for *N. fossalis* to persist where it will be less constrained by the threats that negatively impact its essential habitat features (PCEs).

Habitat areas outside the four core habitat areas also support stable, intact occurrences of *Navarretia fossalis.* These satellite areas represent unique habitat within this species' range that also contain the PCEs laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species. The conservation of multiple areas that support occurrences dispersed throughout the range of *N. fossalis* will allow occurrences to persist and expand, ensuring that this species will not go extinct. The satellite habitat areas occur over a wide range of soils and at various elevations that include several occurrences over a range of environmental variables, the preservation of which will help maintain the genetic diversity of *N. fossalis.* The satellite habitat areas allow for connections between existing occurrences of *N. fossalis,* and together with the core habitat areas, will create a sustainable matrix of habitat for this species that will enable it to evolve and respond to future environmental changes.

Areas were selected as satellite habitat areas if they are: (1) Important peripheral occurrences of this species that are on the geographic edge of this species' distribution; (2) occurrences that are isolated from other occurrences by geographic features; or (3) areas that are nested within the distribution of this species and provide connections between the core habitat areas and other satellite habitat areas.

(7) For the core and satellite habitat areas, we mapped the specific areas that contain the physical and biological features (the PCEs) in the quantity and spatial arrangement needed to support life history functions essential for *Navarretia fossalis.* We first mapped the ephemeral wetland habitat in the occupied area using occurrence data, aerial imagery, and 1:24,000 topographic maps. We then mapped the intermixed wetland and upland habitats that make up the local watersheds and the topography and soils that support the occupied ephemeral wetland habitat. We mapped this area using USGS topographic 1:24,000 scale maps, aerial imagery, and soil maps to identify the gently sloping area associated with ephemeral wetland habitat and any adjacent areas that slope directly into the ephemeral wetland habitat which likely contribute to the hydrology of the ephemeral wetland habitat. In most cases, we delineated the border of the proposed revised critical habitat around the occupied ephemeral wetlands and associated local watershed areas to follow natural breaks in the terrain such as ridgelines, mesa edges, and steep canyon slopes.

When determining the proposed revised critical habitat boundaries, we made every effort to map precisely only the areas that contain the PCEs and provide for the conservation of *Navarretia fossalis.* However, we cannot guarantee that every fraction of proposed revised critical habitat contains the PCEs due to the mapping scale that we use to draft critical habitat boundaries. Additionally, we made every attempt to avoid including developed areas such as lands underlying buildings, paved areas, and other structures that lack PCEs for *N. fossalis.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed revised critical habitat are excluded by text in this rule and are not proposed for critical habitat designation. Therefore, Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the species or PCEs in adjacent critical habitat.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this rule constitute a proposed revision from the areas we designated as critical habitat for *Navarretia fossalis* on October 18, 2005 (70 FR 60658). The differences include the following:

(1) We refined the PCEs to more accurately define the physical and biological features that are essential to the conservation of *Navarretia fossalis.* The PCEs were written in both the 2005 final critical habitat and this proposed rule to describe the ephemeral wetland habitat where *N. fossalis* occurs, the associated watersheds that support the ephemeral wetland habitat, and the soils and topography that allow water to pond during winter and spring months. In the PCE related to the vernal pools and flooded alkali vernal plains where *N. fossalis* occurs, we added information relating to the necessary timing and duration of ponding in the ephemeral wetlands where *N. fossalis* occurs (PCE 1). In the PCE related to the local watershed and filling of the ephemeral wetland habitat, we discussed the landforms that contribute to the local hydrology and local watershed (PCE 2). In the PCE related to soils types associated with habitat for *N. fossalis,* we state that these soil types facilitate the slow percolation and minimal run-off of water necessary for the ephemeral wetland habitat where *N. fossalis* occurs (PCE 3).

(2) We revised the criteria used to identify critical habitat. Similar to the 2005 critical habitat, we used the Recovery Plan as the basis for our criteria. However, in this proposed revised critical habitat we conducted an additional analysis of all the *Navarretia fossalis* data currently available. The result of the additional analysis was that some areas identified as essential in the 2005 designation were removed and other areas were included in this proposed rule that were not identified as essential in the 2005 designation. We described the steps that we used to identify and delineate the areas that we are proposing as critical habitat in more detail compared to the 2005 critical habitat designation to ensure that the public better understands why the areas are being proposed as critical habitat.

(3) We improved our mapping methodology to more accurately define the critical habitat boundaries and to better represent those areas that possess the physical and biological features essential to the conservation of the species. This proposed revised rule identifies 12,313 fewer acres (4,983 ha) considered essential to the conservation of *Navarretia fossalis* than we identified in the 2005 rule. However, this reduction is primarily due to our attempt to better represent the areas that contain the essential features for *N. fossalis.* For example, in the 2005 final rule, we delineated large areas of watershed habitat as essential, which resulted in large, poorly defined critical habitat areas. The major reductions to the 2005 critical habitat are discussed in detail below (see #6). Finally, in the 2005 final rule, we used a 100-meter grid to delineate critical habitat. In this proposed revised rule, we mapped the areas that contain the PCEs as accurately as possible by more directly approximating the delineation of essential areas rather than using a 100-meter grid to map essential areas. However, we acknowledge the possibility that, due to mapping, data, and resource constraints, there may be some undeveloped areas mapped as critical habitat that do not contain the PCEs.

(4) We identified several areas we are considering for exclusion from this proposed revised critical habitat designation under section 4(b)(2) of the Act. Any exclusions in our upcoming final revised critical habitat designation could differ from the exclusions we made in the 2005 final critical habitat designation.

(5) We added and subtracted some subunits and revised the area of proposed revised critical habitat. The 2005 final critical habitat designation (70 FR 60658, October 18, 2005) included 4 units and 10 subunits, comprising a total of 652 ac (264 ha), which were grouped to match the management areas described in the 1998 Recovery Plan. This proposed revision includes 6 units with 24 subunits (two of which are exempt from designation under section 4(a)(3)(B) of the Act), comprising a total of 7,086 ac (2,868 ha) of land considered essential to the conservation of *N. fossalis.* These 6 units and 24 subunits match the units and subunits in the 2005 critical habitat to the extent that the subunits overlap and match the management areas described in the 1998 Recovery Plan. In 2005 we identified 18,747 ac (7,587 ha) of land containing features essential to the conservation of *N. fossalis* that we did not designate as critical habitat. The lands were either exempt from critical habitat under section 4(a)(3)(B) of the Act or we excluded them under section 4(b)(2) of the Act. In this proposed revised rule, 2 subunits on MCB Camp Pendleton (145 ac (59 ha)) and MCAS Miramar (69 ac (28 ha)) are exempt under section 4(a)(3)(B) of the Act. We are also considering excluding certain areas under section 4(b)(2) of the Act from the final designation. Specifically, we are requesting public comment on the potential exclusion of 5,675 ac (2,296 ha) covered by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), 3 ac (1 ha) covered by the Carlsbad Habitat Management Plan (HMP) under the San Diego Multiple Habitat Conservation Plan (MHCP), and 86 ac (35 ha) covered by the County of San Diego under the San Diego Multiple Species Conservation Plan (MSCP).

In Table 2 below, we provide a comparison between the 2005 final critical habitat designation and this proposed revised critical habitat rule. The table identifies the change in area for each subunit in the 2005 critical habitat designation and our new areas for units and subunits in this proposed revised critical habitat designation. Some areas designated in the 2005 rule are not proposed as critical habitat because they do not meet the criteria we are using to designate critical habitat (See Table 2). Additionally, there are areas being proposed as critical habitat that were not considered in the 2005 final critical habitat because we have determined that these areas contain features essential for the conservation of *Navarretia fossalis.*

TABLE 2—A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 FINAL CRITICAL HABITAT DESIGNATION AND THIS PROPOSED REVISED CRITICAL HABITAT DESIGNATION

Location*	2005 Final critical habitat		2009 Proposed revised critical habitat		Difference (2009 minus 2005)
	Subunit	Area containing essential features	Subunit	Area containing essential features	Area
Unit 1: Los Angeles Basin-Orange Management Area					
Cruzan Mesa	1A	294 ac (119 ha)	1A	129 ac (52 ha)	−165 ac (−67 ha).
Plum Canyon	1B	32 ac (13 ha)	1B	32 ac (13 ha)	0 ac (0 ha).
Unit 2: San Diego: Northern Coastal Mesa Management Area					
MCB Camp Pendleton	4(a)(3) exemption	67 ac (27 ha)	4(a)(3) exemption	145 ac (59 ha)	78 ac (32 ha).
Poinsettia Lane Commuter Station	2; partially excluded under section 4(b)(2).	22 ac (9 ha)	2	9 ac (4 ha)	−13 ac (−5 ha).
Unit 3: San Diego: Central Coastal Mesa Management Area					
Santa Fe Valley	Proposed as Unit 3, but determined not essential.		Not proposed		
Santa Fe Valley (Crosby Estates)			3A	5 ac (2 ha)	5 ac (2 ha).
Carroll Canyon			3B	20 ac (8 ha)	20 ac (8 ha).
Nobel Drive			3C	37 ac (15 ha)	37 ac (15 ha).
MCAS Miramar	4(a)(3) exemption	61 ac (25 ha)	4(a)(3) exemption	69 ac (28 ha)	8 ac (3 ha).
Montgomery Field	Excluded under section 4(b)(2).	38 ac (16 ha)	3D	48 ac (20 ha)	10 ac (4 ha).
Unit 4: San Diego: Inland Management Area					
San Marcos (Upham)	4C1	34 ac (14 ha)	4C1	34 ac (14 ha)	0.
San Marcos (Universal Boot)	4C2	32 ac (13 ha)	4C2	32 ac (13 ha)	0.
San Marcos (Bent Avenue)	4D	7 ac (3 ha)	4D	5 ac (2 ha)	−2 ac (−1 ha).
Ramona	4E	86 ac (35 ha)	4E	135 ac (55 ha)	49 ac (20 ha).
Unit 5: San Diego: Southern Coastal Mesa Management Area					
Sweetwater Vernal Pools (S1–3)	5A; partially excluded under section 4(b)(2).	163 ac (66 ha)	5A	95 ac (38 ha)	−68 ac (−27 ha).
Otay River Valley (K1 and K2)	Excluded under section 4(b)(2).	57 ac (23 ha)	Not proposed, determined not essential.		−57 ac (−23 ha).
Otay River Valley (M2)	5B and excluded under section 4(b)(2).	109 ac (44 ha)	5B	24 ac (10 ha)	−85 ac (−34 ha).
Otay Mesa (J26)	5C and excluded under section 4(b)(2).	19 ac (8 ha)	Not proposed, determined not essential.		−19 ac (−8 ha).
Arnie's Point	Proposed as Subunit 5D, but determined not essential.		Not proposed		
Proctor Valley (R1–2)			5F	88 ac (36 ha)	88 ac (36 ha).
Otay Lakes (K3–5)			5G	140 ac (57 ha)	140 ac (57 ha).
Western Otay Mesa vernal pool complexes.	Excluded under section 4(b)(2).	117 ac (47 ha)	5H	143 ac (58ha)	26 ac (11 ha).
Eastern Otay Mesa vernal pool complexes.	Excluded under section 4(b)(2).	277 ac (112 ha)	5I	221 ac (89 ha)	−56 ac (−23 ha).
Unit 6: Riverside Management Area					
San Jacinto River	Excluded under section 4(b)(2).	10,774 ac (4,360 ha).	6A	3,550 ac (1,437 ha).	−7,224 ac (−2,924 ha).
Salt Creek Seasonally Flooded Alkali Plain.	Excluded under section 4(b)(2).	2,233 ac (904 ha)	6B	1,054 ac (427 ha)	−1,179 ac (−477 ha).
Wickerd Road and Scott Road Pools	Excluded under section 4(b)(2).	275 ac (111 ha)	6C	205 ac (83 ha)	−70 ac (−28 ha).

TABLE 2—A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 FINAL CRITICAL HABITAT DESIGNATION AND THIS PROPOSED REVISED CRITICAL HABITAT DESIGNATION—Continued

Location*	2005 Final critical habitat		2009 Proposed revised critical habitat		Difference (2009 minus 2005)
	Subunit	Area containing essential features	Subunit	Area containing essential features	Area
Skunk Hollow	Excluded under section 4(b)(2).	306 ac (124 ha)	6D	158 ac (64 ha)	−148 ac (−60 ha).
Mesa de Burro	Excluded under section 4(b)(2).	4,396 ac (1,779 ha).	6E	708 ac (287 ha)	−3,688 ac (−1,493 ha).
Total Area Essential for the Conservation of *Navarretia fossalis*.		19,399 ac (7,851 ha).		7,086 ac (2,868 ha).	−12,313 ac (−4,983 ha).**

*This table does not include all locations that are occupied by *Navarretia fossalis*. It includes only those locations that were designated as critical habitat in 2005 or proposed as critical habitat in this rule.
**Values in this table may not sum due to rounding.

(6) Following is a list of the areas reduced or enlarged in this proposed revision to critical habitat designation, or eliminated from the 2005 final critical habitat designation, and an explanation of why these areas are no longer considered to contain the PCEs in the appropriate spatial arrangement and quantity essential to the conservation of *Navarretia fossalis.*

(a) Cruzan Mesa—The habitat identified as essential to the conservation of *N. fossalis* on Cruzan Mesa in 2005 included the areas on top of this mesa where occurrences of *N. fossalis* had been found. The slopes of the mesa were also included due to the gridding technique that was used to describe critical habitat in the 2005 final rule. Because the mesa slopes do not contribute to the watershed of the vernal pools on Cruzan Mesa occupied by *N. fossalis,* they were removed. This area was reduced by 165 ac (67 ha).

(b) Poinsettia Lane Commuter Station—The habitat identified as essential to the conservation of *N. fossalis* at the Poinsettia Lane Commuter Station in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the base map layer and the coarseness of the gridding techniques used in the 2005 final rule, some of the area designated as critical habitat consisted of developed residential lots and some of the area was on the west side of the railroad tracks where *N. fossalis* has not been found. These areas do not contribute to the watershed of the vernal pools at the Poinsettia Lane Commuter Station and were removed. In some places the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these vernal pools. This area was reduced by 13 ac (5 ha).

(c) San Marcos (Bent Avenue)—The habitat identified as essential to the conservation of *N. fossalis* in San Marcos in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. In the 2005 final rule, we were unaware that the designated critical habitat included developed areas. These areas do not contribute to the watershed of the vernal pools in San Marcos and were removed. This area was reduced by 2 ac (1 ha).

(d) Ramona—The habitat identified as essential to the conservation of *N. fossalis* in Ramona in the 2005 final rule captured the vernal pools where *N. fossalis* had been found, but did not capture the associated watershed area. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for the vernal pools in this area. This area was enlarged by 49 ac (20 ha).

(e) Montgomery Field—The habitat identified as essential to the conservation of *N. fossalis* at Montgomery Field in the 2005 final rule did not capture all of the vernal pool and associated watershed area essential for the conservation of *N. fossalis.* In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the vernal pools and watershed area in this subunit. This area was enlarged by 10 ac (4 ha).

(f) Sweetwater Vernal Pools—The habitat identified as essential to the conservation of *N. fossalis* at the Sweetwater Vernal Pools in the 2005 final rule included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the Sweetwater vernal pools and were removed. This area was reduced by 68 ac (27 ha).

(g) Otay River Valley (K1 and EO 10)—The habitat identified as essential to the conservation of *N. fossalis* in the Otay River Valley at the K1 and K2 vernal pool complexes are not known to support *N. fossalis* at this time. We have no data that indicates *N. fossalis* occurred in the K1 vernal pool complex. *Navarretia fossalis* was last reported in the Otay River Valley at CNDDB EO 10 in 1981. At this time, we do not believe that the unoccupied habitat in the Otay River Valley is essential for the conservation of *N. fossalis.* More occupied habitat exists for *N. fossalis* than we were aware of when the 1998 Recovery Plan was written and we believe that the species can be recovered with the management and protection of habitat that is currently occupied. We removed 57 ac (23 ha) in the Otay River Valley.

(h) Otay River Valley (M2)—The habitat identified as essential to the conservation of *N. fossalis* in the Otay River Valley in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools in the Otay River Valley and were removed. This area was reduced by 85 ac (34 ha).

(i) Otay Mesa (J26)—The habitat identified as essential to the conservation of *N. fossalis* on Otay Mesa at the J26 vernal pool complex is not known to support an occurrence of *N. fossalis* at this time, and we have no data that indicates *N. fossalis* ever occurred in the J26 vernal pool

complex. Surveys of the area conducted by the City of San Diego in 2003 did not locate *N. fossalis* in the J26 vernal pool complex. The 1998 Recovery Plan indicated the J26 vernal pool complex is important for the stabilization of *N. fossalis* as a species. However, at this time, we do not believe that the unoccupied habitat at the J26 vernal pool complex in Otay Mesa is essential for the conservation of *N. fossalis.* More occupied habitat for this species exists than we were aware of when the 1998 Recovery Plan was written and we believe that *N. fossalis* can be recovered with the management and protection of habitat that is currently occupied. We removed 19 ac (8 ha) at the J26 vernal pool complex.

(j) Western Otay Mesa vernal pool complexes—The habitat identified as essential to the conservation of *N. fossalis* within the Western Otay Mesa vernal pool complexes in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools within the Western Otay Mesa vernal pool complexes and were removed. There are also additional areas that provide habitat for *N. fossalis* that were not included in the 2005 final rule. These areas meet our criteria for critical habitat as described in this proposed revised critical habitat and have been included. In some places, the boundary of this proposed subunit includes essential habitat that was not mapped in 2005. When our mapping methods changed, we used more detailed maps to ensure that all vernal pool complexes occupied by *N. fossalis* were accurately mapped. Overall, this area was enlarged by 26 ac (11 ha).

(k) Eastern Otay Mesa vernal pool complexes—The habitat identified as essential to the conservation of *N. fossalis* within the Eastern Otay Mesa vernal pool complexes in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used to describe critical habitat in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the conservation of *N. fossalis* within the Eastern Otay Mesa vernal pool complexes and were removed. There are also additional areas that provide habitat for *N. fossalis* that were not included in the 2005 final rule. These areas meet our criteria for critical habitat as described in this proposed revised critical habitat and have been included. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005. When our mapping methods changed, we used more detailed maps to ensure that all vernal pool complexes occupied by *N. fossalis* were accurately mapped. Overall, this area was reduced by 57 ac (23 ha).

(l) San Jacinto River—The habitat identified as essential to the conservation of *N. fossalis* along the San Jacinto River in 2005 included a large area north of the habitat known to support occurrences of *N. fossalis.* This area is referred to as Mystic Lake. It is an ephemeral lake bed that only fills during years of high rainfall. Mystic Lake may help create conditions that result in the appropriate habitat for *N. fossalis* to the south (downstream). However, based on the best available data, we do not believe that this area provides an essential contribution to the viability of the occurrences of *N. fossalis* along the San Jacinto River. In this proposed revised rule we have identified the ephemeral wetland habitat that supports occurrences of *N. fossalis* and local associated watershed areas as PCEs. The Mystic Lake area included in the 2005 critical habitat rule does not constitute part of the local associated watershed area for the San Jacinto River occurrences as defined in this proposed revised rule. Although the Mystic Lake area may contribute to conservation of *N. fossalis* in a general sense, it is not occupied by the species and we do not consider it to be essential to the conservation of the species. In addition to the removal of the Mystic Lake area, some habitat on the outer edges of the San Jacinto River flood plain were removed from critical habitat because they do not contain the physical and biological features that are essential to the conservation of this species. This area was reduced by 7,224 ac (2,924 ha).

(m) Salt Creek Seasonally Flooded Alkali Plain—The habitat identified as essential to the conservation of *N. fossalis* at the Salt Creek Seasonally Flooded Alkali Plain in 2005 included a large area to the west that is outside of the local watershed for this vernal pool complex. Upon closer examination of USGS 1:24,000 scale topographic maps, we determined that some areas identified in the 2005 rule as essential to the conservation of *N. fossalis* do not fall within the local watershed of this vernal pool complex. Impacts originating from these more distant watershed areas could affect the vernal pool complex, but we do not believe that these areas contain essential physical and biological features or are otherwise essential to the conservation of this species in the Salt Creek Seasonally Flooded Alkali Plain. This area was reduced by 1,179 ac (477 ha).

(n) Wickerd Road and Scott Road Pools—The habitat identified as essential to the conservation of *N. fossalis* at the Wickerd Road and Scott Road Pools in 2005 included two vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique that was used to describe critical habitat in the 2005 final rule, some of the areas consisted of developed residential lots. These areas do not contribute to the watershed of the vernal pools at Wickerd Road and Scott Road Pools and were removed. In some places the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these two pools. This area was reduced by 70 ac (28 ha).

(o) Skunk Hollow—The habitat identified as essential to the conservation of *N. fossalis* at Skunk Hollow in 2005 included two vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique that was used to describe critical habitat in the 2005 final rule, some of the areas designated consisted of developed residential lots. There were also some areas included that slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools at Skunk Hollow and were removed. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these two pools. This area was reduced by 148 ac (60 ha).

(p) Santa Rosa Plateau (Renamed ''Mesa de Burro'' in this revised proposed critical habitat rule)—The habitat identified as essential to the conservation of *N. fossalis* on the Santa Rosa Plateau in the 2005 rule included the entire plateau area (i.e., flat table-like geological formations), which contains three distinct plateaus. Upon further review, we found that *N. fossalis* only occurs on one of the plateaus: Mesa de Burro. We determined that only the Mesa de Burro plateau contains the physical and biological features essential to the conservation of this species. The other areas on the Santa Rosa Plateau are not known to support *N. fossalis* and are not hydrologically connected to Mesa de Burro, and therefore are not essential to the conservation of *N. fossalis.* This area was reduced by 3,688 ac (1,493 ha).

(7) The following areas we consider to contain features essential to the conservation of the species have been added to this proposed revised critical habitat, but were not considered essential to the conservation of *Navarretia fossalis* in the 2005 final critical habitat designation: Santa Fe Valley (Crosby Estates); Carroll Canyon; Nobel Drive; Proctor Valley; and Otay Lakes. We have added a total of 290 ac (117 ha) of proposed critical habitat in these five new subunits. An explanation of how the added areas contribute to the conservation of *N. fossalis* is provided below in the ''Proposed Revised Critical Habitat Designation'' section.

Proposed Revised Critical Habitat Designation

We are proposing 6 units that include 22 subunits as critical habitat for *Navarretia fossalis.* The critical habitat areas we describe below, which include the 22 subunits we are proposing as critical habitat but not the 2 subunits that are exempt from critical habitat, constitute our best assessment at this time of areas that meet the definition of critical habitat for *N. fossalis.* Table 3 identifies the approximate area of each proposed critical habitat subunit by landownership. These subunits, which generally correspond to the geographic area of the subunits delineated in the 2005 designation (see Table 2 for a detailed comparison of this proposed rule and the 2005 designation), if finalized, will replace the current critical habitat designation for *N. fossalis* in 50 CFR 17.96(a). The critical habitat areas we describe below constitute our best assessment of areas determined to be occupied at the time of listing that contain the primary constituent elements with the appropriate spatial arrangement and quantity (i.e., essential features) that may require special management considerations or protection. We are not proposing any unoccupied areas or areas outside of the species' historical range because we determined that occupied lands within the species' historical range are sufficient for the conservation of *N. fossalis,* providing that these lands are protected and receive special management considerations for *N. fossalis.*

TABLE 3—AREA ESTIMATES (ACRES (AC) HECTARES (HA)) AND LAND OWNERSHIP FOR *Navarretia fossalis* PROPOSED REVISED CRITICAL HABITAT

Location	Federal	State government	Local government	Private	Total
Unit 1: Los Angeles Basin-Orange Management Area					
1A. Cruzan Mesa				129 ac (52 ha)	129 ac (52 ha).
1B. Plum Canyon				32 ac (13 ha)	32 ac (13 ha).
Unit 2: San Diego: Northern Coastal Mesa Management Area					
MCB Camp Pendleton	4(a)3 exemption*				4(a)3 exemption.*
2. Poinsettia Lane Commuter Station			6 ac (2 ha)	3 ac (1 ha)	9 ac (4 ha).
Unit 3: San Diego: Central Coastal Mesa Management Area					
3A. Santa Fe Valley (Crosby Estates)				5 ac (2 ha)	5 ac (2 ha).
3B. Carroll Canyon			16 ac (7 ha)	3 ac (1 ha)	20 ac (8 ha).
3C. Nobel Drive			37 ac (15 ha)		37 ac (15 ha).
MCAS Miramar	4(a)3 exemption*				4(a)3 exemption.*
3D. Montgomery Field			48 ac (20 ha)		48 ac (20 ha).
Unit 4: San Diego: Inland Management Area					
4C1. San Marcos (Upham)				34 ac (14 ha)	34 ac (14 ha).
4C2. San Marcos (Universal Boot)			15 ac (6 ha)	17 ac (7 ha)	32 ac (13 ha).
4D. San Marcos (Bent Avenue)				5 ac (2 ha)	5 ac (2 ha).
4E. Ramona			3 ac (1 ha)	132 ac (53 ha)	135 ac (55 ha).
Unit 5: San Diego: Southern Coastal Mesa Management Area					
5A. Sweetwater Vernal Pools (S1–3)	23 ac (9 ha)	1 ac (<1 ha)	71 ac (29 ha)		95 ac (38 ha).
5B. Otay River Valley (M2)				24 ac (10 ha)	24 ac (10 ha).
5F. Proctor Valley (R1–2)			51 ac (21 ha)	37 ac (15 ha)	88 ac (36 ha).
5G. Otay Lakes (K3–5)			140 ac (57 ha)		140 ac (57 ha).
5H. Western Otay Mesa vernal pool complexes.			45 ac (18 ha)	98 ac (40 ha)	143 ac (58 ha).
5I. Eastern Otay Mesa vernal pool complexes.				221 ac (89 ha)	221 ac (89 ha).
Unit 6: Riverside Management Area					
6A. San Jacinto River		1,504 ac (608 ha)		2,046 ac (828 ha)	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain.				1,054 ac (427 ha)	1,054 ac (427 ha).
6C. Wickerd Road and Scott Road Pools.				205 ac (83 ha)	205 ac (83 ha).
6D. Skunk Hollow				158 ac (64 ha)	158 ac (64 ha).

TABLE 3—AREA ESTIMATES (ACRES (AC) HECTARES (HA)) AND LAND OWNERSHIP FOR *Navarretia fossalis* PROPOSED REVISED CRITICAL HABITAT—Continued

Location	Federal	State government	Local government	Private	Total
6E. Mesa de Burro		675 ac (273 ha)		32 ac (13 ha)	708 ac (287 ha).
Total	23 ac (9 ha)	2,180 ac (882 ha)	434 ac (176 ha)	4,235 ac (1,714 ha).	6,872 ac (2,781 ha).**

*145 ac (59 ha) of federally owned land on MCB Camp Pendleton and 69 ac (28 ha) of federally owned land MCAS Miramar are exempt from this critical habitat (see ''Exemptions under Section 4(a)(3) of the Act'' section).
**Values in this table may not sum due to rounding.

Critical Habitat Units

Presented below are brief descriptions of all subunits and reasons why they meet the definition of critical habitat for *Navarretia fossalis.* The units in this proposed revised critical habitat correspond to the management areas described in the 1998 Recovery Plan for Vernal Pools of Southern California. Each subunit contains either (1) a core habitat area; or (2) a satellite habitat area that provide connectivity between core habitat areas or other satellite habitat areas that are captured in other subunits. Areas identified as subunits that harbor satellite habitat areas were identified as containing features essential to the conservation of the species (compared to other areas not identified as essential habitat) due to a combination of their geographic proximity to core habitat areas, their status as an area that supports a stable occurrence (representing occurrences that continue to persist within a given geographic area), and the likelihood that these particular habitat areas support genetically unique occurrences. Other areas not chosen as satellite areas/subunits include occurrences that are represented by one or more of the following characteristics: small population size, no detailed information on occurrence, lack of observations during recent surveys, locations not identified in the Recovery Plan, or areas that have low likelihood of persistence due to fragmentation or enclosure by developed areas, resulting in unstable occurrences.

Unit 1: Los Angeles Basin—Orange Management Area

Unit 1 is located in northwestern Los Angeles County and consists of two subunits totaling 161 ac (65 ha) of private land.

Subunit 1A: Cruzan Mesa

Subunit 1A is located near the City of Santa Clarita in Los Angeles County, California. This subunit is on Cruzan Mesa, northwest of Forest Park and the Sierra Highway and southwest of Vasquez Canyon Road. Subunit 1A consists of 129 ac (52 ha) of private land and meets our selection criteria as satellite habitat. Cruzan Mesa is one of the only areas in Los Angeles County that supports mesa-top vernal pools. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis,* provides potential connectivity with Subunit 1B, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis.* This subunit and subunit 1B (described below) represent the most northern occurrences of this species. Subunit 1A contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., mowing, grading) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 1B: Plum Canyon

Subunit 1B is located near the City of Santa Clarita in Los Angeles County, California. This subunit is in Plum Canyon, west of Forest Park and the Sierra Highway and north of Plum Canyon Road. Subunit 1B consists of 32 ac (13 ha) of private land and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis,* provides potential connectivity with Subunit 1A, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis.* The Plum Canyon vernal pool habitat occurs on a flat area downslope from the vernal pools on Cruzan Mesa. The vernal pools on Cruzan Mesa (Subunit 1A) and Plum Canyon represent the only habitat for *N. fossalis* in Los Angeles County and the most northern occurrences of this species. Subunit 1B contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species within this subunit. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 2: San Diego—Northern Coastal Mesa Management Area

Unit 2 is located in Northern Coastal San Diego County and consists of one subunit totaling 9 ac (4 ha), as well as, the exempt areas on MCB Camp Pendleton. This unit contains 6 ac (3 ha) owned by the North County Transit District, and 3 ac (1 ha) of private land. MCB Camp Pendleton is exempt in this revised critical habitat designation for *Navarretia fossalis* under section 4(a)(3)(B) of the Act because the 2007 Integrated Natural Resources Management Plan (INRMP) for MCB Camp Pendleton provides a benefit to *N. fossalis* (see the ''Exemptions under Section 4(a)(3) of the Act'' section of this proposed rule for a detailed discussion).

Unit 2: Poinsettia Lane Commuter Station

Unit 2 is located adjacent to the City of Carlsbad in San Diego County, California. This subunit is loosely

bounded by Avenida Encinas on the north, a housing development on the east, Poinsettia Lane on the south, and train tracks on the west. Unit 2 consists of approximately 9 ac (4 ha) that includes 6 ac (2 ha) of land owned by State or local governments and 3 ac (1 ha) of private land. Unit 2 meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* on MCB Camp Pendleton and in Subunits 4C1, 4C2, and 4D. The Poinsettia Lane vernal pool complex consists of a series of vernal pools that run parallel to the berm created by the train tracks. Unit 2 contains the physical and biological features that are essential to the conservation of *N. fossalis* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Unit 3: San Diego: Central Coastal Mesa Management Area

Unit 3 is located in Central Coastal San Diego County and consists of four subunits totaling 110 ac (45 ha), as well as the exempt lands on MCAS Miramar. This unit contains 102 ac (42 ha) owned by State and local governments, and 8 ac (3 ha) of private land. MCAS Miramar is exempt in this proposed revised critical habitat designation for *Navarretia fossalis* under section 4(a)(3)(B) of the Act, because the 2006 INRMP for MCAS Miramar provides a benefit to *N. fossalis* (see the ''Exemptions under Section 4(a)(3) of the Act'' section of this proposed rule for a detailed discussion).

Subunit 3A: Santa Fe Valley: Crosby Estates

Subunit 3A is located southwest of Lake Hodges and east of the unincorporated community of Rancho Santa Fe. This subunit is loosely bounded by a driving range to the north and northwest, High Society Way on the east and southeast, and Country Girl Lane on the southwest. Subunit 3A consists of 5 ac (2 ha) of private land and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in San Marcos and in Subunit 3B. The Crosby Estates vernal pool complex consists of a series of vernal pools on a flat area 150 ft (46 m) above the San Dieguito River. This vernal pool complex occurred naturally, but it had been degraded by past agricultural activities. It was restored as to its current condition when the adjacent area was developed. Subunit 3A contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 3B: Carroll Canyon

Subunit 3B is located in the City of San Diego in San Diego County, California. This subunit is located to the southwest of the intersection of Parkdale Avenue and Osgood Way, and is loosely bounded by residential development on the north, open space to the east, and a quarry to the south and west. Subunit 3B consists of approximately 20 ac (8 ha) that includes 17 ac (7 ha) of land owned by State or local governments and 3 ac (1 ha) of private land. Subunit 3B meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 3A and 3C. The Carroll Canyon vernal pool complex consists of a group of vernal pools on the edge of a mesa north of Carroll Canyon. Historically, there may have been more habitat for this species in this area; however, the majority of vernal pool habitat in the vicinity of this subunit has been developed. Subunit 3B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., trespass, illegal trash dumping) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3C: Nobel Drive

Subunit 3C is located in the City of San Diego in San Diego County, California. This subunit is loosely bounded by the 805 interstate on the northeast, the train tracks on the south, and Nobel Drive on the northwest. Subunit 3C consists of 37 ac (15 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 3B and 3D. The Nobel Drive vernal pool complex consists of a group of vernal pools on a mesa-top north of Rose Canyon. Subunit 3C contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities

(e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3D: Montgomery Field

Subunit 3D is located in the City of San Diego in San Diego County, California. This subunit is located at Montgomery Field (airport) to the northeast of the runway area. Subunit 3D consists of 48 ac (20 ha) of land owned by the City of San Diego and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with the occurrence of *N. fossalis* in Subunit 3C. The Montgomery Field vernal pool complex consists of a large group of vernal pools east of the runway area at Montgomery Field, although only the northeastern portion of this vernal pool complex is being proposed as critical habitat. *Navarretia fossalis* has not been documented in the southeastern portion of this vernal pool complex. The northeastern portion and southeastern portion of this vernal pool complex are hydrologically disconnected by past development of the area. Subunit 3D contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 4: San Diego: Inland Management Area

Unit 4 is located in Inland San Diego County and consists of four subunits totaling 206 ac (83 ha). This unit contains 15 ac (6 ha) owned by State and local governments, and 191 ac (77 ha) of private land.

Subunits 4C1, 4C2, and 4D: San Marcos

Subunits 4C1, 4C2, and 4D are located in the City of San Marcos in San Diego County, California. These three subunits consist of three separate vernal pool complexes. The first (Subunit 4C1) is loosely bounded by La Mirada Drive on the northeast, Las Posas Road on the southeast, Linda Vista Drive on the southwest, and South Pacific Street on the northwest. The second (Subunit 4C2) is loosely bounded by Linda Vista Drive on the northeast, Las Posas Road on the east, West San Marcos Boulevard on the south, and South Pacific Street on the west. The third (Subunit 4D) is loosely bounded by South Bent Avenue on the northeast, commercial development on the southeast and southwest, and Linda Vista Drive on the northwest. Subunit 4C1 consists of 34 ac (14 ha) of private land, Subunit 4C2 consists of 15 ac (6 ha) of land owned by local government and 17 ac (7 ha) of private land, and Subunit 4D consists of 5 ac (2 ha) of private land. These three subunits meet our selection criteria as satellite habitat areas because they support stable occurrences of *Navarretia fossalis* and provide potential connectivity between occurrences of *N. fossalis* in Unit 2 and Subunit 4E. We grouped these vernal pool complexes because of the clustered nature of these occurrences. These subunits have separate subunit numbers to be consistent with the numbering identified in the previous critical habitat designation. Subunits 4C1, 4C2, and 4D contain the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., commercial development, trespass, off-road vehicle use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 4E: Ramona

Subunit 4E is located in the unincorporated community of Ramona. This subunit is loosely bounded by the Ramona Airport and Ramona Airport Road on the north, Sawday Road on the east, Santa Maria Creek on the south, and a series of rock outcrops on the west. Subunit 4E consists of approximately 135 ac (55 ha) that includes 3 ac (1 ha) of land owned by State or local governments and 132 ac (53 ha) of private land. Subunit 4E meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with occurrences of *N. fossalis* in Subunits 4C1, 4C2, and 4D. The vernal pools in this subunit occur in gently sloping grassland habitat and are at the highest elevation where *N. fossalis* is known to occur. Subunit 4E contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., agricultural activities, recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 5: San Diego: Southern Coastal Mesa Management Area

Unit 5 is located in Southern San Diego County and consists of six subunits totaling 711 ac (288 ha). This unit contains 23 ac (9 ha) of federally owned land, 308 ac (124 ha) of land owned by State and local governments, and 380 ac (154 ha) of private land.

Subunit 5A: Sweetwater Vernal Pools

Subunit 5A is located southwest of the Sweetwater Reservoir. This subunit is loosely bounded by the Sweetwater Reservoir on the north, steeply sloping topography on the east, State Route 125 on the south, and an unnamed drainage on the west. Subunit 5A consists of approximately 95 ac (38 ha) and includes 23 ac (9 ha) of Federal land that is part of the San Diego National Wildlife Refuge Complex and 72 ac (29 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat. This satellite habitat subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5B and 5F. Some of the area occupied by *N. fossalis* was lost during the construction of State Route 125. The soil

from that area was salvaged and is being used to restore other vernal pools in this subunit. Subunit 5A contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5B: Otay River Valley

Subunit 5B is located adjacent to the City of Chula Vista in San Diego County, California. This subunit is loosely bounded by Olympic Parkway on the north, a housing development on the east, and a landfill to the southwest. Subunit 5B consists of 24 ac (10 ha) of private land and meets our selection criteria as satellite habitat, which supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5H. Subunit 5B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 5F: Proctor Valley

Subunit 5F is located between the unincorporated communities of Eastlake and Jamul in San Diego County, California. This subunit is located along Proctor Valley Road in Proctor Valley. Subunit 5F consists of approximately 88 ac (36 ha) and includes 51 ac (21 ha) of land owned by the City of San Diego and 37 ac (15 ha) of private land. Subunit 5F meets our selection criteria as satellite habitat, which supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5G. The vernal pools in this subunit occur in Proctor Valley on a flat area that is slightly elevated from the stream channel that runs through this valley. The vernal pools in this subunit to the west of Proctor Valley Road have been severely impacted by off-road vehicle use, but the vernal pools to the east of Proctor Valley road have remained relatively intact. Subunit 5F contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use, off-road vehicle use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 5G: Otay Lakes

Subunit 5G is located east of the City of Chula Vista in San Diego County, California. This subunit is loosely bounded by Lower Otay Reservoir to the north and west and by the slopes of Otay Mountain to the southeast. Subunit 5G consists of 140 ac (57 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5F and 5I. The vernal pool complexes in this subunit are located on the flat areas to the south of Lower Otay Reservoir. Subunit 5G contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5H: Western Otay Mesa Vernal Pool Complexes

Subunit 5H is located within the Otay Mesa Community planning area of the City of San Diego in San Diego County, California. Subunit 5H consists of approximately 143 ac (58 ha) that includes 45 ac (18 ha) of land owned by State or local governments and 98 ac (40 ha) of private land. Subunit 5H and Subunit 5I encompass the core habitat on Otay Mesa. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5G and 5I. This subunit contains several mesa-top vernal pool complexes on western Otay Mesa (Bauder vernal pool complexes J 2N, J 2S, J 2W, J 4, J 13N, J 13S, J 14, J 33, J 34 as in Appendix D of City of San Diego, 2004). Subunit 5H contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use,

residential and commercial development) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5I: Eastern Otay Mesa Vernal Pool Complexes

Subunit 5I is located in the City of San Diego in San Diego County, California. This subunit contains several mesa top vernal pool complexes on eastern Otay Mesa. Subunit 5I consists of 220 ac (89 ha) of private land. Subunit 5I along with Subunit 5H encompass the core habitat on Otay Mesa. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5B and 5H. This subunit contains several mesa-top vernal pool complexes on eastern Otay Mesa (Bauder vernal pool complexes J 22, J 29, J 30, J 31N, J 31S as in Appendix D of City of San Diego, 2004 and Service GIS). Subunit 5I contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use, residential and commercial development) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions Under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Unit 6: Riverside Management Area

Unit 6 is located in Western Riverside County and consists of five subunits totaling 5,675 ac (2,297 ha). This unit contains 2,179 ac (882 ha) of land owned by the State of California's Department of Fish and Game and 3,496 ac (1,415 ha) of private land.

Subunit 6A: San Jacinto River

Subunit 6A is generally located along the San Jacinto River near the cities of Hemet and Perris in Riverside County, California. This subunit is loosely bounded by Mystic Lake on the northeast and by the Perris Airport in the southwest. Subunit 6A consists of approximately 3,550 ac (1,437 ha), including 1,504 ac (609 ha) of land owned by State or local governments and 2,046 ac (828 ha) of private land. Subunit 6A encompasses the core habitat along the San Jacinto River. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6B and 5C. This subunit consists of seasonally flooded alkali vernal plains that occur along the San Jacinto River. Subunit 6A contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., manure dumping, flood control) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions Under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain

Subunit 6B is located near the City of Hemet and west of the Hemet-Ryan Airport in Riverside County, California. This subunit is loosely bounded by Devonshire Avenue on the north, Warren Road on the east, the train tracks on the south, and the low-lying hills on the west. Subunit 6B consists of 1,054 ac (427 ha) of private land that encompasses the core habitat along the Upper Salt Creek drainage in western Hemet. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6A and 6C. This subunit consists of seasonally flooded alkali vernal plains. Subunit 6B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., grazing, flood control, discing for vegetation control) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6C: Wickerd and Scott Road Pools

Subunit 6C is located in the City of Menifee in Riverside County, California. This subunit is loosely bounded by low-lying hills north of Garbani Road on the north, Briggs Road on the east, Scott Road on the south, and Menifee Road on the west. Subunit 6C consists of 205 ac (83 ha) of private land and meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6A, 6B, and 6D. This subunit consists of two large vernal pools. Subunit 6C contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., residential or agricultural

development, discing for vegetation control, and maintenance of existing pipelines) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6D: Skunk Hollow

Subunit 6D is located east of the City of Murrieta in Riverside County, California. This subunit is loosely bounded by Browning Street on the north, the edge of an unnamed canyon on the east, Murrieta Hot Springs Road on the south, and Pourroy Avenue on the west. Subunit 6D consists of 158 ac (64 ha) of private land and meets our selection criteria as satellite habitat because this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6C and 6E. This subunit consists of the large Skunk Hollow vernal pool and a small pool to the east of the Skunk Hollow pool. Subunit 6D contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6E: Mesa de Burro

Subunit 6E is located west of the City of Murrieta in Riverside County, California. This subunit is on Mesa de Burro within the Santa Rosa Plateau Ecological Reserve. Subunit 6E consists of approximately 708 ac (287 ha), including 676 ac (274 ha) of land owned by State or local governments and 32 ac (13 ha) of private land. Subunit 6E encompasses the core habitat on Mesa de Burro at the Santa Rosa Plateau.

As core habitat, this subunit contains a large area of habitat that supports a sizable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* on MCB Camp Pendleton and in Subunit 6D. This subunit consists of seasonally flooded alkali vernal plains, including mesa-top vernal pools on volcanic basalt soils. Subunit 6E contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Effects of Critical Habitat Designation

Section 7 Consultation

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

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an 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 substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are advisory.

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

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

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

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the BLM the opportunity to make ''not likely to adversely affect'' (NLAA) determinations for projects implementing the National Fire Plan.

Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the BLM must ensure staff are properly trained, and both agencies must submit monitoring reports to the Service to determine if the procedures are being implemented properly and that effects on endangered species and their habitats are being properly evaluated. As a result, we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

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

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

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify its critical habitat but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We then define ''Reasonable and Prudent Measures'' considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific ''Terms and Conditions'' that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

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

Federal activities that may affect *Navarretia fossalis* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Navarretia fossalis.* Generally, the conservation role of the *N. fossalis* proposed revised critical habitat units is to support viable occurrences in core habitat areas and satellite habitat areas.

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

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

(1) Actions that would impact the ability of an ephemeral wetland to continue to provide habitat for *Navarretia fossalis* and other native species that require this specialized habitat type. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the biological and physical features that provide the appropriate habitat for *N. fossalis* by eliminating ponding habitat, changing the duration and frequency of the ponding events that this species relies on, making the habitat too wet and allowing for obligate wetland species to become established, making the habitat too dry and allowing upland species to become established, causing large amounts of sediment to be deposited in *N. fossalis* habitat, or causing increased erosion and incising of waterways.

(2) Actions that would impact the soil and topography that cause water to pond during the winter and spring months. Such activities could include, but are not limited to, deep ripping of soils, trenching, soil compaction, and development activities. These activities could alter the biological and physical features that provide the appropriate habitat for *N. fossalis* by eliminating ponding habitat, impacting the impervious nature of the soil layer, or making the soil so impervious that water pools for an extended, detrimental hydroperiod (as described in the PCEs).

Exemptions Under Section 4(a)(3) of the Act

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 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Sikes Act Improvement Act of 1997 required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an 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.

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. Any INRMPs developed by military installations located within the range of *Navarretia fossalis* and which contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

Both Marine Corps Base (MCB) Camp Pendleton and Marine Corps Air Station (MCAS) Miramar have approved INRMPs that address *Navarretia fossalis,* and the Marine Corps (on both installations) has committed to work closely with us, California Department of Fish and Game, and California Department of Parks and Recreation to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. In accordance with section 4(a)(3)(B)(i) of the Act, we determined that conservation efforts identified in the INRMPs will provide a benefit to *N. fossalis* occurring in habitats within or adjacent to MCB Camp Pendleton and MCAS Miramar (see the following sections that detail this determination for each installation). Therefore, 214 ac (87 ha) of habitat on MCB Camp Pendleton and MCAS Miramar are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)

In the previous final critical habitat designation for *Navarretia fossalis,* we exempted MCB Camp Pendleton from the designation of critical habitat (October 18, 2005, 70 FR 60658). We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCB Camp Pendleton in November 2001. A revised and updated INRMP was prepared by MCB Camp Pendleton in March 2007 (Marine Corp Base Camp Pendleton 2007). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat occurring on MCB Camp Pendleton (Marine Corp Base Camp Pendleton 2007, Section 4, pp. 51–76). This conservation includes the 145 ac (59 ha) of habitat that we believe to be essential for the conservation of *N. fossalis* on Stuart Mesa and near the Wire Mountain Housing Complex. Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

The INRMP for MCB Camp Pendleton benefits *Navarretia fossalis* through ongoing efforts to survey and monitor the species, and by providing this information to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. The INRMP also benefits *N. fossalis* by implementing the following base directives to avoid and minimize adverse effects to the species: (1) Keeping bivouac/command post/field support activities at least 984 ft (300 m) from *N. fossalis* habitat year-round; (2) keeping vehicle/equipment on existing roads (however, foot traffic is authorized year-round); and (3) prohibiting digging (including construction of fighting positions) in *N. fossalis* habitat (Marine Corp Base Camp Pendleton 2007, Appendix F, p. 54). Additionally, MCB Camp Pendleton's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including *N. fossalis* and its habitat. As a result, activities occurring on MCB Camp Pendleton are currently being conducted in a manner that benefits *N. fossalis.* Finally, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including *N. fossalis* and vernal pool habitat. We are currently consulting with the Marine Corps under section 7 of the Act to programmatically address potential impacts of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we anticipate additional measures that benefit *N. fossalis* to be incorporated into the INRMP for MCB Camp Pendleton.

Marine Corps Air Station Miramar (MCAS Miramar)

In the previous final critical habitat designation for *Navarretia fossalis,* we exempted MCAS Miramar from the designation of critical habitat (October 18, 2005, 70 FR 60658). We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCAS Miramar in May 2000. A revised and updated INRMP was prepared by MCAS Miramar in October 2006 (Gene Stout and Associates *et al.* 2006). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat occurring on MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23). This conservation includes the 69 ac (28 ha) of habitat that we have determined contains the features essential for the conservation of *N. fossalis* in the western portion of MCAS Miramar. Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

The INRMP for MCAS Miramar benefits *Navarretia fossalis* through ongoing efforts to avoid and minimize impacts to the species and vernal pool habitat. The INRMP classifies all *N. fossalis* habitat and nearly all other vernal pool basins and watersheds on MCAS Miramar as a Level I Management Area (Gene Stout and Associates et al. 2006, Section 5, Table 1). Under the INRMP, Level I

Management Areas receive the highest conservation priority of the various Management Areas on MCAS Miramar. The conservation of vernal pool basins and watersheds in the Level I Management Areas is achieved through: (1) Education of base personnel; (2) implementation of proactive measures that help avoid accidental impacts (e.g., signs and fencing); (3) development of procedures to respond to and restore accidental impacts on vernal pools; and (4) maintenance of an inventory of vernal pool basins and the associated watersheds on MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23). Additionally, the MCAS Miramar's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including *N. fossalis* and its habitat. Activities occurring on MCAS Miramar are currently being conducted in a manner that benefits *N. fossalis* and prevents degradation or destruction of the species' vernal pool habitat.

Proposed Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, 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 legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction 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 considering 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; and/or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *N. fossalis,* the benefits of critical habitat include public awareness of *N. fossalis* presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *N. fossalis* due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken or requiring authorization by a Federal agency.

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 it provides for the conservation of the essential physical and 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 evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Conservation Partnerships on Non-Federal Lands

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

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

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

As discussed above, consultation under section 7(a)(2), and the duty to avoid jeopardy to a listed species and adverse modification of designated critical habitat, is only triggered where Federal agency action involved. In the absence of Federal agency action, the primary regulatory restriction applicable to non-Federal landowners is the prohibition against take of listed animal

species under section 9 of the Act. In order to take listed animal species where no independent Federal action is involved that would trigger section 7 consultation, a private landowner must obtain an incidental take permit under section 10 of the Act. However, because take of listed plants is not prohibited under the Act, section 10 permits are not required for listed plant species. As a consequence, the Department's Cooperative Conservation approach is particularly suited to the conservation of listed plant species. By entering into voluntary conservation agreements and management plans with non-Federal landowners to protect listed plant species on non-Federal lands and by encouraging non-Federal landowners to voluntarily include measures to conserve listed plants in HCPs developed for animal species under section 10 of the Act, we can extend essential protection to listed plants beyond those available under the regulatory provisions of the Act.

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

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

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

Benefits of Excluding Lands With HCPs

The benefits of excluding lands with approved HCPs from critical habitat designation, such as HCPs that cover listed plant species, include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop, and upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Habitat Conservation Plans often cover a wide range of species, including listed plant species and species that are not State and federally listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to the following discussions of proposed exclusions under section (4)(b)(2). *Navarretia fossalis* is covered under the City of Carlsbad Habitat Management Plan (HMP) under the MHCP, the County of San Diego Subarea Plan under the MSCP, and the Western Riverside County MSHCP. We are considering the exclusion of lands covered by these plans. We are also asking for public comment on the possible exclusion of essential habitat within the City of Chula Vista Subarea plan. The Chula Vista Subarea Plan does not specifically address the conservation of *N. fossalis* (see Table 4 for a list of the subunits that we are considering for exclusion). Portions of the proposed critical habitat subunits may warrant exclusion from the proposed designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under these approved and legally operative Habitat Conservation Plans (HCPs). In this revised proposed rule, we are seeking input from the stakeholders in these HCPs and the public as to whether or not we should exclude these areas from the final revised critical habitat designation. Below is a brief description of each plan and the lands proposed as critical habitat that are covered by each plan.

TABLE 4—AREAS BEING CONSIDERED FOR EXCLUSION FROM THE FINAL REVISED CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT

Submit	Area considered for exclusion
Carlsbad HMP under the San Diego MHCP	
2. Poinsettia Lane Commuter Station	3 ac (1 ha).
Subtotal Carlsbad HMP under the San Diego MHCP	3 ac (1 ha).
County of San Diego subarea plan under the San Diego MSCP	
3A. Sante Fe Valley: Crosby Estates	5 ac (2 ha).
5B. Otay River Valley	13 ac (5 ha).
5F. Proctor Valley	37 ac (15 ha).
5I. Eastern Otay Mesa vernal pool complexes	30 ac (13 ha).
Subtotal County of San Diego subarea plan under the San Diego MSCP	86 ac (35 ha).
Western Riverside County MSHCP	
6A. San Jacinto River	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain	1,054 ac (427 ha).
6C. Wickerd Road Pool and Scott Road Pool	205 ac (83 ha).
6D. Skunk Hollow	158 ac (64 ha).
6E. Mesa de Burro	708 ac (287 ha).
Subtotal for Western Riverside County MSHCP	5,675 ac (2,297 ha).
Total	5,725 ac (2,317 ha).*

*Values in this table may not sum due to rounding.

San Diego Multiple Habitat Conservation Program (MHCP)—Carlsbad HMP

The San Diego MHCP is a comprehensive, multi-jurisdictional, planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County. The San Diego MHCP is also a regional subarea plan under the State of California's Natural Communities Conservation Plan (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). The MHCP preserve system is intended to protect viable occurrences of native plant and animal species and their habitats in perpetuity, while accommodating continued economic development and quality of life for residents of northern San Diego County. The MHCP includes an approximately 112,000-ac (45,324-ha) study area within the cities of Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach. At this time, only the City of Carlsbad has completed its Subarea Plan, which is called the Carlsbad Habitat Management Plan (Carlsbad HMP). We are only considering lands covered by the Carlsbad HMP for exclusion. The section 10(a)(1)(B) permit for the City of Carlsbad HMP was issued on November 9, 2004 (Service 2004c).

Navarretia fossalis is a conditionally covered species under the Carlsbad HMP. ''Conditional'' coverage means that the City of Carlsbad will receive assurances for this species after a series of conditions is met for this species. There is currently one area within the City of Carlsbad that helps to support an occurrence of *N. fossalis.* This occurrence is on land that is conserved and some management is currently occurring under the Carlsbad HMP. Any new occurrences of *N. fossalis* that are discovered will be conserved under the Narrow Endemics Policy that provides special protection to rare species such as *N. fossalis.* Under the Narrow Endemics Policy of the MHCP, any new occurrences found within Focused Planning Areas (FPA) (i.e., core areas and linkages important for conservation of sensitive species) will be conserved at levels of 95 to 100 percent. New occurrences found outside of FPAs will be conserved at a minimum level of 80 percent based on the Narrow Endemics Policy. The Narrow Endemics Policy requires the conservation of new occurrences of narrow endemic species (80 percent outside of FPAs), mitigation for unavoidable impacts, and implementation of management practices designed to achieve no net loss of these narrow endemic species. Additionally, cities cannot permit more than 5 percent gross cumulative loss of narrow endemic species or occupied area within the FPAs and no more than 20 percent cumulative loss of narrow endemic locations, population numbers, or occupied acreage outside of FPAs (AMEC Earth and Environmental, Inc. 2003).

The Carlsbad HMP currently provides conservation for the *Navarretia fossalis* habitat at the Poinsettia Lane Commuter Station within Unit 2, which is within the boundaries of the Carlsbad HMP. Unit 2 consists of 9 ac (4 ha); 3 ac (1 ha) is private land within the Carlsbad HMP and 6 ac (2 ha) is on land owned by the North County Transit District that is not part of the Carlsbad HMP. The conservation for the 3 ac (1 ha) of habitat within the Carlsbad HMP is outlined in the biological opinion for the Carlsbad HMP (Service 2004c, pp. 312–16). The land is conserved with conservation easements, and funds have been designated for the management of this area to benefit vernal pool species, including *N. fossalis* (Service 2004c, p. 314).

Since the issuance of the permit for the Carlsbad HMP the 3 ac (1 ha) of land that we are considering for exclusion has been restored with native vegetation. This 3-acre (1 ah) area is conserved and management actions have taken place. Carlsbad HMP also provides the framework to develop a

comprehensive management plan that outlines measures necessary for the long-term conservation of *Navarretia fossalis* and has funding to implement a management plan. We anticipate working with the City of Carlsbad to draft a management plan that will provide for the long-term conservation of this area.

San Diego Multiple Species Conservation Program (MSCP)—County of San Diego's Subarea Plan

The MSCP is a subregional HCP made up of several subarea plans that has been in place for more than a decade. The subregional plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species (''covered species'') through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. *Navarretia fossalis* was evaluated in the County of San Diego and the City of San Diego Subarea Plans. As discussed under the ''Benefits of Excluding Lands with HCPs'' section of this rule, we are only considering exclusion of lands within the County of San Diego Subarea Plan. Specifically, we are considering the exclusion of 134 ac (54 ha) in Subunits 3A, 5B, 5F, and 5I; we are only considering a portion of the lands in Subunits 5B, 5F, and 5I (see Table 4 for the amount of land being considered for exclusion in each subunit).

Upon completion of preserve assembly, approximately 171,920 ac (69,574 ha) of the 582,243-ac (235,626-ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1 and 4–2 to 4–4). San Diego County's subarea plan identifies areas where mitigation activities should be focused to assemble its preserve areas (i.e., PAMA). Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the ''preserve area'' in this proposed revised critical habitat designation. When the preserve is completed, the public sector (i.e., Federal, State, and local government, and general public) will have contributed 108,750 ac (44,010 ha) (63.3 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Currently and in the future, Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1 and 4–2 to 4–4).

Private lands within the PAMA are subject to special restrictions on development, and lands that are dedicated to the preserve must be legally protected and permanently managed to conserve the covered species. Public lands owned by the County, State of California, and the Federal Government that are identified for conservation under the MSCP must also be protected and permanently managed to protect the covered species.

Numerous processes are incorporated into the MSCP that allow our oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements and provides for our review and approval of proposed subarea plan amendments and preserve boundary adjustments and for Service review and comment on projects during the California Environmental Quality Act review process. We also chair the MSCP Habitat Management Technical Committee and the Monitoring Subcommittee (MSCP 1998, pp. 5–11 to 5–23). Each MSCP subarea plan must account annually for the progress it is making in assembling conservation areas. We must receive annual reports that include, both cumulatively and by project, the habitat acreage destroyed and conserved within the subareas. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans' associated implementing agreements.

To protect vernal pool habitat, the County of San Diego subarea plan requires that: (1) Development be configured in a manner that minimizes impacts to sensitive biological resources (Service 1997, p. 10; Service 1998b, p. 7); (2) unavoidable impacts to vernal pools associated with reasonable use or essential public facilities be minimized and mitigated to achieve no net loss of function and value; and (3) a sufficient amount of watershed be avoided as necessary for the continuing viability of vernal pools (Service 1997, pp. 43–44; Service 1998b, p. 67).

At this time, a portion of lands that meet the definition of critical habitat for *Navarretia fossalis* inside the County's subarea plan under the MSCP have already been conserved. Although some areas placed in conservation are not yet fully managed, such management will occur over time as the subarea plan is implemented. There are also lands inside the PAMA, that, although they have not yet been formally committed to the preserve, are reasonably assured of conservation for *N. fossalis* in accordance with the subarea plan. There are also lands in Subunits 5B and 5I that are not currently covered by the County of San Diego's Subarea Plan because they are in major and minor amendment areas. There is an established process through which these areas can be covered by the plan, but presently these areas have not gone through this process.

Additionally, projects that are on lands that meet the definition of critical habitat, but are outside the PAMA (preserve areas) must meet the narrow endemic requirements under the MSCP. Consistent with the narrow endemics requirements of the MSCP, the lands outside the PAMA boundaries will be surveyed for *Navarretia fossalis* prior to any development occurring on these lands. Under the County of San Diego's subarea plan, narrow endemic plants, including *N. fossalis,* are conserved under the Biological Mitigation Ordinance using a process that: (1) Requires avoidance to the maximum extent feasible; (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible; and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property (County of San Diego (BMO) 1997, p. 11; Service 1998b, p. 12). These measures help protect *N. fossalis* and its essential habitat whether the lands are located in the PAMA or not. The narrow endemic policy for the County of San Diego subarea plan requires in situ conservation of *N. fossalis* or mitigation to ameliorate any habitat loss. Therefore, although some losses may occur to this species within the lands that are not within the PAMA, the preservation, conservation, and management of *N. fossalis* provided by

the County of San Diego subarea plan under the MSCP promotes the long-term conservation of this species and its essential habitat within the lands covered by the subarea plan.

In summary, we are considering the exclusion of 86 ac (35 ha) that meet the definition of critical habitat for *Navarretia fossalis* within the County of San Diego's subarea plans under section 4(b)(2) of the Act. There are an additional 23 ac (9 ha) of Federal land at the San Diego National Wildlife Refuge included in Subunit 5A that are within the County of San Diego's subarea plan that meet the definition of critical habitat, but because these lands are federally owned we are not considering them for exclusion. The 1998 final listing rule for *N. fossalis* identified the following primary threats for this species: Habitat destruction and fragmentation from urban and agricultural development, pipeline construction, road construction, alteration of hydrology and flood plain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from nonnative plants (October 13, 1998, 63 FR 54938). The implementation of the County of San Diego MSCP subarea plan helps to address these threats through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of *N. fossalis.* We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We request comments on lands in major and minor amendment areas (Subunits 5B and 5I) under the County of San Diego's subarea plan under the MSCP and we encourage any public comment in relation to our consideration of the areas discussed above for inclusion or exclusion.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP encompassing about 1.26 million ac (510,000 ha) in western Riverside County (Unit 6). The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including *Navarretia fossalis.* Participants in the Western Riverside County MSHCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (Service 2004b) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public (PQP) lands). These PQP lands include those under Federal ownership, primarily managed by the USFS and BLM, and also permittee-owned or controlled open-space areas, primarily managed by the State and Riverside County. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified (''hard-lined'') in the Western Riverside County MSHCP. Rather, it is based on textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area and is interpreted as implementation of the Western Riverside County MSHCP takes place.

Specific conservation objectives in the Western Riverside County MSHCP for *Navarretia fossalis* include providing 6,900 ac (2,792 ha) of occupied or suitable habitat for the species in the MSHCP Conservation Area. This acreage goal can be attained through acquisition or other dedications of land assembled from within the Criteria Area (i.e., the Additional Reserve Lands) or Narrow Endemic Plan Species Survey Area and through coordinated management of existing PQP lands. We internally mapped a ''Conceptual Reserve Design,'' which illustrates existing PQP lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals. Our Conceptual Reserve Design was intended to predict one possible future configuration of the eventual approximately 153,000 ac (61,916 ha) of Additional Reserve Lands in conjunction with the existing PQP lands, including approximately 6,900 ac (2,792 ha) of ''suitable'' *N. fossalis* habitat, that will be conserved to meet the goals and objectives of the plan (Service 2004b, p. 73).

Preservation and management of approximately 6,900 ac (2,792 ha) of *Navarretia fossalis* habitat under the Western Riverside County MSHCP will contribute to conservation and ultimate recovery of this species. *Navarretia fossalis* is threatened primarily by agricultural activities, development, and fuel modification actions within the plan area (Service 2004b, pp. 369–378). The Western Riverside County MSHCP will remove and reduce threats to this species and its PCEs as the plan is implemented by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. Areas identified for preservation and conservation include 13 of the known locations of the species at Skunk Hollow, the Santa Rosa Plateau, the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway to Railroad Canyon, and upper Salt Creek west of Hemet. Areas targeted for conservation include the floodplains of the San Jacinto River, the area along Salt Creek from Warren Road to Newport Road, and the vernal pools in Upper Salt Creek west of Hemet.

The Western Riverside County MSHCP Conservation Area will maintain floodplain processes along the San Jacinto River and along Salt Creek to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change. Additionally, the Western Riverside County MSHCP requires surveys for *Navarretia fossalis* as part of the project review process for public and private projects where suitable habitat is present within a defined narrow endemic species survey area (see Narrow Endemic Species Survey Area Map, Figure 6–1 of the Western Riverside County MSHCP, Volume I, in Dudek and Associates, Inc. 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (see Protection of Narrow Endemic Plant Species; Western Riverside County MSHCP, Volume 1, section 6.1.3, in Dudek and Associates, Inc. 2003).

The survey requirements, the avoidance and minimization measures, and the management for *Navarretia fossalis* (and its PCEs) provided for in the Western Riverside County MSHCP are expected to benefit this species on public and private lands covered by the plan. We are considering the exclusion of approximately 5,675 ac (2,297 ha) of private lands and permittee-owned or controlled PQP lands in Unit 6 (Subunits 6A–6E), within the Western Riverside County MSHCP Plan Area, from the final revised critical habitat designation under section 4(b)(2) of the Act. Projects in the areas proposed as critical habitat conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *N. fossalis,* various policies (i.e., Narrow Endemic Plant Species Policy, and the Riparian/Riverine and Vernal Pool Policy in Dudek and Associates, Inc. 2003) provide additional conservation requirements.

The Western Riverside County MSHCP incorporates several processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on a long-term management and monitoring plan; (2) submission of annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004b, pp. 9–10). Below we provide a brief analysis of the lands in Unit 6 that we are considering for exclusion and how each area is covered by the Western Riverside County MSHCP or other conservation measures.

The Western Riverside County MSHCP has several measures in place to ensure the plan is implemented in a way that conserves *Navarretia fossalis* in accordance with the species-specific criteria and objectives for this species. Projects in the areas proposed as critical habitat conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *N. fossalis,* various policies (including the Narrow Endemic Plant Species Policy, and the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools Policy (in Dudek 2003) may provide additional conservation. We are proposing five subunits within Unit 6, all of which are within the boundaries of the Western Riverside County MSHCP. Each subunit has land in different mapping categories (some of which overlap) as they relate to different polices and review processes under the Western Riverside County MSHCP. The breakdown for each subunit, in terms of how much land is considered ''Public/Quasi Public,'' within the ''Criteria Area,'' or in one of the ''Narrow Endemic Plant Species Survey Areas,'' is presented in Table 5.

TABLE 5—AREAS PROPOSED FOR CRITICAL HABITAT WITHIN THE WESTERN RIVERSIDE COUNTY MSHCP

Location	Public/quasi public lands	Lands within the criteria area	Lands within the narrow endemic plant species survey area	Total area proposed as critical habitat
6A. San Jacinto River	1,504 ac (608 ha)	2,264 ac (619 ha)	3,524 ac (1,426 ha)	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain.	1 ac (<1 ha)	1,030 ac (417 ha)	1,054 ac (427 ha)	1,054 ac (427 ha).
6C. Wickerd Pool and Scott Road Pool.	0 ac (0 ha)	0 ac (0 ha)	205 ac (83 ha)	205 ac (83 ha).
6D. Skunk Hollow	21 ac (8 ha)	0 ac (0 ha)	145 ac (59 ha)	158 ac (64 ha).
6E. Mesa de Burro	708 ac (287 ha)	0 ac (0 ha)	708 ac (287 ha)	708 ac (287 ha).

Two of the subunits, Subunit 6D (Skunk Hollow) and Subunit 6E (Mesa de Burro), primarily consist of lands already in permanent conservation. The majority of Subunit 6D was conserved as a result of the Rancho Bella Vista HCP (Rancho Bella Vista 1999, p. 2; CNLM 2009a, p. 1) and the remainder of the land in Subunit 6D was conserved as a result of the ADA 161 HCP (CNLM 2009b, p. 1). In total, 100 percent of the lands in Subunit 6D are conserved and managed specifically for the purpose of preserving the vernal pool habitat. Subunit 6E is within the Santa Rosa Plateau Ecological Reserve. This Reserve has four landowners: the California Department of Fish and Game, County of Riverside, Metropolitan Water District of Southern California, and The Nature Conservancy. The landowners and the Service (which owns no land on the Plateau) signed a cooperative management agreement on April 16, 1991 (Dangermond and Associates, Inc. 1991), and meet regularly to work on the management of the Reserve (Riverside County Parks 2009, p. 2). The vernal pools within this Subunit 6E are managed and monitored to preserve the unique vernal pool plants and animals that occur on the Santa Rosa Plateau, including Mesa de Burro.

The other three units (Subunit 6A, 6B, and 6C) are not conserved at this time; however, we anticipate that these areas will be conserved over time as the Western Riverside County MSHCP is implemented. Subunit 6A is 99 percent within the Narrow Endemic Plant Species Survey Area (NEPSSA), and Subunits 6B and 6C are entirely within the NEPSSA. Because these areas are within the NEPSSA, biological surveys for *Navarretia fossalis* will occur prior to the development of any areas within these subunits. Furthermore, Subunits 6A and 6B have additional protections in place either from past conservation efforts or because they are within the Criteria Area.

A large portion of Subunit 6A (1,504 ac (608 ha), or approximately 42 percent) is within the San Jacinto Wildlife Area, a wildlife area owned and operated by the California Department of Fish and Game (CDFG). This area consists of restored wetlands that provide habitat for waterfowl and wading birds, as well as seasonally flooded vernal plain habitat along the San Jacinto River north of the Ramona Expressway that supports *Navarretia fossalis.* The Service regularly works with the CDFG to ensure that the seasonally flooded alkali vernal plain habitat at the San Jacinto Wildlife Area continues to function and provide a benefit for *N. fossalis* and other sensitive species that use this habitat. In addition to the portion of Subunit 6A owned by CDFG, 98 percent of the remaining land (2,006 ac (812 ha)) is within the Criteria Area. Projects in this area will be implemented through the Joint Project Review Process to ensure that the requirements of the MSHCP permit and the Implementing Agreement are properly met (Western Riverside County MSHCP, Volume 1,

section 6.6.2 in Dudek and Associates, Inc. 2003, p. 6–82).

Additionally, the majority of Subunit 6B is within the Criteria Area (98 percent; 1,030 ac (417 ha) out of a total 1,054 ac (427 ha)) and projects in this area will be implemented through the Joint Project Review Process. This subunit is in the area referred to as West Hemet, under the jurisdiction of the City of Hemet. The City of Hemet is currently in the process of updating their General Plan, including addressing the sensitive vernal pool resources. Subunit 6C is not within the Criteria Area for the Western Riverside County MSHCP; however, impacts to the pools in this subunit should be avoided, minimized, or offset through implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools Policy and NEPSSA Policy.

In summary, we are considering exclusion of 5,675 ac (2,297 ha) of *Navarretia fossalis* habitat on permittee-owned or controlled lands in Unit 6 that meets the definition of critical habitat for *N. fossalis* within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The 1998 final listing rule for *N. fossalis* identified the following primary threats to *N. fossalis:* Habitat destruction and fragmentation from urban and agricultural development, pipeline construction, road construction, alteration of hydrology and flood plain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from nonnative plant species (October 13, 1998, 63 FR 54938). The implementation of the Western Riverside County MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of *N. fossalis.* We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Unit 6 for inclusion or exclusion (see Public Comments section above).

Economics

An analysis of the economic impacts for the previous proposed critical habitat designation was conducted and made available to the public on August 31, 2005 (70 FR 51742). That economic analysis was finalized for the final rule to designate critical habitat for *Navarretia fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658). The analysis determined that the costs associated with critical habitat for *N. fossalis,* across the entire area considered for designation (across designated and excluded areas), were primarily a result of the potential effect of critical habitat on land development, flood control, and transportation. After excluding land in Riverside County and San Diego County from the proposed critical habitat, the economic impact was estimated to be between $13.9 and $32.1 million over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *N. fossalis,* as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the notice of availability for the economic analysis published in the **Federal Register** on August 31, 2005 (70 FR 51742).

We are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for *Navarretia fossalis.* Because no new geographic areas will need to be analyzed, we will use the basic framework of the previous analysis, primarily updating economic figures. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0038, or by contacting the Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are soliciting the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat. We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to Jim Bartel, Field Supervisor of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., 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. SBREFA amended the RFA to

require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

An analysis of the economic impacts for our previous proposed critical habitat designation was conducted and made available to the public on August 31, 2005 (70 FR 51742). This economic analysis was finalized for the final rule to designate critical habitat for *Navarretia fossalis* as published in the **Federal Register** on October 18, 2005 (70 FR 60658). The costs associated with critical habitat for *N. fossalis,* across the entire area considered for designation (across designated and excluded areas), were primarily a result of the potential effect of critical habitat on land development, flood control, and transportation. After excluding land in Riverside County and San Diego County from the proposed critical habitat, the economic impact was estimated to be between $13.9 and $32.1 million over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *N. fossalis,* as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the notice of availability for the economic analysis as published in the **Federal Register** on August 31, 2005 (70 FR 51742).

While we do not believe our revised designation, as proposed, will result in a significant impact on a substantial number of small business entities based on the previous designation, we are initiating new analyses to more thoroughly evaluate potential economic impacts of this revision to critical habitat. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

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

In accordance with the Unfunded Mandates Reform Act, 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 [T]ribal 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 [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) Based in part on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. 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. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the revised rule, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

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

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements 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 these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

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 destruction or 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), it has been determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed to revise critical habitat in accordance with the provisions of the Act. This proposed 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 *Navarretia fossalis.*

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 (NEPA) (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 as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This 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)).

Clarity of the Rule

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a 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 occupied at the time of listing that contain the features essential for the conservation of the species, nor are there any unoccupied tribal lands that are essential for the conservation of *Navarretia fossalis.* Therefore, critical habitat for *N. fossalis* is not being proposed on tribal lands. We will continue to coordinate with Tribal governments as applicable during the designation process.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we determined that this proposed rule to designate critical habitat for *Navarretia fossalis* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and we will review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary author of this notice is the staff from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.96(a), revise the entry for ''*Navarretia fossalis* (spreading navarretia)'' under family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia)

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

(2) Within these areas, the primary constituent elements (PCE) for *Navarretia fossalis* consist of three components:

(i) PCE 1—*Ephemeral wetland habitat.* Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by the winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall. This period of inundation is long enough to promote germination, flowering, and seed production for *N. fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(ii) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools that support the habitat described in PCE 1, and provide the water that allows for the inundation described in PCE 1.

(iii) PCE3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCE 2 that allow for ponding of water because they have a clay component or other property that creates an impermeable surface or subsurface layer. The properties of these soils contribute to reduced percolation and minimal run-off of water, all of which lead to supporting the habitat and period of inundation described in PCE 1. These soil types are known to include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) *Note:* Index Map of critical habitat units for *Navarretia fossalis* (spreading navarretia) follows:

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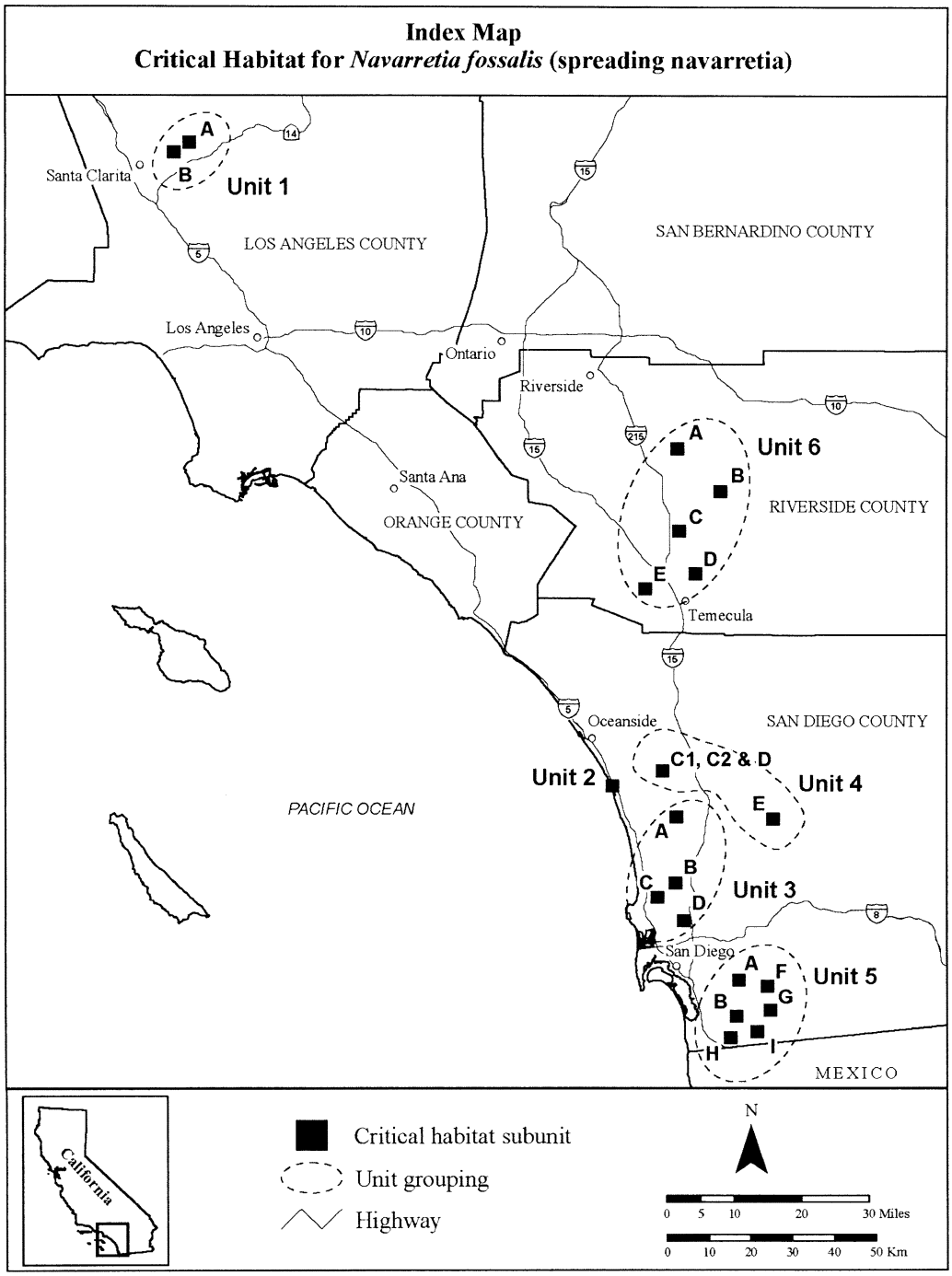


(6) Unit 1: Los Angeles Basin—Orange Management Area, Los Angeles County, CA. Subunit 1A: Cruzan Mesa.

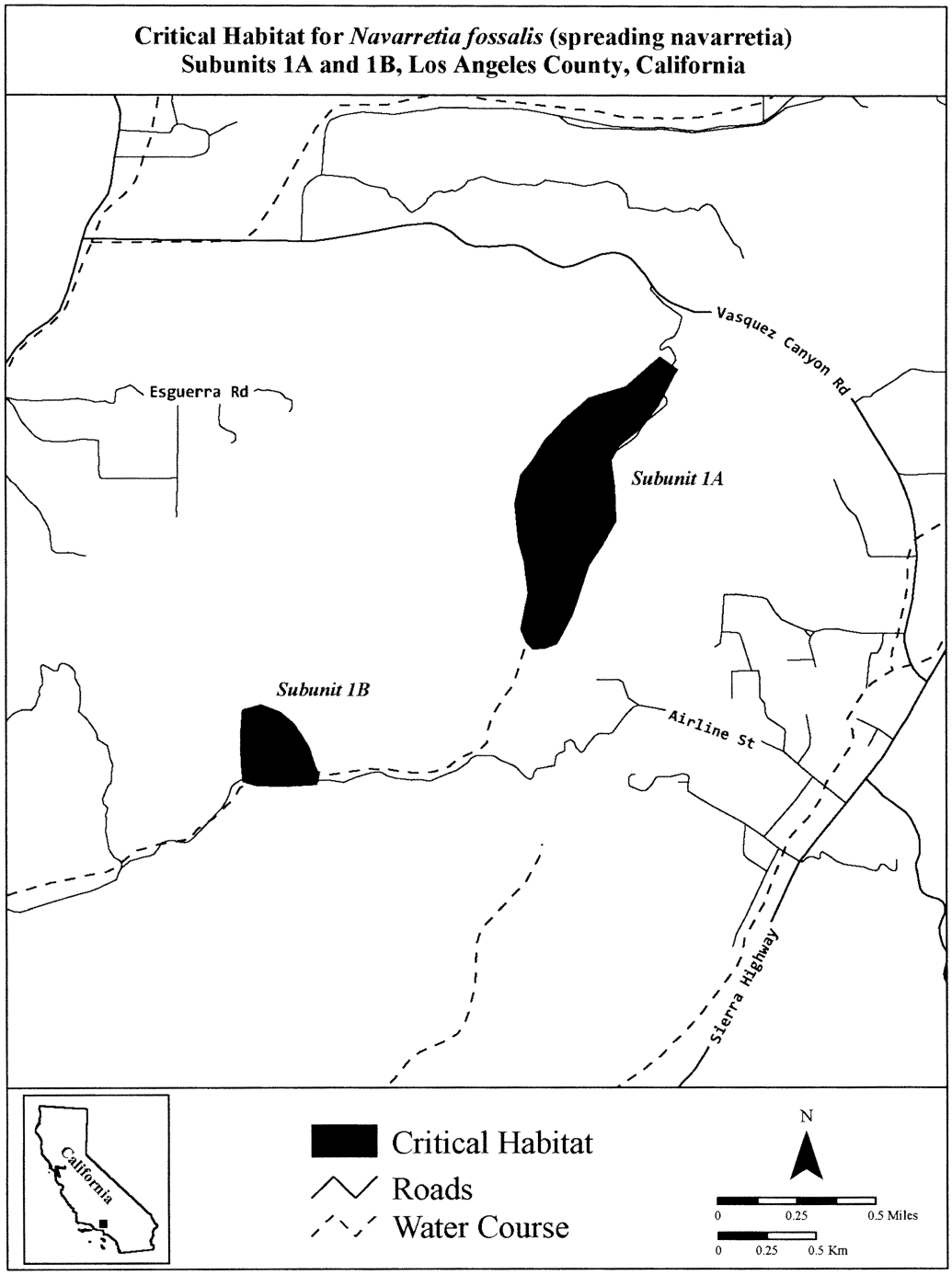
(i) [Reserved for textual description of Subunit 1A.]

(ii) *Note:* Map of Subunit 1A (Cruzan Mesa) is at paragraph (7)(ii) of this entry.

(7) Unit 1: Los Angeles Basin—Orange Management Area, Los Angeles County, CA. Subunit 1B: Plum Canyon.

(i) [Reserved for textual description of Subunit 1B.]

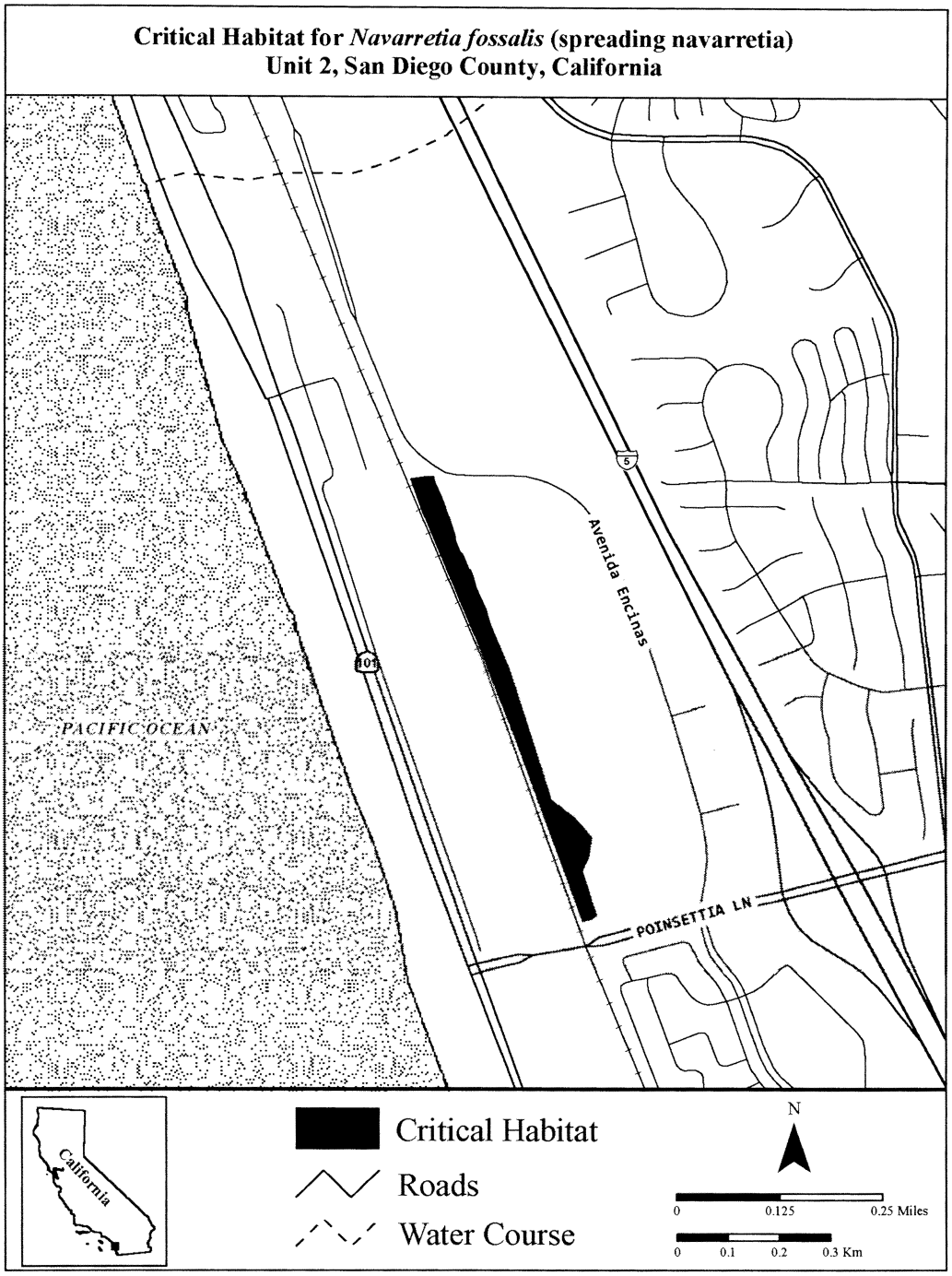
(ii) *Note:* Map of Los Angeles Basin—Orange Management Area Subunits 1A (Cruzan Mesa) and 1B (Plum Canyon) follows:



(8) Unit 2: San Diego: Northern Coastal Mesa Management Area—Poinsettia Lane Commuter Station, San Diego County, CA.

(i) [Reserved for textual description of Unit 2.]

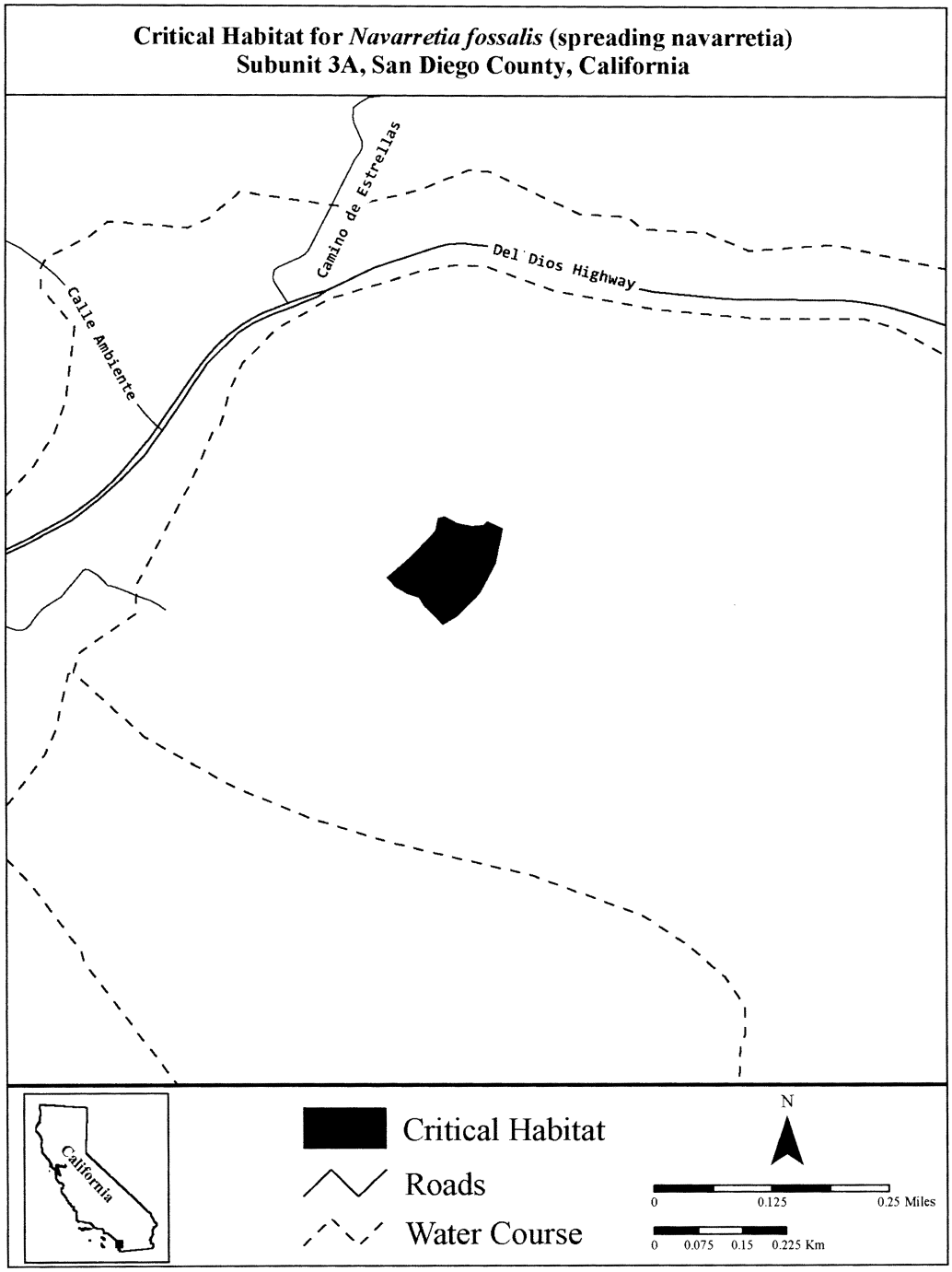
(ii) *Note:* Map of Unit 2 (Poinsettia Lane Commuter Station) follows:



(9) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3A: Santa Fe Valley: Crosby Estates.

(i) [Reserved for textual description of Subunit 3A.]

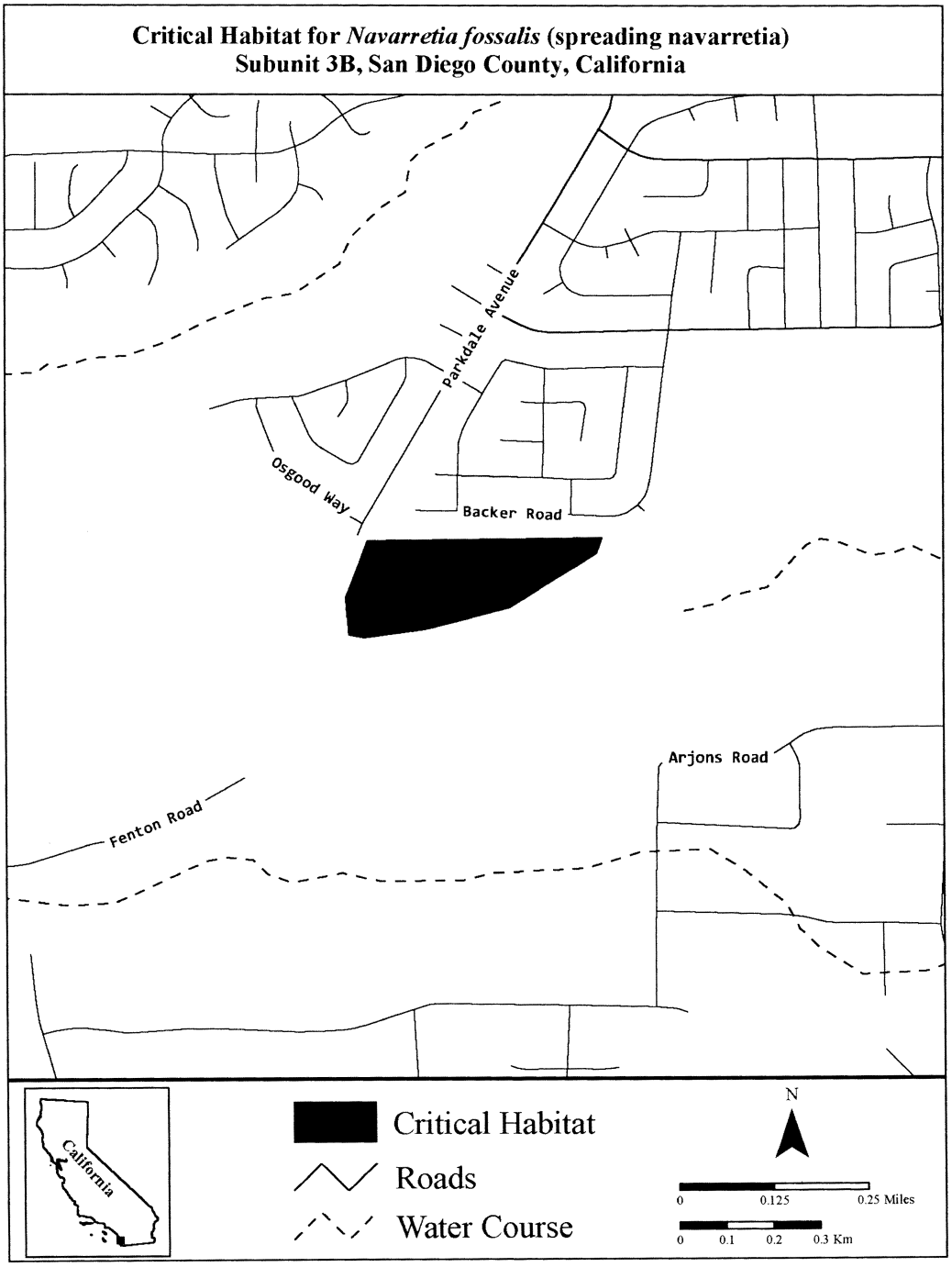
(ii) *Note:* Map of Unit 3, Subunit 3A (Santa Fe Valley: Crosby Estates) follows:



(10) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3B: Carroll Canyon.

(i) [Reserved for textual description of Subunit 3B.]

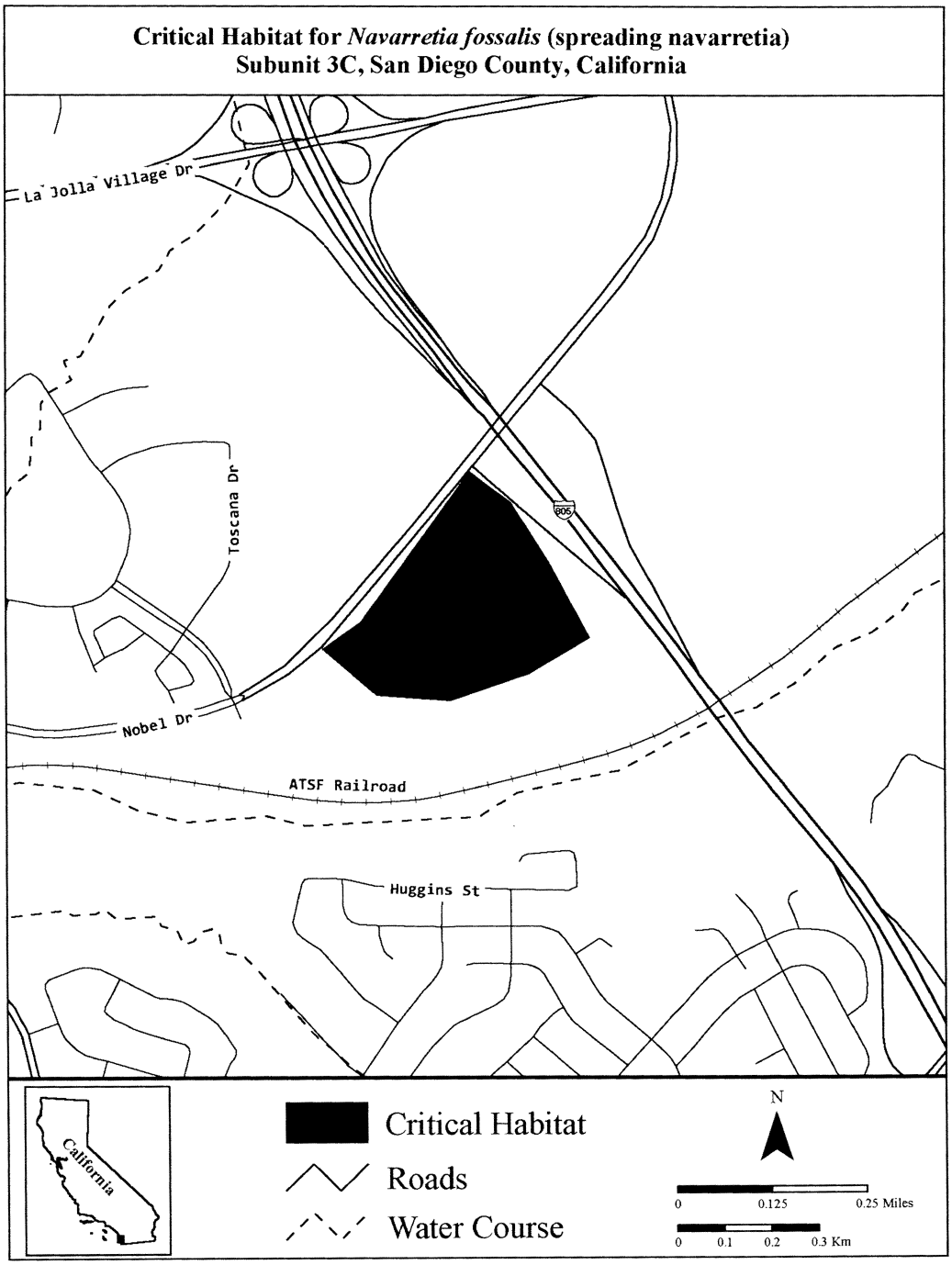
(ii) *Note:* Map of Unit 3, Subunit 3B (Carroll Canyon) follows:



(11) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3C: Nobel Drive.

(i) [Reserved for textual description of Subunit 3C.]

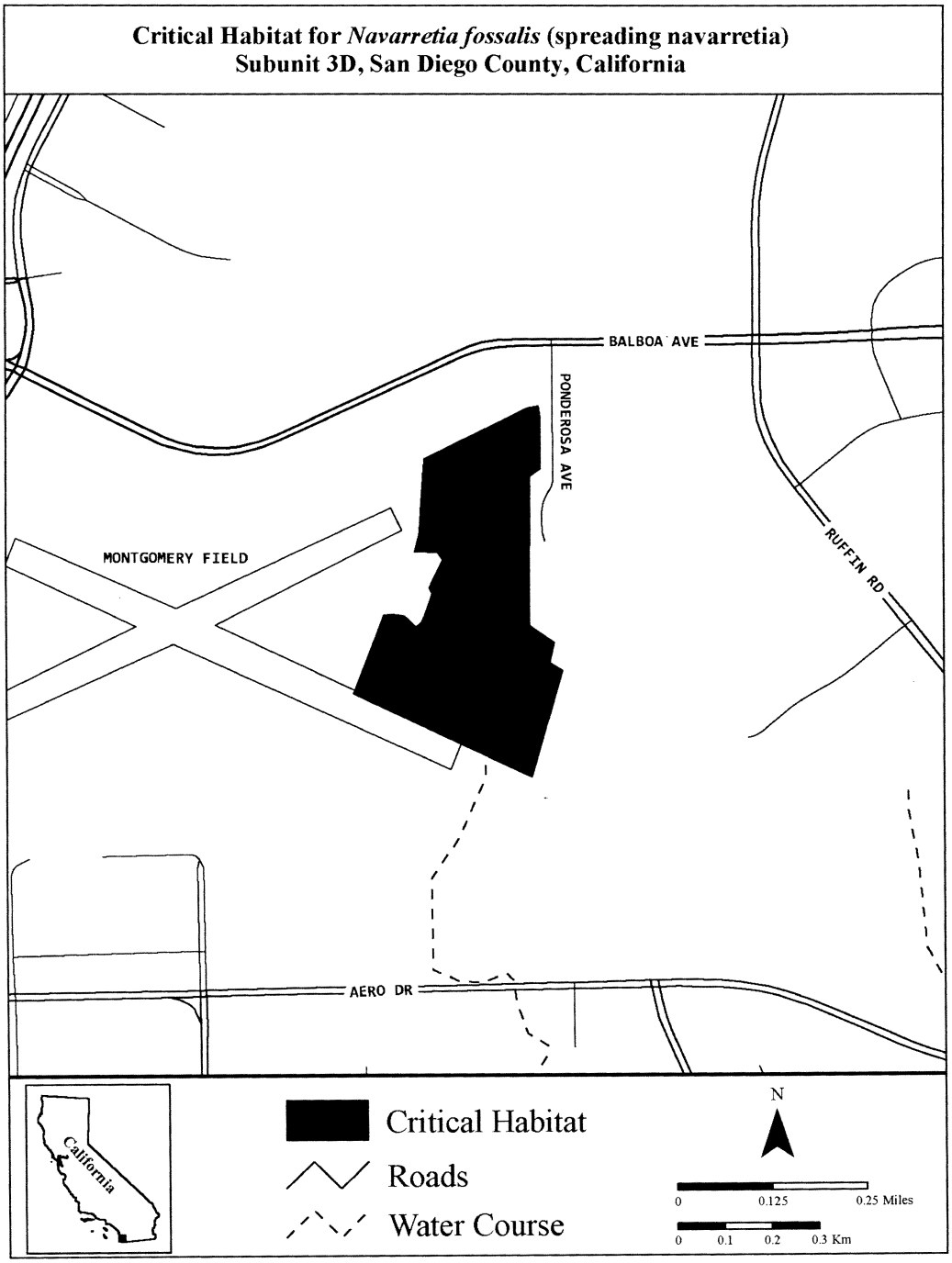
(ii) *Note:* Map of Unit 3, Subunit 3C (Nobel Drive) follows:



(12) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3D: Montgomery Field.

(i) [Reserved for textual description of Subunit 3D.]

(ii) *Note:* Map of Unit 3, Subunit 3D (Montgomery Field) follows:



(13) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C1: San Marcos (Upham).

(i) [Reserved for textual description of Subunit 4C1.]

(ii) *Note:* Map of Unit 4, Subunit 4C1 is at paragraph (15)(ii) of this entry.

(14) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C2: San Marcos (Universal Boot).

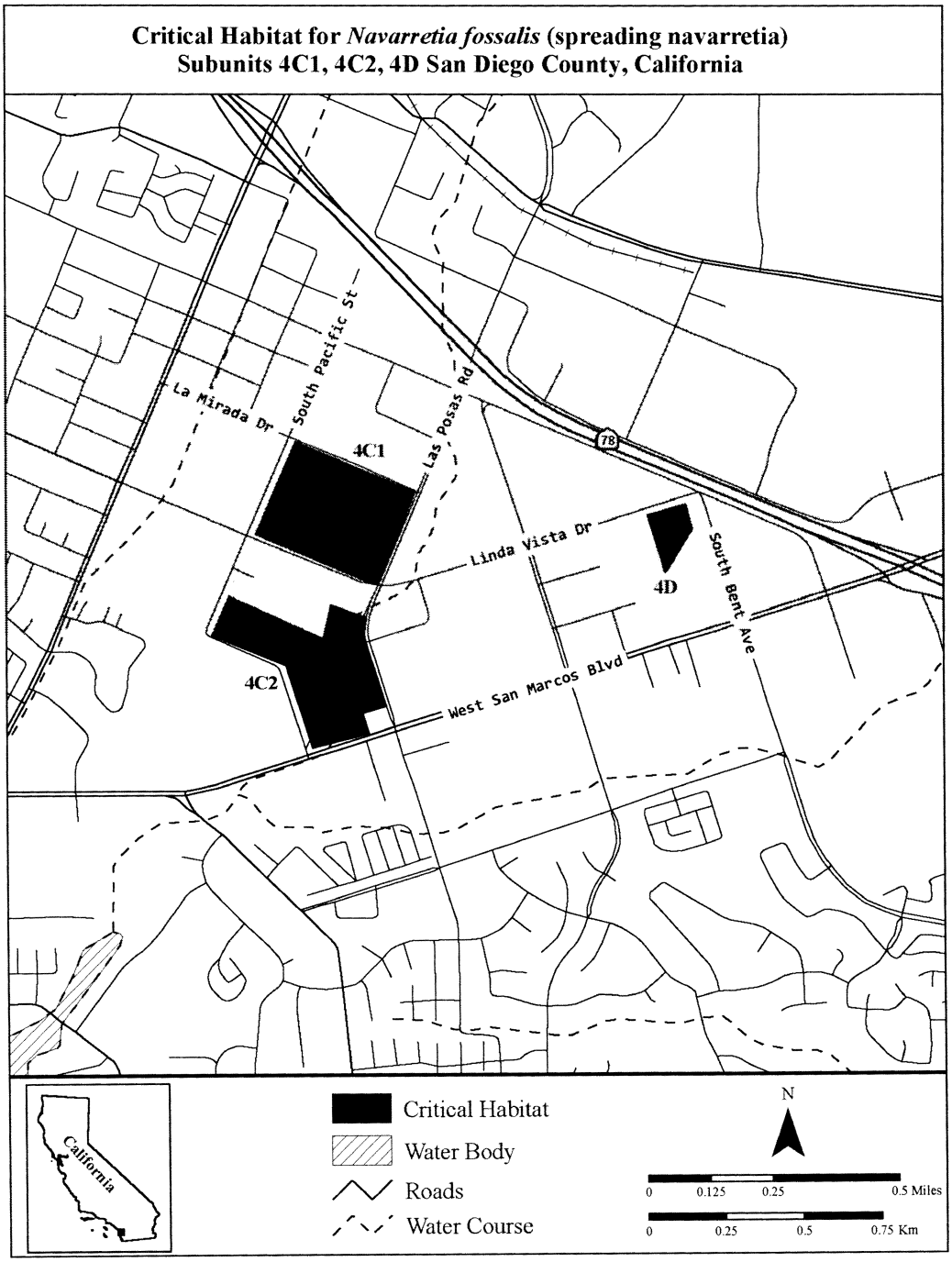
(i) [Reserved for textual description of Subunit 4C2.]

(ii) *Note:* Map of Unit 4, Subunit 4C2 is at paragraph (15)(ii) of this entry.

(15) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4D: San Marcos (Bent Avenue).

(i) [Reserved for textual description of Subunit 4D.]

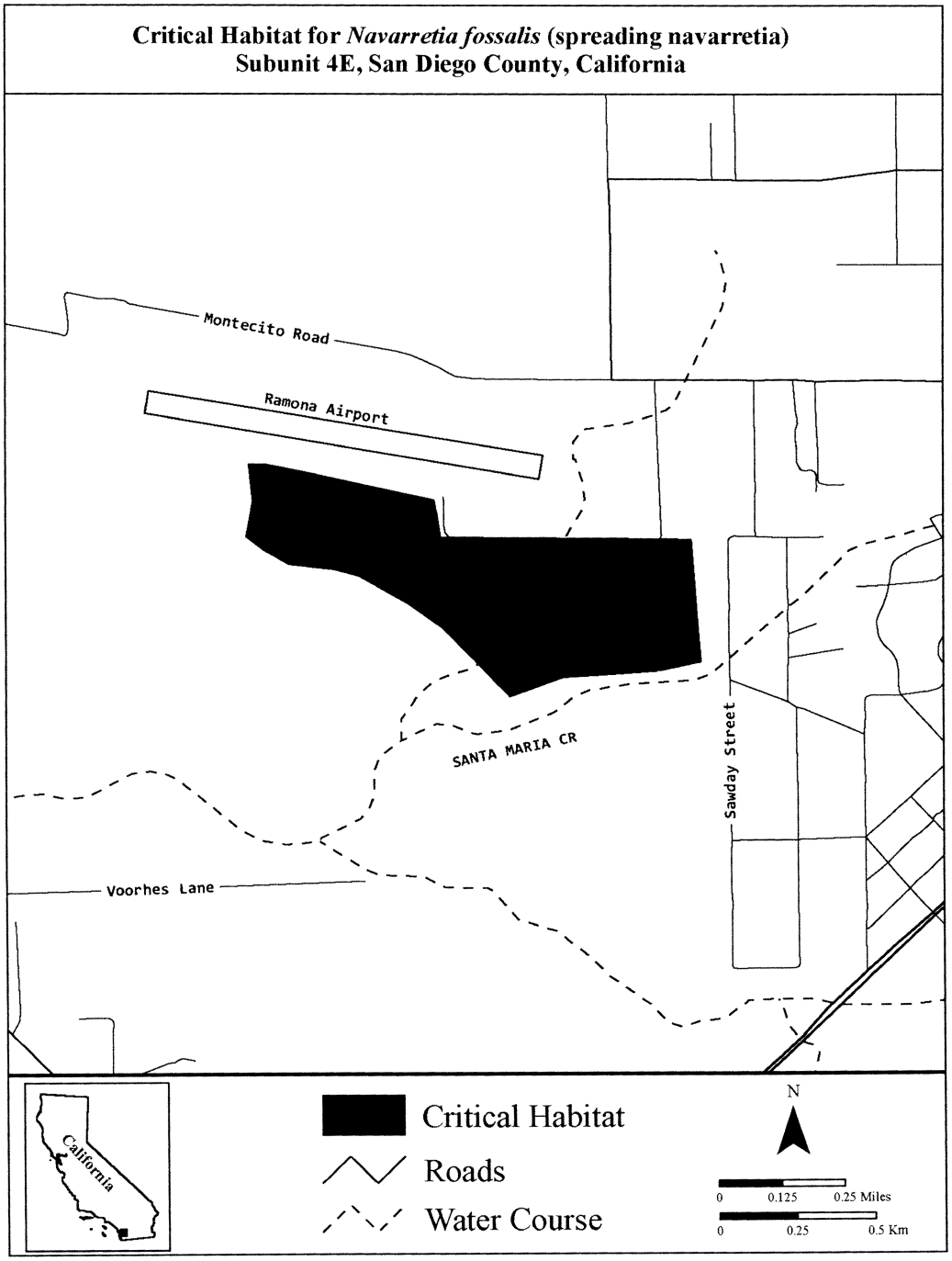
(ii) *Note:* Map of Unit 4, Subunits 4C1, 4C2, and 4D (San Marcos) follows:



(16) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4E: Ramona.

(i) [Reserved for textual description of Subunit 4E.]

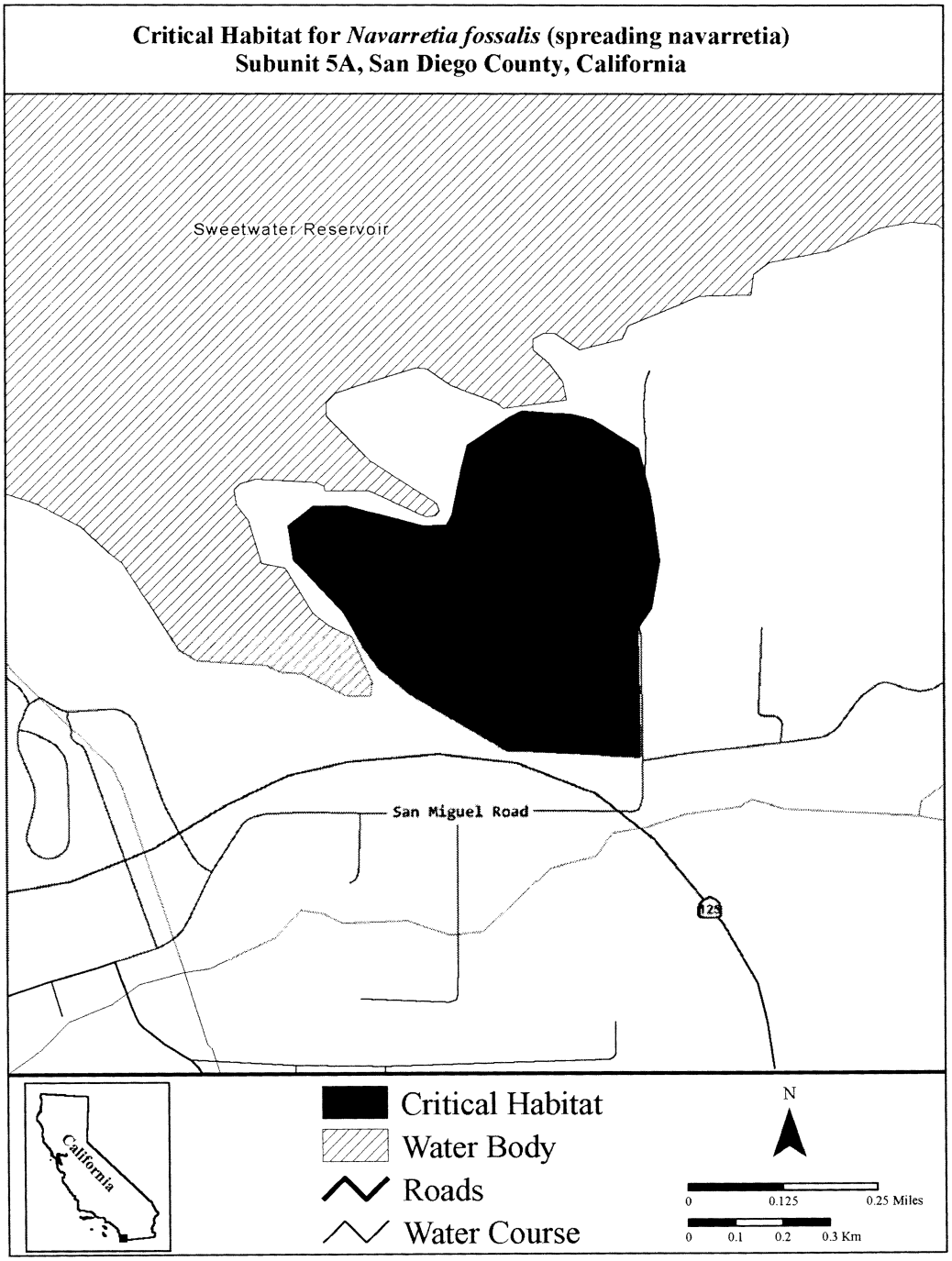
(ii) *Note:* Map of Unit 4, Subunit 4E (Ramona) follows:



(17) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5A: Sweetwater Vernal Pools.

(i) [Reserved for textual description of Subunit 5A.]

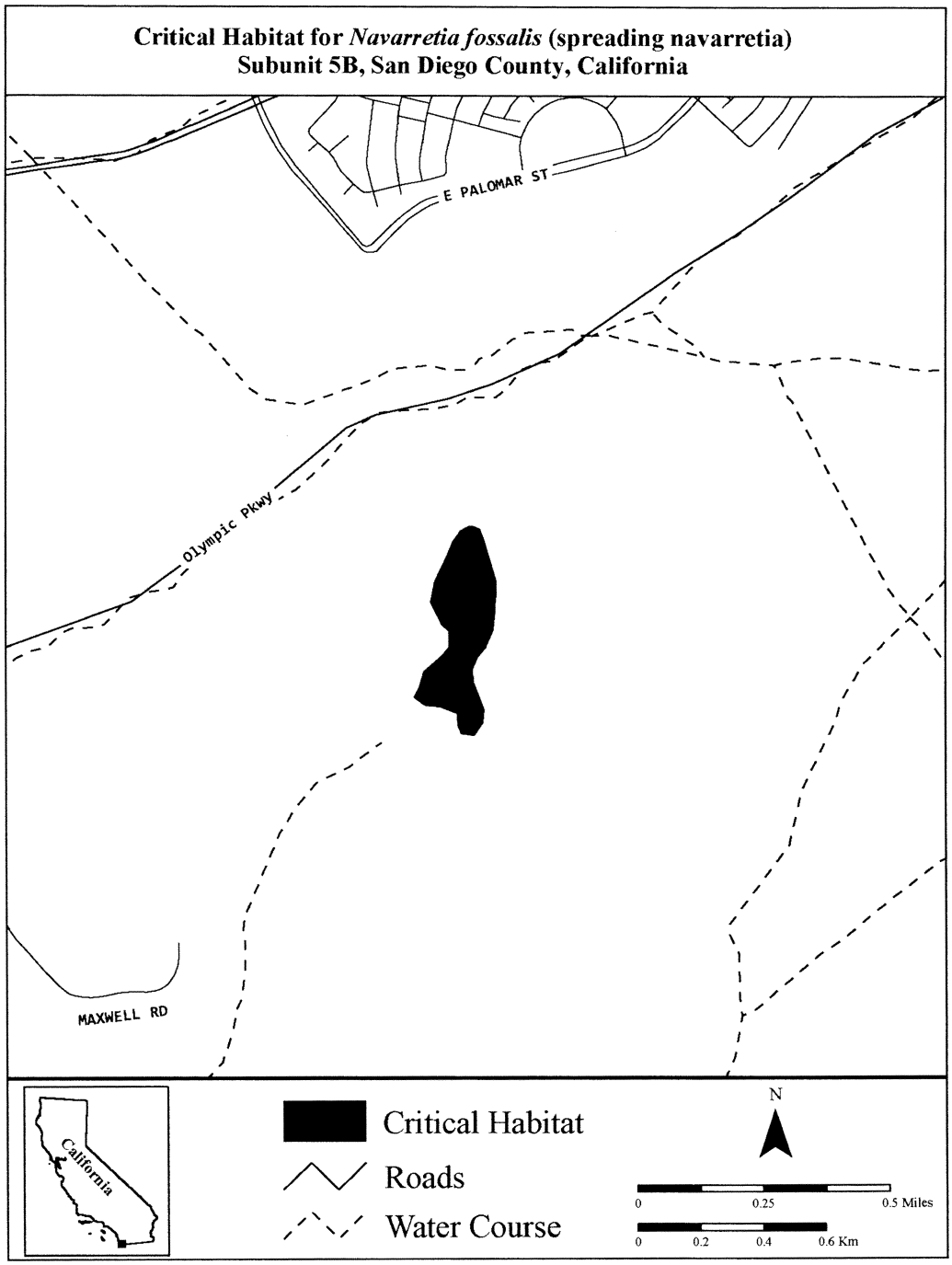
(ii) *Note:* Map of Unit 5, Subunit 5A (Sweetwater Vernal Pools) follows:



(18) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5B: Otay River Valley.

(i) [Reserved for textual description of Subunit 5B.]

(ii) *Note:* Map of Unit 5, Subunit 5B (Otay River Valley) follows:



(19) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5F: Proctor Valley.

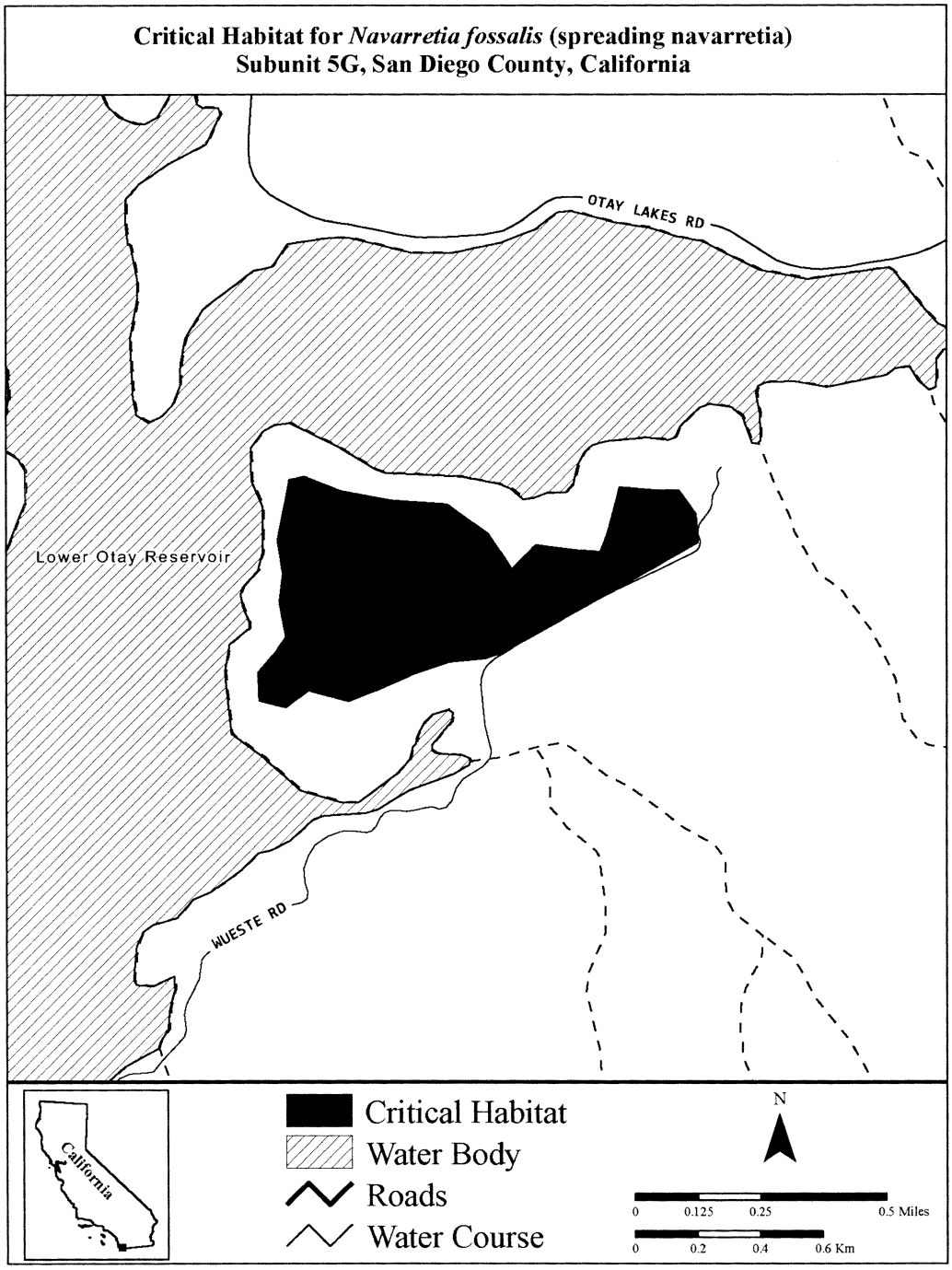
(i) [Reserved for textual description of Subunit 5F.]

(ii) *Note:* Map of Unit 5, Subunit 5F (Proctor Valley) follows:

(20) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5G: Otay Lakes.

(i) [Reserved for textual description of Subunit 5G.]

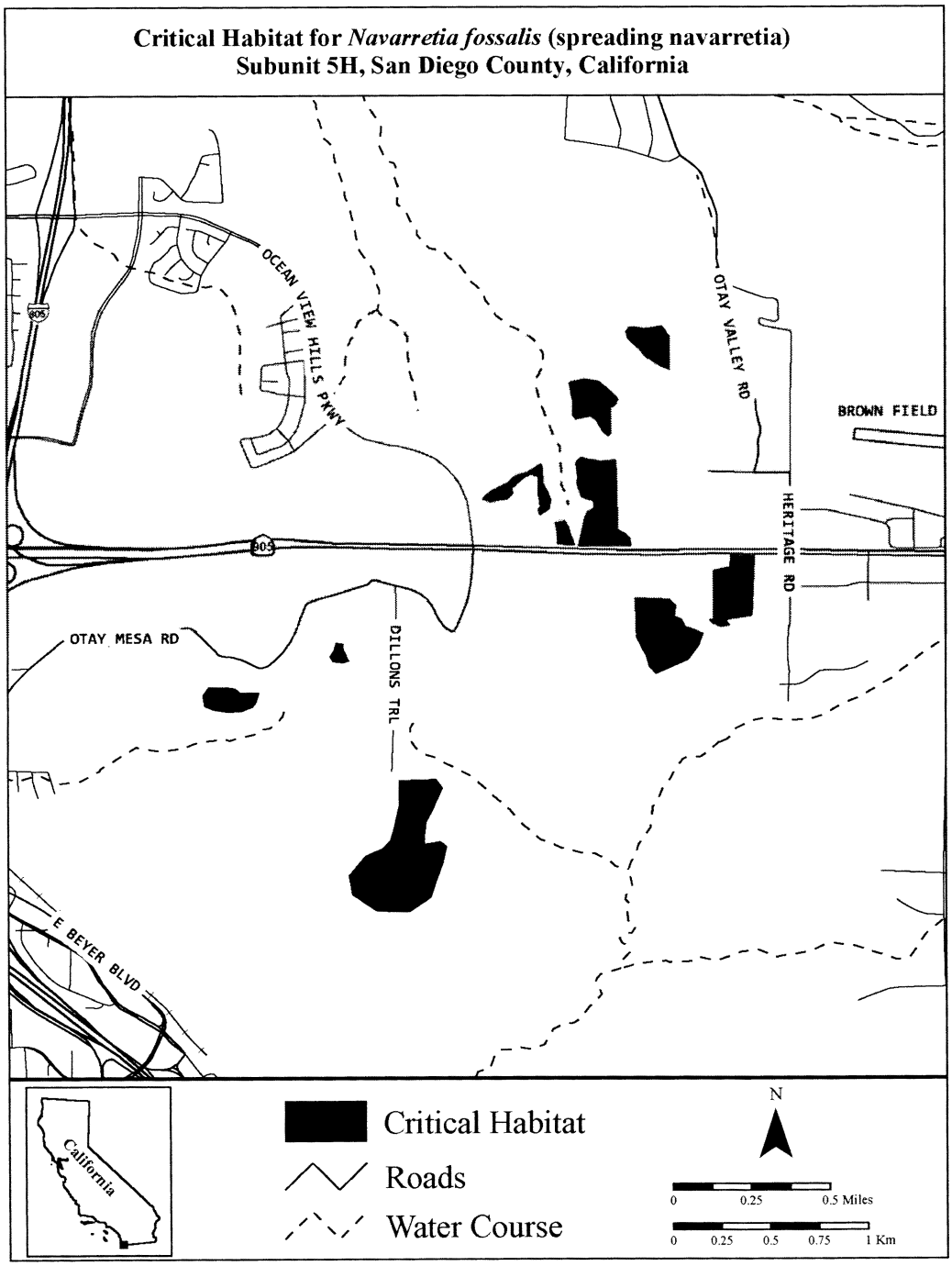
(ii) *Note:* Map of Unit 5, Subunit 5G (Otay Lakes) follows:



(21) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5H: Western Otay Mesa Vernal Pool Complexes.

(i) [Reserved for textual description of Subunit 5H.]

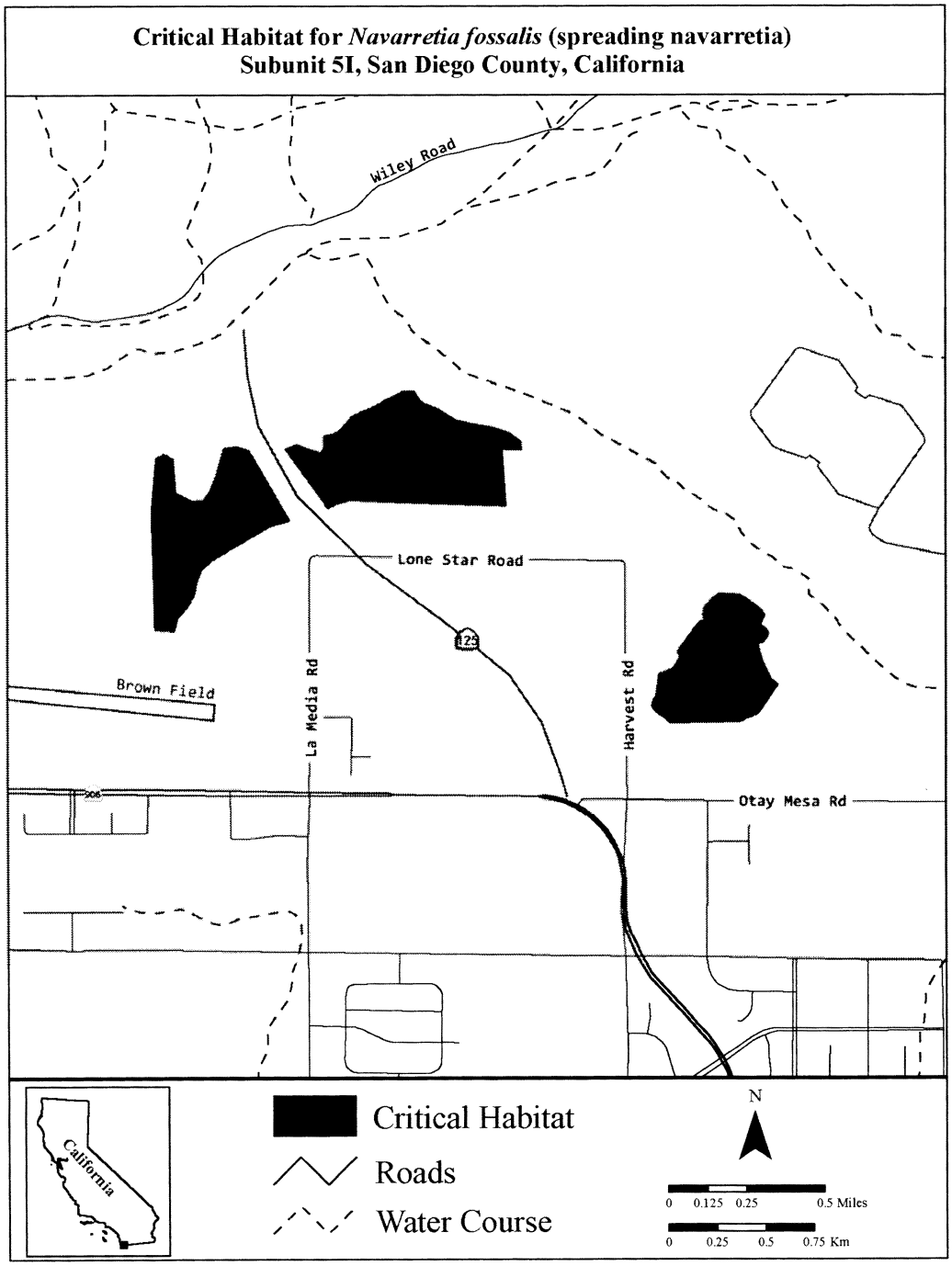
(ii) *Note:* Map of Unit 5, Subunit 5H (Western Otay Mesa Vernal Pool Complexes) follows:



(22) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5I: Eastern Otay Mesa Vernal Pool Complexes.

(i) [Reserved for textual description of Subunit 5I.]

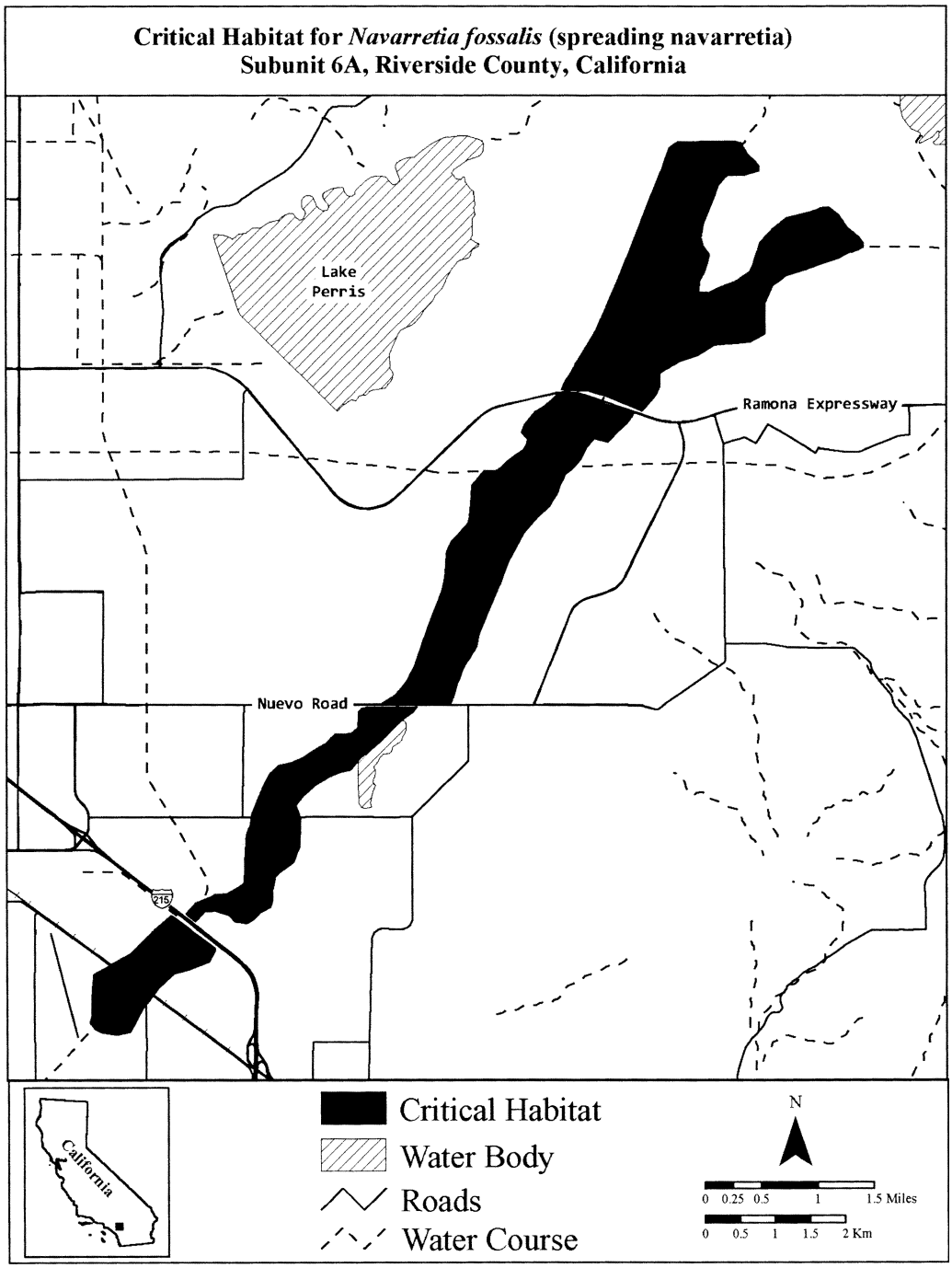
(ii) *Note:* Map of Unit 5, Subunit 5I (Eastern Otay Mesa Vernal Pool Complexes) follows:



(23) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6A: San Jacinto River.

(i) [Reserved for textual description of Subunit 6A.]

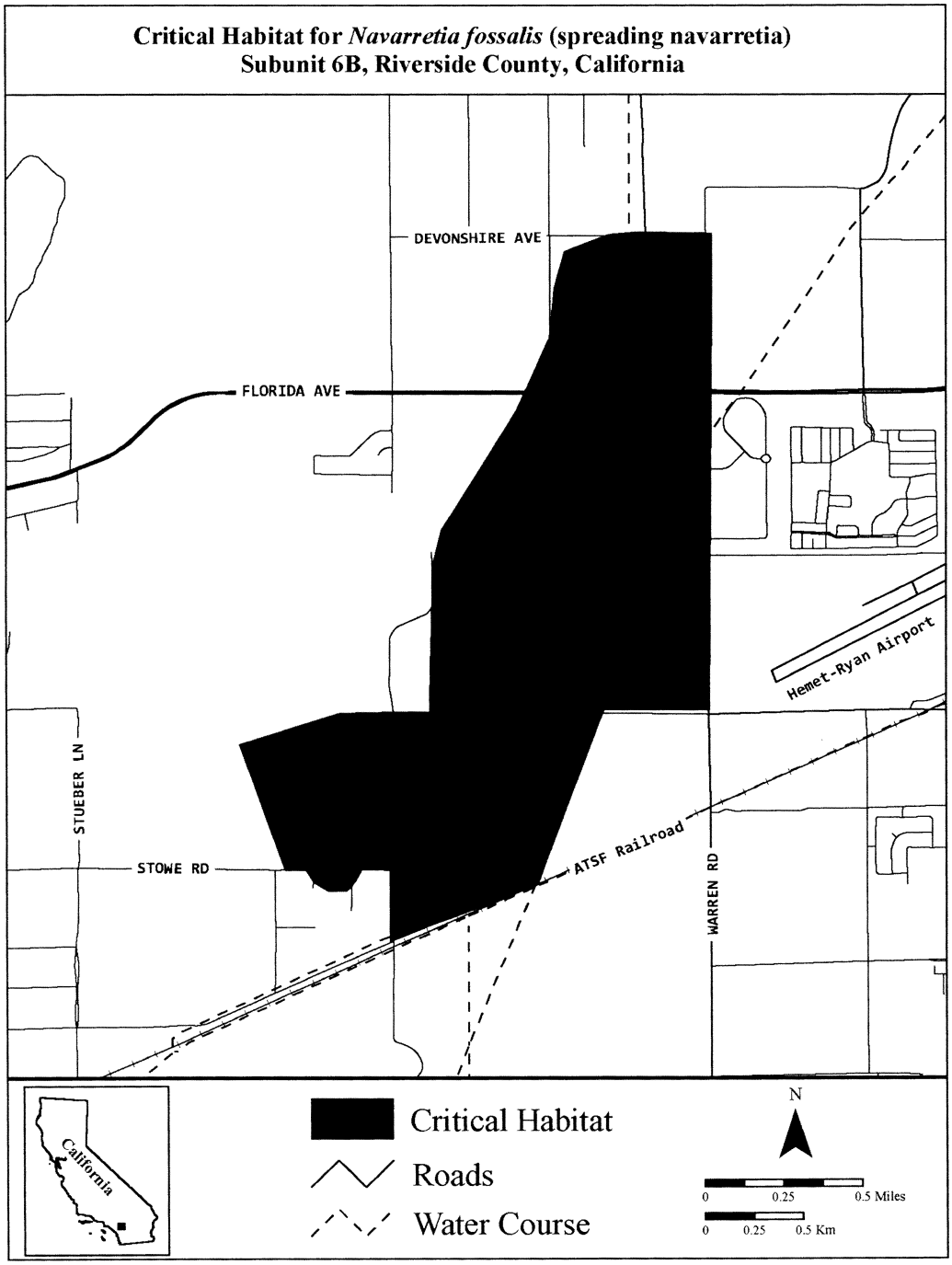
(ii) *Note:* Map of Unit 6, Subunit 6A (San Jacinto River) follows:



(24) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain.

(i) [Reserved for textual description of Subunit 6B.]

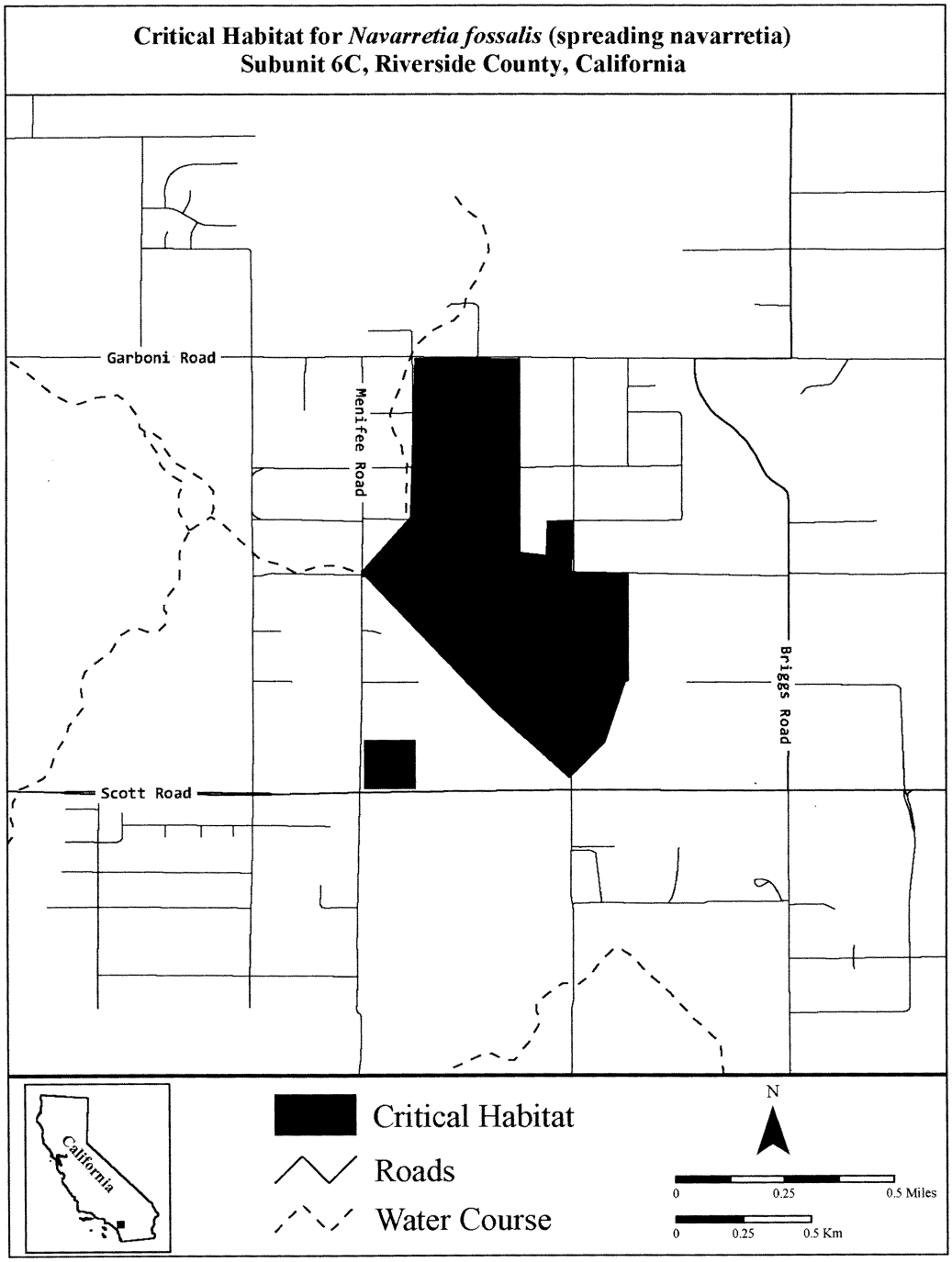
(ii) *Note:* Map of Unit 6, Subunit 6B (Salt Creek Seasonally Flooded Alkali Plain) follows:



(25) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6C: Wickerd and Scott Road Pools.

(i) [Reserved for textual description of Subunit 6C.]

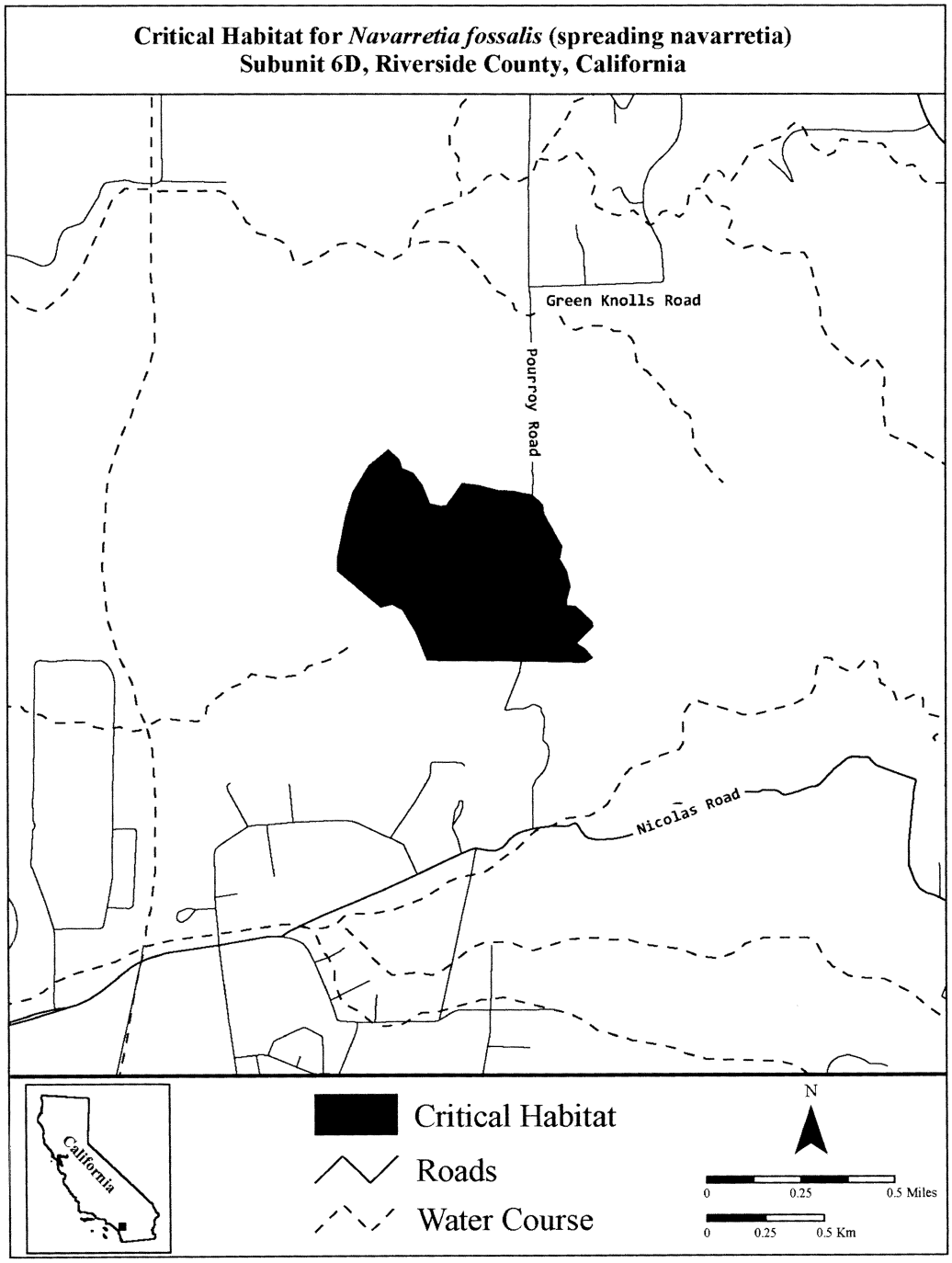
(ii) *Note:* Map of Unit 6, Subunit 6C (Wickerd and Scott Road Pools) follows:



(26) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6D: Skunk Hollow.

(i) [Reserved for textual description of Subunit 6D.]

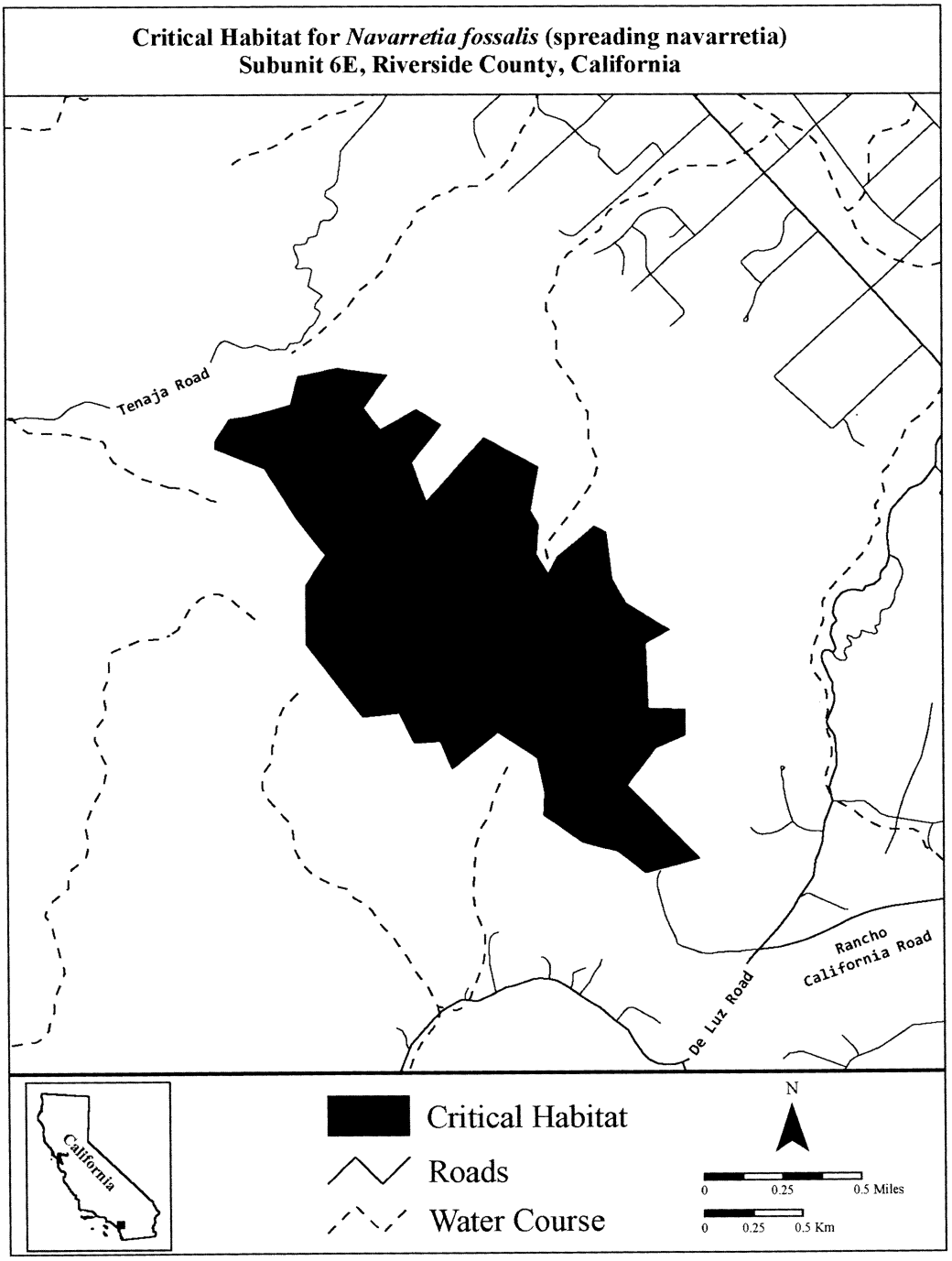
(ii) *Note:* Map of Unit 6, Subunit 6D (Skunk Hollow) follows:



(27) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6E: Mesa de Burro.

(i) [Reserved for textual description of Subunit 6E.]

(ii) *Note:* Map of Unit 6, Subunit 6E (Mesa de Burro) follows:



* * * * *

Dated: May 27, 2009.

Jane Lyder,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–13013 Filed 6–9–09; 8:45 am]

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