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50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0069; MO 92210–0–0009–B4]

RIN 1018–AV89

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating final revised critical habitat for the arroyo toad (*Anaxyrus californicus, Bufo californicus*). We are designating approximately 98,366 acres (ac) (39,807 hectares (ha)) of habitat in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California, as critical habitat for the arroyo toad. This final revised designation constitutes an increase of approximately 86,671 ac (35,074 ha) from the 2005 designation of critical habitat for the arroyo toad. A taxonomic name change has occurred and been accepted for the arroyo toad. Throughout the remainder of this document we will use the currently recognized name for the listed entity, *Anaxyrus californicus,* for references to the arroyo toad.

DATES: This rule becomes effective on March 11, 2011.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0069, *http://www.fws.gov/ventura/*, and *http://www.fws.gov/carlsbad/.* Comments and materials received, as well as supporting documentation used in preparing this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section) or 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 760–431–9624. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We intend to discuss only those topics directly relevant to the designation of revised critical habitat for the arroyo toad under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), in this final rule. For more information on the taxonomy, biology, and ecology of the arroyo toad, refer to the final listing rule published in the **Federal Register** on December 16, 1994 (59 FR 64859); the final critical habitat rule published in the **Federal Register** on February 7, 2001 (66 FR 9414); the final revised critical habitat rule published in the **Federal Register** on April 13, 2005 (70 FR 19562); and the proposed revised critical habitat rule published in the **Federal Register** on October 13, 2009 (74 FR 52612). Additionally, information on this species can be found in the Recovery Plan for the Arroyo Southwestern Toad (*Bufo microscaphus californicus*) finalized on July 24, 1999 (Service 1999). The nomenclature for the listed entity has changed to "arroyo toad (*Anaxyrus californicus*)" but this change does not alter the description or distribution of the animals.

Change in Taxonomic Nomenclature

When we made the proposed revised critical habitat for the arroyo toad available on October 13, 2009 (74 FR 52612), we proposed a nomenclature change to the arroyo toad from *Bufo californicus* to *Anaxyrus californicus* and for that change to be published in the Code of Federal Regulations (CFR). Based on the information presented in the proposed revised rule (*see Taxonomy and Nomenclature* of the proposed rule (74 FR 52612; October 13, 2009)) and acceptance by the scientific community, we make that change and are amending the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to identify the listed entity as "arroyo toad (*Anaxyrus californicus*)."

New Information on Species' Description, Life History, Ecology, Habitat and Range

We did not receive any new information pertaining to the description, ecology, or habitat of the arroyo toad following the 2009 proposed rule to revise critical habitat (74 FR 52612; October 13, 2009). However, the following paragraphs discuss new information that we received regarding the species' life history and status, and the areas needed for arroyo toad conservation.

Life History

The following additional information and clarifications on the life history of the arroyo toad are based on comments from peer reviewers (*see* **Peer Review** section below) received on the proposed revised rule (74 FR 52612; October 13, 2009).

We stated in the revised proposed rule that most arroyo toads become sexually mature in the spring following metamorphosis. However, we should clarify that unlike males, female arroyo toads generally do not become sexually mature until 2 years of age (Sweet 1992, p. 52).

In the proposed revised rule, we stated that arroyo toads need breeding pools that are less than 12 inches (in.) (30 centimeters (cm)) deep. However, a peer reviewer pointed out that pools "less than 12 in. (30 cm) deep" may not include any suitable breeding habitat in some cases. Breeding pools need a band of current-free water near the shoreline that is 2 to 4 feet (ft) (0.6 to 1.2 meters (m)) wide and less than 4 in. (10 cm) deep. The peer reviewer has found that arroyo toad egg clutches are laid entirely or mostly in water less than 4 in. (10 cm) deep with minimal current velocity because egg strands are not attached to any substrate features and can be swept away by even very small currents. Additionally, egg strands or portions of strands that end up in water over about 6 in. (15 cm) deep are often attacked by fungus and fail to hatch (Sweet 1992, p. 57). Based on the above information, we now specify that arroyo toads need breeding pools that are no more than 6 in. (15 cm) deep. We have also made changes as appropriate to the primary constituent elements (PCEs) in this final rule (*see* the "*Primary Constituent Elements for the Arroyo Toad*" section below). For more life history information, please *see* the "*Life History*" section in the proposed revised critical habitat designation published in the **Federal Register** on October 13, 2009 (74 FR 52612).

Reasons for Decline and Threats

Comments we received on the proposed revised rule (74 FR 52612; October 13, 2009) provided additional information and clarifications on threats to the arroyo toad.

In the 2009 proposed rule under the "*Reasons for Decline and Threats*" section, we stated that the introduction of aquatic species not native to southern California watercourses has been facilitated by construction of the California Aqueduct and other sources of inter-basin water transport (Service 1999, p. 48). We also stated that

currently, the California Aqueduct is linked directly to the Santa Ynez River, Santa Clara River, San Jacinto River, and Mojave River Basins. However, one peer reviewer noted that the Santa Ynez River is connected to the California Aqueduct only via many tens of kilometers of buried pipeline, with numerous pump stations. It is far less likely that macroscopic, nonnative organisms will survive such transport than is the case for the Santa Clara, San Jacinto and Mojave drainage connectors, so the threat posed to the San Ynez River populations from aqueduct transfer is not of the same order of magnitude as for the other systems.

In the 2009 proposed rule under the "*Reasons for Decline and Threats*" section, we also noted that nonnative species that compete for resources with or prey on arroyo toads pose a serious threat to arroyo toads. Nonnative amphibians, such as bullfrogs (*Lithobates catesbeianus*) and African clawed frogs (*Xenopus laevis*), are known to feed on arroyo toads at various life stages (Ramirez 2007, p. 102). Arroyo toad tadpoles are also subject to predation by introduced fish species, especially green sunfish (*Lepomis cyanellus*) and prickly sculpin (*Cottus asper*), whereas mosquitofish (*Gambusia affinis*) and crayfish (*Procambarus clarkii*) have been observed to prey on arroyo toad eggs in addition to tadpoles. The presence of deep and persistent pools during summer and fall constitute a threat to arroyo toads because such pools provide refuge and breeding habitat for nonnative predators such as crayfish, various warm-water fish species, African clawed frogs, and bullfrogs. Artificially sustained flow regimes and activities that create ponds (including the introduction of beaver (*Castor canadensis*) into central and southern coastal montane regions) make habitat more suitable for bullfrogs and African clawed frogs than for arroyo toads (Sweet 1992, p. 156). For example, the presence of bullfrogs is an indicator of how the natural hydrology of a stream drainage has been altered. Bullfrog tadpoles mature more slowly than arroyo toads and many other amphibians and require permanent water for a full year (Hecnar and M'Closkey 1997, p.146), whereas arroyo toads are essentially a terrestrial species and need aquatic habitats with shallow pools and minimal current only during the breeding season. In stream habitats with pools that predominately persist through the summer and then dry up by the fall, arroyo toads would be at an advantage in comparison to nonnative species. In a modified system with deep pools that persist year-round, both species must rely on the same habitat for breeding, even though their biological needs differ, which allows bullfrogs more opportunity to prey on essentially all life stages of arroyo toads.

We have also received new information on the threat that feral pigs (*Sus scrofa*) pose not only to amphibians in general, but in particular to arroyo toads in critical habitat units 15, 16, 17, and 18. The Forest Service is studying the effects of feral pigs in the San Diego River where pigs were released approximately 3 years ago on tribal lands. According to a forest biologist on the Cleveland National Forest, feral pigs have now spread as far north as Lake Henshaw and east into Cuyamaca State Park, possibly into the San Luis Rey River, San Vincente Creek, and Sweetwater River (Winter *in litt.* 2010). In a recent study by Jolley *et al.* (2010, p. 519), wild pigs were found to negatively affect almost all aspects of ecosystem structure and function. Their rooting disturbs soil layers and natural decomposition cycles. Typically traveling in groups, areas where pigs have rooted appear as if rototilled, leaving large areas of bare earth that can be easily colonized by invasive weeds. In addition to rooting and habitat alteration, wild pigs prey on reptiles and amphibians, although the extent of predation has not been quantified (Jolley *et al.* 2010, p. 520).

In recent decades, large fires in the West have become more frequent, more widespread, and potentially more deadly (Joint Fire Science Program (JFSP) 2007, pp. 1–12). Wildfire has always been a periodic visitor to southern California forests, as part of the cycle of natural dynamics that influences the composition of our forests (JFSP 2007, p. 1). However, recently there has been a shift to more severe fires in some locations and wildfire effects are often exacerbated by drought and insect attack. In addition, fire suppression activities such as fire line construction, hand line construction, bulldozing, water withdrawal using helicopters and pumps, backfiring, and fire camp and safety zone construction pose a threat to the arroyo toad.

Direct mortality to arroyo toads can result from construction of fuelbreaks and safety zones in stream terraces where arroyo toads are burrowed. Bulldozing operations can also severely degrade other essential upland habitats. For example, in response to the Zaca Fire that occurred on the Los Padres National Forest in 2007, a number of broad fuelbreaks and safety zones were bulldozed in several areas, including the lower portions of Mono and Indian Creeks (Sweet 2007a, pp. 1–9; 2007b, p. 1). Based on research along Mono and Indian Creeks prior to the fire (Sweet 1992, pp. 1–198; 1993, pp. 1–73), juvenile and adult arroyo toads were known to make extensive use of the stream terraces where several of the fuelbreaks and safety zones were constructed. In August and September of 2007 when construction occurred, a large proportion of the population would have been within burrows on the terraces and any toads that were in those burrows were very likely killed by the bulldozing (Sweet 2007a, p. 1). In addition to causing direct mortality, Sweet (2007a, p. 1) reported that the bulldozing operations severely degraded essential upland habitat by removing shade and the opportunity for toads to select microclimates based on soil temperature, moisture content, and ground cover. The bulldozing also created substantial barriers to toad movement through the placement of large piles of woody debris between the creek bed and the terraces. This formed ideal conditions for the terraces to become invaded by nonnative weeds, in particular yellow star thistle (*Centaurea solstitialis*), and thus created unsuitable habitat for arroyo toads because they are unable to dig burrows for shelter or aestivation in terraces where yellow star thistle is well-established (Sweet 2007a, p. 1). Based on the above information, we believe arroyo toads suffer direct mortality and habitat loss from fire suppression activities.

Previous Federal Action

On July 20, 2007 (Service 2007, pp. 1–2), we announced that we would review the April 13, 2005, final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined it was necessary to revise critical habitat, and we published a proposal to revise the designation on October 13, 2009 (74 FR 52612). Additionally, 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 2005 designation of critical habitat for the arroyo toad (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* Case No. 07–2380–JM–AJB). On June 5, 2008, the court entered a consent decree requiring a proposed revised critical habitat rule to be submitted to the **Federal Register** by October 1, 2009,

and a final revised critical habitat designation to be submitted to the **Federal Register** by October 1, 2010. On June 29, 2010, we published in the **Federal Register** a notice reopening the comment period on the proposed rule and making available the draft economic analysis (75 FR 37358). On August 10, 2010, the U.S. District Court granted a motion to modify the stipulated settlement agreement to submit the final revised critical habitat determination to the **Federal Register** on January 21, 2011. For more information on previous Federal actions concerning the arroyo toad, refer to the proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612).

Summary of Changes From the 2005 Critical Habitat Designation

On April 28, 2004 (69 FR 23254), we proposed to designate 138,713 ac (56,133 ha) of critical habitat for the arroyo toad in 23 units. On April 13, 2005 (70 FR 19562), we designated approximately 11,695 ac (4,733 ha) of critical habitat for the arroyo toad in six units. We proposed to revise this designation to approximately 109,110 ac (44,155 ha) in 22 units on October 13, 2009 (74 FR 52612). This final revised critical habitat designation includes approximately 98,366 ac (39,807 ha) in 21 units, after excluding portions of Units/Subunits 6b, 8, 9, 10a, 10b, 11a, 13b, 13c, 14, 15, 16d, 17a, 18c, and 19a (approximately 11,697 ac (4,734 ha)) based on consideration of economic, national security, and other relevant impacts (*see* **Exclusions Under Section 4(b)(2) of the Act** section below). The areas identified in this final revised rule constitute revisions of areas excluded and designated as critical habitat for the arroyo toad on April 13, 2005 (70 FR 19562; Figure 1), and proposed revisions to that rule published on October 13, 2009 (74 FR 52612). This final revised critical habitat designation includes approximately 98,366 ac (39,807 ha) of land in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California. Table 1 below outlines the differences between the 2005 final critical habitat rule (70 FR 19562; April 13, 2005), the 2009 proposed revisions to the critical habitat designation (74 FR 52612; October 13, 2009), and this final revised critical habitat designation for the arroyo toad. For more information on the differences between the 2005 critical habitat rule and the 2009 proposed revised critical habitat rule, please *see* the **Summary of Changes From Previously Designated Critical Habitat** section of the proposed revised critical habitat rule published in the **Federal Register** on October 13, 2009 (74 FR 52612).

TABLE 1—CHANGES BETWEEN THE APRIL 13, 2005, ARROYO TOAD REVISED CRITICAL HABITAT DESIGNATION; THE OCTOBER 13, 2009 AND THE JUNE 29, 2010, PROPOSED REVISED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE AND MAY NOT TOTAL DUE TO ROUNDING

Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
1. San Antonio River	Monterey	Entire Unit excluded under 4(b)(2) for national security reasons.	Entire Unit exempted under 4(a)(3).	Entire Unit exempted under 4(a)(3).
2. Sisquoc River	Santa Barbara	Designated as Unit 2: 4,800 (1,942).	Included as Unit 2: 3,775 (1,528).	Designated as Unit 2: 3,775 (1,528).
3. Upper Santa Ynez River Basin.	Santa Barbara	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 3: 3,032 (1,227).	Designated as Unit 3: 3,032 (1,227).
4. Sespe Creek	Ventura	Designated as Unit 4: 4,008 (1,622).	Included as Unit 4: 2,760 (1,117).	Designated as Unit 4: 2,760 (1,117).
5. Piru Creek	Ventura	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 5: 2,507 (1,015).	Designated as Unit 5: 2,507 (1,015).
5a.			Included as Subunit 5a: 1,358 (550).	Designated as Subunit 5a: 1,358 (550).
5b.			Included as Subunit 5b: 1,149 (465).	Designated as Subunit 5b: 1,149 (465).
6. Upper Santa Clara River Basin.	Los Angeles	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 6: 3,795 (1,537).	Designated as Unit 6: 2,802 (1,134).
6a.			Included as Subunit 6a: 520 (210).	Designated as Subunit 6a: 520 (210).
6b.			Included as Subunit 6b: 1,995 (807).	Designated as Subunit 6b: 1,003 (406).
6c.			Included as subunit 6c: 1,279 (518).	Designated as Subunit 6c: 1,279 (518).
7. Upper Los Angeles River Basin.	Los Angeles	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 7: 1,190 (482).	Designated as Unit 7: 1,190 (482).
8. Lower Santa Ana River Basin.	Orange	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 8: 2,182 (883).	Designated as Unit 8: 737 (298).
9. San Jacinto River Basin	Riverside	Designated as Unit 9: 700 (283).	Included as Unit 9: 2,406 (974).	Designated as Unit 9: 2,391 (968).
9a.			Included as Subunit 9a: 1,226 (496).	Designated as Subunit 9a: 1,226 (496).
9b.			Included as Subunit 9b: 1,180 (478).	Designated as Subunit 9b: 1,166 (472).

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Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical Habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
10. San Juan Creek Basin	Orange, Riverside.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 10: 5,667 (2,293).	Designated as Unit 10: 3,496 (1,415).
10a.			Included as Subunit 10a: 4,728 (1,913).	Designated as Subunit 10a: 3,096 (1,253).
10b.			Included as Subunit 10b: 939 (380).	Designated as Subunit 10b: 399 (161).
11. San Mateo Creek Basin	Orange, San Diego.	Entire Unit either excluded under 4(b)(2) for economic reasons or exempted under 4(a)(3).	Included as Unit 11: 1,878 (758).	Designated as Unit 11: 1,820 (737).
11a.			Included as Subunit 11a: 1,034 (418).	Designated as Subunit 11a: 975 (395).
11b.			Included as Subunit 11b: 844 (341).	Designated as Subunit 11b: 844 (341).
12. Lower Santa Margarita River Basin.	San Diego	Entire Unit either excluded under 4(b)(2) for economic reasons or exempted under 4(a)(3).	Included as Unit 12: 1,009 (408).	Designated as Unit 12: 1,009 (408).
12a.			Included as Subunit 12a: 394 (159).	Designated as Subunit 12a: 394 (159).
12b.			Included as Subunit 12b: 615 (248).	Designated as Subunit 12b: 615 (248).
13. Upper Santa Margarita River Basin.	Riverside, San Diego.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 13: 8,137 (3,293).	Designated as Unit 13: 7,863 (3,182).
13a.			Included as Subunit 13a: 1,155 (467).	Designated as Subunit 13a: 1,155 (467).
13b.			Included as Subunit 13b: 4,756 (1,925).	Designated as Subunit 13b: 4,731 (1,914).
13c.			Included as Subunit 13c: 2,226 (901).	Designated as Subunit 13c: 1,977 (800).
14. Lower and Middle San Luis Rey River Basin.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 14: 12,906 (5,223).	Designated as Unit 14: 10,115 (4,093).
15. Upper San Luis Rey River Basin.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 15: 12,977 (5,252).	Designated as Unit 15: 8,368 (3,336).
16. Santa Ysabel Creek Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 16: 15,494 (6,270).	Designated as Unit 16: 15,370 (6,220).
16a.			Included as Subunit 16a: 13,967 (5,652).	Designated as Subunit 16a: 13,865 (5,611).
16d.			Included as Subunit 16d: 1,527 (618).	Designated as Subunit 16d: 1,504 (609).
17. San Diego River Basin/ San Vicente Creek.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 17: 4,263 (1,725).	Designated as Unit 17: 4,171 (1,688).
17a.			Included as Subunit 17a: 1,241 (502).	Designated as Subunit 17a: 1,149 (465).
17b.			Included as Subunit 17b: 1,865 (755).	Designated as Subunit 17b: 1,865 (754).
17d.			Included as Subunit 17d: 1,158 (469).	Designated as Subunit 17d: 1,158 (469).
18. Sweetwater River Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 18: 4,783 (1,936).	Designated as Unit 18: 4,624 (1,871).
18a.			Included as Subunit 18a: 4,156 (1,682).	Designated as Subunit 18a: 4,156 (1,682).
18c.			Included as Subunit 18c: 627 (254).	Designated as Subunit 18c: 470 (189).
19. Cottonwood Creek Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 19: 14,375 (5,817).	Designated as Unit 19: 14,344 (5,804).
19a.			Included as Subunit 19a: 5,847 (2,366).	Designated as Subunit 19a: 5,816 (2,353).

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Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical Habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
19b.			Included as Subunit 19b: 5,129 (2,076).	Designated as Subunit 19b: 5,129 (2,076).
19c.			Included as Subunit 19c: 1,511 (611).	Designated as Subunit 19c: 1,511 (611).
19d.			Included as Subunit 19d: 938 (380).	Designated as Subunit 19d: 938 (380).
19e.			Included as Subunit 19e: 950 (384).	Designated as Subunit 19e: 950 (384).
20. Upper Santa Ana River Basin/Cajon Wash.	San Bernardino.	Designated as Unit 20: 1,119 (453).	Included as Unit 20: 1,775 (718).	Designated as Unit 20: 1,775 (718).
21. Little Rock Creek Basin	Los Angeles	Designated as Unit 21: 734 (297).	Included as Unit 21: 612 (248).	Designated as Unit 21: 612 (248).
22. Upper Mojave River Basin	San Bernardino.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 22: 5,919 (2,395).	Designated as Unit 22: 5,602 (2,267).
22a.			Included as Subunit 22a: 5,684 (2,300).	Designated as Subunit 22a: 5,602 (2,267).
22c.			Included as Subunit 22c: 235 (95).	Entire Subunit removed—does not meet the definition of critical habitat.
23. Whitewater River Basin	Riverside	Designated as Unit 23: 333 (135).	Included as Unit 23: 1,355 (548).	Entire Unit removed—does not meet the definition of critical habitat.
Total *		11,695 (4,733)	112,765 (45,634)	98,366 (39,807)

* Values in table may not sum due to rounding.

Summary of Changes From the 2009 Proposed Rule To Revise Critical Habitat

The most significant changes between the October 2009 proposed revision and this final revised rule are outlined in Table 1 above and include:

(1) In the document making available the draft economic analysis of revised critical habitat designation for the Arroyo toad (DEA) (75 FR 37358; June 29, 2010), we stated we were considering exclusion of the entirety of Subunit 6b from critical habitat based on the many conservation measures included in the Natural River Management Plan that protect the arroyo toad and its habitat on Newhall Ranch lands in Subunit 6b, the conservation easement lands that have already been conveyed to California Department of Fish and Game (CDFG) and are planned in the future in this subunit, and the valuable conservation partnership we have developed over the years with Newhall Ranch. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion for the lands covered by the conservation easements already conveyed to the CDFG and exclusion of these lands will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 330 ac (134 ha) of private land in Unit 6 under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act** section below).

(2) In the proposed revised critical habitat rule (74 FR 52612), we erroneously identified some of the upland habitat areas bordering the river corridors of the Santa Clara River and Castaic Creek as critical habitat in Subunit 6b. Upon closer examination, we have found that little of these lands remain as native habitats that would be useable as foraging areas by arroyo toads because these lands are either developed, used for intensive agriculture, or inaccessible to arroyo toads due to busy roads or steep slopes. We now find that these areas do not contain the physical or biological features that are essential to the conservation of the arroyo toad, and therefore we have removed approximately 662 ac (268 ha) from Subunit 6b.

(3) In the 2009 proposed revised rule, we included lands that encompass Santiago Creek from just below the confluence with Black Star Creek downstream to Irvine Lake in Unit 8. Following public comment, we reevaluated this area and determined that this area is unsuitable for arroyo toads because water from Irvine Lake frequently backs up into this area and creates conditions favorable for arroyo toad predators, and therefore it does not contain the physical or biological features essential to the conservation of the arroyo toad. Additionally, we removed other areas that do not contain the physical or biological features such as developed areas and roads. Therefore, we removed approximately 185 ac (75 ha) from Unit 8.

(4) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Orange County Central-Coastal Subregional NCCP/HCP (Orange County Central-Coastal NCCP/HCP) and 670 ac (271 ha) of land in the associated North Ranch Policy Plan Area (NRPPA) for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of these lands and the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude a total of approximately 1,259 ac (508 ha) of land covered by the Orange County Central-Coastal NCCP/HCP plan area (including those lands associated with the NRPPA) in Unit 8 in this final designation. For a complete

discussion of the benefits of inclusion and exclusion *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(5) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Southern Orange County Natural Community Conservation Plan (NCCP)/Master Streambed Alteration Agreement/HCP (Southern Orange HCP), now known as the Orange County Southern Subregion HCP, for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of lands conserved and managed by Orange County Southern Subregion HCP permittees and the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 2,179 ac (882 ha) of lands conserved and managed consistent with the Orange County Southern Subregion HCP in Units 10 and 11 in this final designation. For a complete discussion of the benefits of inclusion and exclusion, *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(6) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 10b. Upon closer examination, we determined that approximately 31 ac (13 ha) are developed (such as highways or buildings) and do not contain the physical or biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from Subunit 10b.

(7) In the 2009 proposed revised rule, we inadvertently included approximately 20 ac (8 ha) of land within Marine Corps Base Camp Pendleton in Subunit 11a. We have now exempted these areas from Subunit 11a. For a complete discussion of exemptions under section 4(a)(3)(B) of the Act, *see* **Exemptions** section below.

(8) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of those lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees that are conserved and managed, and that the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 289 ac (118 ha) of lands conserved and managed consistent with the Western Riverside County MSHCP in Units 9 and 13 in this final designation. For a complete discussion of the benefits of inclusion and exclusion, *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(9) In the 2009 proposed revised rule, we included approximately 57 ac (23 ha) of lands that fall within the Meadowwood project site (within Unit 14) north of State Route 76 along the San Luis Rey River in San Diego County. Following public comment, we reevaluated this area and determined that it does not contain suitable breeding or aestivation habitat and therefore does not contain the physical or biological features essential to the conservation of the arroyo toad. Thus, we removed these areas from critical habitat. We did not remove all lands north of State Route 76, as arroyo toads may access these other areas via Horse Ranch Creek, which flows underneath State Route 76 and connects with the San Luis Rey River.

(10) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 16a. Upon closer examination, we determined that approximately 101 ac (40 ha) do not contain the physical or biological features essential to the conservation of the arroyo toad, as these lands are developed and, in one area, the mapping did not accurately follow the boundaries of the essential features and does not contain suitable habitat. Therefore, we removed these areas from Subunit 16a.

(11) In the proposed revised rule, we stated we were considering excluding 4,046 ac (1,636 ha) of arroyo toad habitat in Units 14, 16, 17, and 18 under section 4(b)(2) of the Act. These areas overlap with tribal lands that are owned or managed by the following tribes: The Rincon Band of Luiseño Mission Indians of the Rincon Reservation (Rincon Band of Luiseño Mission Indians); the Pala Band of Luiseño Mission Indians of the Pala Reservation (Pala Band of Luiseño Mission Indians); Sycuan Band of the Kumeyaay Nation; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation (Mesa Grande Band of Diegueno Mission Indians); and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation). We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of some of these tribal lands (*i.e.,* tribal trust lands and those off-reservation lands (fee-owned) within the Sycuan Band of the Kumeyaay Nation that are currently in the process of being transferred to trust) and the exclusion will not result in extinction of the species. We have not concluded that the benefits of exclusion outweigh the benefits of inclusion for the remaining 1,046 ac (423 ha) of off-reservation, fee-owned lands, and these lands are included in this final revised critical habitat designation (included in Table 2 within the private land ownership totals). Therefore, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude a total of 3,000 ac (1,214 ha) as follows: 2,733 ac (1,103 ha) of tribal lands in Unit 14; 23 ac (9 ha) in Unit 16; 92 ac (37 ha) in Unit 17; and 152 ac (62 ha) in Unit 18 based on our government-to-government relationship with the tribes, and impacts to current and future partnerships with the affected tribes and other tribes we coordinate with on threatened and endangered species issues (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below).

(12) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the San Diego Multiple Species Conservation Program (MSCP) for exclusion under section 4(b)(2) of the Act. After considering the relevant impacts, the Secretary is declining to exercise his discretion to exclude these lands. Therefore, we included approximately 9,339 ac (3,779 ha) of land owned by or under the jurisdiction of the permittees of the San Diego MSCP in Units 16, 17, 18 and 19 in this final designation.

(13) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 18c. Upon closer examination, we determined that a road exists on approximately 6 ac (2 ha), and we have determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from Subunit 18c.

(14) In the document that made available the draft economic analysis of revised critical habitat designation for the Arroyo Toad (DEA) published in the **Federal Register** on June 29, 2010 (75 FR 37358), we stated we were considering exclusion of the Department of Defense (DOD) Remote Training Site Warner Springs and Camp Morena from critical habitat designation for reasons of national security. We have now made a final determination that the benefits of exclusion outweigh the benefits of

inclusion for these lands and exclusion of these lands will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 4,640 ac (1,878 ha) of Bureau of Land Management (BLM) and U.S. Forest Service (Forest Service) lands leased to the DOD in Unit 15 and Unit 19 for reasons of national security under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below).

(15) Based on information submitted by Summit Valley Ranch during the initial public comment period from October 13, 2009, to December 14, 2009, we removed approximately 82 ac (33 ha) of private land from Subunit 22a. The lands in question are located north of State Road 138 on Summit Valley Ranch, San Bernardino County. We included this area in the proposed revised critical habitat designation because we believed it contained suitable upland habitat for arroyo toads; however, it has come to our attention that: (1) Surveys have never detected arroyo toads in the area, (2) the area lacks the PCEs for the arroyo toad, and (3) State Route 138 serves as a barrier for arroyo toads to disperse into the area. Consequently, we determined that the area north of State Route 138 does not contain the physical or biological features essential to the conservation of arroyo toads and, therefore, does not meet the definition of critical habitat for the arroyo toad.

(16) We removed Subunit 22c (approximately 234 ac (95 ha)) from the final revised critical habitat designation. Subunit 22c is within the geographical area occupied by the species at the time of listing; however, this subunit was erroneously included in the 2009 revised proposed rule (74 FR 52612; October 13, 2009). Although we were not aware of this issue when we published the proposed rule, the existence of Cedar Springs Dam upstream of this subunit has altered the hydrology of the 1-mile (1.6 km) reach of the upper West Fork of the Mojave River to the upper end of Silverwood Lake to such an extent that it does not contain the features essential to the conservation of the species and, therefore, does not meet the definition of critical habitat for the arroyo toad.

(17) We removed lands within the jurisdiction of the Coachella Valley Multiple Species Conservation Plan (Coachella Valley MSHCP; Unit 23 (approximately 1,355 ac (548 ha)) from the final revised critical habitat designation. This unit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule.

(18) A number of comments we received suggested editorial changes and technical corrections to sections of the rule pertaining to the **Background** and "*Criteria Used To Identify Critical Habitat*" sections of our proposed revised rule. These changes were recommended to improve clarity, include additional information, and correct minor errors. They have been incorporated into this final revised rule where appropriate.

(19) In the document making available the draft economic analysis (75 FR 37358; June 29, 2010), we added approximately 1,068 ac (432 ha) to proposed Subunit 11b, approximately 951 ac (385 ha) to proposed Unit 15, approximately 1,831 ac (741 ha) to proposed Subunit 16a, and approximately 96 ac (39 ha) to proposed Subunit 16d. For a complete discussion of these revisions, *see* **Changes to Proposed Revised Critical Habitat** in the document making available the draft economic analysis (75 FR 37358; June 29, 2010).

(20) To prepare final critical habitat maps, we overlay maps of those lands we are excluding from this critical habitat designation on polygons that were used to delineate the areas proposed as critical habitat. This process can leave small fragments (generally less than an acre and not contiguous with designated critical habitat) of a proposed critical habitat unit or subunit that are not included in the excluded acreage but are instead removed due to discrepancies in the mapping process (such as differences in GIS layers that are mapped at different scales). These fragments in Unit 8, Subunit 10a, and Unit 14 were not included in the final revised critical habitat designation. As a result, the sum of the areas designated and excluded is slightly reduced in this final revised critical habitat designation compared to the size of the total proposed designation due to removal of these small artifacts or fragments created by the mapping discrepancies.

Critical Habitat

Background

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) Which 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 species 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 and transplantation; and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that are likely to result in 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 seeks or requests Federal agency funding or authorization of an activity 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 Federal action agency's and the applicant's obligation under section 7(a)(2) of the Act 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, habitat within the

geographical area occupied by the species at the time it was listed must contain the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are 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, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential for the conservation of the species and may be included in the critical habitat designation.

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 and any previous designations of critical habitat. Additional information sources may include the recovery plan for the species, 5-year reviews 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 dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity conservation because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p.4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11; Cayan *et al.* 2009, p. xi). However, predictions of climatic conditions for smaller sub-regions, such as California, remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other conditions. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the arroyo toad that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the revised critical habitat for this species. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the arroyo toad, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

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

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, 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 derive the specific physical and biological features required for conservation of the arroyo toad from studies of this species' habitat, ecology,

and life history, as described below and in proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612). We have determined that the arroyo toad requires the following physical and biological features:

Space for Individual and Population Growth, and for Normal Behavior

The arroyo toad is found along medium-to-large streams in coastal and desert drainages in central and southern California, and Baja California, Mexico. It occupies aquatic, riparian, and upland habitats in a number of the remaining suitable drainages within its range. Suitable habitat for the arroyo toad is created and maintained by the fluctuating hydrological, geological, and ecological processes that naturally occur in riparian ecosystems and adjacent uplands (Campbell *et al.* 1996, pp. 13–15; Sweet 1992, 1993 *in* Service 1999, p. 39). Periodic flooding that modifies stream channels, redistributes channel sediments, and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad (Campbell *et al.* 1996, p. 13; Sweet 1992, 1993 *in* Service 1999, p. 39). This natural flooding regime helps maintain areas of open, sparsely vegetated, sandy stream channels and terraces.

The substrate in habitats preferred by arroyo toads consists primarily of sand, fine gravel, or pliable soil, with varying amounts of large gravel, cobble, and boulders. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth of the arroyo toad (Campbell *et al.* 1996, p. 12; Sweet 1992 *in* Service 1999, pp. 32–34). Arroyo toads breed in the quiet margins of open streams and avoid sites with deep or swift water, tree canopy cover, or steeply incised banks. Larvae occupy shallow areas of open streambeds on substrates ranging from silt to cobble, with preferences for sand or gravel. Newly metamorphosed arroyo toads and juveniles remain on sparsely vegetated sand and gravel bars bordering the natal pool for 3 to 5 weeks (Sweet 1992, p. 52).

Arroyo toads must be able to move between the stream and upland foraging sites, as well as up and down the stream corridor. Juveniles and adult arroyo toads require and spend much of their lives in riparian and upland habitats adjacent to breeding locations (Campbell *et al.* 1996, p. 12). Riparian habitats used for foraging and burrowing include sand bars, alluvial terraces, and streamside benches that lack vegetation, or are sparsely to moderately vegetated. Upland habitats used by arroyo toads during both the breeding and non-breeding seasons include alluvial scrub, coastal sage scrub, chaparral, grassland, and oak woodland.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Arroyo toad tadpoles eat microscopic algae, bacteria, and protozoans consumed from the spaces among pebbles, gravel, and sand, or abraded from stones (Sweet 1992, p. 82). Juveniles and adults eat insects, although ants are preferred. When foraging, arroyo toads are often found around the drip lines of oak trees. These areas often lack vegetation, yet have levels of prey that will support arroyo toads. When active at night, toads often are observed near ant trails feeding on ants, beetles, and other prey.

Cover or Shelter

During the day and other periods of inactivity, arroyo toads seek shelter by burrowing into sand. Thus, areas of sandy or friable (readily crumbled) soils are necessary, but these soils can be interspersed with gravel or cobble deposits. Additionally, arroyo toads may seek temporary shelter under rocks or debris and have been found in mammal burrows on occasion. Upland sites with compact soils can also be used for foraging and dispersal (Holland 2000, *in litt.* p. 2).

Sites for Breeding, Reproduction, and Rearing or Development of Offspring

The arroyo toad has specialized breeding habitat requirements. Arroyo toads are unusual in that females deposit their eggs at the male's calling site, rather than the behavior common in other toad species where the female transports the male to a deposition site of her choosing (Sweet 1992, p. 57). Because male toads stand on the substrate to call and their throats must be above water, eggs are laid in very shallow water. Female arroyo toads lay their eggs in water less than 4 in. (10 cm) (Sweet 1992, p. 37) but not greater than 6 in. (15 cm) deep over substrates of sand, gravel, or cobble in open sites such as overflow pools, old flood channels, and shallow pools along streams. These shallow pools are associated with open sand and gravel channels along low-gradient (typically less than 6 percent) reaches of medium-to-large streams (Campbell *et al.* 1996, p. 12; Sweet 1992, p. 28). In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more patchily distributed. Streams where arroyo toads breed can have either intermittent or perennial streamflow and typically experience periodic flooding that scours vegetation and replenishes fine sediments. Such habitats rarely have closed canopies over the lower banks of the stream channel due to periodic flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development.

Because the suitability of breeding pools may vary from year to year due to the dynamics of southern California riparian systems and flood regimes, adult arroyo toads may move up or down stream in search of suitable breeding pools, or not breed in certain years (Campbell *et al.* 1996, p. 14). Pools less than 6 in. (15 cm) deep with clear water, flow rates less than 0.2 ft per second (5 cm per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding and egg deposition (Sweet 1992, pp. 29–37). Breeding pools, especially those formed along intermittent streams, must persist a minimum of 2 months for the completion of larval development (Campbell *et al.* 1996, p. 6). When warm rainy conditions occur in January, February, and March, arroyo toads become active and begin to forage on stream terraces and in channel margins. Breeding usually begins in late March at lower elevations but male calling peaks in early to mid-April and extends through late May, sometimes even into late June (Sweet 1992, p. 50). Breeding may occur on several dates at a single site, and eggs may be deposited over a period of 7 to 8 weeks (Campbell *et al.* 1996, p. 6; Griffin and Case 2001, p. 634). Although egg strings are laid in very slow-moving water, larvae (tadpoles) can be found in water velocities of up to 1.0 to 1.3 ft per second (30 to 40 cm per second) (Sweet 1992, p. 29). Larvae usually hatch in 4 to 6 days at water temperatures of 54 to 59 degrees Fahrenheit (12 to 16 degrees Celsius) (Sweet 1992, p. 71). Tadpoles disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks (Sweet 1992, p. 50). After metamorphosis, the juvenile arroyo toads remain on the bordering gravel bars until the pool dries out (usually from 8 to 12 weeks depending on the site and rainfall) (Sweet 1992, p. 52).

Primary Constituent Elements for the Arroyo Toad

Under the Act and its implementing regulations, we are required to identify

the physical or biological features essential to the conservation of the arroyo toad in areas occupied at the time of listing (including areas currently occupied that based on biology we believe were likely occupied at the time of listing), focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we determined the arroyo toad's PCEs are:

(1) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

- Breeding pools that are less than 6 in (15 cm) deep;
- Areas of flowing water with current velocities less than 1.3 ft per second (40 cm per second); and
- Surface water that lasts for a minimum of 2 months during the breeding season (a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(2) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(3) A natural flooding regime, or one sufficiently corresponding to natural, that: (A) Is characterized by intermittent or near-perennial flow that contributes to the persistence of shallow pools into at least mid-summer; (B) Maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and (C) Also modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

(4) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and connectivity to areas that contain suitable habitat.

In summary, the need for space for individual and population growth and normal behavior is met by PCEs 1 and 4; the need for food, water, and physiological requirements is met by PCE 1; cover and shelter requirements are met by PCE 2; areas for breeding, reproduction, and rearing of offspring are met by PCEs 1, 2, and 3; and habitats representative of the historical, geographical, and ecological distributions of a species are met by PCE 4.

Special Management Considerations or Protection

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

The area designated as revised critical habitat may require some level of management or protection to address current and future threats to the arroyo toad and maintain the physical and biological features essential to the conservation of the species. Special management may be required in all units to ensure that aquatic and riparian upland habitats provide abundant breeding and non-breeding areas, prey species, shelter, and connectivity within the landscape.

A detailed discussion of threats to the arroyo toad and its habitat can be found in the final listing rule (59 FR 64859, December 16, 1994); the first critical habitat designation (66 FR 9414, February 7, 2001); the previous revised critical habitat designation (70 FR 19562, April 13, 2005); the proposed revised critical habitat designation (74 FR 52612, October 13, 2009); and the 1999 recovery plan (Service 1999, pp. 1–119). Maintaining the physical and biological features essential to the conservation of the arroyo toad may require special management considerations or protection to reduce effects that may result from the following threats, among others: Habitat destruction and alteration due to short- and long-term changes in river hydrology, including construction of dams and water diversions that alter natural water flow regimes; agriculture and urbanization; construction of roads; off-highway vehicle use and other recreational activities; mining activities; introduced nonnative predators (such as bullfrogs and predatory fish); drought; periodic fires and fire suppression activities; unseasonal water releases from dams; livestock grazing; and light and noise pollution from adjacent developments and campgrounds. These threats may cause habitat alteration, degradation, or fragmentation and the direct or indirect loss of arroyo toad eggs, juveniles, or adults.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining those areas that, within the geographical area occupied by the species at the time of listing (*see* "*Geographic Range*" section in the 2009 proposed revised critical habitat rule (74 FR 52612)), possess those physical or biological features essential to the conservation of the arroyo toad and which may require special management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing for any areas that are essential for the conservation of the arroyo toad. In designating critical habitat for the arroyo toad, we reviewed the relevant information available, including peer-reviewed journal articles, unpublished reports and materials (such as survey results and expert opinions), the final listing rule, the 2004 proposed critical habitat rule, the arroyo toad recovery plan (Service 1999, pp. 1–119), the 5-year review for the arroyo toad (Service 2009, pp. 1–51), and regional GIS coverages. We analyzed this information to develop criteria for identifying areas that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the arroyo toad that may require special management considerations or protection, or that are essential for the conservation of the arroyo toad. The process we used is described below.

(1) To begin our analysis, we first examined the California Natural Diversity Database (CNDDB) current and historical records to get an indication of the habitat where arroyo toads are present; the CNDDB is a continually refined and updated inventory of location information gathered during species surveys and observations. We then examined the arroyo toad recovery

plan (Service 1999, pp. 1–119), which has a recovery strategy focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads (defined as populations that require little or no direct human assistance such as captive breeding or rearing, or translocation between sites) throughout the historical range of the species, and on minimizing or eliminating impacts and threats to arroyo toad populations (Service 1999, p. 67). The recovery plan states that in-stream and riparian habitats that support breeding, as well as upland habitats that provide foraging and overwintering habitat, need to be managed to maintain and enhance populations throughout the range of the arroyo toad (Service 1999, p. 68). The recovery plan divides the range of the arroyo toad into three large recovery units—northern, southern, and desert—and we considered the conservation of the arroyo toad in each of these as well as the species as a whole in our analysis. Using the recovery plan as our guide, we analyzed areas within the geographical area occupied by the arroyo toad at the time of listing to determine which areas contained the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (the physical and biological features).

(2) In determining the specific areas containing the essential physical and biological features, based on the recovery plan, 5-year review, previous critical habitat proposals for the arroyo toad, scientific literature, and results of studies that have been conducted since the species was listed, we made sure that we proposed critical habitat that would provide for the conservation of the species. Criteria for critical habitat units we used to assist our process included: (1) Representation of locations throughout the current geographical, elevational, and ecological distribution of the species; (2) maintenance of the appropriate population structure across the species' range; (3) retention or provision of the connectivity between breeding sites that allows for the continued existence of essential metapopulations (a group of subpopulations in somewhat geographically isolated patches, interconnected through patterns of gene flow, extinction, and recolonization (Soule 1987, p. 7), despite fluctuations in the status of subpopulations); and (4) presence of upland habitat around each breeding location to allow for survival and recruitment to maintain a breeding population over the long term.

We also evaluated the area outside the geographical area occupied by the species at the time of listing to identify any areas that are essential for the conservation of the arroyo toad. We looked at areas that may have been historically occupied by arroyo toads based on CNDDB records but were no longer occupied at the time of listing. We considered areas that may have the physical and biological features essential for the conservation of the species but have never been occupied. Based on our evaluation, we believe that areas currently occupied by arroyo toads are sufficient for the recovery of the species. The recovery plan for the arroyo toad also determined that occupied areas are sufficient for recovery and did not include any unoccupied areas. Therefore, based on available scientific information, we determined that there are no areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the arroyo toad.

(3) To identify and map areas that we determined meet the definition of critical habitat, we used data on known arroyo toad locations and data on movement distances by arroyo toads. The main source for arroyo toad locations was the CNDDB (2008); we also obtained data on locations that have not yet been entered into the CNDDB directly from the biologists that collected them.

Areas meeting the definition of critical habitat for the arroyo toad include occupied areas on stream reaches containing suitable breeding and upland habitat. To determine the extent of suitable arroyo toad habitat as discussed in the "*Habitat*" section of the 2009 proposed revised critical habitat rule (74 FR 52612; October 13, 2009), we used spatial data on stream gradients with grades less than 6 percent, aerial photography, surveys of habitat suitability, and site visits. Additionally, we included higher gradient areas between breeding habitat because these areas are used by toads during the non-breeding period and allow toads to disperse between breeding areas. To delineate upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces, valley bottomlands, and upland habitats adjacent to stream reaches occupied by the arroyo toad. Lacking spatially explicit data on geomorphology, we used elevation above the stream channel as an indicator of the extent of alluvial and upland foraging habitat. Based on the results of the GIS habitat model that incorporated average movement distances of arroyo toads, we determined that areas up to 82 ft (25 m) in elevation above the stream channel were most likely to contain the riparian and upland habitat elements essential to arroyo toads. Most arroyo toad activity and movement occurred within these areas; therefore, steeper slopes away from the stream were eliminated. However, we truncated the upland habitat delineation in flat areas at 4,921 ft (1,500 m) from the stream channel (a distance based on known movement of arroyo toads, *see* below) if the 82-ft (25-m) elevation limit had not yet been reached at that point. The 82-ft (25-m) elevation limit was reached at distances less than 4,921 ft (1,500 m) from the mapped stream channel along the majority of the stream reaches, so the distance limit was often not a factor. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23254; April 28, 2004), which was also included in the review process for the 2009 proposed critical habitat designation (74 FR 52612; October 13, 2009).

(4) To evaluate our critical habitat model, we assessed its effectiveness at capturing documented toad locations from studies that focused specifically on surveying toads in upland habitats and studies involving radio telemetry. Holland and Sisk (2000, pp. 1–28) established extensive pitfall trap arrays at discrete distances from two stream courses and operated these arrays at various periods throughout the year. They had 466 captures of arroyo toads, 35 (7.5 percent) of which were identified as being in upland areas. The low percentage of toads captured in upland areas may be because the vast majority of captures (98.7 percent) were during the months from January to September, when breeding and metamorphosis occurs and when toads would likely be in close proximity to the stream. Nevertheless, toads were captured at distances that ranged from 49 to 3,855 ft (15 to 1,175 m) from the upland-riparian ecotone (boundary) (Holland and Sisk 2000, pp. 1–28). For the two areas sampled in that study (Cristianitos Creek and the upper Santa Margarita River, San Diego County), we found that our critical habitat boundaries encompassed all of the pitfall trapping stations where arroyo toads were detected.

We also assessed studies that involved the tracking of arroyo toads with radio telemetry equipment. For example, in a number of studies by Ramirez (2002a, p. 10; 2002b, p. 50; 2002c, p. 23; 2003, pp. 72–81), arroyo toads were tracked from the end of

breeding activity until the commencement of aestivation, generally May through September. Cumulatively, these four studies involved tracking 77 adult arroyo toads in three separate critical habitat units in Orange, San Bernardino, and Los Angeles Counties. All but one of the numerous burrow sites chosen by these arroyo toads fell within our proposed revised critical habitat boundaries.

(5) To provide legal boundaries for the critical habitat areas, critical habitat boundaries for all drainages were mapped as contiguous blocks of 98-ft by 98-ft (30-m by 30-m) cells that conform to a Universal Transverse Mercator (UTM) grid. Due to the conversion of GIS data from two different geographic projections (UTM zone 10 and zone 11) and conversion of the data to acres and hectares, some rounding adjustments may be reflected in the total acreage of the units.

When determining revisions to critical habitat boundaries for this final rule, we made every effort to avoid developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat are excluded by text in this final rule. Therefore, Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action may affect adjacent critical habitat.

Final Revised Critical Habitat Designation

We are designating approximately 98,366 ac (39,807 ha) as critical habitat for the arroyo toad within 21 units, identified as Units 2 through 22. The area identified as critical habitat Unit 1 (6,453 ac (2,612 ha)) was exempted in its entirety under section 4(a)(3) of the Act and, therefore, was not proposed. Table 2 outlines the areas included and excluded from this final revised critical habitat designation by land ownership. Units designated as critical habitat are discussed in detail below. The areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the arroyo toad.

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
1. San Antonio River—exempt	Federal	0	0	0	0
2. Sisquoc River	Federal	1,700 (688)	0	0	1,700 (688)
	Private	2,073 (839)	0	0	2,073 (839)
3. Upper Santa Ynez River Basin	Federal	2,214 (896)	0	0	2,214 (896)
	Private	818 (331)	0	0	818 (331)
4. Sespe Creek	Federal	2,498 (1,011)	0	0	2,498 (1,011)
	Private	262 (106)	0	0	262 (106)
5. Piru Creek	Federal	2,105 (852)	0	0	2,105 (852)
	Private	402 (163)	0	0	402 (163)
5a.	Federal	1,277 (517)	0	0	1,277 (517)
	Private	81 (33)	0	0	81 (33)
5b.	Federal	828 (335)	0	0	828 (335)
	Private	321 (130)	0	0	321 (130)
6. Upper Santa Clara River Basin	Federal	443 (179)	0	0	443 (179)
	Private	3,351 (1,356)	662 (268)	330 (134)	2,359 (955)
6a.	Federal	284 (115)	0	0	284 (115)
	Private	236 (96)	0	0	236 (96)
6b.	Private	1,995 (807)	662 (268)	330 (134)	1,003 (406)
6c.	Federal	159 (64)	0	0	159 (64)
	Private	1,120 (453)	0	0	1,120 (453)
7. Upper Los Angeles River Basin	Federal	1,113 (451)	0	0	1,113 (451)
	Private	77 (31)	0	0	77 (31)
8.Lower Santa Ana River Basin	Federal	54 (22)	0	0	54 (22)
	Private	2,128 (861)	185 (75)	1,259 (508)	683 (276)
9. San Jacinto River Basin	Federal	505 (204)	0	0	545 (221)
	State	210 (85)	0	0	232 (94)
	Private	1,691 (684)	0	14 (6)	1,614 (653)
9a.	Federal	72 (29)	0	0	72 (29)
	Private	1,154 (467)	0	0	1,154 (467)
9b.	Federal	433 (175)	0	0	473 (191)
	State	210 (85)	0	0	232 (94)
	Private	537 (217)	0	14 (6)	461 (187
10. San Juan Creek Basin	Federal	558 (225)	0	0	558 (225)
	Local	1,909 (773)	16 (6)	1,854 (750	38 (15)
	Private	3,200 (1,295)	15 (6)	285 (115)	2,900 (1,174)
10a.	Federal	547 (221)	0	0	547 (221)
	Local	1,406 (569)	0	1,403 (568)	3 (1)

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION—Continued

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
	Private	2,775 (1,123)	1 (<1)	228 (92)	2,547 (1,031)
10b.	Federal	11 (4)	0	0	11 (4)
	Local	503 (204)	16 (6)	452 (183)	35 (14)
	Private	425 (172)	14 (6)	57 (23)	353 (143)
11. San Mateo Creek Basin	Federal	844 (341)	0	0	844 (341)
	Private	1,034 (418)	0	39 (16)	975 (395)
11a.	Private	1,034 (418)	0	39 (16)	975 (395)
11b.	Federal	844 (341)	0	0	844 (341)
12. Lower Santa Margarita River Basin	State	5 (2)	0	0	5 (2)
	Private	1,004 (406)	0	0	1,004 (406)
12a.	Private	394 (159)	0	0	394 (159)
12b.	State	5 (2)	0	0	5 (2)
	Private	610 (247)	0	0	610 (247)
13. Upper Santa Margarita River Basin*	Federal	454 (184)	0	0	454 (184)
	Private	7,682 (3,109)	0	275 (111)	7,409 (2,998)
13a.	Federal	337 (136)	0	0	337 (136)
	Private	813 (329)	0	0	818 (331)
13b.	Federal	117 (47)	0	0	117 (47)
	Private	4,640 (1,878)	0	26 (11)	4,614 (1,867)
13c.	Private	2,226 (901)	0	249 (101)	1,977 (800)
14. Lower and Middle San Luis Rey River Basin	Federal	4 (2)	0	0	4 (2)
	State	10 (4)	0	0	10 (4)
	Pala Tribe	2,385 (963)	0	1,662 (673)	**0
	Rincon Tribe	1,155 (467)	0	1,071 (433)	**0
	Private	9,351 (3,785)	58 (23)	0	10,101 (4,088)
15. Upper San Luis Rey River Basin	Federal	1,467 (594)	0	771 (312)	695 (281)
	Private	11,511 (4,658)	0	3,838 (1,553)	7,673 (3,105)
16. Santa Ysabel Creek Basin	Federal	190 (77)	0	0	190 (77)
	State	182 (74)	1 (<1)	0	175 (71)
	Local	143 (58)	0	0	143 (58)
	Tribal	23 (9)	0	23 (9)	0
	Private	14,956 (6,053)	100 (40)	0	14,862 (6,014)
16a.	Federal	190 (77)	0	0	190 (77)
	State	182 (74)	1 (<1)	0	175 (71)
	Local	143 (58)	0	0	143 (58)
	Private	13,452 (5,444)	100 (40)	0	13,357 (5,405)
16d.	Mesa Grande Tribe.	23 (9)	0	23 (9)	0
	Private	1,504 (609)	0	0	1,504 (609)
17. San Diego River Basin/San Vicente Creek	Federal	425 (172)	0	0	425 (172)
	Tribal	92 (37)	0	92 (37)	0
	Private	3,746 (1,516)	0	0	3,746 (1,516)
17a.	Federal	354 (143)	0	0	354 (143)
Capitan Grande Tribe	92 (37)	0	92 (37)	0	
	Private	795 (322)	0	0	795 (322)
17b.	Federal	48 (19)	0	0	48 (19)
	Private	1,817 (735)	0	0	1,817 (735)
17d.	Federal	23 (9)	0	0	23 (9)
	Private	1,134 (459)	0	0	1,134 (459)
18. Sweetwater River Basin	Federal	556 (225)	0	0	556 (225)
	State	1,659 (671)	0	0	1,659 (671)
	Tribal	391 (158)	0	152 (62)	**0
	Private	2,178 (882)	6 (2)	0	2,410 (975)
18a.	Federal	553 (224)	0	0	553 (224)
	State	1,554 (629)	0	0	1,554 (629)
	Private	2,049 (829)	0	0	2,049 (829)
18c.	Federal	3 (1)	0	0	3 (1)
	State	105 (42)	0	0	105 (42)
	Sycuan Tribe	391 (158)	0	152 (62)	**0
	Private	129 (53)	6 (2)	0	362 (146)
19. Cottonwood Creek Basin	Federal	4,118 (1,666)	0	0	4,118 (1,666)
	Local	1,482 (600)	0	31 (13)	1,476 (597)
	Private	8,778 (3,551)	0	0	8,751 (3,541)
19a.	Federal	2,128 (861)	0	0	2,128 (861)
	Local	1,482 (600)	0	31 (13)	1,476 (597)
	Private	2,237 (905)	0	0	2,212 (895)
19b.	Federal	209 (84)	0	0	209 (84)
	Private	4,921 (1991)	0	0	4,921 (1991)
19c.	Federal	809 (327)	0	0	809 (327)

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION—Continued

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
	Private	703 (284)	0	0	703 (284)
19d.	Federal	910 (368)	0	0	910 (368)
	Private	28 (11)	0	0	28 (11)
19e.	Federal	61 (25)	0	0	61 (25)
	Private	889 (360)	0	0	889 (360)
20. Upper Santa Ana River Basin/Cajon Wash	Federal	711 (288)	0	0	711 (288)
	Private	1,065 (431)	0	0	1,065 (431)
21. Little Rock Creek Basin	Federal	612 (248)	0	0	612 (248)
22. Upper Mojave River Basin*	Federal	2,186 (885)	43 (17)	0	2,143 (867)
	State	238 (96)	191 (77)	0	47 (19)
	Private	3,494 (1,414)	82 (33)	0	3,412 (1,381)
22a.	Federal	2,143 (867)	0	0	2,143 (867)
	State	47 (19)	0	0	47 (19)
	Private	3,494 (1,414)	82 (33)	0	3,412 (1,381)
22c.	Federal	43 (17)	43 (17)	0	0
	State	191 (77)	191 (77)	0	0
23. Whitewater River Basin	Federal	783 (317)	783 (317)	0	0
	Private	572 (231)	572 (231)	0	0
Total***		112,765 (45,634)	2,702 (1,091)	11,697 (4,734)	98,366 (39,807)

* Land ownership values differ from the proposed rule due to updated ownership data.
** Off-reservation lands (fee-owned) were not excluded and are included within the Private land ownership total.
*** Values in table may not sum due to rounding.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the arroyo toad below. The units are grouped by recovery unit as described in the recovery plan (Service 1999) and listed in order geographically north to south and west to east within each recovery unit. For more information about the areas excluded from critical habitat, please *see* **Exclusions Under Section 4(b)(2) of the Act** section of this final rule.

Northern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following seven unit descriptions is necessary to conserve the species in the northern recovery unit. Because the toad populations in this recovery unit have been reduced in size and their habitat fragmented by road construction, dams, agriculture, and urbanization, it is important to protect all of them and safeguard against the loss of any one population due to random natural or human-caused events. The Forest Service is the primary landowner of revised critical habitat within the northern recovery unit.

Unit 1: San Antonio River: (6,453 ac (2,612 ha))

All lands in Unit 1 (approximately 6,453 ac (2,612 ha)) were exempted under section 4(a)(3)(B) of the Act in the October 2009 proposed revised designation for the arroyo toad (74 FR 52612; October 13, 2009) because they are subject to the 2007 Service-approved Integrated Natural Resources Management Plan (INRMP) for Fort Hunter Liggett. The INRMP provides a benefit to the arroyo toad, including monitoring arroyo toad population status, reducing public and military vehicle encroachment into arroyo toad habitats, reducing bullfrogs and other invasive species, and integrating species management and conservation with Fort Hunter Liggett training and maintenance activities. Please refer to the **Application of Section 4(a)(3) of the Act** section below for details on the INRMP and the benefits it provides to the arroyo toad.

Unit 2: Sisquoc River (3,775 ac (1,528 ha))

This unit is located in Santa Barbara County and encompasses approximately 33 miles (mi) (54 kilometers (km)) of the Sisquoc River and adjacent uplands from Sycamore Campground downstream to just below the confluence with La Brea Creek. Upper stretches of the river are within the Los Padres National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on rural private lands. The unit consists of 1,700 ac (688 ha) of Federal land and 2,073 ac (839 ha) of private land. This long, undammed river is one of the few remaining major rivers in southern California with a natural flow regime, and supports a core population of arroyo toads that is important for maintaining the genetic diversity of the species. Unit 2 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from the removal and alteration of habitat due to sand and gravel mining, livestock overgrazing of riparian habitats, and limited recreational activities.

Unit 3: Upper Santa Ynez River Basin (3,032 ac (1,227 ha))

This unit is located in Santa Barbara County upstream of Gibraltar Reservoir and encompasses approximately 27 mi (43 km) of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit consists of 2,214 ac (896 ha) of Federal land and 818 ac (331 ha) of private land within the Los Padres National Forest, and supports a

large and well-studied arroyo toad population that likely experiences precipitation and soil moisture conditions not faced by toads at drier sites (Sweet 1992, pp. 1–198; 1993, pp. 1–73). Potential adaptations to these conditions make this unit important for maintaining the genetic diversity of the species. Unit 3 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats, primarily along the lower Santa Ynez River and lower Mono Creek, from nonnative species, recreation, and problems associated with an upstream dam (such as sediment trapping, altered hydrological regime, and temperature changes).

Unit 4: Sespe Creek (2,760 ac (1,117 ha))

This unit is located in Ventura County and encompasses approximately 27 mi (43 km) of Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 3,530 ft (1,076 m)) downstream to the confluence with Alder Creek. The unit consists of 2,498 ac (1,011 ha) of Federal land and 262 ac (106 ha) of private land. This unit supports one of the largest arroyo toad populations on the Los Padres National Forest along Sespe Creek, which is undammed and retains its natural flooding regime. Up to several hundred adult arroyo toads inhabit this reach of the Sespe Creek (Sweet 1992, p. 192), and during years of successful reproduction, such as 2003, thousands of juveniles can be found as well (Murphy 2008, pers. comm.). Arroyo toads have been found up to 3,300 ft (1,000 m) in elevation in this area, which is one of the highest known occurrences in the northern recovery unit. Unit 4 contains the physical and biological features that are essential to the conservation of the species, including numerous suitable breeding pools (shallow, sand- or gravel-based pools with a minimum of vegetation along one or both margins during the breeding season from late March to June (Sweet 1992, p. 28)) and an abundance of sandy substrates (PCEs 1 and 2), unimpeded seasonal flood flows (PCE 3), and relatively undisturbed riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities and nonnative predators.

Unit 5: Piru Creek (2,507 ac (1,015 ha))

This unit is located in Ventura and Los Angeles Counties and consists of two subunits totaling 2,105 ac (852 ha) of Federal land and 402 ac (163 ha) of private inholdings.

Subunit 5a

Subunit 5a encompasses approximately 17 mi (27 km) of Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir. The subunit consists of 1,277 ac (517 ha) of Federal land and 81 ac (33 ha) of private land. As recently as 2003, the upper portion of Subunit 5a was documented to be free of nonnative vertebrate predators, and the substantial arroyo toad population supported by this subunit was documented to be increasing and expanding over the course of several years (Uyehara 2003, pers. comm.). Subunit 5a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). 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 livestock grazing and recreational activities.

Subunit 5b

Subunit 5b is primarily within the Sespe Wilderness and encompasses approximately 15 mi (24 km) of Piru Creek from the confluence with Fish Creek downstream to Lake Piru, as well as Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The subunit supports a substantial arroyo toad population and consists of 828 ac (335 ha) of Federal land and 321 ac (130 ha) of private land. Subunit 5b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (modified to some extent below Pyramid Dam) (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). Because lower Piru Creek in Subunit 5b is downstream of a large dam, the habitat there has experienced some degradation over the years from perennial water releases, rapid changes in flow volume, excessive flows during the breeding season, and an increased presence of nonnative predators. However, in 2005, the California Department of Water Resources proposed to permanently change the water release schedule for Pyramid Dam to one that more closely mimics the pre-dam hydrograph and benefitted downstream habitat for the arroyo toad (State Water Board 2008, p. 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 predators and recreational activities.

Unit 6: Upper Santa Clara River Basin (2,802 ac (1,134 ha))

This unit is located in northwestern Los Angeles County and consists of three subunits totaling 443 ac (179 ha) of Federal land and 2,359 ac (955 ha) of private land.

Subunit 6a

Subunit 6a encompasses approximately 7 mi (12 km) of Castaic Creek from Bear Canyon downstream to Castaic Lake, and 0.7 mi (1.2 km) of Fish Creek from Cienaga Spring to the confluence with Castaic Creek. The subunit consists of 284 ac (115 ha) of Federal land and 236 ac (96 ha) of private land. Subunit 6a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). 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 urban development, agriculture, recreation, mining, and nonnative predators.

Subunit 6b

Subunit 6b encompasses: (1) Approximately 2.6 mi (4.2 km) of Castaic Creek from the downstream edge of The Old Road right-of-way (adjacent to Interstate 5) down to the confluence with the Santa Clara River; and (2) 4 mi (6.4 km) of the Santa Clara River from the confluence with San Francisquito Creek down to the confluence with Castaic Creek. Subunit 6b consists of

1,003 ac (406 ha) of private land. This subunit allows for natural population expansion and fluctuation of the Santa Clara River population by connecting arroyo toad habitat in Castaic Creek with San Francisquito Creek and the occupied reach of the Santa Clara River. Subunit 6b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). 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 urban development, agriculture, recreation, mining, and nonnative predators.

The Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude 330 ac (134 ha) of Subunit 6b that we proposed as revised critical habitat. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below).

Additionally, based on closer examination of some upland areas that we proposed in the revised critical habitat proposal (74 FR 52612, October 13, 2009) and that we believed met the definition of critical habitat, we have found that these lands are either developed, used for intensive agriculture, or are inaccessible to arroyo toads due to busy roads or steep slopes. We now find that little of these lands remain as native habitats that would be useable as foraging areas by arroyo toads, do not contain the physical and biological features that are essential to the conservation of the arroyo toad, and therefore, do not meet the definition of critical habitat. Therefore, we have removed approximately 662 ac (268 ha) from Subunit 6b.

Subunit 6c

Subunit 6c encompasses approximately 11 mi (18 km) of upper Santa Clara River from Arrastre Canyon downstream to the confluence with Bee Canyon Creek. The subunit consists of 159 ac (64 ha) of Federal land and 1,120 ac (453 ha) of private land. This subunit is important for maintaining the arroyo toad metapopulation in the upper Santa Clara River Basin. Additionally, the upper portion of the Santa Clara River in this subunit supports a breeding population of arroyo toads (Farris 2001, pers. comm.; Hovore 2001, *in litt.;* Sandburg 2001, *in litt.*) that has the potential to greatly increase in size. Subunit 6c contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). 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 urban development, agriculture, recreation, mining, and nonnative predators.

Unit 7: Upper Los Angeles River Basin (1,190 ac (482 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 8 mi (13 km) of upper Big Tujunga Creek from immediately above Big Tujunga Reservoir upstream to approximately 1.2 mi (2 km) above the confluence with Alder Creek, (2) almost 3.7 mi (6 km) of Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and (3) approximately 1.9 mi (3 km) of Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek. The unit consists of 1,113 ac (451 ha) of Forest Service land and 77 ac (31 ha) of private land. This unit supports an arroyo toad population in the Big Tujunga Creek Canyon watershed in the Upper Los Angeles River Basin within the Angeles National Forest. This population is important because it occurs at a relatively high elevation that is atypical for arroyo toads, and it is the only known substantial population remaining in the coastal foothills of the San Gabriel Mountains. Unit 7 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative predators, such as crayfish, bullfrogs, and nonnative plants, such as *Arundo donax* (giant reed grass).

Southern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following 12 unit descriptions is necessary to conserve the species in the southern recovery unit. These critical habitat units consist of a range of geographic locations from coastal regions to interior mountains. Arroyo toads likely occurred throughout each of these river and creek basins, but are now found only in segments of the rivers and creeks due to loss or change of habitat and nonnative predators. Conserving arroyo toad populations in these river basins is necessary for preserving the species' full range of genetic and phenotypic variation.

Unit 8: Lower Santa Ana River Basin (737 ac (298 ha))

This unit is located in east-central Orange County and encompasses: (1) Approximately 5.8 mi (9 km) of Santiago Creek from just below the town of Modjeska downstream to the confluence with Black Star Creek, (2) approximately 2 mi (3 km) of Black Star Creek downstream to the confluence with Santiago Creek, (3) an approximately 2.4-mi (4-km) stretch of lower Baker Canyon downstream to the confluence with Santiago Creek, and (4) approximately 7.3 mi (12 km) of Silverado Creek from the eastern edge of section 11 (T05S, R07W) in the Cleveland National Forest downstream to the confluence with Santiago Creek. As proposed, Unit 8 included a total of 2,182 ac (883 ha). Of these lands, we have now removed approximately 185 ac (75 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* numbers 3 and 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 8 totaling 1,259 ac (508 ha). The portion of Unit 8 we are designating as critical habitat consists of 54 ac (22 ha) of Forest Service land and 683 ac (276 ha) of private land. This unit contains a vital arroyo toad population in central Orange County that may represent one of the last remnants of a greater historical population from the Santa Ana River Basin that was mostly extirpated due to urbanization of the greater Los Angeles metropolitan area. It is also possible that this population belongs to a larger metapopulation that extends across the lower coastal mountain slopes of the Santa Ana Mountains from Santiago Creek to San Mateo Creek (including Units 10 and 11 discussed below). Unit 8 contains the physical and biological features that are essential to the

conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nearby residential activities and degraded habitat conditions due to past commercial sand and gravel removal operations.

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,259 ac (508 ha) that are owned by or are under the jurisdiction of the permittees of the Orange County Central–Coastal NCCP/HCP and the associated NRPPA. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 9: San Jacinto River Basin (2,391 ac (968 ha))

This unit is located in west-central Riverside County and consists of two subunits totaling 14 ac (5 ha) of BLM land, 531 ac (215 ha) of Forest Service land, 232 ac (94 ha) of State land, and 1,614 ac (653 ha) of private land. This unit supports the most northeastern arroyo toad populations within the coastal region of the species' range. This unit also is geographically isolated from other known toad populations to the south in the Santa Margarita Watershed, to the west in the San Juan Watershed, and from residual populations to the north in the Santa Ana Watershed. Therefore, this location is important to maintain the current geographic extent of the species.

Subunit 9a

Subunit 9a encompasses approximately 6.3 mi (10 km) of the San Jacinto River from the Sand Canyon confluence downstream to the Soboba Indian Reservation border. The subunit consists of 64 ac (26 ha) of Forest Service land, 8 ac (3 ha) of BLM land, and 1,154 ac (467 ha) of private land. Subunit 9a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 human activities, including direct mortality from vehicular traffic, trampling by people during recreational activities or trash dumping, and collection (Ortega 2009, *in litt.* p. 1; Wilcox 2009, pers. comm.).

Subunit 9b

Subunit 9b encompasses approximately 7.4 mi (12 km) of Bautista Creek from near the eastern edge of section 20 (T6S, R2E) downstream to approximately the middle of section 27 (T5S, R1E), where the stream enters a debris basin. As proposed, Subunit 9b included a total of 1,180 ac (478 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 9b totaling 14 ac (6 ha). The portion of Subunit 9b we are designating as critical habitat consists of 467 ac (189 ha) of Forest Service land, 6 ac (2 ha) of BLM land, 232 ac (94 ha) of State land, and 461 ac (187 ha) of private land. Subunit 9b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 recreation and vehicular traffic (U.S. Geological Survey (USGS) 2001, p. 8).

As indicated above, the Secretary is exercising his discretion to exclude approximately 14 ac (6 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 10: San Juan Creek Basin (3,496 ac (1,415 ha))

This unit is located in southern Orange County and southwestern Riverside County and consists of two subunits totaling 558 ac (226 ha) of Forest Service land, 38 ac (15 ha) of local government land, and 2,900 ac (1,174 ha) of private land. This unit supports a large arroyo toad population in the San Juan Creek Basin, and arroyo toad populations in this unit may function as an important linkage between toads in Santiago Creek (Unit 8) to the north and the San Mateo Creek Basin (Unit 11) to the south.

Subunit 10a

This subunit is located in southern Orange County and southwestern Riverside County. Subunit 10a encompasses: (1) Approximately 5 mi (8 km) of San Juan Creek from immediately above the Upper San Juan Campground downstream to Interstate 5, (2) approximately 9.9 mi (16 km) of Bell Canyon from the southern half of section 8 (T06S, R06W) in the Cleveland National Forest downstream to the confluence with San Juan Creek, and (3) approximately 1.2 mi (2 km) of an unnamed tributary to the west of Bell Canyon in sections 8 and 18 (T06S, R06W) downstream to the confluence with Bell Creek. As proposed, Subunit 10a included a total of 4,728 ac (1,913 ha). Of these lands, we have now removed approximately 1 ac (<1 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 10a totaling 1,631 ac (660 ha). The portions of Subunit 10a we are designating as critical habitat consist of 547 ac (221 ha) of Forest Service land, 3 ac (1 ha) of local government land, and 2,547 ac (1,031 ha) of private land. Subunit 10a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 predators (bullfrogs), water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2).

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,631 ac (660 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This

exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 10b

This subunit is located in southern Orange County. Subunit 10b encompasses 5.2 mi (8 km) of Trabuco Creek downstream from approximately the middle of section 6 (T06S, R06W) in the Cleveland National Forest. As proposed, Subunit 10b included a total of 939 ac (380 ha). Of these lands, we have now removed approximately 31 ac (13 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 6 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 10b totaling 509 ac (206 ha). The portion of Subunit 10b we are designating as critical habitat consists of 11 ac (4 ha) of Forest Service land, 35 ac (14 ha) of local government land, and 353 ac (143 ha) of private land. Subunit 10b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 predators (bullfrogs), water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2).

As indicated above, the Secretary is exercising his discretion to exclude approximately 509 ac (206 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 11: San Mateo Creek Basin (1,820 ac (737 ha))

This unit is located in northwestern San Diego County, southern Orange County, and southwestern Riverside County and consists of two subunits totaling 844 ac (341 ha) of Forest Service land and 975 ac (395 ha) of private land. This unit supports large arroyo toad populations in close proximity to the coast. Nearly all of the other near-coastal, historical populations of arroyo toad were extirpated due to extensive urbanization and river channelization along the coastal regions of southern California. Distinctive climatic conditions near the coast may provide different selective pressures on toads in this area, and favor specific genetic characteristics that help maintain the genetic diversity of the species.

We exempted approximately 6,014 ac (2,427 ha) of military land under section 4(a)(3)(B) of the Act because the lands are subject to the 2007 INRMP for Marine Corps Base Camp Pendleton, and the INRMP provides a benefit to the arroyo toad (*see* the **Application of Section 4(a)(3) of the Act** section below for details on the INRMP and the benefits it provides to the arroyo toad).

Subunit 11a

Subunit 11a encompasses: (1) Approximately 1.7 mi (3 km) of Cristianitos Creek from just above Gabino Creek downstream to the MCB Camp Pendleton boundary; (2) approximately 3.1 mi (5 km) of Gabino Creek upstream from its confluence with Cristianitos Creek, including about 0.6 mi (1 km) of La Paz Creek; and (3) approximately 4 mi (6 km) of Talega Creek upstream from its confluence with Cristianitos Creek and beyond the boundaries of MCB Camp Pendleton. As proposed, Subunit 11a included a total of 1,034 ac (418 ha). Of these lands, we have now exempted approximately 20 ac (8 ha) (*see* number 7 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, a portion of Subunit 11a totaling 39 ac (16 ha). The portion of Subunit 11a we are designating as critical habitat totals 975 ac (395 ha), and is comprised entirely of private land. Subunit 11a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 human activities, including direct mortality from vehicle collisions and vehicular crossings of streambeds, grazing, and nonnative predators (Bloom 1996, pp. 4–5; Bloom 1998, *in litt.*, pp. 1, 3).

As indicated above, the Secretary is exercising his discretion to exclude approximately 39 ac (16 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 11b

Subunit 11b encompasses: (1) Approximately 9.3 mi (15 km) of San Mateo Creek from Los Alamos Canyon downstream to MCB Camp Pendleton, and (2) approximately 2.4 mi (4 km) of Los Alamos Canyon downstream to the confluence with San Mateo Creek. The subunit consists of 844 ac (341 ha) of Forest Service land. Subunit 11b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 habitat conditions favorable for nonnative predators (ECORP 2004, p. 16).

Unit 12: Lower Santa Margarita River Basin (1,009 ac (408 ha))

This unit is located in northwestern San Diego County and consists of two subunits totaling 5 ac (2 ha) of State land and 1,004 ac (406 ha) of private land. This unit supports large arroyo toad populations in proximity to other large arroyo toad populations to the north (Unit 11), and provides potential connectivity to populations in the upper Santa Margarita River Basin (Unit 13). We exempted approximately 7,239 ac (2,929 ha) of military land (7,016 ac (2,839 ha) on MCB Camp Pendleton and 223 ac (90 ha) on Fallbrook Naval

Weapons Station) in this unit under section 4(a)(3)(B) of the Act in the October 2009 proposed revised designation for the arroyo toad (74 FR 52612) because the lands are subject to the 2007 INRMP for MCB Camp Pendleton and the 2006 INRMP for the Fallbrook Naval Weapons Station, and each INRMP provides a benefit to the arroyo toad. Please refer to the **Application of Section 4(a)(3) of the Act** section below for details on the INRMPs and the benefits they provide to the arroyo toad.

Subunit 12a

Subunit 12a encompasses approximately 2.1 mi (3 km) of De Luz Creek from the town of De Luz downstream to the MCB Camp Pendleton boundary. The subunit consists of 394 ac (159 ha) of private land. Subunit 12a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 cumulative impacts to the species' habitat from recreation, nonnative predators, and nonnative plants (CNDDB 2008, EO 26).

Subunit 12b

Subunit 12b encompasses approximately 5.5 mi (9 km) of the Santa Margarita River upstream from the MCB Camp Pendleton boundary. The subunit consists of 5 ac (2 ha) of State land and 610 ac (247 ha) of private land. Subunit 12b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 cumulative impacts to the species' habitat from nonnative predators, nonnative plants, and vehicular traffic (Varanus Biological Services, Inc. 1999, pp. 34–35).

Unit 13: Upper Santa Margarita River Basin (7,863 ac (3,182 ha))

This unit is located in southern Riverside County and northern San Diego County and consists of three subunits totaling 22 ac (9 ha) of BLM land, 432 ac (174 ha) of Forest Service land, and 7,409 ac (2,998 ha) of private land. This unit provides potential links to arroyo toad populations in the lower Santa Margarita River Basin (Unit 12) and other nearby drainages containing suitable habitat.

Subunit 13a

Subunit 13a encompasses approximately 7.3 mi (12 km) of Arroyo Seco Creek from just south of the San Diego-Riverside County boundary downstream to Vail Lake. The subunit consists of 337 ac (136 ha) of Forest Service land and 818 ac (331 ha) of private land. Subunit 13a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 predators and campground activities (USGS 2000, p. 3).

Subunit 13b

Subunit 13b encompasses approximately 16.3 mi (26 km) of Temecula Creek from Dodge Valley downstream to Vail Lake. As proposed, Subunit 13b included a total of 4,756 ac (1,925 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 13b totaling 26 ac (11 ha). The portion of Subunit 13b we are designating as critical habitat consists of 95 ac (38 ha) of Forest Service land, 22 ac (9 ha) of BLM land, and 4,614 ac (1,867 ha) of private land. Subunit 13b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 road maintenance and sand-mining operations (HELIX 2004, p. 1).

As indicated above, the Secretary is exercising his discretion to exclude approximately 26 ac (11 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 13c

Subunit 13c encompasses approximately 6.5 mi (10 km) of Wilson Creek from the confluence with Cahuilla Creek downstream to Vail Lake. As proposed, Subunit 13c included a total of 2,226 ac (901 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 13c totaling 249 ac (101 ha). The portion of Subunit 13c we are designating as critical habitat totals 1,977 ac (800 ha), and is comprised entirely of private land. Subunit 13c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 direct mortality and habitat degradation from off-highway vehicular traffic, and upstream sedimentation caused by urbanization, agriculture, or wildfire (R. Haase, MCAS Camp Pendleton, *in litt.* 2009b, p. 1).

As indicated above, the Secretary is exercising his discretion to exclude approximately 249 ac (101 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 14: Lower and Middle San Luis Rey River Basin (10,115 ac (4,093 ha))

This unit is located in northern San Diego County and encompasses approximately 30 mi (48 km) of the San Luis Rey River from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the City of Oceanside. It also includes approximately 3.4 mi (5.5 km) of Pala Creek and 1.7 mi (2.7 km) of Keys Creek upstream from the confluence with the

San Luis Rey River. As proposed, Unit 14 included a total of 12,906 ac (5,223 ha). Of these lands, we have now removed approximately 58 ac (23 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* numbers 9 and 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 14 totaling 2,733 ac (1,106 ha). The portion of Unit 14 we are designating as critical habitat consists of approximately 4 ac (2 ha) of BLM land, 10 ac (4 ha) of State land, and 10,101 ac (4,088 ha) of private land. This unit supports one of the largest contiguous river reaches that is occupied by the species. Unit 14 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from dams and water diversions, intensive urbanization, agriculture, and nonnative predators and plants.

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,071 ac (433 ha) of Rincon Band of Luiseño Mission Indians Tribal Lands and approximately 1,662 ac (673 ha) of Pala Band of Luiseño Mission Indians Tribal Lands. These exclusions are based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Unit 15: Upper San Luis Rey River Basin (8,368 ac (3,386 ha))

This unit is located in northern San Diego County and encompasses: (1) Approximately 8.6 mi (14 km) of the West Fork of the San Luis Rey River from Barker Valley downstream to the upper end of Lake Henshaw, (2) approximately 3.5 mi (6 km) of Cañada Aguanga from just below Lake Jean downstream to the confluence with the San Luis Rey River, (3) approximately 11.4 mi (18 km) of the upper San Luis Rey River from the Indian Flats area downstream to the upper end of Lake Henshaw, and (4) approximately 6.9 mi (11 km) of Agua Caliente Creek from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey River. As proposed, Unit 15 included a total of 12,977 ac (5,252 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 15 totaling 4,609 ac (1,865 ha). The portion of Unit 15 we are designating as critical habitat consists of 695 ac (281 ha) of Forest Service land and 7,673 ac (3,105 ha) of private land. This unit supports a unique assemblage of small, disjunct, high-elevation arroyo toad populations and one significant population on Agua Caliente Creek (Gergus 1992, *in litt.,* p. 1; Ervin 2000, *in litt.,* pp. 2–3, 5; CNDDB 2008, Element Occurrences (EOs) 27, 32) in an area where in-stream and overland dispersal between populations likely still is possible. Unit 15 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from groundwater pumping on private lands, nonnative predators, feral pigs, and grazing (Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 4,609 ac (1,865 ha) within the existing and proposed Remote Training Site Warner Springs. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below for a detailed discussion).

Unit 16: Santa Ysabel Creek Basin (15,370 ac (6,220 ha))

This unit is located in north-central San Diego County and consists of two subunits totaling 6 ac (2 ha) of BLM land, 184 ac (74 ha) of Forest Service land, 175 ac (71 ha) of State land, 143 ac (58 ha) of local government land, and 14,862 ac (6,014 ha) of private land. This unit supports large amounts of suitable habitat connecting large populations with several additional populations, thereby promoting the long-term persistence of the species in the area.

Subunit 16a

Subunit 16a encompasses: (1) Approximately 16.9 mi (27 km) of Santa Ysabel Creek from the northwestern quarter of section 24 (T12S, R01E) in the Cleveland National Forest downstream to the confluence with the San Dieguito River, (2) approximately 10 mi (16.1 km) of Guejito Creek from the 2,000 ft (610 m)-elevation contour downstream to the confluence with Santa Ysabel Creek, (3) approximately 2.5 mi (4.0 km) of Boden Canyon upstream from the Santa Ysabel Creek confluence, (4) approximately 4.3 mi (7 km) of Temescal Creek from the northern edge of Pamo Valley to the confluence with Santa Ysabel Creek, (5) approximately 9.1 mi (15 km) of Santa Maria Creek from the west side of Ramona to the confluence with Santa Ysabel Creek, and (6) approximately 1 mi (2 km) of the San Dieguito River upstream from the confluence with Santa Ysabel Creek. As proposed, Subunit 16a included a total of 13,967 ac (5,653 ha). Of these lands, we have now removed approximately 101 ac (40 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 10 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The subunit consists of 184 ac (74 ha) of Forest Service land, 6 ac (2 ha) of BLM land, 175 ac (71 ha) of State land, 143 ac (58 ha) of local government land, and 13,357 ac (5,405 ha) of private land. Subunit 16a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 grazing, nonnative predators, feral pigs, and urbanization (Tierra Environmental Services 2001, *in litt.;* CNDDB 2008, EOs 59, 61; Winter *in litt.* 2010).

Subunit 16d

Subunit 16d encompasses approximately 6.2 mi (10 km) of Santa Ysabel Creek about 0.5 mi (0.8 km) east of Highway 79 downstream to Sutherland Reservoir. As proposed, Subunit 16d included a total of 1,527 ac (609 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, a

portion of Subunit 16d totaling 23 ac (9 ha). The portion of Subunit 16b we are designating as critical habitat totals 1,504 ac (609 ha), and is comprised entirely of private land. Subunit 16d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 grazing and feral pigs (CNDDB 2008, EO 62; Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 23 ac (9 ha) of Mesa Grande Band of Diegueno Mission Indians Tribal Land. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Unit 17: San Diego River Basin/San Vicente Creek (4,171 ac (1,688 ha))

This unit is located in central San Diego County and consists of three subunits totaling 35 ac (14 ha) of BLM land, 390 ac (158 ha) of Forest Service land, and 3,746 ac (1,516 ha) of private land. This unit supports suitable habitat for population expansion, thus increasing the probability of the long-term persistence of these populations.

Subunit 17a

Subunit 17a encompasses: (1) Approximately 8.7 mi (14 km) of the San Diego River from Temescal Creek downstream to the upper edge of El Capitan Reservoir, and (2) approximately 1 mi (2 km) of lower Cedar Creek. As proposed, Subunit 17a included a total of 1,241 ac (502 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 17a totaling 92 ac (37 ha). The portion of Subunit 17a we are designating as critical habitat consists of 354 ac (143 ha) of Forest Service land, and 795 ac (322 ha) of private land. Subunit 17a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 urbanization, nonnative predators, and feral pigs (Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 92 ac (37 ha) of Capitan Grande Band of Diegueno Mission Indians Tribal Lands. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Subunit 17b

Subunit 17b encompasses approximately 7.2 mi (12 km) of the San Diego River downstream from El Capitan Reservoir. The subunit consists of 12 ac (5 ha) of BLM land, 36 ac (15 ha) of Forest Service land, and 1,817 ac (735 ha) of private land. Subunit 17b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 urbanization, agriculture, nonnative predators, and harmful water releases (based on timing or amount) from the El Capitan Reservoir.

Subunit 17d

Subunit 17d encompasses approximately 7.6 mi (12 km) of San Vicente Creek upstream from San Vicente Reservoir. The subunit consists of 23 ac (9 ha) of BLM land and 1,134 ac (459 ha) of private land. Subunit 17d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 urbanization, agriculture, nonnative predators, feral pigs, and harmful water releases (based on timing or amount) from the Sutherland/San Vicente Aqueduct (Varanus Biological Services, Inc. 1999, p. 20; RECON 2008, pp. 1, 3–4; Winter *in litt.* 2010).

Unit 18: Sweetwater River Basin (4,624 ac (1,871 ha))

This unit is located in south-central San Diego County and consists of two subunits totaling 553 ac (224 ha) of Forest Service land, 3 ac (1 ha) of San Diego National Wildlife Refuge land, 1,659 ac (671 ha) of State land, and 2,410 ac (975 ha) of private land. This unit supports several large populations over large stretches of rivers and streams (Gergus 1992, *in litt.,* p. 1; Ervin 1997, *in litt.,* pp. 3–5; Varanus Biological Services, Inc. 1999, pp. 4–16; CNDDB 2008, EOs 38, 43, 67, 73, 77, 85, 99, 100). These populations may function as an important linkage between toads in the San Diego River Basin (Unit 17) to the north and Cottonwood Creek Basin (Unit 19) to the south.

Subunit 18a

Subunit 18a encompasses: (1) Approximately 26.6 mi (43 km) of the Sweetwater River from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the top of Loveland Reservoir, (2) approximately 4.3 mi (7 km) of Viejas Creek from the western border of the Viejas Indian Reservation downstream to the confluence with the Sweetwater River, and (3) approximately 1.5 mi (2 km) of Peterson Canyon from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir. The subunit consists of 553 ac (224 ha) of Forest Service land, 1,554 ac (629 ha) of State land, and 2,049 ac (829 ha) of private land. Subunit 18a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 vehicular traffic, including off- highway vehicular traffic; horse-riding activities; nonnative predators; reservoir inundation; feral pigs; and direct mortality from trampling or dumping trash (Varanus Biological Services, Inc. 1999, p. 14; Mendelsohn *et al.* 2005, pp. 10–11; Winter *in litt.* 2010).

Subunit 18c

Subunit 18c encompasses approximately 5.8 mi (9.3 km) of the Sweetwater River from immediately below Loveland Dam downstream to just above the Sycuan Resort. As

proposed, Subunit 18c included a total of 627 ac (254 ha). Of these lands, we have now removed approximately 6 ac (2 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 13 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 18c totaling 152 ac (62 ha). The portion of Subunit 18c we are designating as critical habitat consists of 3 ac (1 ha) of San Diego National Wildlife Refuge land, 105 ac (42 ha) of State land, and 362 ac (146 ha) of private land. Subunit 18c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 harmful water releases (based on timing or amount) from the Loveland Reservoir and gravel mining operations (Madden-Smith *et al.* 2003, pp. 15, 17).

As indicated above, the Secretary is exercising his discretion to exclude approximately 152 ac (62 ha) of Sycuan Band of the Kumeyaay Nation Tribal Lands. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (see **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below).

Unit 19: Cottonwood Creek Basin (14,344 ac (5,804 ha))

Unit 19 is located in southern San Diego County and consists of five subunits totaling 190 ac (77 ha) of BLM land, 3,927 ac (1,588 ha) of Forest Service land, 1,476 ac (597 ha) of local government land, and 8,751 ac (3,541 ha) of private land. This unit encompasses a large number of arroyo toad occurrences (Gergus 1992, *in litt.;* Varanus Biological Services, Inc. 1999, pp. 2–3; Gergus 2000, *in litt.;* CNDDB 2008, EOs 20–22, 30, 40, 44, 63–65, 69, 79) in an area where in-stream and overland dispersal between populations likely still is possible and where there is room for population expansion. Additionally, this unit may function as an important linkage between toads in the Sweetwater River Basin (Unit 18) to the north and populations to the south in Mexico, as populations in this unit represent the most southern arroyo toad populations in the species' range within the United States.

Subunit 19a

Subunit 19a encompasses: (1) Approximately 7 mi (11.2 km) of Cottonwood Creek from Buckman Springs (near Interstate 8) downstream to Morena Reservoir, (2) approximately 2.8 mi (4.5 km) of Morena Creek downstream to the Cottonwood Creek confluence, (3) approximately 0.5 mi (1 km) of an unnamed tributary of Morena Creek in section 35 (T16S, R04E) downstream to the confluence with Morena Creek, (4) approximately 5 mi (8 km) of Kitchen Creek downstream to the Cottonwood Creek confluence, and (5) approximately 3.8 mi (6 km) of La Posta Creek downstream to the Cottonwood Creek confluence. As proposed, Subunit 19a included a total of 5,847 ac (2,366 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 19a totaling 31 ac (13 ha). The portion of Subunit 19a we are designating as critical habitat consists of 2,128 ac (861 ha) of Forest Service land, 1,476 ac (597 ha) of local government land, and 2,212 ac (895 ha) of private land. Subunit 19a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 grazing, recreational activities, and nonnative plants and predators (Ervin 2000, *in litt.;* TAIC 2005, p. 1; CNDDB 2008, EOs 20, 44, 69).

As indicated above, the Secretary is exercising his discretion to exclude approximately 31 ac (13 ha) within Camp Morena. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below for a detailed discussion).

Subunit 19b

Subunit 19b encompasses approximately 12.7 mi (20 km) of Cottonwood Creek from immediately below Barrett Lake downstream to the U.S.–Mexico border and includes 10.3 mi (17 km) of Potrero Creek from approximately the 2,466-ft (752-m) elevation benchmark downstream to the confluence with Cottonwood Creek. The subunit consists of 80 ac (32 ha) of Forest Service land, 129 ac (52 ha) of BLM land, and 4,921 ac (1,991 ha) of private land. Subunit 19b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 grazing, and nonnative plants and predators (Ervin 1997, *in litt.;* TAIC 2005, pp. 1, 3; CNDDB 2008, EOs 40, 64, 65, 79).

Subunit 19c

Subunit 19c encompasses: (1) Approximately 7.6 mi (12 km) of Pine Valley Creek from the north edge of section 12 (T15S, R4E) downstream to approximately 0.6 mi (1 km) south of Interstate 8, (2) approximately 0.6 mi (1 km) of Noble Creek downstream to the confluence with Pine Valley Creek, (3) approximately 2.4 mi (4 km) of Scove Canyon downstream to the confluence with Pine Valley Creek, and (4) approximately 1.3 mi (2 km) of an unnamed tributary upstream of Scove Canyon in sections 25 and 36 (T15S, R04E). The subunit consists of 809 ac (327 ha) of Forest Service land and 703 ac (284 ha) of private land. Subunit 19c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 urbanization, vehicular traffic, and nonnative predators (Holland and Sisk 2001, p. 9; CNDDB 2008, EOs 21, 22, 30).

Subunit 19d

Subunit 19d encompasses approximately 8 mi (13 km) of Pine Valley Creek from the Nelson Canyon confluence downstream to Barrett Reservoir and approximately 1.6 mi (3 km) of Horsethief Canyon downstream

to the confluence with Pine Valley Creek. The subunit consists of 910 ac (368 ha) of Forest Service land and 28 ac (11 ha) of private land. Subunit 19d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 U.S. Border Patrol activities (Varanus Biological Services, Inc. 1999, p. 2).

Subunit 19e

Subunit 19e encompasses approximately 4.4 mi (7 km) of Campo Creek from Campo Lake downstream to the U.S.-Mexico border. The subunit consists of 61 ac (25 ha) of BLM land and 889 ac (360 ha) of private land. Subunit 19e contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 fire management activities along the U.S.–Mexico border (LEI 2008, p. 2).

Desert Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following four unit descriptions is necessary to conserve the species in the desert recovery unit. Each of these units is isolated from each other and from any other recovery units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. However, this recovery unit also represents unique ecological conditions for arroyo toads, such as extremes in aridity, heat, and cold, and likely harbors important genetic diversity.

Unit 20: Upper Santa Ana River Basin/Cajon Wash (1,775 ac (718 ha))

This unit is located in southwestern San Bernardino County and encompasses approximately 7.9 mi (13 km) of Cajon Wash from approximately 0.2 mi (0.3 km) north of United States Highway 138 downstream to approximately 0.3 mi (0.5 km) northwest of the Interstate 15 crossing. The unit consists of 711 ac (288 ha) of Forest Service land and 1,065 ac (431 ha) of private land. This unit supports a population that may represent some of the last vestiges of a much greater population that historically existed along the upper Santa Ana River Basin, but was almost entirely extirpated due to urbanization of the greater Los Angeles area. Therefore, this location is important to maintain the current geographic extent of the species. Unit 20 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities.

Unit 21: Little Rock Creek Basin (612 ac (248 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 5.9 mi (9.5 km) of Little Rock Creek from the South Fork confluence downstream to the upper end of Little Rock Reservoir (in the vicinity of Rocky Point Picnic Ground), and (2) approximately 1.1 mi (1.8 km) of Santiago Creek upstream from the confluence with Little Rock Creek in the Little Rock Creek Basin. The unit consists of 612 ac (248 ha) of Forest Service land. This unit is on the periphery of the species' range in the Mojave Desert and geographically isolated from other known arroyo toad populations; therefore, it is important for maintaining the current geographic extent of the species. Unit 21 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities.

Unit 22: Upper Mojave River Basin (5,602 ac (2,267 ha))

This unit is located in San Bernardino County and consists of one subunit totaling 2,143 ac (867 ha) of Federal land, 47 ac (19 ha) of State land, and 3,412 ac (1,381 ha) of private land.

Subunit 22a

Subunit 22a includes: (1) Approximately 9.3 mi (18 km) of Deep Creek from near Holcomb Creek downstream to the confluence with the West Fork; (2) approximately 4 mi (6 km) of Little Horsethief Creek upstream from its confluence with Horsethief Creek; (3) approximately 4 mi (6 km) of Horsethief Creek from approximately 1 mi (1.6 km) above the Little Horsethief Creek confluence downstream to the West Fork confluence; (4) approximately 6 mi (10 km) of the West Fork of the Mojave River from Highway 173 downstream to Mojave River Forks Dam; (5) approximately 1 mi (1.6 km) of the Mojave River below Mojave River Forks Dam; (6) approximately 1.4 mi (2.2 km) of Grass Valley Creek upstream from the confluence with the West Fork; and (7) approximately 2.8 mi (4.5 km) of Kinley Creek upstream from the Deep Creek confluence. Subunit 22a consists of 2,143 ac (867 ha) of Federal land, 3,412 ac (1,381 ha) of private land, and 47 ac (19 ha) of State land. This subunit contains Summit Valley, which encompasses the lower portions of Horsethief Creek and the West Fork of the Mojave River, a broad, flat, alluvial valley that supports a substantial arroyo toad population (Ramirez 2003, pp. 16–17). Additionally, the downstream portion of this subunit contains the driest conditions of any unit proposed for arroyo toad critical habitat (Teale Data Center 1998, p. 1; CIMS 2000, p. 1), Subunit 22a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). 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 species, urban development, and recreation.

Based on information submitted by Summit Valley Ranch during the initial public comment period from October 13, 2009, to December 14, 2009, we removed approximately 82 ac (33 ha) of private land from Subunit 22a. The lands in question are located north of State Road 138 on Summit Valley Ranch, San Bernardino County. We included this area in the proposed revised critical habitat designation because we believed it contained suitable upland habitat for arroyo toads; however, it has come to our attention that (1) surveys have never detected arroyo toads in the area, (2) the area

lacks the PCEs for the arroyo toad, and (3) State Route 138 serves as a barrier for arroyo toads to disperse into the area. Consequently, we determined that the area north of State Route 138 does not contain the physical and biological features essential to the conservation of arroyo toads and therefore does not meet the definition of critical habitat for the arroyo toad.

Additionally, we removed Subunit 22c (approximately 234 ac (915 ha)) within Unit 22 from our revised critical habitat designation. Subunit 22c is within the geographical area occupied at the time of listing; however, this subunit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Although we were not aware of this issue when we published the proposed rule, the existence of Cedar Springs Dam upstream of this subunit has altered the hydrology of the 1-mi (1.6-km) reach of the upper West Fork of the Mojave River above Silverwood Lake that extends to the upper end of the lake to such an extent that it does not contain the features essential to the conservation of the species and therefore does not meet the definition of critical habitat for the arroyo toad.

Unit 23: Whitewater River Basin

We removed Unit 23 (approximately 1,355 ac (548 ha)) from the final revised critical habitat designation. This unit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuit Courts of Appeal 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. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

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

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

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

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

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the 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 Forest Service and the BLM the opportunity to make "not likely to adversely affect" 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 Forest Service and the BLM will insure staff is properly trained and both agencies will submit monitoring reports to the Service to determine if the procedures are being implemented properly and effects to 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 and/or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. 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 critical habitat.

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

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected, and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies 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.

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 PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features (PCEs) to an extent that appreciably reduces the conservation value of critical habitat for the arroyo toad. As discussed above, the role of critical habitat is to support life-history needs of the species and to provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat 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 the arroyo toad include, but are not limited to, the following:

(1) Actions that alter water chemistry or temperature. Such activities include, but are not limited to: Release of chemicals, biological pollutants, or heated effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source). These activities can alter water conditions beyond the tolerances of the arroyo toad and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that increase sediment deposition within the stream channel or disturb upland foraging and dispersal habitat. Such activities include, but are not limited to: Excessive sedimentation from livestock overgrazing, road construction, commercial or urban development, channel alteration, timber harvest, off-highway vehicle use or recreational activity, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the arroyo toad by increasing the sediment deposition to levels that would adversely affect the arroyo toad's ability to complete its life cycles.

(3) Actions that alter channel morphology or geometry. Such activities include, but are not limited to: Construction and operation of flood control and water diversion structures, such as dams and reservoirs that regulate stream flows and trap sediments, direct groundwater extraction, channelization, impoundment, road and bridge construction, development, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes to the hydraulic functioning of the stream by altering the timing, duration, quantity and levels of water flows and may result in degradation or elimination of the arroyo toad and its habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the arroyo toad and provide habitat for nonnative species that prey on arroyo toads.

(4) Actions that eliminate upland foraging, aestivating, or dispersal habitat for the arroyo toad. Such activities include, but are not limited to: Road construction, commercial or urban development, timber harvest, off-highway vehicle use or recreational activity, and other watershed and floodplain disturbances. These actions could affect the species' habitat through erosion; siltation; soil compaction; water quality degradation from urban runoff containing contaminants, fertilizers, and pesticides; and the spread of introduced nonnative plants.

(5) Actions that lead to introducing, spreading, or augmenting nonnative aquatic species in stream segments used by arroyo toad. Possible actions include, but are not limited to: Fish stocking for sport, nonnative aquatic plant species for aesthetics, or other related actions. These activities could affect the growth and reproduction of the arroyo toad by subjecting eggs, larvae, tadpoles, and adult arroyo toads to increased predation pressure or limit the amount of habitat available for the species through competition, which would adversely affect the arroyo toad's ability to complete its life cycle.

Note that the scale of these activities is a crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat would be appreciably diminished in providing for the physical or biological features essential to the conservation of the arroyo toad.

We consider all of the final revised critical habitat units and subunits to contain features essential to the conservation of the arroyo toad. All units are within the geographical area occupied by the species at the time it was listed, and are currently occupied by arroyo toads. To ensure that their actions do not jeopardize the continued existence of the arroyo toad, Federal agencies already consult with us on activities in areas currently occupied by the arroyo toad, or in unoccupied areas if the species may be affected by their actions.

Exemptions

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

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

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

(2) A statement of goals and priorities;

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

(4) A monitoring and adaptive management plan.

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

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

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 the arroyo toad and that contain those features essential to the species' conservation were to ensure they provided a benefit to the arroyo toad in order to allow us to determine if those military installations qualified for exemption under section 4(a)(3)(B) of the Act.

Fort Hunter Liggett Military Reservation, Marine Corps Base Camp Pendleton (MCB Camp Pendleton), and Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station) have Service-approved INRMPs that address the arroyo toad, and these DOD installations have committed to work closely with us and the CDFG to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. Based on the above considerations and rationales provided below, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMPs will provide a benefit to the arroyo toad occurring in habitats within or adjacent to these installations. Therefore, approximately 19,706 ac (7,956 ha) of habitat subject to the Service-approved INRMPs on Fort Hunter Liggett Military Reservation, MCB Camp Pendleton, and Fallbrook Naval Weapons Station are exempt from this revised critical habitat designation for the arroyo toad under section 4(a)(3) of the Act. See the following individual military sections below for information on the history of the INRMPs and how each INRMP provides a benefit to arroyo toad and its habitat.

Although Remote Training Site Warner Springs and Camp Morena had not completed the INRMP process by the time this critical habitat rule was finalized, the Secretary is exercising his discretion to exclude lands within these military facilities under section 4(b)(2) of the Act for reasons of national security (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below).

Fort Hunter Liggett Military Reservation

Fort Hunter Liggett was established in 1940 as Hunter Liggett Military Reservation, when the Army purchased lands belonging to William Randolph Hearst and other private landowners. The installation was used intensively to prepare troops for World War II, the Korean and Vietnam conflicts, and the Cold War; as a training ground for the 7th Infantry Division formerly stationed at Fort Ord; and as a Test and Experimentation Command Center. Fort Hunter Liggett occupies approximately 163,000 ac (66,000 ha) of varied habitats within the Santa Lucia Mountains in southern Monterey County, California. Currently, the installation is used for training by the 40th Mechanized Infantry Division of the California Army National Guard; reserve units from several branches of the Armed Forces; active components of the Army Rangers, Special Forces, Navy Seabees, and Marines; and other government agencies.

The Fort Hunter Liggett INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to ensure that natural resources are managed in support of the Fort Hunter Liggett military training mission and that all activities are consistent with Federal stewardship requirements. The Fort Hunter Liggett INRMP was completed in 2005, followed by a revised and updated version in 2007, to address conservation and management of its natural resources, including conservation measures for the arroyo toad (U.S. Army Reserve Command 2007, pp. 171–174). The INRMP is Fort Hunter Liggett's adaptive plan for managing natural resources to support and be consistent with the military mission while protecting and enhancing the biological integrity of lands under its use (U.S. Army 2004, p. iv). Fort Hunter Liggett is committed to an ecosystem management approach for its natural resources program by integrating all components of natural resource management into a comprehensive and coordinated effort. An integrated approach to ecosystem management will help protect the biological diversity found at Fort Hunter Liggett.

The INRMP identifies the following management and protection measures for the arroyo toad: (1) Implement monitoring that will meet the Service's criteria to demonstrate population status of arroyo toads on Fort Hunter Liggett; (2) reduce public and military vehicle encroachment into sandy riverine habitat, particularly during the breeding season for the arroyo toad; (3) minimize adverse effects to arroyo toads from roads and borrow sites (sites where soil and other material is removed for construction purposes); (4) gain an understanding of the timing of arroyo toad upland use, extent of upland use and distance traveled from breeding sites, characteristics of preferred upland habitat to include micro- and macro-habitats and substrate of burrowing sites, and use of rodent burrows; (5) identify threat posed by noxious weeds and reduce noxious weed presence to improve native habitat and site diversity; (6) obtain geomorphology information that will provide a foundation for development of management strategies for arroyo toad habitat and a better idea of habitat sustainability for arroyo toads; (7) identify the threats posed by nonnative beavers in the San Antonio River in arroyo toad breeding habitat and outlying areas and implement control if threats warrant; (8) reduce bullfrog abundance in areas most likely to benefit arroyo toads; (9) prevent introduction and spread of disease at Fort Hunter Liggett; (10) maintain a viable population of arroyo toads and suitable habitat on Fort Hunter Liggett; (11) evaluate current management goals and actions and adapt to meet species management requirements; (12) integrate species management and conservation with Fort Hunter Liggett training and maintenance activities; (13) provide for adaptive management in accordance with the Fort Hunter Liggett INRMP; and (14) monitor mortality in order to augment the Service's ability to determine effects of Fort Hunter Liggett activities on arroyo toad and identify mortality factors at Fort Hunter Liggett.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2005 INRMP and 2007 updated INRMP for Fort Hunter Liggett provide a benefit to the arroyo toad and features essential to its conservation, and will benefit arroyo toads occurring in habitats on the installation. This includes habitat located in the Salinas River Basin (Service 1999, p. 14). Therefore, lands subject to the INRMP for the Fort Hunter Liggett Military Reservation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not

including approximately 6,453 ac (2,612 ha) of habitat in this final revised critical habitat designation because of this exemption.

Marine Corps Base (MCB) Camp Pendleton

MCB Camp Pendleton is the Marine Corps' premier amphibious training installation and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 125,000 ac (50,586 ha) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 10,000 ac (4,047 ha) that is developed, most of the installation is largely undeveloped land that is used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 82 miles (132 kilometers) to the north, and San Diego, 38 miles (61 kilometers) to the south. Nearby communities include Oceanside to the south, Fallbrook to the east, and San Clemente to the northwest. Aside from a portion of the installation's border that is shared with the San Mateo Wilderness Area and the Fallbrook Naval Weapons Station, surrounding land use is urban development, rural residential development, and agricultural farming and ranching. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 2,000 ac (809 ha) that encompasses San Onofre State Beach.

The MCB Camp Pendleton INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to conserve and rehabilitate natural resources consistent with the use of MCB Camp Pendleton to train Marines and set the agenda for managing natural resources on MCB Camp Pendleton. MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for the arroyo toad (MCB Camp Pendleton 2007, Appendix F, Section F.1, pp. F1–F5). Additionally, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and supportive of the objectives of the revised 2007 INRMP (MCB Camp Pendleton 2007, Chapter 2, p. 31).

The arroyo toad receives programmatic protection from training and other installation activities within the riparian component of its habitat, as outlined and required in the Riparian Ecosystem Conservation Plan (MCB Camp Pendleton 2007, Appendix C). Management and protection measures for the arroyo toad identified in Appendix C of the INRMP include, but are not limited to, the following: (1) Eliminating nonnative, invasive species (such as *Arundo donax*) on the installation and off the installation in partnership with upstream landowners to enhance ecosystem value; (2) providing viable riparian corridors and promoting connectivity of native riparian habitats; (3) maintaining natural floodplain processes and extent of these areas by avoiding and minimizing further permanent loss of floodplain habitats; (4) maintaining to the extent practicable stream and river flows needed to support riparian habitat; (5) monitoring and maintaining groundwater levels and basin withdrawals to avoid loss and degradation of habitat quality; (6) restoring areas to their original condition after disturbance, such as following project construction or fire damage; and (7) promoting increased arroyo toad populations in watersheds through perpetuation of natural ecosystem processes and programmatic instruction application for avoidance and minimization of impacts (MCB Camp Pendleton 2007, Appendix C, pp. C5–C8).

Current environmental regulations and restrictions apply to all endangered and threatened species on the installation (including the arroyo toad) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to arroyo toad and its habitat that include: (1) Controlling nonnative animal species (such as bullfrogs) and nonnative plant species (such as *Arundo donax* and *Rorippa* spp. (watercress)); and (2) restricting military-related traffic use within riparian areas to existing roads, trails, and crossings. Second, 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 the arroyo toad and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including the arroyo toad and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to arroyo toad habitat.

MCB Camp Pendleton's INRMP also benefits the arroyo toad through ongoing monitoring and research efforts. The installation conducts annual monitoring to track arroyo toad populations and has conducted a study to examine arroyo toad use of habitat dominated by *Arundo donax* (although analysis of this study is not yet complete). Data are provided to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. Additionally, MCB Camp Pendleton collaborated with the U.S. Geological Survey's Biological Resources Division to develop and implement a rigorous, science-based monitoring protocol for arroyo toad populations throughout the installation, including surveying for presence of eggs and larvae (Atkinson *et al.* 2003, pp. 4–5).

We are consulting with the Marine Corps under section 7 of the Act to programmatically address potential upland impacts to the arroyo toad (and several other species) as a result of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we expect additional measures that benefit the arroyo toad will be incorporated into the INRMP for MCB Camp Pendleton. This consultation is currently in progress, and we did not rely on any proposed measures in our consideration of the INRMP under section 4(a)(3)(B) of the Act. However, upland habitat conservation measures being considered include, but are not limited to: (1) Implementing programmatic measures to avoid and minimize impacts to upland habitats adjacent to riparian habitats occupied by arroyo toads, and (2) compensating for impacts to upland habitats used by arroyo toads by implementing ongoing installation-wide upland habitat enhancement programs (such as nonnative vegetation control, erosion control, and upland habitat restoration).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton provide a benefit to the arroyo toad and its habitat. This includes habitat located in the following areas: San Mateo Creek, San Onofre Creek, and Santa Margarita River Basins (names of areas used follow those used in the recovery plan (Service 1999, pp.

25–27)). Therefore, lands subject to the INRMP for MCB Camp Pendleton, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 13,030 ac (5,273 ha) of habitat in this final revised critical habitat designation because of this exemption.

Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station)

The Naval Weapons Station Seal Beach, Detachment Fallbrook (Fallbrook Naval Weapons Station), is the primary west coast supply point of ordnance for the U.S. Marine Corps and the large deck amphibious assault ships of the Pacific Fleet. The Fallbrook Naval Weapons Station also has the only west coast maintenance facility for air-launched missiles for the Pacific Fleet. The installation encompasses approximately 8,852 acres (3,582 ha) and is located within the southern foothills of the Santa Ana Mountains of northern San Diego County, adjacent to the city of Fallbrook, California. It is bounded to the north, west, and much of the south by MCB Camp Pendleton, with the Santa Margarita River forming the common border on the north between the two properties. Other than training lands on MCB Camp Pendleton, surrounding land use includes semi-rural agricultural lands that include plant nurseries, avocado and citrus groves, vineyards, and limited urban development.

The Fallbrook Naval Weapons Station INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to support mission operations and accommodate increased military mission requirements for national security and emergency homeland security, while meeting all environmental compliance responsibilities. The INRMP also provides ecosystem-based management to preserve, protect, and enhance natural resources on the installation, and provides the organizational support and communication links necessary for effective planning, implementation, and administration of the installation's natural resources. The Fallbrook Naval Weapons Station completed its INRMP in 2006 (which was updated from an INRMP developed by the Naval Ordnance Center Pacific Division in 1996) to address conservation and management of its natural resources, including conservation measures for the arroyo toad (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The arroyo toad primarily receives protection from installation activities because no training occurs on the installation, and maintenance and potential development activities typically do not occur in arroyo toad habitat due to the steep sloping topography along the Santa Margarita River that immediately surrounds the suitable habitat. However, some impacts could occur associated with activities (such as fuel break grading, fire management, and possible infrastructure) that may impact the arroyo toad and thus require implementation of specified protection measures. The INRMP identifies the following management and protection measures for the arroyo toad: (1) Avoidance and minimization measures, applied to infrastructure development and maintenance to protect the arroyo toad, that are part of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) approval process; (2) placement of riparian filter strip and buffer along firebreaks that lead into riparian zones where arroyo toads may be active; (3) avoidance of firebreak maintenance and fire suppression activities (where possible); (4) avoidance of discing for firebreaks leading to the Santa Margarita River during arroyo toad dispersal periods; (5) implementation of erosion and sediment control; (6) timing and location protections associated with prescribed burns; (7) implementation of nonnative vegetation control measures, including removal of *Arundo donax;* (8) implementation of standardized survey methods; (9) evaluation and control of nonnative bullfrogs; and (10) implementation of long-term monitoring activities, including upland sites (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The ongoing monitoring efforts outlined in the INRMP (as listed above) include surveys of sites at two or more locations along the Santa Margarita River, which includes upland surveys conducted every 5 years, offset from breeding surveys by 2 years. Surveys are also conducted after major alteration of the flow regime (natural or anthropogenic). Finally, the installation conducts annual monitoring to track arroyo toad populations as part of the fire plan activities, with survey data available since 2001 (Fallbrook Naval Weapons Station 2006, Chapter 3, p. 109).

Environmental regulations and restrictions apply to all endangered and threatened species on the installation (including the arroyo toad) and are provided to all users of the installation to guide activities and protect the species and its habitat (Fallbrook Naval Weapons Station 2006, Chapter 5, p. 25). Biennial meetings are held with the Service to evaluate all management items associated with endangered and threatened species, including the arroyo toad.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2006 INRMP for the Fallbrook Naval Weapons Station provide a benefit to the arroyo toad, and will benefit arroyo toads occurring on the installation, which includes habitat located in the Santa Margarita River Basin (as identified in the recovery plan (Service 1999, pp. 26–27)). Therefore, lands subject to the INRMP for the Fallbrook Naval Weapons Station are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 223 ac (90 ha) of habitat in this final revised critical habitat designation because of this exemption.

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

Section 4(b)(2) of the Act states that the Secretary must designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following paragraphs, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

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 evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When 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; implementation of an existing conservation plan; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. The designation of critical habitat may strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

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

When we evaluate a conservation plan, 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 identifying 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 our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

In the case of the arroyo toad, based on the detailed analyses presented below, the Secretary is exercising his discretion to exclude the following areas from this final revised critical habitat designation:

(1) Tribal lands or trust resources on the following reservations: Rincon Band of Luiseño Mission Indians; Pala Band of Luiseño Mission Indians; Sycuan Band of the Kumeyaay Nation; the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation); and Mesa Grande Band of Diegueno Mission Indians.

(2) Federal lands leased by the U.S. Navy for Remote Training Site Warner Springs and Camp Morena. Because Remote Training Site Warner Springs and Camp Morena are part of Naval Base Coronado, they are included in a 2009 update to the Naval Base Coronado INRMP, which identifies measures that the Navy is currently implementing to provide conservation benefits to the arroyo toad. As the 2009 update to the INRMP is still being reviewed by the Service and is not yet approved, these lands are not exempt under section 4(a)(3) of the Act. Thus, these lands were considered for exclusion under section 4(b)(2) of the Act.

(3) Certain lands covered by three completed HCPs for the arroyo toad, including the following: Western Riverside County MSHCP, the Orange County Southern Subregion HCP, and the Orange County Central—Coastal NCCP/HCP. No HCPs or conservation plans covering the species in the proposed critical habitat areas have been approved since the publication of the proposed revised designation in the **Federal Register** on October 13, 2009 (74 FR 52612).

(4) Certain lands in conservation easement owned and managed by the Newhall Land and Farming Company for the conservation of the arroyo toad.

Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

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 or 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 exclusions of HCP lands under section (4)(b)(2) of the Act. The arroyo toad is covered under the Western Riverside County MSHCP, the Orange County Southern Subregion HCP, and the Orange County Central—Coastal NCCP/HCP.

Other conservation or management plans considered in the following discussions of exclusions include the 2002 Naval Base Coronado INRMP that is being revised for Remote Training Site Warner Springs and Camp Morena; tribal land management for arroyo toads by Rincon Band of Luiseño Mission Indians, Pala Band of Luiseño Mission Indians, Sycuan Band of the Kumeyaay Nation, the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation), and Mesa Grande Band of Diegueno Mission Indians; and non-Federal lands managed by the Newhall Land and Farming Company.

The areas for which the Secretary is exercising his discretion to exclude under section 4(b)(2) of the Act are listed in Table 3 below and described in detail in the following sections. Below are brief descriptions of each plan and lands excluded from critical habitat covered by each plan. Additional details on these areas can be found in the proposed rule (74 FR 52612; October 13, 2009).

TABLE 3—AREAS BEING EXCLUDED UNDER SECTION 4(b)(2) OF THE ACT FROM THIS REVISED CRITICAL HABITAT DESIGNATION

Unit/subunit	Area excluded under Section 4(b)(2) of the Act
Newhall Land and Farming Company	
Subunit 6b. [Upper Santa Clara River Basin]	330 ac (134 ha)
Western Riverside County MSHCP	
Unit 9. [San Jacinto River Basin]	14 ac (6 ha)
Unit 13. [Upper Santa Margarita River Basin]	275 ac (112 ha)
Subtotal Western Riverside County MSHCP	289 ac (118 ha)
Orange County Central-Coastal NCCP/HCP	
Unit 8. [Lower Santa Ana River Basin]	1,259 ac (508 ha)
Orange County Southern Subregion HCP	
Subunit 10a. [San Juan Creek Basin]	1,632 ac (660 ha)
Subunit 10b. [San Juan Creek Basin]	509 ac (206 ha)
Subunit 11a. [San Mateo Creek Basin]	39 ac (16 ha)
Subtotal for Orange County Southern Subregion HCP	2,179 ac (882 ha)
Tribal Lands	
Unit 14. [Lower and Middle San Luis Rey River Basin], Rincon Reservation, Pala Reservation	2,733 ac (1,103 ha)
Subunit 16d. [Santa Ysabel Creek Basin], Mesa Grande Reservation	23 ac (9 ha)
Subunit 17a. [San Diego River Basin/San Vicente Creek], Capitan Grande Reservation	92 ac (37 ha)
Subunit 18c. [Sweetwater River Basin], Sycuan Reservation and future reservation land	152 ac (62 ha)
Subtotal for Tribes	3,000 ac (1,214 ha)
Military Lands	
Unit 15. [Upper San Luis Rey River Basin], Remote Training Site Warner Springs	4,609 ac (1,865 ha)
Subunit 19a. [Cottonwood Creek Basin], Camp Morena	31 ac (13 ha)
Subtotal for Military Lands	4,640 ac (1,878 ha)
Total	11,697 ac (4,734 ha)*

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

Newhall Land and Farming Company (Newhall LFC) Natural River Management Plan

In the October 13, 2009, proposed revised critical habitat designation (74 FR 52612), we erroneously reported that Subunit 6b consists of 159 ac (65 ha) of Federal land and 1,995 ac (807 ha) of private land. In actuality, in the proposed rule Subunit 6b should have been described as consisting only of 1,995 ac (807 ha) of private land owned by the Newhall Land and Farming Company (Newhall LFC).

We determined that approximately 1,003 ac (405 ha) of land in Subunit 6b owned by Newhall LFC meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors, including our relationships with the landowner and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 330 ac (133 ha) of land

conserved and managed by Newhall LFC within Subunit 6b from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 672 ac (272 ha) of Newhall LFC lands within Subunit 6b in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying the area as critical habitat.

Newhall LFC developed the Natural River Management Plan (NRMP) (Valencia Company 1998) for the long-term conservation and management of the biological resources within their lands, including the arroyo toad and its habitat; the NRMP was approved by the U.S. Army Corps of Engineers and CDFG in 1998. The NRMP provides management measures designed to protect, restore, monitor, manage, and enhance habitat for multiple species, including the arroyo toad, that occur along the mainstem of the Santa Clara River, Castaic Creek, and San Francisquito Creek including the portion within Subunit 6b. Protective measures for arroyo toad habitat in the NRMP include: (1) The creation of new riverbed areas, including planting wetland mitigation sites; (2) revegetation of riparian areas; (3) removal of invasive plants such as giant reed (*Arundo donax*) and tamarisk (*Tamarix* sp.); (4) protecting wetlands from urban runoff by establishing a revegetated upland buffer between developed areas and the River; (5) implementing a Drainage Quality Management Plan with Best Management Practices to ensure water quality within the River corridor; and (6) implementing the biological mitigation measures for the Newhall Ranch Specific Plan that includes restricting pets and off-road vehicles from the area and restricting access to the River corridor by limiting hiking and biking to the River trail system.

Of particular importance to the conservation of the arroyo toad and its habitat under the NRMP is the inclusion of substantial conservation easements, which when completed will protect almost all of the arroyo toad's breeding habitat and riparian river corridor on Newhall LFC lands and will eventually total 1,201 ac (486 ha). At the present time, Newhall LFC has finalized the placing of a conservation easement on 541 ac (219 ha) over portions of the Santa Clara River corridor and Castaic Creek, of which 330 ac (133 ha) were within proposed revised critical habitat in proposed Subunit 6b. This conservation easement has been conveyed to CDFG and will be conserved and managed under the NRMP. An additional conservation easement of 330 ac (133 ha) covering the Santa Clara River corridor and San Francisquito Creek is awaiting approval by CDFG, and 330 (133 ha) acres west of Interstate 5 along the Santa Clara River and Castaic Creek will be part of future easement dedications to CDFG. Ultimately, these easements will extend along every river mile of Castaic Creek, San Francisquito Creek, and the Santa Clara River within Subunit 6b (Valencia Company 1998).

The 330 ac (133 ha) of the conservation easement within proposed Subunit 6b boundaries that has already been conveyed to the CDFG over portions of the Santa Clara River corridor and Castaic Creek will ensure that arroyo toad habitat within the easement will remain in a natural condition in perpetuity. Use of the easement is limited to the preservation and enhancement of native species and their habitats, including the arroyo toad and its habitat. Based on the placement of the conservation easement, the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4), are protected along Castaic Creek and the mainstem of the Santa Clara River within proposed Subunit 6b. This conservation easement provides greater protection of crucial arroyo toad breeding and foraging habitat in this area than could be gained through the designation of critical habitat. Additionally, we have already completed section 7 consultation on the effects of the NRMP on the arroyo toad and found that it would not jeopardize the continued existence of the species.

In summary, the conservation easement under the NRMP provides permanent protection to approximately 330 ac (133 ha), or 33 percent, of Newhall LFC lands within proposed Subunit 6b. Approximately 672 ac (272 ha), or 67 percent, of Newhall LFC lands in Subunit 6b are not currently conserved and managed.

Below is an analysis of the relative benefits of inclusion and exclusion of 330 ac (133 ha) in Subunit 6b for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Newhall LFC Natural River Management Plan

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 33 percent of lands we proposed for designation within Subunit 6b are conserved and

managed under Newhall LFC's NRMP and associated conservation easement; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the NRMP and conservation easement. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. In contrast, approximately 67 percent of land within Subunit 6b are not conserved in easements, and we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because 330 ac (133 ha) of arroyo toad habitat within proposed Subunit 6b is conserved and managed under the NRMP and associated conservation easement, no educational benefits would be realized in these areas. The remaining 67 percent of Newhall LFC land proposed as revised critical habitat within Subunit 6b is not in easements, and there are educational benefits of including these areas (such as informing the public about essential habitat and potentially refining the broader conservation goals for arroyo toad under the NRMP by focusing conservation in other areas essential to the recovery of the species).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Los Angeles County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed. We further believe that few, if any, additional educational benefits would be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Newhall LFC Natural River Management Plan

We believe conservation benefits would be realized by foregoing designation of critical habitat for the arroyo toad on lands covered by the NRMP and associated conservation easement including: (1) Continuance and strengthening of our effective working relationship with Newhall LFC to promote voluntary, proactive conservation of the arroyo toad and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; and (3) encouragement of additional conservation easements and other conservation and management plan development in the future on Newhall LFC's other lands for this and other federally listed and sensitive species.

The NRMP and associated conservation easement provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under section 7 of the Act), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing conservation and management plans on private lands. Exclusion of Newhall LFC lands that are conserved and managed by the NRMP and associated conservation easement will also strengthen the partnership between the Service and Newhall LFC, which may encourage other conservation partnerships between our two entities in the future.

In summary, we believe excluding land covered by the NRMP and associated conservation easement from critical habitat could provide the significant benefit of maintaining our existing partnership and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Newhall LFC Natural River Management Plan

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by Newhall LFC proposed as critical habitat for arroyo toad. The benefits of including conserved and managed lands in the critical habitat designation are small. The conservation easement on portions of the Santa Clara River mainstem and Castaic Creek that encompass approximately 330 ac (133 ha), or 33 percent, of Subunit 6b, are already managed and conserved under the NRMP, and provide a benefit to arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in this conservation easement; education information regarding the importance of the easement was identified during the development and implementation of Newhall LFC's NRMP and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection within the conservation easement under the NRMP. Therefore, we do not believe critical habitat designation for the arroyo toad within the conservation easement will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including Newhall LFC lands within Subunit 6b in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the

specific lands covered by the NRMP that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus, and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

The exclusion of conserved areas in Subunit 6b will benefit the partnership that we have with Newhall LFC and other participating property owners, and encourage the conservation of lands associated with the development and implementation of future conservation management plans.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad in Subunit 6b will preserve our partnership with Newhall LFC and encourage the conservation of lands associated with development. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Subunit 6b in final revised critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Subunit 6b will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by Newhall LFC on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about the importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with Newhall LFC, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Subunit 6b. Therefore, the Secretary is declining to exercise his discretion to exclude 672 ac (272 ha) of Newhall LFC lands within Subunit 6b from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Newhall LFC Natural River Management Plan

We determined that exclusion of 330 ha (133 ha) of land in Subunit 6b from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 330 ha (133 ha) of land in Subunit 6b from this final revised critical habitat designation.

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

We determined that approximately 6,386 ac (2,583 ha) of land in Units 9 and 13 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 289 ac (118 ha) of conserved and managed land, or 5 percent of land within the Western Riverside County MSHCP plan area in Units 9 and 13 from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 6,097 ac (2,467 ha), or 95 percent, of land within the Western Riverside County MSHCP plan area in Units 9 and 13 in this final revised critical habitat designation, as these areas contain features essential to the conservation of the species that are not permanently conserved and managed. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. We proposed approximately 6,386 ac (2,583 ha) of critical habitat for the arroyo toad in Units 9 and 13 within the plan area. The Western Riverside County MSHCP is a multi-species conservation program designed to minimize and mitigate the effects of expected habitat loss and associated incidental take of 146 "covered species", including the arroyo toad. On June 22, 2004, we issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years (Service 2004, TE–088609–0). We concluded in our biological opinion (Service 2004, p. 164) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. Our determination was based on our conclusion that 48 percent of the arroyo toad modeled habitat, including the majority of each known arroyo toad population in western Riverside County, will be protected or will remain within the Western Riverside County MSHCP Conservation Area. In addition, required surveys for the arroyo toad may result in newly discovered occurrences being included in the Western Riverside County MSHCP Conservation Area (Service 2004, p. 164).

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (called the Additional Reserve Lands) to complement the approximately 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 ownership of public or quasi-public agencies, primarily the Forest Service and BLM, as well as permittee-owned or controlled open-space areas managed by the State of California 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 (ARL) is not mapped or precisely delineated ("hard-lined") in the Western Riverside County MSHCP. Instead, the ARL are 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 are determined as implementation of the Western Riverside County MSHCP takes place.

Specific conservation objectives in the Western Riverside County MSHCP for the arroyo toad include providing 9,695 ac (3,914 ha) of occupied or suitable habitat for the species in the MSHCP Conservation Area along portions of San Juan Creek (Subunit 10a), Los Alamos Creek (Subunit 11b), San Jacinto River

(Subunit 9a), Indian Creek, Bautista Creek (Subunit 9b), Wilson Creek (Subunit 13c), Temecula Creek (Subunit 13b), Arroyo Seco (Subunit 13a), and Vail Lake, and including 93 percent of the known arroyo toad occurrences as of 2004 (Service 2004, pp. 162–163). Approximately 3,793 ac (1,531 ha) of occupied or suitable habitat will remain on existing PQP lands and 5,902 ac (2,383 ha) will be conserved within the Additional Reserve Lands. These 5,902 ac (2,383 ha) can be attained through acquisition or other dedications of land assembled from within the Criteria Area or the Arroyo Toad Survey Area (as these lands are acquired they become part of the Additional Reserve Lands). Additionally, areas within the Western Riverside County MSHCP where there is potential suitable habitat for arroyo toad that is not yet protected are subject to the Additional Survey Needs and Procedures Policy (*see* Additional Survey Needs and Procedures, Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek and Associates, Inc. 2003). In these areas, surveys for the arroyo toad are required as part of the project review process for public and private projects where suitable habitat is present (*see* Amphibian Species Survey Area Map, Figure 6–3 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* Additional Survey Needs and Procedures, Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek and Associates, Inc. 2003). Once species-specific objectives are met, avoided areas would be evaluated to determine whether they should be released for development or included in the MSHCP Conservation Area.

Preservation and management of approximately 5,902 ac (2,383 ha) of arroyo toad habitat under the Western Riverside County MSHCP within Additional Reserve Lands will contribute to the conservation and ultimate recovery of this species. Additionally, cooperative management and monitoring are anticipated on existing PQP lands. The arroyo toad is threatened primarily by alterations of stream hydrology and geomorphology as a result of mining, reservoirs, and flood control activities; development; agriculture, including livestock grazing; recreational activities; and nonnative species (Service 2004, pp. 156–158). The Western Riverside County MSHCP will remove and reduce threats to the arroyo toad and the physical and biological features essential to the conservation of the species as the plan is implemented by preserving large blocks of suitable habitat. Within the MSHCP Conservation Area, breeding populations will be maintained at a minimum of 80 percent of the conserved breeding locations as measured by the presence/absence of juvenile toads, tadpoles, or egg masses across any 5 consecutive years. Additionally, the Western Riverside County MSHCP will maintain ecological processes within the MSHCP Conservation Area given existing constraints and activities covered under the MSHCP along portions of San Juan Creek, San Jacinto River, Indian Creek, Bautista Creek, Wilson Creek, Temecula Creek, Arroyo Seco, and Vail Lake. The plan also generates funding for long-term management of conserved lands for the benefit of the species they protect.

Approximately 14 ac (6 ha) of Subunit 9b within the Western Riverside County MSHCP is covered by the 10-Year Habitat Management Plan for the Cactus Valley Habitat Management Unit (Cactus Valley Habitat Management Plan). These lands, known as the Kirchner/Searl property, were transferred in 2007 from the landowner to the County of Riverside to be conserved and managed in Western Riverside County MSHCP's Additional Reserve Lands. Additionally, the Cactus Valley Habitat Management Plan was developed in conformance with the Western Riverside County MSHCP, and identifies management goals, including but not limited to: (1) Completion of initial evaluations of acquired properties within the first 4 years following acquisition; (2) controlling unauthorized public access; (3) maintaining and enhancing upland habitats; (4) maintaining and enhancing wetland habitats; (5) initiating adaptive management should target species locations fall below 75 percent of locations indicated in the Western Riverside County MSHCP species accounts; and (6) managing disturbance regimes, including but not limited to, fire, exotic species invasions, sedimentation, and erosion (County of Riverside 2009a, pp. 1, 7). After 10 years, if not sooner, the management plan will be revised. Thus, these areas within the Cactus Valley Habitat Management Unit are permanently protected and managed within Additional Reserve Lands pursuant to the Western Riverside County MSHCP.

Approximately 117 ac (47 ha) of Subunits 13b and 13c within the Western Riverside County MSHCP is covered by the 10-Year Habitat Management Plan for the Sage Habitat Management Unit (Sage Habitat Management Plan). These lands, known as the Geller #2 Phase I, Odegaard, Wilson Creek/J Street, and Mulder properties, were transferred in 2006 and 2008 from the landowners to the County of Riverside to be conserved and managed in Western Riverside County MSHCP's Additional Reserve Lands. Additionally, the Sage Habitat Management Plan was developed in conformance with the Western Riverside County MSHCP, and identifies management goals, including but not limited to: (1) Completion of initial evaluations of acquired properties within the first 4 years following acquisition; (2) controlling unauthorized public access; (3) maintaining and enhancing upland habitats; (4) maintaining and enhancing wetland habitats; (5) initiating adaptive management should target species locations fall below 75 percent of locations indicated in the Western Riverside County MSHCP species accounts; and (6) managing disturbance regimes, including but not limited to, fire, exotic species invasions, sedimentation, and erosion (County of Riverside 2009b, pp. 1, 9). After 10 years, if not sooner, the management plan will be revised. Thus, these areas within the Sage Habitat Management Unit are permanently protected and managed within Additional Reserve Lands under the Western Riverside County MSHCP.

Approximately 158 ac (64 ha) of Subunit 13c is covered by the Management Plan for the Wilson Creek Conservation Bank (Wilson Creek Management Plan) consistent with the Western Riverside County MSHCP. The Wilson Creek Conservation Bank, an approximately 890 ac (360 ha) conserved property in the unincorporated community of Aguanga, was established as mitigation for development projects elsewhere in western Riverside County (CNLM 2006, p. 1). The Wilson Creek Management Plan outlines specific long-term preserve management practices, including: (1) Annual biological resource monitoring to identify changes in habitat and trends in species composition, diversity, and abundance; (2) use of buffers and barriers to minimize the influence of neighboring properties that may reduce the quality and integrity of the ecosystem; (3) maintenance and enhancement of habitat; (4) identification of habitat enhancement opportunities; and (5)

development of a fire management program in consultation with the Riverside County Fire Marshall and appropriate wildlife agencies (CNLM 2006, pp. 1–2). Thus, the Wilson Creek Management Plan provides protection to the arroyo toad and its proposed critical habitat through the conservation and management of an area that may otherwise be left unprotected.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Units 9 and 13 for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Western Riverside County MSHCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act (CWA) from the U.S. Army Corps of Engineers (Corps). Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 5 percent of lands proposed for designation in Units 9 and 13 within the plan area for the Western Riverside County MSHCP (Additional Reserve Lands identified above and Wilson Creek Conservation Bank) are conserved and managed under the Western Riverside County MSHCP; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Western Riverside County MSHCP. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 95 percent of lands meeting the definition of critical habitat within the Western Riverside County MSHCP plan area are not currently conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified above in Additional Reserve Lands and Wilson Creek Conservation Bank within Units 9 and 13 is already conserved and managed under the Western Riverside County MSHCP (approximately 5 percent of land within the Western Riverside County MSHCP plan area meeting the definition of critical habitat), no educational benefits would be realized in these areas. The remaining 95 percent of land proposed as revised critical habitat within the Western Riverside County MSHCP plan area is not currently conserved and managed, and there are educational benefits of including these areas.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. In Riverside County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Western Riverside County MSHCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Western Riverside County MSHCP including: (1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP jurisdictions and stakeholders to promote conservation of the arroyo toad, its habitat, and 145 other species covered by the HCP and their habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this species

and the many other species covered by the HCP, including conservation benefits that might not otherwise occur; (3) encouragement for local jurisdictions to fully participate in the Western Riverside County MSHCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

In the case of arroyo toad in Riverside County, the partnership and commitment by the permittees of the Western Riverside County MSHCP resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed a close partnership with the permittees of the Western Riverside County MSHCP through the development of the HCP, which incorporates protections (conserved lands) and management for the arroyo toad, its habitat, and the physical and biological features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP (as discussed further in Comments 26 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of Western Riverside County MSHCP lands could help preserve the partnerships we developed with the County of Riverside and other local jurisdictions in the development of the HCP, foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Western Riverside County MSHCP provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP. Exclusion of Western Riverside County MSHCP lands would help preserve the partnerships we developed with the County of Riverside and other local jurisdictions in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Western Riverside County MSHCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP

We reviewed and evaluated the benefits of inclusion and exclusion from critical habitat designation for the arroyo toad for lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees. The benefits of including conserved and managed lands in the critical habitat designation are small. Approximately 14 ac (6 ha) of land in Subunit 9b covered by the Cactus Valley Habitat Management Plan, approximately 117 ac (47 ha) of land in Subunits 13b and 13c covered by the Sage Habitat Management Plan, and approximately 158 ac (64 ha) of land in Subunit 13c covered by the Wilson Creek Management Plan are already managed and conserved, and provide a conservation benefit to the arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Western Riverside County MSHCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Western Riverside County MSHCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Western Riverside County MSHCP plan area in the final revised critical habitat designation for arroyo toad that are not currently conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. None of the remaining lands within the Western Riverside County MSHCP plan area in Units 9 and 13 are currently both conserved and managed to benefit the arroyo toad, and the broad conservation goals for this species under the Western Riverside County MSHCP do not explicitly require and assure protection of the specific lands included in Units 9 and 13. Therefore designation of these units will provide an educational benefit by focusing attention on the specific lands within the Western Riverside County MSHCP plan area that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

Excluding those portions of lands within Units 9 and 13 that are conserved and managed from critical habitat designation will further our existing partnerships with permittees under the Western Riverside County MSHCP and encourage future voluntary conservation efforts for this species by relieving landowners of any additional regulatory burden stemming from designation. We consider this a significant benefit of excluding these lands.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad in Units 9 and 13 will help preserve our partnership with the County of Riverside and other permittees in the Western Riverside County MSHCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including conserved and managed lands within Units 9 and 13 in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Units 9 and 13 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts

by the Western Riverside County MSHCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the County of Riverside and other permittees under the Western Riverside County MSHCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Units 9 and 13. Therefore, the Secretary is declining to exercise his discretion to exclude 6,097 ac (2,467 ha) of land within the Western Riverside County MSHCP plan area in Units 9 and 13 from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Units 9 and 13, Western Riverside County MSHCP

We determined exclusion of 289 ac (118 ha) of land in Units 9 and 13 within the Western Riverside County MSHCP plan area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 289 ac (118 ha) of land in Units 9 and 13 owned by or under the jurisdiction of Western Riverside County MSHCP permittees from this final revised critical habitat designation.

Orange County Central-Coastal Subregional Habitat Conservation Plan/ Natural Community Conservation Plan (Orange County Central-Coastal NCCP/ HCP)

We determined that approximately 641 ac (259 ha) of land in Unit 8 owned by or under the jurisdiction of the permittees of the Orange County Central-Coastal NCCP/HCP and approximately 670 ac (271 ha) of land in Unit 8 in the associated North Ranch Policy Plan Area (NRPPA) meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude a total of 1,259 ac (508 ha), or 96 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area (including those lands associated with the NRPPA) within Unit 8 from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 52 ac (21 ha), or 4 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area within Unit 8 in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying the area as critical habitat.

The Orange County Central-Coastal NCCP/HCP in central Orange County (including lands within a portion of Unit 8) was developed in cooperation with numerous local and State jurisdictions and agencies, and participating landowners, including Southern California Edison; Transportation Corridor Agencies; The Irvine Company; California Department of Parks and Recreation; Metropolitan Water District of Southern California; Orange County; and the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano. Approved in 1996, the Orange County Central-Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 covered species within the 208,713-ac (84,463-ha) planning area. We concluded in our biological opinion (Service 1996, p. 66) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. We also issued an incidental take permit to the permittes of the plan under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the arroyo toad for all areas within the Orange County Central-Coastal Subregion, except the NRPPA which is addressed in more detail below. This take authorization only applies to smaller arroyo toad populations, reintroduced populations, or populations that have expanded due to NCCP/HCP reserve management. It also requires creation and implementation of a project-specific mitigation plan if a planned activity would result in take of arroyo toads. The HCP requires the mitigation plan to: (1) Address design modifications, minimize impacts, and provide appropriate protections for arroyo toad; (2) provide for arroyo toad relocation to an acceptable location where habitat will be management and enhanced as needed; and (3) provide for monitoring and adaptive management of arroyo toads and their habitat.

The Orange County Central-Coastal NCCP/HCP provides for monitoring and adaptive management of covered species and their habitat, including the arroyo toad, within this reserve system. To date, monitoring and management related to arroyo toad has included reserve-wide herpetofauna surveys conducted from 1997 through 2001 and ongoing control of invasive nonnative vegetation in the upland environment.

Approximately 589 ac (238 ha) of the portion of Unit 8 within the Orange County Central-Coastal NCCP/HCP plan area is covered by the Irvine Ranch Northern Open Space Recreation and Resource Management Plan (Irvine Ranch Northern Open Space Management Plan). These lands were transferred in 2010 from the landowner (i.e., the Irvine Company, who is also a permittee of the Orange County Central-Coastal NCCP/HCP) to the County of Orange to be conserved and managed in Orange County Central-Coastal NCCP/ HCP's reserve system. Additionally, the Irvine Ranch Northern Open Space Management Plan was developed in conformance with the Orange County Central-Coastal NCCP/HCP, and identifies actions needed to maintain long-term habitat value by addressing key challenges such as management of increased wildfire frequency, nonnative plants and animals, and unauthorized activities by individuals or groups (LSA and IRC 2010, pp. 66–67; Service 2010, p. 1).

Approximately 670 ac (271 ha) of Unit 8 within NRPPA is covered by the Resource Plan for East Orange Conservation Easement Property (East Orange Management Plan), the Resource Plan for Fremont/Blind Easement Property (Fremont/Blind Management Plan), and the Resource Plan for Silmod Conservation Easement Property (Silmod Management Plan). As noted above, the NRPPA was not included in the Orange County Central-Coastal NCCP/HCP based on a lack of biological information and a lack of specific conservation commitments at the time of adoption of the plan. The landowner (i.e., The Irvine Company) agreed to continue to work with CDFG and the

Service to address the conservation needs of multiple sensitive species in the NRPPA, including the arroyo toad. As a result, conservation easements held by the Nature Conservancy and managed by the Irvine Company were established (which includes approximately 670 ac (271 ha) of lands within the arroyo toad proposed revised critical habitat area). Management and monitoring of this area includes a $10 million management endowment and addresses various adaptive management activities that provide a benefit to the arroyo toad and its habitat. The management program addresses management from an ecosystem-based approach, including activities such as restoration of habitat through removal of invasive species, erosion control, and an on-going biological monitoring program that benefits an adaptive management strategy.

In summary, Orange County Central-Coastal NCCP/HCP's reserve system and the conservation easement within the NRPPA provides permanent protection to approximately 1,259 ac (508 ha), or 96 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8. Approximately 52 ac (21 ha), or 4 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 are not conserved and managed.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Unit 8 for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Orange County Central-Coastal NCCP/HCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 96 percent of lands proposed for designation within Orange County Central-Coastal NCCP/HCP's reserve system and associated NRPPA in Unit 8 are conserved and managed under the Orange County Central-Coastal NCCP/HCP and associated management plans; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Orange County Central-Coastal NCCP/HCP and associated management plans. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 4 percent of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 are not conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified in Orange County Central-Coastal NCCP/HCP's reserve system and associated NRPPA within Unit 8 is already conserved and managed under the Orange County Central-Coastal NCCP/HCP and associated management plans (approximately 96 percent of land proposed as critical habitat within the Orange County Central-Coastal NCCP/HCP plan area), no educational benefits would be realized in these areas. The remaining 4 percent of land proposed as revised critical habitat within the Orange County Central-Coastal NCCP/HCP plan area is not conserved and managed, and there are educational benefits of including these areas (such as informing the public about essential habitat and potentially refining the broader conservation goals for arroyo toad under the Orange County Central-Coastal NCCP/HCP by focusing conservation on the specific areas essential to the recovery of the species).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Orange County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would

provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Orange County Central-Coastal NCCP/HCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Orange County Central-Coastal NCCP/HCP and associated NRPPA including: (1) Continuance and strengthening of our effective working relationships with all Orange County Central-Coastal NCCP/HCP jurisdictions and stakeholders (including the Irvine Company with relation to the NRPPA) to promote voluntary, proactive conservation of the arroyo toad and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; (3) encouragement for local jurisdictions to fully participate in the Orange County Central-Coastal NCCP/HCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

In the case of arroyo toad in Orange County, the partnership and commitment by the Orange County Central-Coastal NCCP/HCP jurisdictions and stakeholders resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed close partnerships with all participating entities through the development of the Orange County Central-Coastal NCCP/HCP and the associated conservation easement established under the NRPPA, which incorporates substantial protections and management for the arroyo toad, its habitat, and the features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA (as discussed further in Comment 27 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of lands under the Orange County Central-Coastal NCCP/HCP and associated NRPPA could help preserve the partnership we developed with County of Orange and other participants in the development of the HCP, and foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA. Exclusion of Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA lands would help preserve the partnerships we developed with the County of Orange and other participating property owners in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Orange County Central-Coastal NCCP/HCP and closely associated NRPPA from critical habitat could provide the significant benefit of maintaining existing regional HCP and management plan partnerships, and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Orange County Central-Coastal NCCP/HCP

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by or under the jurisdiction of Orange County Central-Coastal NCCP/HCP permittees, including the Irvine Company with regard to the NRPPA, proposed as critical habitat for arroyo toad. The benefits of including conserved and managed lands in the critical habitat designation are small. The Orange County Central-Coastal NCCP/HCP's reserve system and the conservation easement within the NRPPA encompass approximately 1,259 ac (508 ha), or 96 percent, of the Orange County Central-Coastal NCCP/HCP plan area within Unit 8, are already managed and conserved, and provide a benefit to arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Orange County Central-Coastal NCCP/HCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Orange County Central-Coastal NCCP/HCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Orange County Central-Coastal NCCP/HCP plan area in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the specific lands within Orange County Central-Coastal NCCP/HCP that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

Approximately 1,259 ac (508 ha) are currently being managed under management plans developed in part because the area is a participating NCCP/HCP jurisdiction. The exclusion

of conserved areas in Unit 8 within the Orange County Central-Coastal NCCP/HCP plan area will benefit the partnership that we have with the County of Orange and other participating property owners, and encourage the conservation of lands associated with the development and implementation of future HCPs.

An example of a recognized benefit of the importance of the Orange County Central-Coastal NCCP/HCP and the partnerships with the permittees is the establishment of the conservation easement in the NRPPA. During the development stage of the Orange County Central-Coastal NCCP/HCP (as described above), the permittees, CDFG, and the Service recognized there was a lack of biological information and conservation commitments to include the area now known as the NRPPA into the HCP. The HCP permittees decided to address this area separately to prevent stalling the anticipated conservation afforded by the finalization of the Orange County Central-Coastal NCCP/HCP. The participating permittee and owner of the NRPPA, the Irvine Company, agreed to not only commit to the conservation strategy of the Orange County Central-Coastal NCCP/HCP, but also to continue to work with the CDFG and Service to develop an ecosystem-based conservation plan for the NRPPA. As a result of this commitment, a conservation easement was established with management and monitoring of the area in perpetuity, which includes protection of arroyo toad habitat identified as essential to the conservation of the species. Therefore, conservation associated with the Orange County Central-Coastal NCCP/HCP permittees, including the Irvine Company who committed to conserving NRPPA lands, may not have been realized had it not been for the continued conservation commitment made by the permittees.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad (Unit 8) will preserve our partnership with the permittees in the Orange County Central-Coastal NCCP/HCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Unit 8 in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Unit 8 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the Orange County Central-Coastal NCCP/HCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the permittees under the Orange County Central-Coastal NCCP/HCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Unit 8. Therefore, the Secretary is declining to exercise his discretion to exclude 52 ac (21 ha) of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Unit 8, Orange County Central-Coastal NCCP/HCP

We determined exclusion of 1,259 ac (508 ha) of land in Unit 8 within the Orange County Central-Coastal NCCP/HCP planning area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 1,259 ac (508 ha) of land in Unit 8 from this final critical habitat designation.

Orange County Southern Subregion HCP

We determined that approximately 4,915 ac (1,984 ha) of land in Subunits 10a, 10b, and 11a owned by or under the jurisdiction of the permittees of the Orange County Southern Subregion HCP meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 2,179 ac (882 ha), or 44 percent, of land within the Orange County Southern Subregion HCP plan area in Subunits 10a, 10b, and 11a from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 2,736 ac (1,107 ha), or 56 percent, of land within the Orange County Southern Subregion HCP plan area in Subunits 10a and 11a in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Orange County Southern Subregion HCP is a large-scale HCP encompassing approximately 86,021 ac (34,811 ha) in southern Orange County (including lands within portions of Subunits 10a, 10b, and 11a). Originally developed as the Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan, we now refer to the plan as the Orange County Southern Subregion HCP. Although the plan is intended to be a subregional plan under the State of California's Natural Community Conservation Planning (NCCP) Act of 2001, the NCCP has not yet been permitted by the California Department of Fish and Game. On January 10, 2007, the Service approved the Habitat Conservation Plan and issued incidental take permits (TE144105–0, TE144113–0, and TE144140–0) under section 10(a)(1)(B) of the Act to the three permittees for a period of 75 years. We concluded in our biological opinion (Service 2007, p. 66) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. Our determination was based on permanent protection of arroyo toad populations within the Orange County Southern Subregion HCP plan area combined with long-term management and monitoring actions within its habitat reserve that will help sustain arroyo toad in the area and contribute to the range-wide conservation of the species (Service 2007, p. 67).

The Orange County Southern Subregion HCP was developed by the County of Orange (County), Rancho Mission Viejo, LLC (Rancho Mission Viejo), and the Santa Margarita Water

District (Water District) to address impacts resulting from residential and associated infrastructure development to 32 species including the arroyo toad. The Orange County Southern Subregion HCP is a multi-species conservation program that minimizes and mitigates expected habitat loss and associated incidental take of covered species.

The Orange County Southern Subregion HCP addresses development and associated infrastructure on Rancho Mission Viejo lands, installation and maintenance of infrastructure by the Water District, expansion of Prima Deshecha Landfill by the County, and monitoring and adaptive management of covered species on reserve lands.

The Orange County Southern Subregion HCP will establish approximately 30,426 ac (12,313 ha) of habitat reserve, which will consist primarily of land owned by Rancho Mission Viejo and three pre-existing County parks (Service 2007, pp. 10 and 19). The HCP provides for a large, biologically diverse and permanent habitat reserve that will protect: (1) Large blocks of natural vegetation communities that provide habitat for the covered species; (2) "important" and "major" populations of the covered species in key locations; (3) wildlife corridors and habitat linkages that connect the large habitat blocks and covered species populations to each other, the Cleveland National Forest, and the adjacent Orange County Central-Coastal NCCP/HCP; and (4) the underlying hydrogeomorphic processes that support the major vegetation communities providing habitat for the covered species (Service 2007, p. 10).

The overall habitat reserve will be managed and monitored according to the collective Habitat Reserve Management and Monitoring Program (Habitat Reserve Management Program). The Habitat Reserve Management Program focuses on the development and implementation of a coordinated monitoring and management program to sustain and enhance species populations, including arroyo toad, and their habitats over the long term, while adapting management actions to new information and changing habitat conditions. The management program is comprised of two components: (1) An ongoing management program on County park lands within the habitat reserve; and (2) an adaptive management program that will be implemented on the Rancho Mission Viejo portion of the habitat reserve and on selected portions of the County park lands within the habitat reserve (Service 2007, p. 12).

In addition to the creation of a habitat reserve, the following conservation measures specific to arroyo toad and its habitat include:

(1) Potential impacts to arroyo toads associated with construction activities on Rancho Mission Viejo will be avoided and minimized through preparation of Biological Resources Construction Plans in coordination with the Service;

(2) Potential impacts to arroyo toad habitat from grazing activities will be addressed through implementation of the Grazing Management Plan, which includes the management of grazing activities and restoration of upland habitat with native grasses and coastal sage scrub;

(3) Implementation of the Invasive Species Control Plan on Rancho Mission Viejo will result in removal of nonnative plant species that degrade aquatic habitats and removal of aquatic predators of the arroyo toad;

(4) Through Water Quality Management Plans, flow duration (which influences channel morphology) and water quality will be maintained such that hydrologic conditions of concern such as erosion or sedimentation or pollutants of concern will be addressed;

(5) A detailed monitoring program for the arroyo toad at a species-specific level and also habitat-landscape level will be developed in coordination with the Service (Service 2007, pp. 62–64); and

(6) Removal of nonnative plant species that degrade aquatic habitats occupied by the arroyo toad will be conducted on County lands to offset impacts to aquatic habitat associated with expansion of the County's Prima Deshecha Landfill.

Below is a brief overview of the lands in Subunits 10a, 10b, and 11a that, based on the reasoning provided in the following sections, the Secretary is exercising his discretion to exclude under section 4(b)(2) of the Act, and how these areas are conserved and managed consistent with the Orange County Southern Subregion HCP.

Approximately 1,608 ac (651 ha) of County park lands in Subunit 10a within the Ronald W. Caspers Wilderness Park (Caspers Wilderness Park) is covered by the Ronald W. Caspers Wilderness Park General Development Plan Phase III Habitat Conservation Program (Caspers Wilderness Park Program). The Caspers Wilderness Park Program functions as an operational program to ensure protection of existing biological communities and sensitive plant and animal species through implementation of, at minimum: (1) An ongoing review of sensitive habitat areas; and (2) identification of site specific operational directives for the protection of habitats, which include a mechanism for review and adjustment of directives in light of new information (Lewis 1987, pp. 1–1 and 2–11). Approximately 509 ac (206 ha) of County parks lands in Subunit 10b within O'Neill Regional Park is covered by the O'Neill Regional Park Resource Management Plan. The goals of this plan are: (1) To insure the protection and preservation of the natural and cultural resources within the park through the development of recommended management tools (such as resource management checklists, interpretive programs, mitigation programs, and the hiring of a resource monitor); and (2) to maintain a viable ecosystem, a recreational opportunity, and visual quality inherent to the park by developing a comprehensive understanding of park resource systems and interrelationships, and directing future planning efforts to insure their protection (County of Orange 1989, pp. 1–1, 11–3 and 11–4). Therefore, the Caspers Wilderness Park Program and the O'Neill Regional Park Resource Management Plan provide protection to proposed arroyo toad critical habitat through the conservation and management of these areas that may otherwise be left unprotected.

Approximately 23 ac (9 ha) of the portion of Subunit 10a within the Orange County Southern Subregion HCP plan area is conserved and managed in Planning Area 1 Open Space. These lands are owned by Rancho Mission Viejo and consist of two areas: (1) An area placed under a perpetual conservation easement; and (2) an area subject to a declaration of irrevocable covenant, both recorded on January 14, 2010 (County of Orange 2010a, p. 1; County of Orange 2010b, pp. 1–9; County of Orange 2010c, pp. 1–32). The preservation of Rancho Mission Viejo open space lands in the San Juan Creek watershed (Subunit 10a) is occurring under the Orange County Southern Subregion HCP under a phased dedication program consisting of a two-step process including: (1) The phased recordation of irrevocable covenants by affected landowners on or before the commencement of each new development phase, at which time the areas subject to the irrevocable covenants will be enrolled in the habitat reserve and become subject to the Habitat Reserve Management Program, followed by (2) the phased recordation of conservation easements as soon as practicable but no later than 3 years

following recordation of the corresponding irrevocable covenants (Dudek and Associates 2007, Attachment 1, p. 1). Thus, these areas within Planning Area 1 Open Space are permanently protected and managed in the habitat reserve pursuant to the Orange County Southern Subregion HCP (Dudek and Associates 2007, pp. 20 and 71).

Approximately 39 ac (16 ha) of Subunit 11a within Orange County Southern Subregion HCP is conserved and managed in Donna O'Neill Land Conservancy. The Donna O'Neill Land Conservancy was established in 1990 to offset impacts associated with nearby development in the City of San Clemente. This approximately 1,200 ac (484 ha) property is owned by Rancho Mission Viejo and permanently conserved under a conservation easement deed held by the Donna O'Neill Land Conservancy, a non-profit conservancy group. Management is funded through a non-wasting endowment, grants, and membership dues. Additionally, the conservation easement will be transferred to the Rancho Mission Viejo Land Conservancy (a non-profit entity responsible for collection, investment, and distribution of funding for the benefit, preservation, and enhancement of habitat reserve lands within Rancho Mission Viejo), pending approval by the San Clemente City Council. The city council recently voted 5–0 to approve the transfer in concept, subject to formal documents being provided to the council for review and approval. Once transferred, these lands will be enrolled in the habitat reserve and therefore become subject to the Habitat Reserve Management Program under the Orange County Southern Subregion HCP (Dudek and Associates 2007, p. 35). Thus, the Donna O'Neill Land Conservancy provides protection to the arroyo toad and its proposed critical habitat through the conservation and management of an area that may otherwise be left unprotected.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Subunits 10a, 10b, and 11a for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Orange County Southern Subregion HCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat would have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 44 percent of lands proposed for designation within the Orange County Southern Subregion HCP plan area (i.e., County park lands, Planning Area 1 Open Space conserved lands, and Donna O'Neill Land Conservancy lands) in Subunits 10a, 10b, and 11a are conserved and managed under the Orange County Southern Subregion HCP; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Orange County Southern Subregion HCP. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 56 percent of land proposed for designation within the Orange County Southern Subregion HCP plan area are not conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas for the arroyo toad because it may provide a regulatory benefit when there is a Federal nexus present for a project that might adversely modify critical habitat.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified in County park lands, Planning Area 1 Open Space conserved lands, and Donna O'Neill Land Conservancy within Subunits 10a, 10b, and 11a is already conserved and managed under the Orange County Southern Subregion HCP (approximately 44 percent of land within the Orange County Southern Subregion HCP plan area that meets the definition of critical habitat), no educational benefits would be realized in this area. The remaining 56 percent of land proposed as revised critical habitat within the Orange County Southern Subregion HCP plan area is

not conserved and managed, and there are educational benefits of including these areas because designation may act as a tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Orange County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Orange County Southern Subregion HCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Orange County Southern Subregion HCP including: (1) Continuance and strengthening of our effective working relationships with all Orange County Southern Subregion HCP stakeholders to promote conservation of the arroyo toad and its habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; (3) encouragement of local jurisdictions to fully participate in the Orange County Southern Subregion HCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other lands for this and other federally listed and sensitive species. In the case of arroyo toad in Orange County, the partnership and commitment by the permittees of the Orange County Southern Subregion HCP resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed close partnerships with all participating entities through the development of the Orange County Southern Subregion HCP, which incorporates substantial protections and management for the arroyo toad, its habitat, and the features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Southern Subregion HCP (as discussed further in Comment 29 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of Orange County Southern Subregion HCP lands could help preserve the partnership we developed with the County of Orange and other permittees in the development of the HCP, and foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Orange County Southern Subregion HCP provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Southern Subregion HCP. Exclusion of Orange County Southern Subregion HCP lands would help preserve the partnerships we developed with the County of Orange and other stakeholders in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Orange County Southern Subregion HCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Orange County Southern Subregion HCP

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by or under the jurisdiction of Orange County Southern Subregion HCP permittees as critical habitat for the arroyo toad. The benefits of including lands already conserved and managed in the critical habitat designation are small. Approximately 1,608 ac (651 ha) of land in Subunit 10a within Caspers Wilderness Park, approximately 509 ac (206 ha) of land in Subunit 10b within O'Neill Regional Park, approximately 23 ac (9 ha) of land in Subunit 10a within Planning Area 1 Open Space, and approximately 39 ac (16 ha) of land in Subunit 11a within Donna O'Neill Land Conservancy are already managed and conserved, and provide a benefit to the arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Orange County Southern Subregion HCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Orange County Southern Subregion HCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Orange County Southern Subregion HCP plan area in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the specific lands within Orange County Southern Subregion HCP plan area that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from

designation for actions requiring a Federal nexus in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

The lands in Subunit 10a within Caspers Wilderness Park, in Subunit 10b within O'Neill Regional Park, in Subunit 10a within Planning Area 1 Open Space, and in Subunit 11a within Donna O'Neill Land Conservancy are currently being managed under management plans developed in part because the areas are within a participating HCP jurisdiction. The exclusion of conserved areas of Subunits 10a, 10b, and 11a will benefit the partnership that we have with the County of Orange and other permittees under the Orange County Southern Subregion HCP, and encourage the conservation of lands associated with the development and implementation of future HCPs.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad (Subunits 10a, 10b, and 11a) will preserve our partnership with the permittees in the Orange County Southern Subregion HCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Subunits 10a, 10b, and 11a in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Subunits 10a, 10b, and 11a will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the Orange County Southern Subregion HCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the permittees under the Orange County Southern Subregion HCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Subunits 10a, 10b, and 11a. Therefore, the Secretary is declining to exercise his discretion to exclude 2,736 ac (1,107 ha) of land within the Orange County Southern Subregion HCP plan area in Subunits 10a and 11a in this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Subunits 10a, 10b, and 11a, Orange County Southern Subregion HCP

We determined that the exclusion of approximately 2,179 ac (882 ha) of land in Subunits 10a, 10b, and 11a within the Orange County Southern Subregion HCP planning area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 2,179 ac (882 ha) of land in Subunits 10a, 10b, and 11a from this final revised critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act—Tribal Lands

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to the arroyo toad. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We take into consideration our partnerships and existing conservation actions that tribes have implemented or are currently implementing when conducting our analysis under section 4(b)(2) of the Act in the final revised critical habitat designation. We also take into consideration conservation actions that are planned (such as a Memorandum of Understanding addressing arroyo toad conservation that is under development between the Service, Bureau of Indian Affairs (BIA), and affected tribes (as discussed in detail below)) as part of our ongoing commitment to the government-to-government relationship with tribes. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat based on economic impacts, impacts to National security, or other relevant impacts if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned.

We determined approximately 4,046 ac (1,636 ha) of lands owned by or under the jurisdiction of six tribes contain the physical and biological features essential to the conservation of arroyo toad, and therefore meet the definition of critical habitat under the Act. These tribal lands are found within Units 14, 16, 17, and 18 and are owned by or under the jurisdiction of the following tribes: the Rincon Band of Luiseño Mission Indians; the Pala Band of Luiseño Mission Indians; the Sycuan Band of the Kumeyaay Nation; the Mesa Grande Band of Diegueno Mission Indians; and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation. In making our final decision with regard to these tribal lands, we considered several factors, including Secretarial Order 3206, Executive Order 13175, the President's memorandum on "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; April 29, 1994), conservation measures in place on these lands that may benefit arroyo toad, economic impacts to the tribes, our relationship with the tribes, and impacts to current and future partnerships with the affected tribes and other tribes we coordinate with on endangered and threatened species issues. Under section 4(b)(2) of the Act,

the Secretary is exercising his discretion to exclude approximately 3,000 ac (1,214 ha) of land comprised of all reservation lands and lands we anticipate to be reservation lands in the near future from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude approximately 1,046 ac (422 ha) of tribal fee-owned land that is off-reservation (not under the jurisdiction of tribal governments) in Units 14 and 18 in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Rincon Band of Luiseño Mission Indians Reservation encompasses approximately 4,026 ac (1,625 ha) in northern San Diego County, which includes approximately 1,071 ac (433 ha) that meet the definition of arroyo toad critical habitat in Unit 14. The Rincon Band of Luiseño Mission Indians developed an arroyo toad management plan in 2005 that provides guidelines for the protection and management of arroyo toad habitat within an approximately 97 ac (39 ha) of the Habitat Management Plan area, all of which meet the definition of critical habitat. Specific tasks that will be implemented include: (1) Removal and monitoring of nonnative species within the plan area that pose an arroyo toad threat; (2) monthly removal and monitoring of trash and debris within the plan area; (3) maintenance and monitoring of oil and grease traps at the edge of facility parking lots; (4) assessment and monthly monitoring of vehicle, livestock, and other incursions (such as trespassing) into the plan area; (5) reporting of unauthorized activities within the plan area to the Service; (6) development of an arroyo toad education program; and (7) placement of signs at regular intervals along the plan area boundary.

The Pala Band of Luiseño Mission Indians Reservation encompasses approximately 12,429 ac (5,018 ha) in northern San Diego County, which includes approximately 1,662 ac (673 ha) that meet the definition of critical habitat in Unit 14. The reservation is located in the Middle San Luis Rey River basin approximately 6 miles (9.7 km) east of Interstate 15 on California Highway 76. The town of Pala is located along California Highway 76 in approximately the center of the reservation. The reservation was established for the Cupeno and Luiseño Indians, who considered themselves to be one "people"—Pala. The Pala Band of Luiseño Mission Indians developed a Master Plan in 2005 that is currently being implemented to guide management and land use on the reservation. Additionally, the tribe has developed a management plan to address arroyo toad resource management and conservation, which outlines the following conservation goals to benefit the species: (1) Maintenance of designated open space and waterways for arroyo toad along Pala Creek and the San Luis Rey River; (2) encouragement of allottees (owners of individual allotments within reservation lands) to locate new construction away from inland areas; (3) replacement of the Lilac Extension vehicle crossing of the San Luis Rey River with a bridge; (4) reduction of off-highway vehicle activity by establishing a designated area for these activities outside arroyo toad habitat; (5) purchasing adjacent property known to be occupied by arroyo toads and conserving occupied areas; (6) discouraging development of six allotments within the San Luis Rey River; and (7) removal of nonnative species within arroyo toad habitat corridors.

The Sycuan Band of the Kumeyaay Nation Reservation encompasses approximately 806 ac (325 ha) in southern San Diego County, which includes approximately 22 ac (9 ha) that meet the definition of critical habitat in Unit 18. Additionally, approximately 130 ac (53 ha) of lands within Unit 18 are anticipated to be transferred to the reservation in the near future. The Sycuan Band of the Kumeyaay Nation has two land management plans in place relevant to their reservation that provide direct and indirect arroyo toad benefits on the reservation: an Interim Land Use Master Plan that was adopted by the Sycuan General Council on January 10, 2002 (BRG 2002), and the Sycuan Tribal Environmental Plan that was approved by the Tribal Council in June 2003 (Sycuan 2003). The Land Use Master Plan provides recommended land use planning for the reservation and additional surrounding properties that are to be brought into Trust, and is based on preservation of sensitive environmental and tribal resources (BRG 2002, p. 1). The Sycuan Tribal Environmental Plan includes policies, procedures, and guidance that are in compliance with the Tribal Environmental Policy Act (Sycuan 2003, p. 1). The Sycuan Tribal Environmental Plan outlines procedures for environmental planning, project implementation, and operations that minimize adverse considerations where potential negative impacts to human health and the environment could occur. Additionally, the Sycuan Tribal Environmental Plan promotes environmental protection through responsible management practices that will benefit conservation of endangered and threatened species and their habitat, including arroyo toad. Conservation measures are organized into the following categories outlined in more detail in the "Sycuan Conservation Strategy and Conservation Measures Plan" (Conservation Plan) portion of the Sycuan Tribal Environmental Plan: (1) Conservation area site selection, design, and management; (2) land cover type conservation measures; and (3) species-specific conservation measures (which protect and restore populations and habitat of each covered species) (Sycuan 2003, p. 5). The overall Conservation Plan includes the following types of conservation measures for arroyo toad and other covered species: (1) Protection of existing habitat for compliance and species recovery; (2) enhancement of existing habitat; (3) restoration to create new habitat; (4) management of habitat to maintain and preserve ecological functions; (5) avoidance and minimization of direct impacts on individuals and habitat of covered species; (6) population enhancement measures that directly or indirectly increase abundance of covered species; and (7) research necessary to improve conservation measure effectiveness (Sycuan 2003, pp. 5–6).

The Mesa Grande Reservation, which is owned and managed by the Mesa Grande Band of Diegueno Mission Indians, is situated in the hills above Sutherland Reservoir near the mountain community of Santa Ysabel, which is approximately 35 miles northeast of San Diego, San Diego County. The reservation encompasses approximately 1,818 ac (734 ha) of land, which includes approximately 23 ac (9 ha) that meet the definition of critical habitat in Unit 16. Although there is no arroyo toad management plan for the Mesa Grande Reservation, the Service, BIA, and tribe are currently working together to develop a conservation program for arroyo toad and its habitat.

The Capitan Grande Reservation lands fall within Capitan Grande Canyon where the San Diego River once ran, which is approximately 35 miles (56 km) east of San Diego, San Diego County. The Reservation encompasses approximately 15,619 ac (6,306 ha) of land, which includes approximately 92 ac (37 ha) that meet the definition of critical habitat in Unit 17. An 1875 Presidential Executive Order resulted in the formation of a number of small reservations, including the Capitan

Grande Reservation. From this reservation two tribes were formed: the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation. The tribes jointly manage the Capitan Grande Reservation. Although currently there is no arroyo toad management plan for the Capitan Grande Reservation, the Service, BIA, and both tribes are currently coordinating to discuss arroyo toad management and its habitat on the reservation and will work together to promote conservation of arroyo toad and its habitat.

Lands which meet the definition of critical habitat within the Rincon Band of Luiseño Mission Indians Reservation, the Pala Band of Luiseño Mission Indians Reservation, the Mesa Grande Reservation, and the Capitan Grande Reservation include a streambed, or are on both sides of a streambed, and encompass arroyo toad breeding habitat. Activities on lands that meet the definition of critical habitat within these four tribal reservations could affect species breeding and also potentially affect downstream hydrology and habitat. Therefore it is important we build and maintain strong partnerships with tribes and work cooperatively to accomplish species recovery objectives.

Benefits of Inclusion—Tribal Lands

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. On tribal reservations there is potential for a Federal nexus through the BIA for projects that could adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Units 14, 16, 17, and 18 will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of tribal fee-owned lands (lands that are controlled by local governments) in the arroyo toad proposed and final revised critical habitat designation is beneficial to the species because the proposed and final rules identify those lands that are essential (and may require management) to the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because of past efforts working with the tribes, we believe educational benefits are small on lands controlled by tribal governments (tribal reservation lands). In an effort to demonstrate our commitment to work closely with the tribes as a partner in protecting species while also respecting tribal status, our Regional Director and staff of the Pacific Southwest Region met with tribes at a tribal listening session held on November 20, 2009, at the University of California, Riverside campus at Palm Desert. Carlsbad Fish and Wildlife Office (CFWO) staff is conducting ongoing coordination with all the affected tribes. CFWO staff coordination includes meetings with representatives of the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians on September 15, 2009, and representatives of the Pala Band of Luiseño Mission Indians on August 11, 2009 to discuss development of the proposed critical habitat designation. We believe our ongoing coordination with the tribes should provide sufficient future education, facilitate development of management plans (for reservations that do not currently have management plans), and promote arroyo toad conservation on tribal reservation lands.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State laws such as CEQA (on tribal fee-owned lands) and Federal laws, such as NEPA (on all tribal lands). These laws analyze the potential for projects to significantly affect the environment. The additional protections associated with critical habitat may be beneficial in areas not currently conserved on tribal lands. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

We believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Three reservations that include land that meets the definition of critical habitat have active management plans that contribute to arroyo toad conservation, that provide conservation benefits partly redundant with that provided by critical habitat under section 7(a) of the Act. We are committed to ongoing meaningful collaboration and cooperation with all the affected tribes. For land that meets the definition of critical habitat on reservations where tribes do not currently have management plans, we will continue to work with BIA and affected tribes to develop species and habitat management plans to promote arroyo toad conservation.

In summary, we believe there would likely be some regulatory benefits of critical habitat designation on all tribal lands and educational benefits on tribal

fee-owned lands. On tribal reservation lands, we believe our ongoing coordination with tribes should provide sufficient future education and facilitate development of management plans for these areas.

Benefits of Exclusion—Tribal Lands

We believe significant benefits would be realized by forgoing designation of critical habitat on reservation lands managed by the Rincon Band of Luiseño Mission Indians, the Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, the Mesa Grande Band of Diegueno Mission Indians, the Barona Group of Capitan Grande Band of Mission Indians, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians. These benefits include:

(1) Continuance and strengthening of our effective working relationships with all tribes to promote conservation of arroyo toad and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward recovering this species, including conservation benefits that might not otherwise occur; and

(3) Encouragement of other tribes to complete management plans in the future on other reservations for this and other federally listed and sensitive species and engage in meaningful collaboration and cooperation.

Critical habitat designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. For example, in comments submitted during the public comment periods, the Rincon Band of Luiseño Mission Indians, the Barona Group of Capitan Grande Band of Mission Indians, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians indicated designation of critical habitat for arroyo toad would negatively impact tribal relations. All affected tribes except the Mesa Grande Band of Diegueno Mission Indians submitted comments indicating they were opposed to critical habitat designation or believed their lands should be excluded. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed, reinforce those relationships we are building with tribes, and foster future partnerships and development of future management plans. Therefore, we believe excluding tribal reservation lands from critical habitat provides the significant benefit of maintaining and strengthening existing conservation partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Tribal Lands

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of tribal lands as critical habitat for arroyo toad. Including tribal lands in the critical habitat designation for arroyo toad will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. We also anticipate a potential regulatory benefit from designation for actions requiring a Federal nexus in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat. However, we believe past and future coordination with the tribes will provide sufficient education regarding arroyo toad habitat conservation needs on tribal reservation lands and therefore educational benefits for these areas are small.

The benefits of excluding tribal reservation lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed and reinforce those we are building with the tribes, and foster future partnerships and development of management plans. The tribes and BIA emphasized through comment letters provided in 2004 and during the public comment period their belief that designation of critical habitat on reservation land undermines tribal sovereign governmental authority and interferes with the cooperative government-to-government trust relationship between the tribes and the United States (BIA 2004a, pp. 1–2; BIA 2004b, p. 2; Barona 2009, p. 2; Rincon 2009, p. 2; Viejas 2009, pp. 4–5). We are committed to working with our tribal partners to further the conservation of arroyo toad and other endangered and threatened species. Therefore, in consideration of the relevant impact to our government-to-government relationship with the tribes and our current and future conservation partnerships, we determined the significant benefits of exclusion outweigh the benefits of critical habitat designation.

In summary, we find that the exclusion of tribal reservation lands from this final revised critical habitat will preserve our partnerships with the tribes and foster future development of habitat management plans. These partnership benefits are significant and outweigh the potential regulatory and educational benefits of including these portions of Units 14, 16, 17, and 18 in final revised critical habitat for the arroyo toad. We find that including tribal fee-owned lands as critical habitat within Units 14 and 18 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the County of San Diego and other local jurisdictions on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with tribes, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species and its essential habitat in these areas of Units 14 and 18. Therefore, the Secretary is declining to exercise his discretion to exclude 1,046 ac (422 ha) of tribal fee-owned land that is off-reservation (not under the jurisdiction of tribes) in Units 14 and 18 in this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Tribal Lands

We determined that the exclusion of 3,000 ac (1,214 ha) of tribal reservation land and future reservation land from the revised designation of arroyo toad critical habitat will not result in extinction of the species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to arroyo toad and other federally listed species occupancy provide assurances that this species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion the Secretary is exercising his discretion to exclude approximately 3,000 ac (1,214 ha) of land in units 14, 16, 17, and 18 managed by the Rincon Band of Luiseño Mission Indians, the Pala Band of Luiseño Mission Indians, the Sycuan

Band of the Kumeyaay Nation, the Mesa Grande Band of Diegueno Mission Indians, and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians and managed in the near future by the Sycuan Band of the Kumeyaay Nation from this final revised critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for reasons of national security if the Secretary determines the benefits of such an exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned.

Remote Training Site Warner Springs

The U.S. Navy conducts training activities within the Remote Training Site Warner Springs complex, which is comprised of approximately 6,158 ac (2,486 ha) of lands owned and leased from the Vista Irrigation District and the Cleveland National Forest. Additionally, the U.S. Navy is proposing to expand its training activities onto another 6,326 ac (2,554 ha) of lands owned by the Bureau of Land Management, Cleveland National Forest, and the Vista Irrigation District, expanding the total training area to approximately 12,484 ac (5,040 ha).

Approximately 4,609 ac (1,865 ha) of land in Unit 15 that meet the definition of critical habitat under the Act are in the existing and proposed Remote Training Site Warner Springs. In making our final decision with regard to these lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the U.S. Navy, existing consultations, and conservation measures in place at this facility that benefit arroyo toad. Under section 4(b)(2) of the Act, the Secretary is exercising his discretion to exclude 4,609 ac (1,865 ha) of land meeting the definition of critical habitat in Unit 15 within the existing and proposed Remote Training Site Warner Springs from this final revised critical habitat designation. As described in our analysis below, we reached this conclusion after considering the relevant impacts of specifying these areas as critical habitat.

The U.S. Navy is currently revising the 2002 Naval Base Coronado Integrated Natural Resources Management Plan (INRMP) to address management of arroyo toad and its habitat at the Remote Training Site Warner Springs. We received a draft of the U.S. Navy's revised INRMP in September 2009 (U.S. Navy 2009a). Additionally, the U.S. Navy is currently implementing measures to avoid or minimize impacts to arroyo toad, as identified in a biological opinion we issued on October 30, 2009, on the proposed expansion and realignment of training areas at Remote Training Site Warner Springs (USFWS 2009). These measures include, but are not limited to: (1) Avoid and minimize impacts to the onsite population of the arroyo toad within an Arroyo Toad Management Area; (2) permanently close two stream crossings on the San Luis Rey River; (3) educate personnel on how to avoid adverse impacts to the species; (4) prioritize nonnative, invasive plant species searches and spot treatment control efforts in riparian zones and areas of higher levels of training activity; and (5) conduct surveys for arroyo toad at least every 3 years to determine status and location.

In a letter received by the Service on December 24, 2009, the Navy determined that critical habitat designation on the Remote Training Site Warner Springs would impact national security (U.S. Navy 2009b). The Remote Training Site Warner Springs is unique in its use and purpose in that it serves as the principle venue for Survival, Evasion, Resistance, and Escape (SERE) training on the West Coast. All Department of Defense SERE field training for U.S. Navy and U.S. Marine Corps personnel from the West Coast and Pacific region is conducted at this location. The Remote Training Site Warner Springs also supports unique training activities for Naval Special Warfare, 1st Marine Special Operations Battalion, Naval Construction Force Amphibious Construction Battalion One Seabees, 1st Marine Expeditionary Force Training and Experimentation Group/Tactical Exercise Group, and other non-routine training. The U.S. Navy expressed concern that designation of these lands could cause mission-critical activities to be delayed if they were required to conduct consultation due to a critical habitat designation. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction that lead to delays in training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness.

Benefits of Inclusion—Remote Training Site Warner Springs

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a Department of Defense project that might adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Remote Training Site Warner Springs will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public

education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad critical habitat designation within Remote Training Site Warner Springs could be beneficial to the species because it identifies those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. In general, we believe the designation of critical habitat for the arroyo toad will provide additional information to the public not already sufficiently emphasized through meetings, educational materials provided to the general public by the County of San Diego, and recommendations provided in our Recovery Plan (Service 1999). However, the public education benefit is currently being realized through the INRMP.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other Federal laws, such as NEPA. These laws analyze the potential for projects to significantly affect the environment. On Remote Training Site Warner Springs, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In light of continued U.S. Navy commitments to manage its lands in a manner that promotes conservation of the arroyo toad and the coordination and management efforts demonstrated by the Navy resulting from consultation and development of an INRMP, we believe designation of critical habitat on Remote Training Site Warner Springs would provide minimal additional regulatory and conservation benefits to the species beyond those that will result from continued section 7 consultation.

Benefits of Exclusion—Remote Training Site Warner Springs

The benefits of excluding approximately 4,609 ac (1865 ha) of land meeting the definition of critical habitat on the existing and proposed Remote Training Site Warner Springs are significant. The U.S. Navy maintains and defends our national security at the Remote Training Site Warner Springs by conducting mission-critical training activities unique to this location on the West Coast. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction and training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness. Excluding the Remote Training Site Warner Springs from critical habitat designation will effectively remove the impact that a designation of critical habitat could have on the U.S. Navy's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Remote Training Site Warner Springs

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for lands within the existing and proposed Remote Training Site Warner Springs in Unit 15. We believe the benefits of designating these lands as arroyo toad critical habitat are relatively small, whereas the benefits of excluding these lands from critical habitat will result in the removal of impacts to national security as determined by the U.S. Navy. Therefore, we have determined the benefits identified above of excluding approximately 4,609 ac (1865 ha) of lands within the existing and proposed Remote Training Site Warner Springs from the critical habitat designation outweigh the benefits of including these lands.

Exclusion Will Not Result in Extinction of the Species—Remote Training Site Warner Springs

We determined that the exclusion of 4,609 ac (1865 ha) of land in Unit 15 within the existing and proposed Remote Training Site Warner Springs from the final designation of critical habitat for the arroyo toad will not result in extinction of the species. The U.S. Navy's current management of Remote Training Site Warner Springs and proposed management under the draft INRMP provide some protection and management of lands within Unit 15, including land meeting the definition of critical habitat. The jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 4,609 ac (1865 ha) of land in Unit 15 within the existing and proposed Remote Training Site Warner Springs from this final revised critical habitat designation.

Camp Morena

Camp Morena is a small parcel of approximately 71 ac (29 ha) used by the U.S. Navy under a year-to-year license with the City of San Diego and serves as a support facility for the nearby Camp Michael Monsoor (formerly called La Posta Mountain Warfare Training Facility).

We determined that approximately 31 ac (13 ha) of Camp Morena located in Subunit 19a meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the U.S. Navy, existing consultations, and conservation measures in place at this facility that benefit the arroyo toad. Under section 4(b)(2) of the Act, the Secretary is exercising his discretion to exclude 31 ac (13 ha) of land meeting the definition of critical habitat within Camp Morena in Subunit 19a from this final revised critical habitat designation. As described in our analysis below, we reached this conclusion after considering the relevant impacts of specifying these areas as critical habitat.

In a letter received by the Service on December 24, 2009, the Navy determined that critical habitat designation on Camp Morena would impact national security (U.S. Navy 2009b). Camp Morena and Camp Michael Monsoor provide essential training for U.S. Special Operations Command units preparing to deploy in support of assigned missions and other contingency operations in support of national security. Additionally, Camp Morena and Camp Michael Monsoor are both critical to classified, highly specialized training of west-coast based Sea Air and Land (SEAL) Special Boat Teams. Camp Michael Monsoor is the sole live fire training site exclusively set aside for Naval Special Warfare commands in the San Diego region. Additionally, terrain and training realism is provided for personnel deployed to Iraq and Afghanistan. In support of Camp Michael Monsoor, the U.S. Navy requires significant base operations and logistical support at Camp Morena, including administration activities, classrooms, conference rooms, mission planning capabilities,

and berthing space. The U.S. Navy is concerned that designation of lands on Camp Morena would cause mission-critical activities to be delayed if they were required to conduct consultation due to a critical habitat designation. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Future planned use of Camp Morena includes increased training functions with more frequent training and possible construction of new facilities; delays in construction that lead to delays in training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness.

Benefits of Inclusion—Camp Morena

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the arroyo toad), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a Department of Defense project that might adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Camp Morena will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad critical habitat designation within Camp Morena could be beneficial to the species because it identifies those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. In general, we believe the designation of critical habitat for the arroyo toad will provide additional information to the public not already sufficiently emphasized through meetings, educational materials provided to the general public by the County of San Diego, and recommendations provided in our Recovery Plan (Service 1999).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other Federal laws, such as NEPA. These laws analyze the potential for projects to significantly affect the environment. On Camp Morena, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe there are some regulatory benefits and educational benefits of critical habitat designation on Camp Morena.

Benefits of Exclusion—Camp Morena

The benefits of excluding approximately 31 ac (13 ha) of land meeting the definition of critical habitat on Camp Morena are significant. The U.S. Navy maintains and defends our national security at Camp Morena by conducting mission-critical training activities unique to this location on the West Coast. Mission-critical activities not previously analyzed that could likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction and training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness. Excluding Camp Morena from critical habitat designation will effectively remove the impact that a designation of critical habitat for the arroyo toad could have on the U.S. Navy's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Camp Morena

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for lands within Camp Morena in Subunit 19a. We believe the benefits of designating these lands as arroyo toad critical habitat are relatively small, whereas the benefits of excluding these lands from critical habitat will result in the removal of impacts to national security as determined by the U.S. Navy. Therefore, we have determined the benefits identified above of excluding approximately 31 ac (13 ha) of lands within Camp Morena from the critical habitat designation outweigh the benefits of including these lands.

Exclusion Will Not Result in Extinction of the Species—Camp Morena

We determined that the exclusion of 31 ac (13 ha) of land in Subunit 19a within Camp Morena from the final designation of critical habitat for the arroyo toad will not result in extinction of the species. The U.S. Navy's proposed management of Camp Morena under the draft INRMP may provide some protection and management of lands within Subunit 19a, including land meeting the definition of critical habitat. The jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude

approximately 31 ac (13 ha) of land in Subunit 19a within Camp Morena from this final revised critical habitat designation.

Economics

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (DEA) was made available for public review and comment from June 29, 2010 to July 29, 2010 (75 FR 37358). Substantive comments and information we received on the DEA are summarized below in the "Public Comment" section and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed a final economic analysis (FEA) in November 2010, of the designation that updates the DEA.

The primary purpose of the economic analysis is to estimate the potential incremental economic impacts associated with the revised designation of critical habitat for the arroyo toad. The information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). It also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The economic analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed the arroyo toad as endangered (59 FR 64859; December 16, 1994), and considers those costs that may occur in the years following the revised designation of critical habitat, with the timeframes for this analysis varying by activity.

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis examines activities taking place both within and adjacent to the designation. It estimates impacts based on activities that are "reasonably foreseeable" including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 25-year time frame, from when the proposed rule became available to the public (74 FR 52612; October 13, 2009). The 25-year time frame was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

The vast majority of potential incremental economic impacts attributed to the revised critical habitat designation are expected to be related to the real estate industry (real estate development, CEQA, and delay impacts), followed by utilities and infrastructure projects. The FEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 25 years (2010 to 2035) to be $750 million, annualized at $64 million using a 7 percent discount rate.

The FEA estimates the largest impacts of the proposed revised critical habitat rule would result from real estate development. If the critical habitat designation is finalized as proposed, the FEA estimates that $731 million of the $750 million total incremental costs will result from real estate development, the majority coming from the loss of on-site acres set-aside and other project modifications. Overall, the real estate industry (real estate development, CEQA, and delay impacts) is estimated to experience the highest costs, followed by formal and informal consultations and utilities and infrastructure projects. Of the 22 proposed critical habitat units, five are expected to incur incremental economic costs greater than $50 million between 2010 and 2035. Critical habitat Unit 14, located in San Diego County, has the largest incremental impacts ($228 million) of the units considered for designation.

The FEA is available at *http://www.regulations.gov* or upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Summary of Comments and Recommendations

We requested written comments from the public on the 2009 proposed revised rule to revise critical habitat for the arroyo toad (74 FR 52612; October 13, 2009) during two comment periods. The first comment period opened with the publication of the proposed revised rule in the **Federal Register** on October 13, 2009 (74 FR 52612), and closed December 14, 2009. The second comment period opened with the publication of the notice of availability of the DEA in the **Federal Register** on June 29, 2010 (75 FR 37358) and closed on July 29, 2010. During both public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to revise critical habitat for this species and the associated DEA. During the comment periods, we requested all interested parties to submit comments or information related to the proposed revisions to critical habitat, including (but not limited to) the following: Unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, areas proposed for designation and associated rationale for the non-inclusion or considered exclusion of these areas, and methods used to designate critical habitat.

During the first comment period, we received 50 comment letters directly addressing the proposed revision of critical habitat, 3 from peer reviewers, 2 from Federal agencies, 5 from Native American tribes, and 40 from public organizations or individuals. During the second comment period, we received 60 comments addressing the proposed critical habitat designation and the DEA. Of these latter comments, 8 were from Native American tribes and 52 were from public organization or individuals.

The open period for requesting public hearings on the revised proposed rule was from October 13, 2009, through November 27, 2009 (74 FR 52612). We did not receive any requests for a public hearing during either that period or the comment period that began on October 13, 2009, and ended December 14, 2009.

Peer Review

In accordance with our Policy for Peer Review in Endangered Species Act Activities, published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which it occurs, and conservation biology principles. The three peer reviewers that responded generally supported the proposed revised designation, and two of the three peer reviewers provided additional information, clarifications, and suggestions that we have incorporated as appropriate to improve this final revised critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for the arroyo toad. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments

Comment 1: One peer reviewer affirmed that the background information, essentially the biology of the arroyo toad, was well-documented and prepared. Also, this peer reviewer agreed with our removal of specific areas within some units that do not represent suitable habitat based on additional information garnered since the last designation (such as in Unit 7: Upper Los Angeles River Basin and Unit 23: Whitewater River Basin).

A second peer reviewer noted that our use of the 82-ft (25-m) elevation/4,921-ft (1,500-m) lateral boundary for considerations of critical habitat is scientifically defensible and was unaware of any new information that would change those values. This peer reviewer also stated that the criteria used to identify critical habitat are well-supported and that they agreed with each of the proposed subunits and their boundaries in the Northern Recovery Unit, except subunit 7a, as explained in Comment 6 below. The peer reviewer went on to note all subunit boundaries in the proposed critical habitat rule correspond closely with the areas they know to be occupied by (or suitable for) arroyo toads.

Our Response: We appreciate the assessment of the proposed rule by the peer reviewers. We have identified all habitats that have the physical or biological features essential to the conservation of the species, which are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (*see* "Primary Constituent Elements" section above). We are designating approximately 98,366 acres (ac) (39,807 hectares (ha)) of this habitat in this final designation of critical habitat for the arroyo toad. Some areas meeting the definition of critical habitat have been excluded from this final revised critical habitat designation under section 4(b)(2) of the Act (*see* **EXCLUSIONS UNDER SECTION 4(B)(2)** section for a detailed discussion).

Comment 2: One peer reviewer recommended adding deep or persistent standing water during summer and fall as a threat to arroyo toads because such pools provide refuge and breeding habitat for nonnative predators such as crayfish, various warm-water fish species, African clawed frogs, and bullfrogs. The peer reviewer also presented the rationale that these predators cannot survive seasonal drying, and in most streams in most years, can be eliminated from large portions of streams used by arroyo toads. The peer reviewer pointed out that although these predator species will recolonize, there is a time lag correlated with distance and reduction in abundance that increases survivorship of tadpoles and adult toads.

Our Response: We considered the suggested edits and have made changes to the text as appropriate in the *Reasons for Decline and Threats* section above.

Comment 3: One peer reviewer asked for more elaboration on whether bullfrogs are the predators of greatest concern, rather than some fish species and adult clawed frogs that are very effective predators on arroyo toad tadpoles and, depending on streambed configuration and densities, could be tied to severe population effects on arroyo toads.

Our Response: After closer review of available information, we cannot say for certain that bullfrogs are a greater threat to arroyo toads than other exotic predator species. Bullfrogs and African clawed frogs are both considered serious threats to native amphibians and fishes, not only to the arroyo toad but to other federally endangered species. Bullfrogs are nonnative to California and because of their large size, aggressive behavior, generalized eating habits, and highly successful reproduction capabilities, competition and predation by bullfrogs are known to have a substantial influence on the presence and abundance of other amphibian species (Hecnar and M'Closkey 1997, pp.146–149). Bullfrogs have been documented preying on tadpoles, juveniles and adult arroyo toads. Where they co-occur with arroyo toads, bullfrogs are major predators and can essentially eliminate local populations of arroyo toads (Sweet 1992, p. 128). In a recent study, D'Amore *et al.* (2009, p. 2) examined habitat characteristics correlated with the presence of bullfrogs and California red-legged frogs (*Rana draytonii*). The study found that the invasive bullfrog out-competed the native amphibian in sites with hydrological alteration, landscape-level habitat fragmentation, and degradation of habitat. Unlike the native species, the bullfrog was able to tolerate and succeed in a wide range of conditions, including compromised water quality with higher levels of phosphate, ammonia, and salinity; higher water temperatures; and fragmented habitats due to agriculture, roads, and other human-caused alterations (D'Amore *et al.* 2009, p. 8).

According to Sweet (1992, p. 156), bullfrogs and introduced predatory fishes, such as green sunfish, largemouth bass (*Micropterous salmonides*), and black bullhead (*Ictalurus nebulosus*), are not well-adapted to be permanent residents in arroyo toad habitat because they die off during droughts and are washed out by even moderate flooding in portions of streams occupied by arroyo toads. However, they also thrive in reservoirs and deep pools formed below dams, enabling them to quickly recolonize downstream (Sweet 1992, p. 156).

The African clawed frog is an air-breathing frog that is almost completely aquatic, leaving water only to migrate (Peek 2010, p. 1). They inhabit stagnant grassland ponds as well as streams in arid and semi-arid regions. In California, African clawed frogs have established large and dense populations (Willigan 2001, p. 3). They have been found in San Diego, Orange, and Los Angeles Counties and may also be in San Bernardino, Santa Barbara, Riverside, Imperial, Kern, and Yolo Counties (CaliforniaHerps.com 2010, p. 1). In Ventura County, they are present in the Santa Clara River from the mouth of the river upstream 10.5 mi (17 km) to the Vern Freeman Diversion at Saticoy (Lafferty and Page 1985, p. 589). The species tolerates a wide variety of aquatic conditions, including extreme levels of acidity, low oxygen levels, and high water temperatures (Peek, 2010, p. 1). They are "sit and wait" predators,

similar to bullfrogs, in that they feed on whatever prey they encounter (Peek 2010, p. 2). Their diet includes a wide range of native aquatic invertebrates and vertebrates, including tadpoles and juvenile amphibians, young arroyo chub (*Gila orcutti*), the federally endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) and tidewater goby (*Eucyclogobius newberryi*). In contrast to bullfrogs and predatory fishes that cannot survive when ponds dry up, African clawed frogs burrow into the mud (leaving a tunnel for air) and can remain dormant for 8 months to a year (Peek 2010, p. 1). There are currently no known efforts targeting control of African clawed frogs in Southern California (Peek 2010, p. 2). Based on this information, we will continue to regard introduced predatory fishes, bullfrogs, and African clawed frogs as constituting a severe threat to arroyo toad populations.

Comment 4: One peer reviewer criticized the approach of excluding identified habitats that are described as suitable and currently occupied by arroyo toads simply because these sites are otherwise afforded some degree of protection, be it via a military plan or a municipal watershed plan, or some form of multi-species habitat conservation plan. The peer reviewer argued that this approach weakens an otherwise strong and uniform plan that will designate and help protect habitat for this species.

Our Response: We appreciate the peer reviewer's concerns regarding adequate protection of arroyo toads under HCPs, INRMPs, or other conservation management plans. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. Any remaining conservation benefits resulting from critical habitat inclusion are also limited to projects where a Federal nexus applies.

The benefits of excluding a particular area covered by an existing HCP are primarily based on the perception of negative impacts that a critical habitat designation could have on current and possible future partners.

Regarding arroyo toad habitat occurring on lands owned by the military, we do not have full discretion to designate critical habitat on the military bases. 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 [INRMP] 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." We determined the INRMPs for Fort Hunter Liggett Military Reservation, Marine Corps Base Camp Pendleton, and Fallbrook Naval Weapons Base provide benefits to the arroyo toad; therefore, the Act mandates we exempt lands subject to the INRMPs for these military bases from critical habitat designation (*see* **Exemptions** section in the proposed revised rule (74 FR 52639; October 13, 2009) for details). In addition, although Remote Training Site Warner Springs and Camp Morena had not completed the INRMP process by the time this revised critical habitat rule was finalized, the Secretary is exercising his discretion to exclude lands within these military facilities under section 4(b)(2) of the Act for reasons of national security.

Comment 5: Regarding the *Special Management Considerations or Protection* section (74 FR 52619; October 13, 2009) in the proposed revised rule, one peer reviewer recommended adding fire suppression activities that are conducted without appropriate section 7 consultation or oversight to the list of threats for arroyo toads. The peer reviewer stated that during the Day Fire (2006) in the Hardluck reach of upper Piru Creek, and during the Zaca Fire (2007) in the Sisquoc River, Mono Creek, and Indian Creek staging areas, multiple "safety zones" and access tracks were bulldozed in highly sensitive arroyo toad habitat. The peer reviewer was concerned that some managers and contractors may not be supportive of endangered species restrictions and may *see* a "fire emergency" as license to actively destroy habitat and reopen closed roads. The peer reviewer contended that this is an emerging threat to arroyo toad habitat range-wide, while also being a broader issue requiring greater interagency coordination.

Our Response: We appreciate the peer reviewer's critical review and have added fire suppression activities to the "*Reasons for Decline and Threats*" section above.

Regarding the peer reviewer's concern about interagency cooperation on reducing fire suppression impacts to listed species, we should clarify that since 1995 we have considered wildfire to be an emergency action that falls under section 7 emergency consultation procedures (Service's 1995 Director's memorandum, "Endangered Species and Fire Policy Clarification"). For those wildfires that are unplanned, unwanted, and for which the objective is suppression, consultation is not necessary on the wildfire itself but has been required for the response actions that the action agency controls. Actions that may result in effects to listed species or critical habitat typically include activities such as backburning, fire-line construction, placement of fire camps, use of aircraft, water drops, and use of fire retardant. During the initial contact with the action agency, our role is to offer recommendations to minimize the effects of fire suppression activities to listed species or their critical habitat. After the fire is extinguished, the action agency conducts an assessment on the effects to the listed species or critical habitat caused by actions taken to respond to the emergency. If any listed species or critical habitat were adversely affected by the fire suppression activities, the action agency must initiate formal consultation. The purpose of formal consultation in such cases is to document the amount of any take that occurred, assess the effectiveness of implementation of protective measures proposed at the onset of the emergency, and to conclude the consultation. The project description provided by the action agency must include a description of the nature of the emergency and justification for using emergency procedures. We use this information to update the environmental baseline for the species or designated critical habitat and to account for losses caused by the fire and suppression activities.

We also assist our partners by providing technical assistance and processing section 7 consultations expeditiously on fuel-reduction projects, as fire emergency preparedness has a high priority within our consultation workload. A successful method for addressing fire issues with our partners has been early coordination. The earlier that we are aware of a potential fuel reduction project, the sooner we can assist in determining potential effects to listed species and work with staff to develop measures to minimize or eliminate these effects. This coordination facilitates

streamlined section 7 consultation under the Act.

Comment 6: Regarding the Northern Recovery Unit, one peer reviewer believes that Subunit 7a (lower Big Tujunga Creek proposed in 2004; *see* the **Summary of Changes from Previously Designated Critical Habitat** section of the proposed revised critical habitat rule (74 FR 52622; October 13, 2009)) may harbor suitable breeding habitat. The peer reviewer stated that the middle third of the canyon (from 1,476 to 1,804 ft-elevation (450 to 550 m) appeared to have suitable upland habitat based on their reconnaissance visits conducted during the non-breeding season in 2006. They stated the area also had distribution channels that provided suitable breeding microhabitat, despite evident hydrologic instability probably tied to release operations at Big Tujunga Dam.

Our Response: We appreciate the peer reviewer expressing their opinion that Subunit 7a may harbor suitable breeding habitat. We will consider this information during future recovery planning, including for potential future surveys or reintroduction to expand the number of existing populations. At this time, the best available information indicates this habitat is of questionable suitability, and is not currently occupied (Backlin *et al.* 2002, pp. 6, 12; Hitchcock *et al.* 2004, pp. 8–9, 29) or connected to habitat that is occupied. This location does not appear to be required to maintain the appropriate population structure across the species' range, or to provide connectivity between breeding sites, and it does not meet the definition of critical habitat for the arroyo toad.

Comment 7: One peer reviewer commented that the proposed rule provides considerably more detail about the circumstances of potential HCP exclusions than is usual, and that this is an excellent feature of the document. However, they noted that current coverages by the existing HCPs vary tremendously. According to the peer reviewer's calculations, lands within the proposed critical habitat boundaries that are currently protected are: 0 percent (Orange County Southern Subregion HCP), 0.06 percent (Western Riverside County MSHCP), 19 percent (San Diego MSCP), 51 percent (Orange County Central-Coastal NCCP/HCP), and 89 percent (Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)). Based on these calculations, they do not see how the proposed exclusions can be defended.

Our Response: When we issue an incidental take permit for an HCP, we make a determination that it provides adequate protection for all covered species within the plan area boundary (including HCPs that address arroyo toad and its habitat). Subsequently, we monitor the HCP implementation and the covered species' status and could alter our determination if warranted. We have not determined any HCP that overlapped with arroyo toad proposed critical habitat designation to be improperly implemented or inadequately funded, including proposed Unit 23 within the Coachella Valley MSHCP boundaries, which is not included in this final rule (*see* Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat section). However, we will evaluate any information submitted to us and consider it in our ongoing assessments of all permitted HCPs, and continue to work with permittees to make sure HCPs are adequately funded. If during our ongoing assessments of permitted HCPs we determine they do not adequately protect a covered species, are not being properly implemented, or do not have adequate funding based on all available information, we will take appropriate action with regard to the HCP permit, and may again revise designated critical habitat, subject to available funding and other conservation priorities.

Public Comments

Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

Comment 8: One commenter argued that using unpublished data reports on the arroyo toad does not meet the requirement that the Service use the best available science.

Our Response: We understand the commenter's concern and have considered their argument; however, critical habitat designations use the best available commercial and scientific data to identify lands that we believe contain the physical and biological features essential to the conservation of the species. In designating critical habitat for the arroyo toad, we have used the best available scientific and commercial information, including results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, potential habitat maps developed by the Forest Service, and expert opinion from biologists with extensive experience studying the arroyo toad. Further, information provided in comments on the proposed designation and the draft economic analysis were evaluated and taken into consideration in the development of this final designation, as appropriate. Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section above).

Comment 9: One commenter stated that in describing how Federal rights interact with private rights, the Service should include a short segment on relevant provisions of California water law and how the law might impact private landowners or those who hold water rights under the proposed critical habitat designation. The commenter stated the Service should let current water users know if this critical habitat designation will affect the amount of water available for irrigation, recreational use, agricultural use, or other uses. The commenter further recommended we should state clearly in the rule whether private parties are permitted to change their current water uses, and if so, if there are any special limitations on new uses that would conflict with critical habitat goals.

Our Response: The detailed information requested by the commenter on California water law and individual water rights is beyond the scope of this critical habitat designation; therefore, we have not incorporated such information in this final rule.

Comment 10: One commenter urged us to identify "wildfire suppression activities" as a threat to arroyo toad populations. The commenter asserted that the Service has substantial evidence on file regarding bulldozing and vegetation clearing that occurred along Mono Creek during the 2007 Zaca Fire and that these fire suppression activities caused direct mortality to arroyo toads and adversely modified arroyo toad terrace habitat.

Our Response: We revised the text in the "*Reasons for Decline and Threats*" section above to include fire suppression activities as a threat to arroyo toads. Fire suppression activities include fire line construction; fire retardant and water drops; establishment of temporary fire camps, staging areas, parking sites, safety zones, and helipads; and post-fire rehabilitation. Safety zone and fire line construction often involves using bulldozers to clear vegetation down to bare soil. Parking areas and fire camps result in heavy trampling and soil compaction from equipment and vehicles. Fire camps and fire suppression activities may also tax nearby water supplies for putting out fires (as well as supplying fire camp).

Fire lines that are cut through riparian habitat can alter stream hydrology, destroy vegetation, kill or injure wildlife, and encourage the establishment of nonnative species. All of these activities can result in adverse effects to arroyo toads if they occur in or near occupied habitat.

In the case of the 2007 Zaca Fire, a number of broad fuelbreaks and safety zones were constructed using heavy equipment in the lower portions of Indian, Mono, and Agua Caliente Creeks, as well as elsewhere along Camuesa Road in the upper Santa Ynez River drainage. According to site visit observations (Sweet 2007a, pp. 1–9), several of the fuelbreaks and safety zones were constructed on stream terrace habitat in Indian and Mono Creeks, and severely degraded important upland habitat for arroyo toads. Arroyo toads in these areas have been intensively studied from 1989 to 1993 (*see* Sweet 1992, pp. 1–198; 1993, pp. 1–73) and monitored by Service personnel in most of the last 15 years (Sweet 2007a, p. 1). Sweet's studies indicate that subadult and adult arroyo toads make extensive use of the affected stream terraces, and typically in August and September a large proportion of the population would be resident in burrows on the terraces. Removal of all vegetation (including the root bases of woody shrubs) by bulldozing is very likely to have killed any toads that were dormant in burrows within the treated areas (Sweet 2007a, p. 1).

Sweet (2007a, p. 1) also reported that in addition to causing direct mortality, the bulldozing operations may have seriously degraded critical upland habitat by removing shade and the opportunity for toads to select microclimates based on soil temperature, moisture content, and ground cover; by creating extensive barriers to toad movement through the placement of large piles of woody debris between the creek bed and the terraces; and by providing ideal conditions for the terraces to become invaded by exotic weeds, in particular yellow star thistle. Sweet (2007a, p. 1) noted that arroyo toads are unable to inhabit terraces where star thistle is well-established.

Comment 11: One commenter stated that the proposed critical habitat rule for the arroyo toad is fatally flawed because it fails to consider all essential habitat for the toad, including areas previously designated as critical habitat, habitat recently known to be occupied, and habitat that may not currently be occupied but could provide an opportunity for species recovery. For example, the commenter believes that some key recovery metapopulations were not included in the proposed revised critical habitat designation, such as the San Dieguito River Basin, the Tijuana River, and the Pinto Wash Basin in the Jacumba (In-Ko-Pah) Mountains Wilderness Study Area. The commenter stated that the proposal provides no reasonable explanation for why these important areas previously identified as essential to the recovery of the arroyo toad are not discussed or included in the proposal.

Our Response: We believe we have considered all essential habitat for the arroyo toad and proposed to designate all habitat areas that meet the definition of critical habitat. Section 3(5)(C) of the Act states that except in particular circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. It is not the intent of the Act to designate critical habitat for every population and every documented historical location of a species, nor is it the intent to designate all areas supporting metapopulations as critical habitat. We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of the arroyo toad, and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act. These protections and conservation tools will continue to contribute to recovery of this species. Section 4(b) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available. The best available data indicate that the Tijuana River no longer contains physical and biological features essential to the conservation of the species due to poor water quality. Additionally, the best available data indicate that the arroyo toad does not occur currently and most likely did not occur historically in the Pinto Wash Basin, and therefore we determined that this area is not essential for the conservation of the species. To provide clarification to the commenter regarding the San Dieguito River Basin, we included this area in Unit 16 in the proposed revised critical habitat designation and the final revised critical habitat designation. For a complete description of this unit, *see* **Final Revised Critical Habitat Designation** above.

Comment 12: Two commenters expressed concerns that the Service dismissed from the critical habitat designation areas of habitat that have been altered from the operation of upstream dams but are known in the past to have supported populations of arroyo toads, including Big Tujunga Dam in Unit 7, Sutherland Dam in Unit 16, Loveland Dam in Unit 18, and Morena Dam in Unit 19. While the first commenter recognized that the dams and the basins behind them pose a barrier to arroyo toad movement, they contended that proper management can restore habitat above and below these dams and basins and the Service should promote such restoration. The commenter recommended protecting and maintaining these important habitat areas and pressing for changes in flow regimes to support arroyo toads in these historical habitats.

The second commenter also argued that given the extremely harmful effect these dams have on arroyo toad habitat, they believed the Service should be more focused on stopping the 'taking' activity under section 9 of the Act (which prohibits any party, public or private, from 'harming' an animal listed as endangered) than on removing the area from critical habitat designation. Moreover, if these dams were built with Federal funds, the commenter believed the Service could prohibit harmful activities that jeopardize the species under section 7 of the Act (commenter cited *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153 (1978)).

Our Response: In accordance with 50 CFR 424.12, we designated critical habitat on the basis of the best scientific data available, after taking into consideration the probable economic and other relevant impacts of making such a designation. In designating critical habitat, we considered those physical and biological features that are essential to the conservation of the arroyo toad and that may require special management considerations or protection. We are not designating lands above and below dams and basins if those areas do not contain the physical and biological features that are essential to the conservation of the arroyo toad. For more information on our criteria for designating critical habitat, please *see* the **Criteria Used to Identify Critical Habitat** section above.

The Service implements all sections of the Act, including section 4 (using the best scientific and commercial data available to determine if a species warrants Federal protection), section 7

(consulting on Federal actions that may affect critical habitat), and section 9 (prohibiting take of listed species). Each of these sections of the Act is governed by separate legal standards and requirements. Regarding the commenters' belief that the Service should be more focused on stopping the 'taking' activity than on removing the area from critical habitat designation, we appreciate any information provided by the public regarding a potential section 9 violation, and we will provide this information (as appropriate) to our law enforcement division. However, potential violations are not directly relevant to this final revised critical habitat designation.

Comment 13: Three commenters expressed general opposition to revising critical habitat because taxpayers will be unable to access public lands and will lose recreational opportunities on public lands.

Our Response: We acknowledge the commenters' concerns that revising critical habitat may result in certain habitat areas of the arroyo toad being restricted or closed to the public; however, an area we designate as critical habitat is not a refuge or sanctuary for the species but requires Federal agencies to ensure that their activities are not likely to destroy or adversely modify the areas designated. In addition, we believe that abundant recreational opportunities will remain and be available to the public on public lands, whether or not they are in arroyo toad critical habitat.

Comments Related to Site-Specific Areas

Comment 14: One commenter supported our inclusion of the Upper Santa Ynez River as well as its Mono Creek and Indian Creek tributaries in Unit 3. However, they believe that Agua Caliente Creek (another tributary of the Santa Ynez River) should also be included in the designation and that Manzana Creek and La Brea Creek (tributaries to the Sisquoc River) should be included in the critical habitat designation. The commenter asserts that these tributaries contain numerous breeding pools and juvenile and adult habitat crucial to the survival of the toad but are subject to impacts from high-density recreational activity, off-highway vehicle use, livestock grazing, and mining activities. The commenter contends that designation of these areas as critical habitat would help facilitate protection of existing populations and help provide suitable habitat for recovery efforts.

Our Response: Section 3(5)(A) of the Act defines critical habitat as: (1) The specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical and biological features (a) essential to the conservation of the species, and (b) which may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Not all areas that may contribute to a species' recovery are necessarily essential for conservation of the species. Although arroyo toads are not known to occupy Agua Caliente Creek and we did not include Agua Caliente Creek as part of this final revised critical habitat designation for the arroyo toad, we included the confluence of Agua Caliente Creek and the Santa Ynez River occupied by arroyo toads because we determined that the area meets the definition of critical habitat. Additionally, we do not have information suggesting that Manzana Creek or La Brea Creek are occupied by arroyo toads or that these tributaries contribute a substantial amount of habitat that would be used by arroyo toads. We did not include these tributaries in this final revised critical habitat designation because these areas do not meet the definition of critical habitat for the arroyo toad.

Comment 15: One commenter stated that the portion of Subunit 6a that encompasses approximately 7 mi (12 km) of Castaic Creek from Bear Canyon downstream to Castaic Lake should be excluded from the critical habitat designation. The commenter asserts that the Los Angeles County Department of Water and Power (LADWP) has secured appropriate permits from Federal and State agencies to clear accumulated materials and maintain three check-dams and debris basins on Castaic Creek. The commenter notes that these activities generally disturb the potential habitat for a number of years and the frequency and number of arroyo toads encountered has not dramatically increased; therefore, it is the opinion of the commenter that the area cannot be considered critical to the survival of the species.

Our Response: According to a 2009 translocation survey report conducted prior to maintenance activities for the Castaic Power Plant (Ramirez 2009, pp. 1–5), recent 2008 and 2009 spring season surveys in Basin 1 within and adjacent to the project impact areas indicate that all of Basin 1 represents high-quality arroyo toad foraging and/or aestivation habitat. According to Ramirez (2009, p. 2), the active channel which bisects Basin 1 represents high-quality arroyo toad breeding habitat (during the spring season/inundation period). Arroyo toad tadpoles, juveniles, and adults were documented within Basin 1 during 2008 and 2009 survey efforts conducted by the Forest Service (Ramirez 2009, p. 4). In addition, the western regions of Basins 2 and 3 represent high-quality arroyo toad foraging and/or aestivation habitat (Ramirez 2009, p. 3). Based on these and prior annual survey results, we believe it is essential habitat for the arroyo toad and meets the definition of critical habitat for the species.

Comment 16: Two commenters stated that land within Subunit 6b is already protected through conservation easements and other management measures and requested exclusion of Subunit 6b from the final revised critical habitat designation.

The first commenter stated that the Newhall Land and Farming Company (Newhall LFC) Natural River Management Plan (NRMP) includes numerous avoidance and mitigation measures that benefit arroyo toads. Areas protected by conservation easement under the NRMP encompass nearly half of the proposed critical habitat acreage in Subunit 6. Newhall LFC has also voluntarily placed conservation easements on approximately 48 ac (19 ha) of arroyo toad upland habitat within the Santa Clara River corridor near the U.S. Interstate 5 bridge. This acreage is in addition to the acreage already conserved under the NRMP and Valencia Commerce Center conservation easements, as well as the conservation easements proposed under the Newhall Ranch Specific Plan. The commenter also stated that the Newhall Ranch area is not truly essential to the conservation of the species due to limited arroyo toad observations, and would generate considerable costs for private landowners.

The second commenter stated that Subunit 6b is a highly developed area with concentrated urban and agricultural uses along the Santa Clara River corridor and its tributaries. Within the last 15 years, more than a dozen protocol surveys for arroyo toad have been performed in Subunit 6b and less than half of these surveys have identified any sign of arroyo toad presence. The commenter concluded that the few individuals found are not indicative of a robust population in the subunit, and therefore saw no reason for including Subunit 6b in the critical habitat designation and believed that the new regulatory burden resulting from the designation is not warranted.

Our Response: Although this area currently contains a small arroyo toad population, arroyo toad numbers likely were much larger in the past, and the number of arroyo toads has the potential to greatly increase once again throughout suitable habitat in this subunit. In the case of Newhall Ranch, we determined that approximately 1,003 ac (405 ha) of land in Subunit 6b owned by Newhall LFC meet the definition of critical habitat under the Act. In our exclusion analysis under Section 4(b)(2) of the Act, we evaluated the conservation strategy provided by Newhall LFC's Natural River Management Plan that includes the placement of a conservation easement on 541 ac (218 ha) on portions of Santa Clara River and Castaic Creek, of which 330 ac (133 ha) are within Subunit 6b. Existing conservation measures can minimize the benefits of inclusion, but the benefits of exclusion must outweigh the benefits of inclusion and a determination that exclusion would not result in the extinction of the species must be made before we can exclude lands from a final critical habitat designation. In making our final decision with regard to these lands, we considered several factors, including our relationships with the landowner and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. For the reasons discussed in the **Exclusions Under Section 4(b)(2) of the Act** section above, the Secretary is exercising his discretion to exclude the 330 ac (133 ha) of Newhall LFC lands that have been conveyed the CDFG in a conservation easement and are conserved and managed by the NRMP from this final revised critical habitat designation.

Comment 17: One commenter expressed concerns that the designation of critical habitat at the eastern end of Subunit 6b would impact operations and maintenance of several Metropolitan facilities (Foothill Feeder, Saugus Tunnel, and Santa Clara River Blow-Off Structure) and associated rights-of-way. The commenter stated we should revise the proposed designation to exclude approximately 243 acres of the eastern extension of critical habitat within Subunit 6b because the few arroyo toads present in this area do not represent a sustainable breeding population, and because operation of the Foothill Feeder, including discharge of water from the blow-off into the Santa Clara River, has minimal effects on this species.

Our Response: Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comment above. When considering the benefits of exclusion, we consider a variety of factors, which in the case of Newhall Ranch, included but was not limited to whether the conservation easements had been conveyed to CDFG, and whether there was a reasonable expectation that conservation management strategies and actions in the NRMP will be implemented into the future (*see* **Exclusions Under Section 4(b)(2) of the Act** section above for further discussion). After considering the relevant impacts, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion for the remaining 672 ac (272 ha) of Newhall LFC lands within Subunit 6b. Regarding the 243 ac (98 ha) in question, the commenter did not include a map with the comment but simply described the area as the eastern extension of Subunit 6b. We are unable to determine how much, if any, of the 243 ac (98 ha) are within the 330 ac (133 ha) conservation easement and therefore, whether any of the 243 ac (98 ha) would be within the area that is excluded in Subunit 6b. Additionally, lands covered by buildings, pavement, and other structures, such as the Metropolitan Water District's water management facilities (Foothill Feeder, Saugus Tunnel, and Santa Clara River Blow-Off Structure) would not be included in designated critical habitat because such lands do not support the physical and biological features essential to the conservation of the arroyo toad.

Comment 18: One commenter stated that tributary streams to the lower Big Tujunga Wash in Unit 7, such as Clear, Doan, Ebbets, Vogel, Grizzly, Bryant, Ybarra, and Fusier creeks, contain suitable arroyo toad habitat and are unaffected by "unseasonable" water releases from Big Tujunga Dam. The commenter believed these tributaries have not received adequate focused surveys for arroyo toads and that Big Tujunga Wash might be naturally repopulated with arroyo toad tadpoles from these tributaries, provided water releases from the dam are timed properly and removal of invasive species is successfully completed.

Our Response: We appreciate the commenter expressing their opinion that tributary streams to the lower Big Tujunga Wash may harbor suitable breeding habitat. We will consider this information during future recovery planning. At this time, the best available information indicates this habitat is of questionable suitability, is not currently occupied (Backlin *et al.* 2002, pp. 6, 12; Hitchcock *et al.* 2004, pp. 8–9, 29), is not connected to habitat that is occupied, and does not appear to be required to maintain the appropriate population structure across the species' range, or to provide connectivity between breeding sites; therefore, it does not meet the definition of arroyo toad critical habitat. Please see our response to Comment 6 above.

Comment 19: One commenter expressed concerns regarding potential impacts from the proposed revised critical habitat designation to existing and planned operations, maintenance, and protection activities associated with Metropolitan's Colorado River Aqueduct (CRA) right-of-way and appurtenant facilities in Unit 23. The commenter believes we should revise the proposed designation to exclude the area within the Metropolitan CRA for the following reasons: (1) The absence of arroyo toads and PCEs; (2) previous and ongoing disturbance; (3) significant maintenance operations impacts that could potentially occur; and (4) significant potential economic impacts.

Our Response: Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule (*see* the **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section).

Comment 20: Two commenters commended the Service for proposing critical habitat for the arroyo toad on 7.3 mi (12 km) of Silverado Creek in Unit 8. They stated there are multiple factors threatening the arroyo toad, including habitat loss from urban development, predation by invasive species, and wildfire, that necessitate continued protection under the Act for the arroyo toad in the Santa Ana River Basin.

Our Response: We appreciate the support and look forward to working with the commenters in the future on continued conservation efforts for the arroyo toad.

Comment 21: One commenter stated several reasons why they believe that arroyo toad critical habitat rule improperly includes 43 ac (17 ha) of Pardee's Meadowwood project site north of State Route 76 along the San Luis Rey River in Unit 14. They stated that this area does not contain suitable breeding or aestivation habitat, and the recently completed widening and

realignment of State Route 76 together with the permanent arroyo toad barrier fence that will be installed on the southern edge of the right-of-way will restrict movements of toads from the San Luis Rey floodprone area north onto the Meadowwood project site.

Our Response: Upon further examination, we agree that areas within the Meadowwood project site and on Rosemary's Mountain to the east do not contain the physical and biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from critical habitat. We did not remove all lands north of State Route 76, as arroyo toads may access these other areas via Horse Ranch Creek, which flows underneath State Route 76 and connects with the San Luis Rey River.

Comment 22: One commenter requested that we reexamine the portion of Unit 16 where we proposed critical habitat along Guejito Creek on the Rancho Guejito property. The commenter stated that we included areas where the arroyo toad and the PCEs were absent, such as roads, developed areas, and particular natural features (i.e., steep slopes), or where the species status is uncertain. They recommended the following revisions: (1) Reduce potential adjacent upland habitat to 1,000 ft (305 m), (2) remove the lower 2.3 mi (10 km) reach of Guejito Creek that does not support breeding activities and lacks PCEs, and (3) remove the developed area north of San Pasqual Valley Road.

Our Response: After determining the criteria used to identify critical habitat, we made every effort to avoid developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the revised critical habitat are excluded by text in this final rule.

We do not agree that upland habitat delineation should be limited to 1,000 ft (305 m) from the stream channel. Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. We believe our proposed revisions to critical habitat were supported by sufficient data that represents the best available scientific information. To delineate upland habitat areas, we used a GIS-based modeling procedure. We determined that areas up to 82 ft (25 m) in elevation above the stream channel were most likely to contain the riparian and upland habitat elements essential to arroyo toads. We truncated the upland habitat delineation in flat areas at 4,921 ft (1,500 m) from the stream channel based on known movement of arroyo toads if the 82-ft (25-m) elevation limit had not yet been reached at that point. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23254; April 28, 2004) (*see* the **Criteria Used to Identify Critical Habitat** section of this rule). Peer reviewers expressed support for our methods (*see* Comment 1 above).

We do not agree that the lower 2.3 mi (10 km) reach of Guejito Creek does not contain any PCEs. This area provides stream channels and adjacent upland habitat that allow movement to breeding pools, foraging areas, overwintering sites, and upstream and downstream dispersal for arroyo toad dispersal (PCE 4); therefore, it meets the definition of arroyo toad critical habitat.

Comment 23: Two commenters opposed the designation of critical habitat in Subunit 22a. One commenter argued that the Rancho Las Flores Planned Community (Rancho Las Flores) land in Summit Valley, San Bernardino County, which surrounds the West Fork of the Mojave River, should be excluded from the final revised critical habitat designation. The commenter pointed out that many acres in this area will be designated as open space and are protected by a conservation easement to protect the toad. They also stated that two biological opinions have been issued for projects in this area and a habitat conservation plan (HCP) is being developed to cover lands not addressed in the biological opinions. Additionally, they expressed concern that new housing, jobs, and other social benefits provided by the planned community may be jeopardized or constrained by a critical habitat designation.

A second commenter opposed the designation of critical habitat in Subunit 22a on Summit Valley Ranch in Summit Valley, San Bernardino County, which contains a portion of Little Horsethief Creek that runs through the southern portion of the site and is known to contain a breeding population of the arroyo toad. However, the commenter argued that the proposed critical habitat designation is too broad because it also includes Horsethief Creek and adjacent upland areas that do not contain breeding populations or breeding habitat for the arroyo toad. The commenter recommended revising the proposed designation at a minimum to exclude the western half of Horsethief Creek on Summit Valley Ranch and all land north of Highway 138. Additionally, the developed homesite, stock pond, and grazing land fronting the homesite should be excluded from critical habitat because they lack the primary constituent elements for arroyo toad habitat.

Our Response: Justification of exclusion from critical habitat is not based on conservation measures provided by an HCP or other management plan but on how the benefits of exclusion compare to the benefits of inclusion. After considering the relevant impacts, we did not conclude that the benefits of excluding lands owned by the Rancho Las Flores LLP in Subunit 22a outweigh the benefits of including those lands, and the Secretary is declining to exercise his discretion to exclude the Rancho Las Flores property. Additionally, we did not conclude that the benefits of excluding the Summit Valley Ranch property in Subunit 22a outweigh the benefits of including those lands, and the Secretary is declining to exercise his discretion to exclude the Summit Valley Ranch property. The portion of Little Horsethief Creek that runs through Summit Valley Ranch contains the physical and biological features essential to the conservation of the arroyo toad. The area supports important breeding habitat and a robust breeding population of arroyo toads. However, we agree that the lands north of State Route 138 do not contain the primary constituent elements of critical habitat, and we removed those lands from this final revised critical habitat designation (*see* the **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section). The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not

reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comments Related to HCPs, NCCP Program, and Section 7

Comment 24: One commenter stated that HCPs, which allow for the "take" of species, are not a substitute for the designation of critical habitat, which focuses on the recovery of species. The commenter argued that excluding areas of essential habitat from critical habitat designation that are covered or will be covered in the future by other management or conservation plans is unreasonable and unjustified. They were opposed to any exclusion of areas that may be covered by other management plans, specifically the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), Coachella Valley MSHCP, the Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP.

Our Response: With regard to the commenter's concerns that lands owned or under the jurisdiction of the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and the Orange County Central-Coastal NCCP/HCP should not be excluded because these HCPs may not adequately provide for the recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent that they are redundant with protection measures that would be provided by a critical habitat designation. Any remaining conservation benefits resulting from critical habitat inclusion are also limited to projects where a Federal nexus applies. As described in the **Exclusions Under Section 4(b)(2) of the Act** section above, the likelihood of a project with a Federal nexus occurring on lands covered by the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and the Orange County Central-Coastal NCCP/HCP proposed revised critical habitat is small in areas that are currently conserved; therefore, the benefits of inclusion are relatively minor in these areas. Additionally, we made the determination that lands within the jurisdiction of the Coachella Valley MSHCP do not meet the definition of critical habitat; therefore, this HCP is not addressed in this final rule (*see* **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section).

When we issued the incidental take permits for these regional HCPs, we believed they would address conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act and smaller HCPs), and provide adequate protection for the arroyo toad and its habitat within plan area boundaries. We believe these five regional HCPs (including the Coachella Valley MSHCP, which addresses arroyo toad management although critical habitat does not occur within the boundaries of that plan; *see* **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section) incorporate ongoing management and protection that will benefit the long-term conservation of arroyo toads and their habitat. We continue to monitor their implementation and the species' status and have not altered our determination. We have not determined the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP are being improperly implemented, nor that a return to the project-by-project approach as otherwise occurs under the Act would achieve greater long-term conservation than continued protection under these regional HCPs. Nonetheless, the Secretary is declining to exercise his discretion to exclude lands owned by or under the jurisdiction of the permittees of the San Diego MSCP. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)). The Secretary is exercising his discretion to exclude a portion of lands covered by the Western Riverside County MSHCP, Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP. Please refer to the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section for further discussion of these areas.

Comment 25: One commenter stated that most of the lands proposed for arroyo toad revised critical habitat designation in San Diego County (County) are unincorporated and therefore under the jurisdiction of the County. These areas are subject to the County's ongoing regional habitat conservation planning efforts under the Multiple Species Conservation Program (MSCP). While the MSCP for South San Diego County has been adopted and the Service has issued the incidental take permit, the MSCP for North San Diego County will not be finalized until 2011, and the MSCP for East San Diego County is still in development. Regardless, the commenter stated that the Service should exclude all arroyo toad critical habitat units and subunits within all three MSCP areas from the final revised critical habitat designation, based on the following rationale: (1) HCPs incorporate management measures and protection for conserved lands designed to restore and enhance their value as habitat; (2) costs would be increased and projects delayed by section 7 consultations, prompted primarily by the presence of critical habitat covering activities already covered by HCPs; (3) designating critical habitat over areas already covered by HCPs implies that the HCPs are not providing adequate protection for the covered species, and could provide an avenue for legal challenges against HCPs themselves; and (4) regional HCPs take many years to develop and require substantial investment of time and resources by Federal, State, and local governments; private landowners; and conservation organizations. The commenter stated that the resulting plan provides a preserve system and management measures that protect covered species and their habitat over the long term and provides the opportunity to implement measures to support the recovery of listed species on a broad and meaningful scale.

Our Response: Justification of exclusion from critical habitat is not based on conservation measures provided by an HCP but on how the benefits of exclusion compare to the

benefits of inclusion. After considering the relevant impacts, we did not conclude that the benefits of excluding lands covered by the County of San Diego Subarea Plan under the MSCP outweigh the benefits of including those lands (Subunits 16a, 17b, 17d, 18a, and 19b), and the Secretary is declining to exercise his discretion to exclude lands in these areas. Additionally, the North County MSCP and the East County MSCP under which conservation measures will be assured future implementation are not yet finalized; therefore, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion. There are potential significant benefits to the conservation of arroyo toad that may come from the designation of critical habitat on these lands (Subunits 11b, 12a, 12b, 13a, 13b, 16a, 16d, 17a, 17b, 17d, 18a, 19a, 19b, 19c, 19d, 19e, and Units 14 and 15). The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comment 26: Two commenters argued for the exclusion of lands in Units 9 and 13 from the final revised critical habitat designation that are owned by or under the jurisdiction of the Western Riverside County MSHCP permittees because the HCP already adequately provides for the survival and recovery of the species, and under section 6.9 of the HCP and section 14.10 of the associated Implementing Agreement, no critical habitat should be designated in the HCP Plan Area. The commenters argued that designating critical habitat within the Western Riverside County MSHCP Plan boundaries would create duplicative regulatory efforts without any additional benefits to the species and would ultimately dissuade future habitat conservation plan creation. The commenters argued further that federally owned lands, not just privately owned lands, in each unit within the MSHCP should also be excluded because the Implementing Agreement has already taken Federal lands into account and therefore adequately provides for the survival and recovery of the species on these lands.

Our Response: With regard to the commenters' assertions that lands owned by or under the jurisdiction of the Western Riverside County MSHCP should be excluded because the HCP adequately provides for the survival and recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comments above. We found the benefits of exclusion of lands covered by the Western Riverside County MSHCP that are conserved and managed are greater than the benefits of including these lands in the critical habitat designation in Units 9 and 13 (*see* the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)*" section above for a detailed discussion).

With regard to the commenters' belief that critical habitat should not be designated in the Western Riverside County MSHCP Plan Area based on language in section 6.9 of the HCP and the associated Implementing Agreement, section 14.10 of the Implementing Agreement does not preclude critical habitat designation within the plan area (Dudek and Associates 2003, pp. 51–52). Consistent with our commitment under the Implementing Agreement, and after public review and comment on the proposed revision to critical habitat for the arroyo toad, we determined through our analysis under section 4(b)(2) of the Act that the maximum extent of allowable exclusions under the Western Riverside County MSHCP was limited to the exclusion of conserved and managed lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 9 and 13 (*see* the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)*" section above for a detailed discussion).

Comment 27: One commenter believed the Service should exclude the entire 2,182 ac (883 ha) of proposed Unit 8 from the final revised critical habitat because potential risks to the arroyo toad have been sufficiently reduced or even eliminated through participation in the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (Orange County Central-Coastal NCCP/HCP) and the North Ranch Policy Plan Area (NRPPA). The commenter further stated that although approximately 9 percent (identified by the commenter as land encompassing Santiago Creek from the confluence with Silverado Creek downstream to Irvine Lake) is not covered by either program, this land is unoccupied by arroyo toads and therefore is not essential to conservation of this species. Finally, the commenter identified during the second comment period that the area considered for exclusion within Unit 8 was changed from 1,497 ac (606 ha) in the 2009 proposed revised rule (74 FR 52630, 52643; October 13, 2009) to 647 ac (262 ha) in the 2010 revisions to the proposed rule that were outlined in the document making available the DEA (75 FR 37365; June 29, 2010). The commenter stated that this 850-ac (344-ha) reduction is not explained, nor is it clear how this amount was determined or where it lies within the unit.

Our Response: With regard to the commenter's belief that lands owned or under the jurisdiction of the Orange County Central-Coastal NCCP/HCP should be excluded because the HCP adequately provides for the survival and recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comments above. We found the benefits of exclusion of conserved and managed lands covered by the Orange County Central-Coastal NCCP/HCP and NRPPA to be greater than the minimal benefits of including these lands in the critical habitat designation in Unit 8 (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Orange County Central-Coastal Subregional Habitat Conservation Plan/Natural Community Conservation Plan (Orange County Central–Coastal NCCP/HCP)*" section above for a detailed discussion).

Based on the commenter's concerns with regard to the Santiago Creek area, we reevaluated survey data in our files from 2005 (GLA 2005). We agree that approximately 179 ac (72 ha) specifically encompassing Santiago Creek from just below the confluence with Black Star Creek downstream to Irvine Lake do not contain the PCEs, and therefore we removed this area from this final revised critical habitat designation. We determined that this area is unsuitable for arroyo toads

because as water from Irvine Lake frequently backs up into this area and creates conditions favorable for arroyo toad predators. High numbers and distribution of these predators, such as bullfrog, crayfish (*Procambarus clarkia*), and prickly sculpin (*Cottus asper*), were detected at this location (GLA 2005). With regard to the remaining portion of lands in Unit 8 encompassing Black Star Creek and Santiago Creek upstream of the confluence with Black Star Creek, the best available scientific information indicates that these areas contain the physical and biological features essential to conservation of this species. However, some of these areas are covered by the Orange County Central-Coastal NCCP/HCP and NRPPA, and we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation in these areas. Therefore, the Secretary is exercising his discretion to exclude these areas from this final rule.

Regarding the 9 percent, now 4 percent, of lands covered by the Orange County Central-Coastal NCCP/HCP and NRPPA that are not conserved, we do not agree that these areas do not meet the definition of critical habitat. We also do not agree that the remaining areas of Unit 8 (i.e., 685 ac (277 ha) of Forest Service land) not covered by the HCP do not meet the definition of critical habitat, and the Secretary is not exercising his discretion to exclude these areas from this final revised critical habitat designation. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

With regard to the commenter's concern that the area considered for exclusion was reduced by 850-ac (344-ha) in the document making available the DEA (75 FR 37365; June 29, 2010), we apologize for this confusion, as the acreage printed in the table was in error. The area considered for exclusion as noticed to the public in the 2009 proposed revised rule (74 FR 52630, 52643; October 13, 2009) is the correct acreage considered for exclusion under section 4(b)(2) of the Act. Additionally (as noted above), we found the benefits of exclusion of lands covered by the NRPPA to be greater than the minimal benefits of including these lands in the critical habitat designation in Unit 8 (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts—** "Orange County Central-Coastal Subregional Habitat Conservation Plan/ Natural Community Conservation Plan (Orange County Central-Coastal NCCP/ HCP)" section above for a detailed discussion).

Comment 28: One commenter stated that lands owned by the Sweetwater Authority, Helix Water District, and Padre Dam Municipal Water District in San Diego County (portions of Subunits 18a and 18c) should be excluded from designated critical habitat for the arroyo toad because existing management and protection measures adequately conserve the habitat and those measures are likely to continue in the foreseeable future under the pending draft Joint Water Agencies Natural Community Conservation Plan/Habitat Conservation Plan (JWA NCCP/HCP) anticipated to be completed within the next year.

Our Response: Exclusions under section 4(b)(2) of the Act are based on whether the benefits of exclusion outweigh the benefits of inclusion. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent that they are redundant with protection measures that would be provided by a critical habitat designation. We reviewed the draft JWA NCCP/HCP referenced by the commenter and determined that the existing management and protection measures do provide beneficial conservation measures for the arroyo toad that are redundant with conservation measures provided by critical habitat designation, and therefore would reduce the benefits of inclusion in critical habitat if implementation were assured into the future. When considering the benefits of exclusion, we consider a variety of factors, including, but not limited to, whether the plan is finalized (i.e., approved by all parties) and whether there is a reasonable expectation that conservation management strategies and actions will be implemented into the future (*see* **Exclusions Under Section 4(b)(2) of the Act** section above for further discussion). After considering the relevant impacts, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion for lands owned by the Sweetwater Authority, Helix Water District, and Padre Dam Municipal Water District, and the Secretary is not exercising his discretion to exclude these areas from arroyo toad critical habitat designation. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comment 29: One commenter requested that the Southern Subregion NCCP/HCP (referred to as the Orange County Southern Subregion HCP in the proposed revised critical habitat designation and this final rule) be excluded from the final revised critical habitat designation for the following reasons: (1) The plan benefits the arroyo toad through conservation of breeding locations, protection of upland foraging and aestivation habitats, and management actions; (2) the plan provides assurances that the conservation strategies and actions will be implemented and effective; and (3) the Service has stated its intention to exclude habitat within this plan area from any revision to an existing critical habitat designation as long as the Conservation Strategy is being properly implemented.

Our Response: The Secretary is exercising his discretion to exclude certain lands within the Orange County Southern Subregion HCP plan area from this final revised critical habitat designation (*see* "*Orange County Southern Subregion Habitat Conservation Plan (Orange County Southern Subregion HCP)*" section under the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section above). With regard to the commenter's assertions that lands owned by or under the jurisdiction of the Orange County Southern Subregion HCP should be excluded because the HCP adequately provides for the conservation of the species, the adequacy of an HCP to provide for the conservation of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. We found the benefits of exclusion of lands covered by the Orange County Southern Subregion HCP to be greater than the minimal benefits of including these lands in the critical habitat designation in Subunits 10a, 10b, and 11a (*see* "*Orange County Southern Subregion*

Habitat Conservation Plan (Orange County Southern Subregion HCP)" section under the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section above for a detailed discussion).

Comments Related to Military Lands

Comment 30: The U.S. Navy stated that their facility, Camp Morena, lacks PCEs for arroyo toad and that no potentially suitable breeding habitat occurs on the property. Although potential upland foraging habitat occurs on the property, the U.S. Navy stated that the suitability of the habitat is low based on current and past human use of the site, compacted soils throughout the site, and low percentage of sand in the soil.

Our Response: The Navy's statement was based on a draft 2009 biological inventory that was not available for our review. Through our original analysis, we believe that this area in question contains the PCEs and provides suitable habitat for arroyo toad. Without additional data, we do not have a basis to reevaluate the area. Regardless, we determined that the benefits of exclusion outweigh the benefits of inclusion under section 4(b)(2) of the Act for lands that overlap with Camp Morena (Unit 19); therefore, these lands are not included in this critical habitat designation (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section).

Comment 31: Two Federal agencies commented on the relationship of critical habitat designation for the arroyo toad and military lands. The first commenter, the U.S. Navy, agreed with the exemption of the Fallbrook Naval Weapons Station from critical habitat designation based on the existing 2006 Service approved INRMP, which provides conservation benefits to the arroyo toad. The Navy also believed additional Navy facilities, the Remote Training Site Warner Springs and Camp Morena, should be excluded from the final revised critical habitat designation. They contended that additional regulatory requirements imposed by the critical habitat designation for the arroyo toad may: (1) Restrict or prohibit implementation of required training (such as mission planning capabilities, more frequent training, and construction of new facilities); (2) result in unacceptable delays to construction of facilities needed to support mission critical training (such as unique warfare skills available to soldiers at Remote Training Site Warner Springs and Camp Morena); and (3) cause delays in construction of facilities or training initiatives that support operational readiness, which has a serious impact on personnel readiness and national security, resulting in lower numbers of qualified personnel or skills needed for the Navy's national security mission.

The Navy stated that since the Remote Training Site Warner Springs and Camp Morena are part of Naval Base Coronado, they are included in a 2009 update to the Naval Base Coronado INRMP, which identifies measures that provide conservation benefits to the species at Remote Training Site Warner Springs. The update to the INRMP was based on focused surveys for the arroyo toad that were conducted in 2006 to support the Biological Assessment for Expansion and Realignment of Training Areas at Remote Training Site Warner Springs (March 2008). The INRMP revision, expected to be completed in 2011, will incorporate all coordinated updates and conservation protocols established by new biological opinions for species found on Naval Base Coronado, and it will address natural resource management of the newly acquired Camp Morena property.

The second commenter, Cleveland National Forest, agreed with the U.S. Navy that critical habitat for the arroyo toad should not be proposed along the upper San Luis River at the Remote Training Site Warner Springs in Unit 15 because it is covered by the Naval Base Coronado INRMP; it serves as the west coast's principal venue for SERE (Survival, Evasion, Resistance, and Escape) training, and the critical habitat designation would result in unacceptable delays to future proposed training activities or construction of facilities needed to support mission critical training.

Our Response: In our section 4(b)(2) exclusion analyses for Remote Training Site Warner Springs and Camp Morena, we considered several factors including impacts to national security associated with a critical habitat designation as described by the Navy, existing consultations, and conservation measures in place at Naval Base Coronado facilities that benefit the arroyo toad. As stated in section 4(b)(2) of the Act, the Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned. The Secretary is exercising his discretion to exclude all training lands associated with Remote Training Site Warner Springs and Camp Morena from this final revised critical habitat designation based on impacts to national security (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section above). We appreciate all of the Navy's efforts to conserve the arroyo toad and its habitat on its lands and will continue to work cooperatively with them in the future for resource conservation.

Comments Related to U.S. Forest Service Lands on the Angeles National Forest, Cleveland National Forest, Los Padres National Forest, and San Bernardino National Forest

Comment 32: Two national forests agreed with the proposed revised critical habitat designation:

(1) Angeles National Forest agreed with our description of the biology, habitat, and population status of the arroyo toad; and

(2) Los Padres National Forest agreed with the proposed designation of critical habitat in Unit 3, Subunit 5a, and Subunit 5b because all of these areas are occupied by arroyo toads and contain essential habitat.

Our Response: We appreciate the support and look forward to working with the U.S. Forest Service in the future on continued conservation efforts for the arroyo toad.

Comment 33: Two national forests stated that the proposed revised critical habitat designation will not negatively impact current National Forest Land Management planning:

(1) Angeles National Forest stated that the critical habitat designation would not serve as an impediment for completion of the Tehachapi Renewable Transmission Project or be cost prohibitive, although some design modification of the project may occur to reduce construction impacts to arroyo toad designated critical habitat; and

(2) Los Padres National Forest stated that redesignating Unit 3, Subunit 5a, and Subunit 5b will not likely require a change of current management actions because the Los Padres National Forest considers protection of the arroyo toad and its habitat an important part of their land management plan.

Our Response: Again, we appreciate the support and look forward to working with the U.S. Forest Service in the future on continued conservation efforts for the arroyo toad.

Comment 34: Two national forests provided information on threats to the arroyo toad:

(1) Angeles National Forest stated that the Big Tujunga locality of arroyo toads (Unit 7) is the only one where public access is not restricted, is in close

proximity to a regularly traveled road that can be easily accessed by visitors, and therefore is at an elevated risk of impacts from human activities;

(2) Angeles National Forest provided updated information on effects of the Station Fire to Unit 7, Subunit 6a, and Unit 21; and

(3) Cleveland National Forest stated that regarding Subunits 19c and 19d, there is no authorized grazing along the portions of Pine Creek within proposed critical habitat, which has been in effect since 1998 for the lower portion of Pine Creek (south of Old Highway 80), and since 2007 for the upper portion of Pine Creek (north of Old Highway 80).

Our Response: We appreciate these edit recommendations and have made changes to the unit descriptions in this final rule (*see* the **Final Revised Critical Habitat Designation** section above).

Comment 35: Three national forests recommended adding or removing areas to the proposed revised critical habitat designation:

(1) Angeles National Forest recommended re-examining areas near Lynx Gulch Road for consideration as critical habitat because there are verified records of arroyo toads from this area;

(2) Cleveland National Forest recommended adding San Mateo Creek between Camp Pendleton and Tenaja Falls in Subunit 11b to the critical habitat designation because the entire stretch is occupied by arroyo toads;

(3) San Bernardino National Forest recommended including Little Horsethief Canyon, Horsethief Canyon, the Cleghorn arm of Silverwood Lake, Kinely Creek, Mojave River, and Deep Creek for at least 0.5 mi (km) of the Mojave River below the Mojave spillway in Unit 22;

(4) San Bernardino National Forest recommended re-examining Cucamonga Canyon for consideration as critical habitat because there are verified records of arroyo toads from this area within the last decade; and

(5) Cleveland National Forest recommended removing the following areas because they are headwaters that lack the PCEs of critical habitat for the arroyo toad: Upper San Juan Creek from just upstream of Lower San Juan Picnic Area to the headwaters (Subunit 10a); Agua Caliente Creek (Unit 15); Temecula Creek from the intersection with Chihuahua to headwaters (Subunit 13b); Viejas Creek from just above the confluence with Sweetwater Creek to headwaters (Subunit 18a); and the upper portion of Horsethief Canyon (Subunit 19d).

Our Response: We considered the suggested changes to this critical habitat designation. However, we did not receive enough information to support revisions to our critical habitat designation in most of these areas. Regarding the suggestion to add San Mateo Creek between MCB Camp Pendleton and Tenaja Falls in Subunit 11b to the critical habitat designation, we reevaluated survey data in our files and included this area in the proposed revised critical habitat as noticed in the document making available the DEA (75 FR 37358; June 29, 2010). For more information *see* the **Summary of Changes From the 2009 Proposed Rule to Revise Critical Habitat** section.

Comment 36: Cleveland National Forest recommended removing the Oak Grove administrative site in Subunit 13b from the final revised critical habitat designation because most of the site is developed and heavily disturbed over many years due to operation of the fire station and campground.

Our Response: After determining the criteria used to identify critical habitat, we made every effort to avoid developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the final revised critical habitat (including the Oak Grove administrative site in Subunit 13b) are excluded by text in this rule and are not considered part of this final revised critical habitat designation.

Comment 37: San Bernardino National Forest recommended including all sections of "currently excluded essential habitat" in the final revised critical habitat designation for Subunit 9a that fall within the national forest boundary along the South Fork San Jacinto River. Although none of these sections are known to be occupied by arroyo toads, the area contains suitable habitat for the species and should be managed as critical habitat, especially during times of climate change. San Bernardino National Forest further recommended including the area known as the "Hixon trail area" in Subunit 9b because it has the largest and only population of arroyo toads on the San Jacinto Ranger District.

Our Response: These areas were included in our proposed revised critical habitat rule (74 FR 52612; October 13, 2009) and are included in this final revised critical habitat designation.

Comment 38: San Bernardino National Forest recommended re-examining the species identification for Unit 23.

Our Response: Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule (*see* the **Summary of Changes From the 2009 Proposed Rule to Revise Critical Habitat** section).

Comments Related to Tribal Lands

Comment 39: The Barona Group of Capitan Grande Band of Mission Indians, Rincon Band of Luiseño Mission Indians, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that designation of critical habitat on reservation land undermines tribal sovereign governmental authority and interferes with the cooperative government-to-government trust relationship between the tribes and the United States.

Our Response: We evaluated the benefits of exclusion of all reservation lands from this final revised critical habitat designation. Maintaining and fostering partnerships and good working relationships with tribes are benefits of exclusion and are supported by Secretarial Order 3206. Consistent with Secretarial Order 3206 and Executive Order 13175, we also believe tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. We found the benefits of exclusion of tribal lands to be greater than the benefits of including these lands in the critical habitat designation in Units 14, 16, 17, and 18 (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section above for a detailed discussion). Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. We recognize and value our relationships with the tribes and will continue to work cooperatively with them to conserve federally listed species on their lands.

Comment 40: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that critical habitat designation—for the protection and management of a species that became scarce due to activities off of a reservation—is unfair and inequitable on a reservation. They stated that designation of critical habitat on a reservation creates a disproportionate economic and cultural impact on Native Americans because, unlike other lands within the region, opportunities for relocation of projects are limited on a reservation. Additionally, the Pala Band of Luiseño Mission Indians, Rincon Band of Luiseño Mission Indians, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that designation of critical habitat on their lands would cause economic hardship due to increased costs and delays associated with section 7 consultations. Much of the activities on reservations occur with Federal funds, grants, or oversight; therefore, all these activities with Federal involvement in areas designated as critical habitat would require consultation under section 7 of the Act.

Our Response: Consistent with Secretarial Order 3206, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes these duties with the Federal trust responsibility to the tribes and tribal sovereignty while striving to ensure that Indian tribes do not bear a disproportionate burden for the conservation of species. Consistent with the Act and Secretarial Order 3206, we also evaluated the economic impact of critical habitat designation on tribes. The final economic analysis (FEA) indicated the proposed designation would result in total costs of future project modifications (including on-site set aside, "other" project modifications and administrative costs) associated with real estate development by tribes to be approximately $21 million under the baseline scenario and $119 million under the incremental scenario over the next 25 years.

In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans. These are benefits of exclusion that, along with other benefits of exclusion, significantly outweigh the benefits of inclusion, and we determined that exclusion will not result in the extinction of the species. Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. See our response to Comment 39 above and **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 41: The Pala Band of Luiseño Mission Indians, Rincon Band of Luiseño Mission Indians, and Sycuan Band of the Kumeyaay Nation stated that they have demonstrated their ability to manage natural resources through their own management plans and other conservation programs. Therefore, in lieu of critical habitat designation on their lands, we should defer to their programs to protect arroyo toad habitat.

Our Response: We appreciate receiving the information provided by the three tribes on their management plans and other conservation programs. In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans. These are benefits of exclusion that, along with other benefits of exclusion, significantly outweigh the benefits of inclusion, and we determined that exclusion will not result in the extinction of the species. Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. We look forward to enhancing our government-to-government relationship with the tribes, and providing technical assistance in the future on natural resource to these tribes and any other tribes that do not currently have management plans in place. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 42: The Rincon Band of Luiseño Mission Indians stated that designation of critical habitat on the Rincon Reservation affords no additional benefits to the species. Specifically, the tribe stated that any possible educational benefits or minor protection during a section 7 consultation are negligible.

Our Response: In our analysis under section 4(b)(2) of the Act, we considered educational benefits and benefits provided by critical habitat under section 7(a) of the Act. These are considered to be benefits of including a particular area in critical habitat. However, under section 4(b)(2) of the Act, a determination that the benefits of exclusion outweigh the benefits of inclusion, along with a determination that exclusion would not result in the extinction of the species, must be made before the Secretary determines whether to exercise his discretion to exclude lands that meet the definition of critical habitat from a final critical habitat designation. In our analysis under section 4(b)(2) of the Act, we determined that designating critical habitat would likely provide regulatory benefits under section 7(a) of the Act that are not already provided (as a result of the listing of arroyo toad) by the combination of sections 7 and 9 of the Act and tribal regulations on reservations (such as the Rincon Reservation) where management plans are in place. We agree that educational benefits are small on lands controlled by tribal governments (such as the Rincon Reservation), as we believe our ongoing coordination with the Rincon Band of Luiseño Mission Indians should provide sufficient future education for this area. As a result, the Secretary is exercising his discretion to exclude the Rincon Reservation from this final revised critical habitat designation (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the tribal exclusions).

Comment 43: The Rincon Band of Luiseño Mission Indians stated that designation of critical habitat would create a disincentive to develop HCPs and therefore recommended that we exclude pending HCPs, including the Rincon HCP. They stated that the proposed designation on the Rincon Reservation poses substantial risks to the Rincon HCP without affording the arroyo toad any additional conservation benefits by adding uncertainty to the process, increasing costs to plan development and implementation, and weakening stakeholder support.

Our Response: Under section 4(b)(2) of the Act, the Secretary may exercise his discretion to exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of inclusion, provided the exclusion will not result in the extinction of the species. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. We did not consider for

exclusion areas covered by the draft Rincon HCP; however, the Secretary is exercising his discretion to exclude the Rincon Band of Luiseño Mission Indians reservation lands (*see* the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the tribal exclusions).

Comment 44: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation), stated that the reservation is not used for residential or development purposes. The two tribes prevent use by outside parties, and only tribal members can use the reservation for hunting and cultural purposes. The tribes further stated that they are not planning to change their procedures for controlling access to the reservation and protecting its resources. Finally, the tribes intend to work cooperatively with us to protect arroyo toad habitat on the reservation if needed; therefore, the reservation should be excluded from critical habitat designation.

Our Response: We appreciate the Tribes' information on the current and future use of the reservation, management of their lands, and commitment to protecting natural resources, including the arroyo toad. In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans, which we believe, along with other benefits of exclusion, significantly outweigh the benefits of inclusion in this critical habitat designation. Therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation lands from this final revised critical habitat designation (*see* our Response to Comment 40 above and the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section).

Comment 45: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that although they oppose designation of any critical habitat on the Capitan Grande Reservation, areas proposed as critical habitat on the reservation were too broad. The Barona Group of Capitan Grande Band of Mission Indians surmised that our proposal was based only on our assessment of aerial photographs of the area and knowledge of the features of upstream and downstream parcels, rather than any direct, on-the-ground observations. Based on an arroyo toad habitat assessment of the area submitted by both tribes (HELIX 2009, pp. 1–6), they stated that only about half of the areas proposed contain suitable breeding habitat, and therefore the rest of the area does not contain suitable arroyo toad habitat.

Our Response: To determine the extent of suitable arroyo toad habitat, we used spatial data on stream gradients with grades less than 6 percent, aerial photography, surveys of habitat suitability, and site visits. Additionally, we included higher gradient areas between breeding habitat because these areas are used by toads during the non-breeding period and allow toads to disperse between breeding areas. To delineate upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces, valley bottomlands, and upland habitats adjacent to stream reaches occupied by the arroyo toad. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23258; April 28, 2004) (*see* the **Criteria Used to Identify Critical Habitat** section of this rule). Peer Reviewers expressed support for our methods (*see* Comment 1 above).

We appreciate receiving the arroyo toad habitat assessment and will consider this information during future recovery planning with both tribes. Although the habitat assessment delineates suitable breeding habitat within areas proposed for critical habitat designation and states that we may have overestimated the quantity of upland habitat outside the river bed (HELIX 2009, p. 3), it does not provide the specificity required to redraw the upland habitat areas or invalidate our assessment that these upland areas provide for arroyo toad foraging and overwintering (PCE 4) and that they therefore meet the definition of critical habitat. We will continue to work with the tribes on management and recovery-related activities for the arroyo toad and its habitat. However, with regard to Capitan Grande Reservation lands as they relate to the proposed critical habitat rule, we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation; therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation from this final rule. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 46: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that habitat on the Capitan Grande Reservation may not be occupied by arroyo toad because there are no occupancy records of arroyo toad on the reservation. Additionally, the Barona Group of Capitan Grande Band of Mission Indians stated that although there are occupancy records of arroyo toad near the reservation, the records are either more than 6 years old or more than 2 mi (0.8 km) upstream; therefore, habitat on the reservation likely does not provide connectivity between arroyo toad observations and should not be designated as critical habitat.

Our Response: Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. We believe our proposed revisions to critical habitat were supported by sufficient data that represent the best available scientific information. These data indicate that habitat has not changed since occupancy records were collected on adjacent parcels both upstream and downstream of the Capitan Grande Reservation. Therefore, we have no basis to conclude the area is no longer occupied. Additionally, the best available data indicate that habitat on the reservation is contiguous with habitat containing the PCEs upstream and downstream of the reservation; therefore, these areas continue to meet the definition of critical habitat. However, we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation; therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation from this final rule. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 47: The Sycuan Band of the Kumeyaay Nation stated that the biological data cited in the description of Unit 18 in the proposed rule (*see* the **Proposed Revisions to Critical Habitat Designation** section of the proposed revised critical habitat rule (74 FR 52625; October 13, 2009)), which includes Sycuan lands, is significantly outdated because the occupancy records are 10 to 17 years old. Therefore, any designation in this unit based on species' presence or the existence of PCEs is speculative at best. Additionally, the tribe stated that they do not know which areas of their lands

were proposed as critical habitat because the proposed rule is vague. They stated that the only areas on the reservation that appeared relevant to the proposed critical habitat designation were the north fork of the Sweetwater River, which is not known to support arroyo toad. Therefore, designating critical habitat on the reservation is inappropriate because the reservation does not have arroyo toad habitat or any occupancy records of arroyo toad.

Our Response: Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. The best available data indicate that habitat in Unit 18 has not changed since the occupancy records were collected. Therefore, we have no basis to conclude the area is no longer occupied. To provide clarification to the Sycuan Band of the Kumeyaay Nation regarding proposed critical habitat, the areas that meet the definition of critical habitat on the Sycuan Reservation include lands along the Sweetwater River and along the north fork of the Sweetwater River. With regards to this final rule, we determined that the benefits of exclusion outweigh the benefits of inclusion for Sycuan Band of the Kumeyaay Nation Reservation lands; therefore, the Secretary is exercising his discretion to exclude this reservation from this final revised critical habitat designation. *See* the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comments Related to Economic Impacts and Analysis

Comments from Tribal Governments

Comment 48: The Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that the draft economic analysis (DEA) does not include estimated economic impacts for tribal lands within the proposed revised critical habitat units.

Our Response: The final economic analysis (FEA) has been updated to reflect estimated economic impacts on tribal lands within the proposed revised critical habitat units. The summary tables in the Executive Summary of the FEA include economic impacts on tribal lands. In addition, the FEA includes a new Chapter 7 that discusses the socioeconomic characteristics and estimated baseline and incremental economic impacts for each affected tribe. Where data limitations prevent quantification, the FEA also includes a qualitative discussion of impacts as provided by each tribe.

Comment 49: The Pala Band of Luiseño Mission Indians and the Sycuan Band of the Kumeyaay Nation stated that fee to trust transfers (*i.e.,* land currently owned by the Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation but not yet part of their reservations) are currently in progress and should be treated the same as existing tribal [reservation] land.

Our Response: The FEA includes economic impacts to tribal lands and assumes that fee-owned land incurs the same impacts as reservation land.

Comment 50: The Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that the DEA excludes the economic impacts of proposed critical habitat on tribal groundwater use and tribal water rights.

Our Response: Quantifying impacts of a critical habitat designation on tribal water rights would require information that is not readily available (such as the nature and scope of specific future projects that could be impacted by a critical habitat designation, or details on the current scope of water rights). This type of analysis is generally not undertaken unless there is an adjudication of tribal water rights. The FEA recognizes that tribes' water rights have long been recognized by the U.S. Supreme Court but does not attempt to include an estimated impact related to tribal water rights.

Comment 51: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that the DEA ignored the expenditures the tribes have incurred in developing and implementing their own Tribal Resource Management Plans (RMPs).

Our Response: Where information was provided by the tribes, the FEA included annual costs associated with implementing their own Tribal RMPs. Otherwise, these plans are described qualitatively. These costs incurred by the Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation are considered baseline because the development and initial implementation of the RMPs occurred prior to the proposed critical habitat designation.

Comment 52: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that reservations were created for the use of tribes in perpetuity and are essentially nontransferable, creating a limited, specialized land value.

Our Response: Economic impact estimates in the FEA resulting from reduced development opportunities include the present value of future annual land value losses based on market rates for non-tribal lands in each county. In addition, there are other, unique attributes of tribal land (such as cultural importance, restrictions on the ability of the tribes to transfer lands, and lack of substitutes) that should be taken into consideration when estimating land values. However, the effect of these attributes is difficult to quantify. In the absence of specific examples of recent land transactions within tribal lands that would provide information about the value of these lands, the FEA uses the best available scientific and commercial data available (as shown in Table 2–9 of the FEA) to estimate potential land value losses.

Comment 53: The Pala Band of Luiseño Mission Indians stated that most of the tribal land proposed as critical habitat occurs within allotted lands on the reservations. The tribe stated that the DEA ignored the extraordinary economic impacts on allotted lands, which are not readily purchased or sold. Further, the tribe stated that the DEA does not address economic impacts to the tribes related to constrained allottees.

Our Response: As discussed in our response to Comment 52, in the absence of specific land transaction data provided by affected tribes, the FEA uses average residential and nonresidential residual land values (as shown in Table 2–9 of the FEA). In Chapter 7, the FEA includes a qualitative discussion of the unique issues associated with allotted lands based on information provided by the tribes.

Comment 54: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that because a significant amount of activity on tribal lands occurs with Federal funds, grants, or oversight, the designation of critical habitat on Reservation land results in a disproportionately higher occurrence of section 7 consultations with the Service.

Our Response: The FEA estimates the economic impacts of section 7 consultations based on the historical rate of consultations and the proposed revised critical habitat acreage. The comment letters submitted by the tribes do not provide specific data related to the number of future projects requiring section 7 consultations or the historical rate of consultation for projects occurring on their tribal lands. Therefore, the FEA does not quantify a higher rate of section 7 consultations

but does include a qualitative description of these impacts in Chapter 7, which addresses economic impacts on tribal lands.

Comment 55: The Sycuan Band of the Kumeyaay Nation stated that the DEA excluded the percentage of total tribal lands affected by the proposed critical habitat designation.

Our Response: Chapter 5 of the FEA includes the percentage of total lands, by tribe, affected by the proposed critical habitat designation.

General Comments Regarding Framework and Assumptions

Comment 56: One commenter believed the DEA did not include the most recent demographic projections provided by the San Diego Association of Governments (SANDAG).

Our Response: The most recent SANDAG projections (Series 12) were published in February 2010, following the period in which demographic projections (Series 11) were collected for the DEA. The FEA has been updated to reflect the current Series 12 projections from the period 2010 through 2035. In addition, the FEA includes updated ownership data that was the best available during the time of the analysis in July 2010. The previous ownership data reflected a 2005 ownership database from California Spatial Information Library (CaSIL) that was adjusted by us with 2005 tribal reservation boundaries provided by the Building Industry Association. The updated ownership data in the FEA reflect the following changes: 2009 tribal reservation boundaries from the Building Industry Association; 2009 right-of-way from the Metropolitan Water District (MWD); 2009 parcels from the San Diego Geographic Information Source (SanGIS); 2009 ownership from the Rincon Tribe; and 2008 parcels from Riverside County.

Comment 57: One commenter stated that to assume that all constrained land cannot be developed is unsupportable and understates the effect of the critical habitat designation.

Our Response: The FEA assumes that bodies of water and land located within the 100-year flood plain will not be developed. For communities that participate in the Federal Emergency Management Agency (FEMA) subsidized flood insurance program, development is prohibited within the 100-year flood plain. Specifically, these communities must have a flood management plan and related ordinance in place for developers to obtain flood insurance through FEMA, the sole purveyor of subsidized flood insurance. The flood management plan and ordinance cannot allow development within any special flood hazard area, defined as the 100-year flood plain.

For developers and communities that do not need or want to participate in FEMA's subsidized flood insurance program, development can occur within the 100-year flood plain. However, on average, this development would likely be prohibitively expensive to undertake relative to other locations given the cost of gaining entitlements, including engineering, planning, administration, and construction of the mitigation requirements. This assumption has been verified with private real estate developers and civil engineers and is consistent with SANDAG's data of developable land within their Series 12 Regional Growth Forecast.

Other constraints, including land with "slope issues" and unusually or inadequately configured parcels of land, have not been excluded from the analysis.

Comment 58: One commenter asked why 23,000 ac (9,308 ha) were identified as baseline economic costs, when there are 15,524 developable ac (6,282 ha) in existing HCP boundaries, plus 1,844 buffer ac (746 ha), for a total of 17,368 ac (7,029 ha).

Our Response: Based on the May 2010 DEA, the 23,000 baseline acres (9,308 ha) includes the following components: (1) Developable HCP acres (15,524); (2) 80 percent of developable acres within riparian habitat (buffer) (1,844 * 80 percent = 1,475); and (3) 15 percent of developable acres outside of riparian habitat (40,003 * 80 percent = 6,000). These three components equal 23,000 baseline developable acres (9,308 ha). The definition of baseline acreage is based on our estimates incremental impacts (*see* Appendix H of the DEA), which identifies the proportion of acreage within and outside of riparian habitat that would likely result in a positive arroyo toad survey (i.e., at least one arroyo toad is present). A graphical representation of the methodology used to determine baseline acres is shown in Exhibit 1–1 of the DEA and a detailed description of the methodology is also provided in Chapter 1. Adding developable acreage in existing HCP boundaries (15,524 ac (6,282 ha)) plus developable land within the 1,844 ac (746 ha) buffer does not account for the application of proportional acreage within and outside of riparian habitat that are estimated to represent the presence of arroyo toads (i.e., 80 percent of acreage within the buffer and 15 percent of acreage outside of the buffer). Although these acreage estimates have now changed with the inclusion of updated SANDAG projections and ownership data in the FEA, the methodology remains the same.

Comment 59: One commenter stated that the DEA uses anecdotal evidence to support a 1.5:1 mitigation ratio. The commenter believes anecdotal evidence indicated that 2:1 is more often the mitigation ratio, and that the DEA should include a more scientific basis for this estimate.

Our Response: The mitigation ratio used in the DEA was based on the best available scientific and commercial data, which is the consultation history spanning from 1994 through 2009. We believe the 1.5:1 mitigation ratio is appropriate and continue to use this ratio in the FEA.

Comment 60: One commenter stated that the full 1.5:1 offsetting ratio is not applied to the amount of developable land that the DEA assumes to be used to offset development impacts.

Our Response: Sixty percent of offsetting compensation is assumed to occur "on-site" or within the acreage forecasted to be developed. The remaining 40 percent of off-setting compensation is assumed to occur within suitable arroyo toad habitat within the 100-year flood plain. Specifically, applying a 1.5:1 mitigation ratio to the updated projected developable acreage in the FEA (7,602 ac (3,076 ha)) yields about 11,400 ac (4,613 ha) projected to be set-aside, 40 percent of which will occur within the 100-year flood plain (about 4,600 ac (1,862 ha)). There are about 14,000 ac (5,666 ha) located in the 100-year flood plain to accommodate this offsetting compensation acreage. An explanation of this assumption is included in the FEA.

Comment 61: One commenter believed the DEA contains an unsupported assumption that only 40 percent of all mitigation land would be within the 109,110 ac (44,155 ha) of lands that make up the proposed critical habitat designation. The commenter asked why this would not be 100 percent of all mitigation lands.

Our Response: Sixty percent of offsetting compensation is assumed to occur "on-site" or within the acreage forecasted to be developed. The remaining 40 percent of offsetting compensation is assumed to occur within suitable arroyo toad habitat within the 100-year flood plain. Please refer to our response to Comment 61 above.

Comment 62: One commenter stated that the DEA incorrectly assumed that if land could not be developed in one part San Diego County, the development could be transferred to another area in

the County that would be distinctly different, or that infill densities could be increased.

Our Response: The FEA includes an analysis of substitutability as a basis for determining the potential extent of market impacts, rather than as a means for quantifying costs. To determine the significance of arroyo toad-related project modifications for regional real estate markets, the FEA evaluates the regional significance of the set-aside with the total projected development in each county. As shown in Table 2–8 of the FEA, the estimated on-site incremental set-aside represents about 0.6 percent of future countywide growth (0.9 percent in total, including baseline). In San Diego County, the estimated on-site incremental set-aside represents about 1.4 percent of future countywide growth (2.0 percent in total, including baseline). These estimates may overstate the percentage of growth affected in San Diego County because they do not take into account opportunities for adaptation by developers (such as construction in areas of the county not currently forecast for development, infill development, or more dense development). Thus, the set-aside associated with arroyo toad protection is not expected to have a measurable impact on the amount of new housing constructed or housing prices. Calculations of land value losses do not consider potential offsetting increases in the value of substitute parcels located outside of critical habitat.

Comment 63: One commenter stated that there were several places in the DEA where discrepancies existed between tables and text, between different tables, or between different parts of the text. There are other places where findings are provided and not adequately supported by explanations or tables that were cited.

Our Response: Where appropriate, the FEA has been updated to resolve any identified inconsistencies. Additional text has been added to further explain findings or assumptions.

Comment 64: One commenter stated that property values in the DEA were determined on a countywide basis, using "typical" housing developments and mean rents. The commenter believed the sites identified as habitat may not conform to these averages. Furthermore, the commenter believed the DEA should have included alternative development scenarios, and the exclusion of condominiums in the projection of housing development was inaccurate.

Our Response: The FEA uses an average single-family residential housing value to determine residential residual land value, reflecting the most likely type of residential housing likely to be developed. We recognize that there are a broad range of housing types that will be constructed in the areas that were proposed as critical habitat, ranging from multifamily housing units (such as condominiums) to large, low-density homes. The average residential residual land value takes into account that some of these housing types will have a lower value, while other housing types will have a higher value relative to the assumption used in the FEA. The FEA has been updated to describe this assumption.

Comment 65: One commenter stated that if condominiums are excluded from the projection of housing development in the DEA, then we should ensure that housing values do not reflect the value of condominium units.

Our Response: Housing values reflect single-family detached homes only.

Comment 66: One commenter believed the industrial lease rates were too low in the DEA, assuming a "reasonable share of industrial development" would be planned industrial or research and development, which command higher lease rates.

Our Response: The DEA utilized general development projections obtained from regional planning agencies, which do not identify the specific sub-types of development (i.e., research and development is a sub-type of industrial development). Identifying specific sub-types of development is beyond the scope of the economic analysis. It is assumed that, on average, the mix of industrial development planned in the areas proposed for critical habitat would be similar to the mix of industrial development in each county. Thus, we believe using average industrial lease rates is an appropriate assumption.

Comment 67: One commenter believed the developer's rate of return of 15 percent (as described in the DEA) should apply only to the developer's investment in the project, which is not 100 percent. The commenter stated that after accounting for debt funding (at an average interest rate of 6.375 percent) on approximately 75 percent of a project, the discount rate should be reduced to 8.5 percent.

Our Response: The FEA has been updated to reflect a developer's nominal discount rate of 8.5 percent.

Comment 68: One commenter believed the DEA ignored impacts on agricultural operations, and that the water costs allocable to agriculture in the water section had nothing to do with the need to develop an alternative water supply for agriculture, which are costs that pertain only to water that needs to be replaced due to controlled releases associated with habitat protections. The commenter stated that new agricultural installations require a local permit in San Diego County that would be subject to CEQA, and subject to scrutiny by the Service should the land be disturbed. In addition, the commenter believed the DEA ignores the economic impacts of harvested agricultural output lost annually.

Our Response: The FEA evaluates impacts of the critical habitat designation on the water supply to agricultural operations in Chapter 3. However, the FEA appropriately focuses on the value of resources potentially removed from production rather than the value of the potential reduction in total output from industries that use these resources. The total potential loss in output from "downstream" industries as a result of reduced water supply would not be an appropriate measure of the loss in "social welfare" because: (1) This output also requires additional inputs that represent a cost; and (2) downstream industries may adjust their factor inputs (grow less water intensive crops) in response to changes in water supply.

In the past, agricultural operations have competed for water with urbanized land uses. However, until recently, agricultural lands have steadily declined in part because of higher land values associated with a conversation to urbanized land uses. Although this trend has abated slightly in conjunction with the economic downturn, an overall continued decline is expected over the long term.

Comment 69: With respect to delay impacts as described in the DEA, one commenter stated that the developer does not lose the full value of his land for 2 years because he regains the use of that land in the third year; instead, the developer loses the return on the land above the natural appreciation. The commenter believed the DEA overestimates delay impacts.

Our Response: We agree with the commenter that delay costs were overstated in the DEA. We updated the calculations in the FEA to reflect developers' opportunity cost of delayed returns on investment during the delay period.

Comment 70: One commenter stated that the Service's assumption that delays will stop after 2 years is questionable.

Our Response: The DEA assumes that in most cases, CEQA compliance requirements related to the critical habitat designation would become familiar, and after a period of 12

months, applicants would incorporate these requirements into their CEQA documents.

Comment 71: One commenter believed the assumption identified in the DEA to prepare an Environmental Impact Report (EIR) of $56,000 is too low, and that the cost to prepare an EIR is usually between $100,000 and $200,000.

Our Response: The DEA examines impacts on both large and small projects through CEQA. Consultants who specialize in EIRs agreed that proposed critical habitat adds no measurable CEQA-related costs for large projects that are already required to comply with CEQA statutes. For small projects, the DEA assumes that some projects will be required to prepare an EIR when they could otherwise claim a categorical exemption. Further, small projects that submitted either a mitigated negative declaration or a negative declaration would be required to prepare an EIR. The cost assumptions reflect the incremental cost of preparing these documents above what they already would have been required to prepare.

Comment 72: One commenter stated that Tables 6–2 and 6–3 (estimated CEQA costs) in the DEA appear inaccurate and use faulty assumptions about the cost of producing CEQA documents. The commenter believed there was no documentation regarding CEQA costs, and that there was no support for the assumption that a critical habitat designation alone would upgrade the CEQA document to a more robust environmental review.

Our Response: In Table 6–2 and 6–3 of the DEA, the total annual number of CEQA documents in a critical habitat designation does not equal the sum of their respective columns because of fractional numbers. The FEA has been updated to show each fractional number to the nearest tenth. As noted in the DEA and FEA, the costs associated with a notice of exemption, negative declaration, and EIR are based on personal communication with three consultants who specialize in EIRs. These consultants were contacted as part of the development of the 2005 DEA; the current 2010 DEA escalated these cost assumptions to 2010 dollars using a Consumer Price Index (CPI). Because there is no empirical evidence to support the assumption that a critical habitat designation would necessitate a more robust environmental review for small projects, the DEA assumes the "worst case" scenario that all small projects are affected.

Comment 73: One commenter believed the cost and time required to prepare an EIR would increase substantially even for those projects already requiring an EIR due to the need to prepare additional surveys and conduct additional analysis of arroyo toad impacts. Further, the commenter stated that the DEA incorrectly assumes that substantial increases in CEQA costs would only occur for projects that would not require an EIR absent the critical habitat designation.

Our Response: Consultants who specialize in EIRs agreed that proposed critical habitat adds no measurable CEQA-related costs for large projects that are already required to comply with CEQA statutes. Please also refer to our responses to Comments 71 and 72.

Comment 74: One commenter believed the two types of delay identified in the DEA would be required regardless of whether or not critical habitat is designated.

Our Response: The DEA assumes that delay costs are only incurred for a small percentage of projects that are already entitled or nearly entitled and where the arroyo toad has not previously been identified through surveys. In other words, these projects have nearly completed the necessary environmental reviews assuming the arroyo toad is not present at the site. The delays are caused by the new information provided by critical habitat regarding the potential presence of the arroyo toad and value of the habitat, regardless of the outcome of previous surveys.

Comment 75: Three commenters stated that the DEA did not include an analysis of potential uncertainty and stigma costs, which could be substantial. They recommended that the Service should conduct a literature review or additional research regarding the effects of uncertainty and stigma on other endangered species.

Our Response: We have reviewed the literature and are unaware of any published studies estimating the stigma effects of critical habitat designation. Furthermore, no published literature exists estimating the economic impact of regulatory uncertainty that may result from the designation. New, primary research on these issues is beyond the scope of the economic analysis. Because data are not readily available to quantify potential impacts from regulatory uncertainty and stigma, these impacts are discussed qualitatively in Chapter 6 of the DEA.

Comment 76: Given the ongoing financial situation in our country, one commenter believed that many of the cost assumptions relied on in the DEA may no longer be valid, particularly with regards to the real estate sector. Further, the commenter believed the assumptions regarding the discount rate for future costs and the time value of money should be reevaluated.

Our Response: Key assumptions in the analysis of potential impacts to real estate development include the amount, pace, and location of future development activity and current land values. The economic analysis relies on the best readily-available data sources, including the Santa Barbara County Association of Governments Regional Growth Forecast (2000–2030), the Southern California Association of Governments (SCAG) Adopted 2008 RTP Growth Forecast, and the SANDAG Series 12 Regional Growth Forecast, which project the amount and location of future development. These projections were adopted in 2007 (Santa Barbara), 2008 (SCAG), and 2010 (SANDAG) and rely on data and the best judgment of local and regional planners in the respective communities. We agree that the pace of such development is likely influenced by current economic activities; however, we have no empirical data with which to make assumptions about when the development is most likely to occur. Therefore, we assume development is distributed evenly throughout the timeframe of the projections. Finally, residual land values are based on current 2010 data obtained from reputable industry sources (DataQuick and CB Richard Ellis).

Throughout the report, the economic analysis estimates the present value of future impacts using discount rates of 3 and 7 percent. The U.S. Office of Management and Budget (OMB) requires Federal agencies to report results using these rates (*see* OMB Circular A–4, 2003).

Comment 77: One commenter stated that there may not be funding available for the conservation efforts of established HCPs given that housing and development "starts" and home prices in southern California continue to decline.

Our Response: It is beyond the scope of the economic analysis to determine whether current development projections and estimated residual land values will impact the funding available for the conservation efforts of established HCPs. Furthermore, conservation efforts undertaken as a result of HCPs are considered to be baseline costs and would not be affected by the designation of critical habitat.

Comment 78: One commenter stated that economic impacts to mining projects and grazing shown in the DEA are unrealistic. Specifically, the commenter stated that impacts to mining projects depend largely on an assumption that demand for concrete

and other building materials would continue at a rate established during a housing boom in 2005. Further, the commenter stated that with respect to impacts to grazing, surveys, and fencing have already been implemented on a majority of allotments where arroyo toad occurs. While some fences may still need to be built, the commenter believed that maintenance of fencing could be an incremental cost; however, the commenter believed it is likely that this incremental cost would also occur in the absence of a critical habitat designation in order to protect arroyo toad as a listed species. The commenter believed that wholesale replacement of fencing in response to a critical habitat designation is unlikely.

Our Response: The assumptions used to estimate the economic impacts to mining and grazing industries are conservative and may overstate impacts. However, these impacts represent a nominal portion of total incremental economic impacts. The estimated incremental economic impacts of both mining and grazing activities equal about 0.15 percent of total incremental impacts.

Comment 79: The commenters believed that the assumption that 80 percent of floodplain acreage is occupied by arroyo toads and 15 percent of upland acreage is occupied by arroyo toads is overstated. By generally assuming these occupancy rates, the commenters believed the DEA does not properly account for areas that are not actually occupied by the species, but which will require intensive surveying due to critical habitat designation.

Our Response: Occupancy rates were estimated using the following information: In studies by Griffin *et al.* (1999, pp. 1–66), arroyo toads were found to spend most of their time during the breeding season within the stream channel or on adjacent sandy terraces, but they also used upland areas such as campgrounds and even agricultural fields. Using our best professional judgment, the likelihood of finding arroyo toads in breeding habitat during the breeding season (typically between March and early June, although the breeding season may occur earlier or later, depending on weather conditions, elevation, and latitude) would be approximately 80 to 85 percent. During the non-breeding season, the likelihood would drop to approximately 15 to 20 percent because toads would most likely be burrowed in upland habitat.

Arroyo toad juveniles and adults use upland areas adjacent to breeding habitat for foraging and wintering. Griffin *et al.* (1999, pp. 1–66) also found that arroyo toads seemed to select habitat more according to vegetation structure than vegetation type; dense and tall vegetative structure was preferred least of all. In a study using pitfall traps, Holland and Sisk (2001, pp. 1–32) captured arroyo toads primarily within the stream channel and riparian habitats, but approximately 18 percent of the adult and subadult captures averaged across all 3 years of the study were in upland habitats (11 percent at one site and 24 percent at the other). Using our best professional judgment, the likelihood of finding arroyo toads in upland habitats would be approximately 15 to 20 percent.

Comment 80: One commenter stated that the offsetting compensation ratio for Rancho Las Flores shown in the DEA is artificially low because the number of impacted acres is artificially high. Thus, the commenter believed the resulting offsetting compensation ratio used in the analysis is flawed.

Our Response: The comment did not provide the correct number of affected acres for use in the economic analysis; therefore, the FEA continues to rely on acreage estimates obtained from the Rancho Las Flores consultation for preparation of the 2005 DEA.

Comment 81: One commenter stated that a cost-effectiveness approach is the appropriate framework of economic science for weighing the economic costs and benefits of a critical habitat designation.

Our Response: OMB's Circular A–4 (p. 10) defines the "best practices" for preparing economic analyses of Federal regulations. It states that for all major rulemakings, the Federal agency should carry out a benefit-cost analysis. If some of the primary benefit categories cannot be expressed in monetary units, the Federal agency should also conduct a cost-effectiveness analysis. In unusual cases where no quantified information on benefits, costs and effectiveness can be produced, the regulatory analysis should present a qualitative discussion of the issues and evidence.

Both benefit-cost analysis and cost-effectiveness analysis require measurement of the effectiveness of the regulation in quantitative terms. Benefit-cost analysis simply takes the next step of monetizing the value to the public of the improvements. As discussed in Chapter 8 of the FEA, neither monetization nor quantification of benefits is possible because data on the incremental change in the probability of arroyo toad conservation that is expected to result from the critical habitat designation do not exist. Therefore, potential benefits are discussed qualitatively.

Comment 82: One commenter stated that the DEA should have allocated a portion of the costs of creating and modifying HCPs as an incremental impact because HCPs are often preemptively developed as a strategy to achieve regulatory relief.

Our Response: While it is possible that the HCPs were created in part in anticipation of a critical habitat designation, these costs have already been incurred and the FEA does not include historical costs. Further, the decision of whether or not to designate critical habitat will not affect these costs; thus, costs already incurred are attributable to the baseline. Future baseline costs associated with modifying or maintaining HCPs are reflected in the estimated project modification costs shown in Table 2–13 of the DEA.

Comments Regarding Water Supply Framework and Assumptions in the DEA

Comment 83: With regard to economic impacts to water supply, three commenters stated that the DEA assumes that all impacts are baseline. The commenters explain that prior to a critical habitat designation, a Service permit is required if arroyo toads are present or use the land with sufficient regularity that it is likely to be present during any reasonable span of time, and after critical habitat is designated an agency must consult with the Service if the land is suitable for the arroyo toad. The commenters believed that such additional costs are incremental, not baseline. One of the commenters indicated that since the arroyo toad was listed in 1995, they do not believe that water management changes in San Diego have been implemented as a result of the listing. Thus, the commenter believed that future mandated water management changes would be the result of a critical habitat designation and should be assigned as incremental costs.

Our Response: Comment letters indicated that water agencies have not had to implement any project modifications or consult with the Service as a result of listing the arroyo toad as an endangered species in 1995. Discussions with affected water agencies conducted as part of the 2005 FEA (and included in the updated 2010 DEA) describe a series of project modifications implemented following the listing of the arroyo toad. For example, the California Department of Water Resources (DWR), which manages Pyramid Lake and releases water to Piru Creek, met with the Service, CDFG, and the United Water Conservation District

(UWCD) after the species was listed and mutually agreed to a flow release schedule and operating guidelines for California State Water Project (SWP) water deliveries. Thus, the FEA maintains the assumption that impacts to water supply are attributable to the baseline.

Comment 84: One commenter stated that the DEA assumes that Santa Barbara households incur 25 percent of water costs, which differs from the 64 to 68 percent range identified for other counties.

Our Response: Water consumption percentages by sector are based on data from publicly available software (IMpact Analysis for PLANing or IMPLAN) and data that are used to measure the economic impacts of a given change on a local or regional economy. It is reasonable to conclude that these factors vary by county depending on the mix of land uses contained within each county. As shown in Table D–2 of the DEA, Santa Barbara households account for 25 percent of the demand for water with all other sectors accounting for the remaining 75 percent of water demand, excluding the trade sector.

Comment 85: One commenter stated that the regional multiplier assumption for water supply impacts of 1.21 was too low. Further, the commenter stated that overall regional multipliers are approximately 2:1 when all direct, indirect, and induced expenditures are included.

Our Response: The FEA examines impacts to water supply by estimating the costs associated with potential investments in water supply infrastructure and increased water prices and a corresponding loss in consumer surplus as shown in Table 3–4. In addition to reduced consumer surplus, an increase in the price of water may reduce the purchasing power of county households and increase business production costs. These regional economic impacts are shown in Table 3–5 and Table 3–6 of the FEA. The total output impacts shown in Table 3–6 of the FEA are based on household output per million dollar change in final household demand (about 1.5 for each county), county consumption factors, and impacts by sector. The impacts by sector are estimated by multiplying the annual costs by county by the water consumption factors derived from IMPLAN, publicly available software and data that are used to measure the economic impacts of a given change on a local or regional economy. The FEA continues to rely on the data obtained through IMPLAN.

Comment 86: One commenter believed the use of 2004 averages for costs applicable to dams and reservoirs that were not a part of that prior study is not justified.

Our Response: The use of 2004 averages for costs applicable to dams and reservoirs that were not part of the prior study may understate the economic impacts to water supply. However, as discussed in our response to Comment 83, the FEA assumes that economic impacts to water supply are attributable to the baseline. The methodology employed in the FEA prioritized research efforts on evaluating costs that would result from critical habitat designation (incremental costs). However, the FEA includes costs applicable to the additional dams and reservoirs, using 2005 averages as a proxy, to provide an indication of the magnitude of these baseline impacts.

Comment 87: One commenter stated that there appears to be an error in the calculation of discounting annual water costs.

Our Response: The FEA has been updated to correct an error in the estimate of total water impacts in Table 3–4.

Comment 88: One commenter stated that the discount rate of 7 percent used in estimating water impacts is too high.

Our Response: OMB requires Federal agencies to report results using discount rates of 3 and 7 percent (*see* OMB Circular A–4, 2003).

Comment 89: Two commenters believed the estimated cost of replacement water is too low. One commenter indicated that replacement water costs are likely approximately $600 per acre-foot, or $60 per acre-foot higher than indicated in the DEA. Another commenter indicated that actual 2010 costs are $690 per acre foot for untreated water and $905 per acre foot for treated water. These amounts are projected to increase to $1,634 and $2,016 per acre foot, respectively, by 2025.

Our Response: The FEA incorporates revised replacement water costs. Specifically, Table 3–4 utilizes a replacement water cost of $905 per acre foot for each affected activity/dam in San Diego County. This assumption reflects the cost of replacement water for treated water, which is higher than the cost of replacement water for untreated water. Usage of this assumption may overstate water supply impacts; however, there is no readily available data on the percentage of treated versus untreated water. It is important to note, though, that these impacts are attributable to the baseline as discussed in our response to Comment 83.

Comment 90: One commenter believed the DEA failed to acknowledge or analyze information provided by the Ramona Municipal Water District regarding the economic and public service impacts related to wastewater services—specifically, the expansion of the Santa Maria Wastewater Treatment Plant. The commenter stated that impacts include: Limiting the development projected by the County General Plan, loss of property value that could reach $70 million if property cannot be developed, and potential increases in consumer rates.

Our Response: These economic impacts are now described in Chapter 5 of the FEA.

Comment 91: One commenter stated that the DEA's reliance on historical data to calculate the likelihood of Sweetwater's water releases is invalid. For example, the commenter stated that the DEA falsely assumed that Sweetwater only conducts water transfers outside typical breeding season on a limited basis; those criteria have been superseded by Sweetwater's 2006 Standard Operating Procedure, which assists in minimizing impacts to the arroyo toad from Sweetwater's water transfers, but allows for more operational flexibility resulting in greater water release volumes, a greater volume of water to be replaced, and higher costs than shown in the DEA.

Our Response: We recognize that operations at Sweetwater have changed since the 2005 FEA was prepared. In order to incorporate these changes in the current FEA, we would need to collect data that are not readily available. Based our evaluation of information concerning potentially-affected water agencies, the FEA assumes that impacts to water supply are attributable to the baseline given the presence of arroyo toads downstream. Because the FEA assumes that water supply impacts are attributable to baseline, we prioritized our research efforts and focused on updating those costs and assumptions that would be incremental to the baseline. Thus, the FEA includes updated cost estimates but maintains those assumptions obtained for the 2005 FEA. These costs are included in the FEA to provide context, rather than for decision-making purposes.

Comment 92: One commenter believed that the DEA failed to adequately account for the additional impacts to Sweetwater associated with any modification of current Loveland dam operations, time delays, and regulatory uncertainties. The commenter acknowledged that $2 million in annual economic impacts are

shown in Table 3–4 of the DEA, but the commenter believed this number assumes that costs have not increased in the past 6 years and would not increase over the next 25 years. The commenter stated that there are no releases from the Sweetwater Dam except infrequently in the event it overtops in an El Niño winter.

Our Response: We recognize that operations at Sweetwater have changed since the 2005 FEA was prepared. In order to incorporate these changes in the current FEA, we would need to collect data that are not readily available. Please refer to our response to Comment 91 for additional discussion.

Comment 93: Four commenters stated that the DEA incorrectly assumes that water supplies would be available without adequately considering the regulatory and environmental restrictions that have impacted sources of imported water. They stated that water supplies may have already been committed to another purpose, and that the DEA should assume all lost water will be replaced through the development of new substitute sources.

Our Response: We recognize that the regulatory and environmental environment has changed since the 2005 FEA was prepared. Access to substitute water sources is more difficult, which would increase costs. Because the FEA assumes that some water will be replaced through the development of new substitute sources, costs may be understated. However, assuming 100 percent of lost water will be replaced through the development of new sources likely overstates costs. In order to incorporate an updated assumption regarding the amount of water to be replaced through new substitute sources, we would need to collect substantial data. Based on our evaluation of the best available information and potentially-affected water agencies, the FEA assumes that impacts to water supply are attributable to the baseline given the presence of arroyo toads downstream. Because the FEA assumes that water supply impacts are attributable to baseline, we prioritized our research efforts and focused on updating those costs and assumptions that would be incremental to the baseline. Thus, the FEA continues to rely on assumptions obtained for the 2005 DEA.

Comment 94: One commenter believed there is some question regarding whether Metropolitan Water District (MWD) facilities are included in Unit 23. If so, the commenter believed the DEA underestimates the cost of new infrastructure at $451,500. The commenter instead estimates a cost of $5,780,000 for new infrastructure for water conveyance to avoid discharges into the Whitewater River; if not, the DEA should omit these costs.

Our Response: We evaluated the information provided by the commenter and reevaluated information in our files and determined that MWD facilities are not included in Unit 23. Thus, the FEA has been updated to omit these costs.

Comment 95: One commenter estimated that $350,000 in incremental costs was not included in the DEA for Subunit 6b. The commenter stated that these costs pertain to impacts to the operation and maintenance of Metropolitan Water District's facilities, associated right-of-way, monitoring, and development and implementation of an HCP.

Our Response: It is unclear why the impacts described by the commenter would result from this critical habitat designation, rather than the listing of arroyo toad. As such, the FEA does not include these costs.

Comments Regarding Transportation Impacts

Comment 96: Regarding transportation impacts, one commenter stated that the upland and wetland habitat restoration costs per acre are too low. The commenter believed that instead of using $14,800 per acre, the DEA should have used an assumption of $50,000 per acre, based on research that indicates upland habitat restoration costs range from $30,000 to $50,000 per acre and riparian habitat restoration costs range from $100,000 to $250,000 per acre.

Our Response: The FEA has been updated to reflect an average habitat restoration cost of $50,000 per acre. This assumption is consistent with data derived from the Caltrans Endangered Species Act Annual Impact and Mitigation Report, described in the California Red-Legged Frog Economic Analysis Final Report, dated December 11, 2009.

Comment 97: Four commenters stated that the DEA repeats the error of the 2004 DEA by omitting the State Route 241 Completion Project (aka Foothill-South Transportation Corridor) from the evaluation of transportation projects that would experience significant economic impacts.

Our Response: We have become aware that the proposed State Route 241 Completion Project does not meet the requirements of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), and the California Coastal Commission has denied a permit for this project as currently planned based on concerns related to a portion of the project. Based on California Coastal Commission's concerns, it appears that no viable project alternatives exist at this time and the proposed project as currently designed cannot move forward without project modification. Therefore, this project has not been included in the FEA.

Comment 98: Four commenters stated that the DEA incorrectly excludes transportation projects that are part of regional and interregional transportation plans.

Our Response: We recognize there are some transportation projects that are part of regional and interregional transportation plans (SCAG, SANDAG, and SBCAG Regional Transportation Improvement Plans and Regional Transportation Plans) that overlap with the critical habitat designation. The data required to estimate the economic impacts of these transportation projects is not available; however, the FEA has discussed these projects qualitatively in Chapter 5.

Comment 99: One commenter stated that the proposed widening of State Route 138 near the Rancho Las Flores Planned Community may overlap with Unit 22, although the DEA appears to consider this project confined to Unit 20.

Our Response: The FEA utilizes the California Transportation Investment System (CTIS), a geographic information systems (GIS)-based application, that provides spatial data of planned and programmed transportation projects through 2030. An analysis of the CTIS data shows the proposed widening of State Route 138 overlapping with Unit 20 only.

Comment 100: One commenter believed the DEA overlooks the compliance costs associated with State Route 138 that would be imposed on the Rancho Las Flores Planned Community as it becomes developed.

Our Response: The FEA has been updated to include development proposed in the Rancho Los Flores Planned Community. Thus, in Chapter 2 (footnote 54) of the FEA, impacts pertaining to this development project are identified, including: Loss in land value; other project modifications; and delay costs. CEQA and administrative costs are based on total acreage designated, rather than acreage designated for development.

Comments Regarding Development Projections in the DEA

Comment 101: One commenter stated that the DEA failed to evaluate State and local building ordinances that could limit development, which would lower the estimated economic impacts.

Our Response: As mentioned in our response to Comments 56 and 66, the DEA relies on development projections furnished by regional forecasting agencies. These agencies incorporate local land use projections from city planners who are aware of State or local building ordinances affecting future development.

Comment 102: One commenter stated that Rancho Mission Viejo development has been approved by Orange County in 2004 and the Service in 2007 to consist of 816 developable acres (330 ha), a far greater amount than the 65 ac (26 ha) shown in the DEA for Unit 10.

Our Response: Specific information regarding the type and location of development was not provided in the public comment letter. However, we obtained a map and project description found in "The Ranch Plan Planned Community Program Text" as adopted by Ordinance 04–014 on November 8, 2004, by the Orange County Board of Supervisors. Based on the information contained within this document, we determined that planned development overlapping with Unit 10 is located within the Orange County Southern Subregion HCP. Although it is difficult to confirm the number of overlapping acres, as a very conservative assumption, 800 additional residential acres (324 ha) in Unit 10 have been included in the baseline scenario in the FEA.

Comment 103: One commenter believed the DEA incorrectly stated that there would be no economic impacts to development in Unit 22. The commenter stated that development within the Rancho Las Flores Planned Community and Summit Valley Ranch projects is expected to occur within this critical habitat unit over the next 20 years.

Our Response: Based on the Rancho Las Flores Planned Community (RLFPC) boundary, we were able to determine that 2,624 ac (1,062 ha) of the 9,867-ac (3,993-ha) project overlap with proposed Unit 22, which translates into approximately 27 percent of the project. Because the comment letter did not provide details regarding the type of development within the overlapping acreage, we uniformly applied the percentage of overlap to the residential and nonresidential acreage identified in the City of Hesperia Draft General Plan Update Technical Background Report, dated January 2010. There are 3,810 ac (1,542 ha) of residential, 314 ac (127 ha) of town center (retail), and 80 ac (32 ha) of commercial (office) envisioned in the RLFPC. Applying the percentage of the project overlapping with proposed Unit 22, the FEA has been updated to include the following acreages: 1,029 ac (416 ha) of residential, 85 ac (34 ha) of retail, and 22 ac (9 ha) of office. As a conservative assumption, the FEA includes all development in the RLFPC under the incremental scenario.

Since no information was provided in the comment letter regarding the amount and type of overlapping acreage in the Summit Valley Ranch Specific Plan (SVRSP), the FEA does not include development projections associated with this project. However, while the regional planning agency development projections indicate no development in this census tract, it is clear that proposed Unit 22 overlaps with the SVRSP. Thus, the FEA describes the fact that Unit 22 would have greater economic impacts than shown; however, these impacts cannot be quantified because development data are not available.

Comment 104: One commenter stated that the DEA identifies 38 ac (15 ha) of developable land in Unit 8. Instead, the commenter believed the projected development should be estimated as least 74 ac (30 ha), as approved under the East Orange Planned Community.

Our Response: Although it is difficult to estimate, 36 additional residential acres (15 ha), as a very conservative assumption, in Unit 8 have been included under the incremental scenario in the FEA.

Comments Regarding Benefits of Designation as They Relate to the DEA

Comment 105: One commenter stated that the aesthetic benefits can be quantified by studying willingness-to-pay for environmental benefits in comparable regions. Similarly, the commenter believed the regional economic benefits can be quantified by researching tourism and visitation, and that mentioning these benefits without conducting a study is inappropriate. Another commenter also stated that the DEA failed to quantify benefits and ancillary benefits, and dismissed benefits because they believed the benefits are not the purpose of a critical habitat designation. Further, the second commenter stated that the DEA fails to: (1) Assess the benefits of maintaining riparian areas and adjacent upland habitat; (2) mention or assess the economic benefits accruing from preservation of native habitat for other species; and (3) account for the benefits of maintaining contiguous riparian and adjacent upland habitat for other native species that use these areas. Further, the second commenter believed the DEA fails to mention that critical habitat designation would reduce uncertainty by identifying areas that are likely occupied by the arroyo toad or necessary to its recovery.

Our Response: As described in Chapter 7 of the DEA (now Chapter 8 in the FEA), the primary benefit of critical habitat is to support the conservation of the arroyo toad. This chapter summarizes potential benefits associated with specific arroyo toad conservation efforts such as aesthetic benefits, regional economic benefits, improved water quality and soil productivity, and flood control. The analysis recognizes that these benefits can be measured if sufficient data are available. However, these benefits are not quantified or monetized because to do so requires information on the incremental change in the probability of toad conservation that is expected to result from the designation. Currently, these data are unavailable; no studies exist that provide such information for this particular species. Depending on the project modifications ultimately implemented as a result of the regulation, other ancillary benefits that are not the stated objective of critical habitat (such as increasing the value of homes adjacent to preserved habitat or preserving habitat for other non-listed species) may occur.

Comment 106: One commenter stated that the DEA double-counts property value benefits by including them in the real estate development methodology (and claiming that values and densities would transfer freely throughout the county) and then singles them out as an additional benefit.

Our Response: Property value benefits described qualitatively in Chapter 8 of the FEA focus on potential increase in values for properties adjoining critical habitat. This increase may occur due to the lower density development occurring on critical habitat properties. The commenter is correct in suggesting that if other areas are developed more densely to accommodate housing needs, the net benefit to society may be zero. A discussion of this issue has been added to Chapter 8 of the FEA.

Comment 107: One commenter stated that improved water quality, soil productivity, and flood control should not be mentioned as benefits if costs are not evaluated.

Our Response: The designation of critical habitat is not anticipated to negatively affect water quality, soil productivity, or flood control. Thus, costs to address such issues are not anticipated. Rather, these benefits may arise as a result of project modifications described in the report, for which costs have been estimated (such as costs of conserving land rather than developing it).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under 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' action.

(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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the revised critical habitat designation for the arroyo toad will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small government jurisdictions, including school boards and city and community governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the revised designation of critical habitat for the arroyo toad would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. To estimate the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the arroyo toad. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In the FEA of the proposed revisions to critical habitat, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revisions to critical habitat for the arroyo toad. The FEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in Chapters 2 through 7. The FEA evaluates the potential for economic impacts related to activity categories including real estate development, changes in water supply, grazing and mining activities, road construction projects, utility and other infrastructure projects, CEQA, uncertainty, and delay. The FEA concludes that the incremental impacts resulting from this rulemaking that may be borne by small businesses will be associated only with land development, cattle ranching, and farming. Incremental impacts are either not expected for the other types of activities considered or, if expected, will not be borne by small entities.

As discussed in Appendix A of the FEA, the potential impacts of the proposed revised designation of critical habitat on land developers over the next 25 years would result from lost land value, project modification costs, CEQA costs, delay costs, and administrative costs. Small land developers with projects in the proposed critical habitat designation are expected to bear an annual incremental impact per project of between roughly $800 and $934,000. The number of small land developers affected annually ranges from zero to approximately 1.0 percent of the county total. For those small land developers that are impacted, the average annualized cost per project ranges from less than 0.1 percent to 44.0 percent of the typical annual sales for a small firm in the land subdivision sector.

As discussed in Appendix A of the FEA, the potential impacts of the proposed revised designation of critical habitat on cattle ranchers and farmers would result from future project modifications, such as fencing and water source development. Small cattle ranching businesses operating in the critical habitat designation are expected to bear an incremental impact per project of between roughly $6,300 and $13,700. The number of small cattle ranching operations affected annually ranges from about 0.2 percent to approximately 2.0 percent of the cattle ranching businesses in each county. For those small cattle ranching businesses that are impacted, the average cost per project (*i.e.,* grazing allotment) ranges from less than 0.1 percent to approximately 2.0 percent of the typical annual sales for a small business in the sector.

In summary, we considered whether the revised designation of critical habitat would result in a significant economic impact on a substantial number of small entities. We have identified small businesses that may be affected within the land development, ranching, and farming sectors. We have determined that this designation would not affect a substantial number of land developers, farmers, or cattle ranchers.

For the above reasons and based on currently available information, we certify that the revised designation of critical habitat for the arroyo toad will not have a significant economic impact

on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 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. This revision to critical habitat for the arroyo toad is not considered a significant regulatory action under E.O. 13211. OMB has provided guidance for implementing this Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. As discussed in Appendix A, the FEA finds that none of these outcomes are likely to occur. As such, the final designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

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 tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. "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 section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Non-Federal entities which 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. However, 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) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to project modifications that may need to be made for real estate development; however, these are not expected to affect small governments. Consequently, we do not believe that this final revised critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating revised critical habitat for the arroyo toad in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this final revised designation of critical habitat for the arroyo toad does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this 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 final revised critical habitat designation with appropriate State resource agencies in California; however, we did not receive any comments from State agencies. The majority of land (96 percent) being designated is not State or locally owned and, therefore, the designation has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological 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. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating revised critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the arroyo toad.

Paperwork Reduction Act of 1995

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)

It is our position that, outside the jurisdiction of the Circuit Court of Appeals of the United States 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 assertion was upheld by the Circuit Court of Appeals of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

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

In the proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612), we proposed approximately 1,155 ac (467 ha) in Unit 14 within the Rincon Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Rincon Band of Luiseño Mission Indians; 2,385 ac (963 ha) in Unit 14 within the Pala Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Pala Band of Luiseño Mission Indians; 391 ac (158 ha) in Unit 18 within the Sycuan Band of the Kumeyaay Nation's Reservation and other associated tribal lands owned/managed by the Sycuan Band of the Kumeyaay Nation; 93 ac (38 ha) in Unit 17 within the Capitan Grande Reservation; and 23 ac (9 ha) in Unit 16 within the Mesa Grande Reservation, as critical habitat for the arroyo toad. We worked directly with the tribes to determine economic and other burdens expected to result from critical habitat designation on tribal lands, and as a result of information exchanged, the Secretary is exercising his discretion to exclude all tribal reservation lands meeting the definition of critical habitat for the arroyo toad from this final revised designation under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section above).

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, Ventura Fish and Wildlife Office, or the Field Supervisor, Carlsbad Fish and Wildlife (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

Author(s)

The primary authors of this notice are staff of the Ventura Fish and Wildlife Office and the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for "Toad, arroyo (=arroyo southwestern)" under "Amphibians" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS	.....	.....	.....	.....	.....	.	
*	*	*	*	*	*		*
Toad, arroyo (=arroyo southwestern).	*Anaxyrus californicus*	*U.S.A. (CA), Mexico*	*Entire*	*E*	*568*	*17.95(d)*	*NA*
*	*	*	*	*	*		*

■ 3. In § 17.95(d), revise the entry for "Arroyo Toad (*Bufo californicus*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Arroyo Toad (*Anaxyrus californicus*).

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

(2) Within these areas, the primary constituent elements for the arroyo toad consist of four components:

(i) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

(A) Breeding pools that are less than 6 inches (15 centimeters) deep;

(B) Areas of flowing water with current velocities less than 1.3 feet per second (40 centimeters per second); and

(C) Surface water that lasts for a minimum of 2 months during the breeding season (a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(ii) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(iii) A natural flooding regime, or one sufficiently corresponding to natural, that:

(A) Is characterized by intermittent or near-perennial flow that contributes to the persistence of shallow pools into at least mid-summer;

(B) Maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and

(C) Also modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

(iv) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and connectivity to areas that contain suitable habitat.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5' quadrangles using USDA National Agricultural Imagery Program (NAIP) county-wide MrSID compressed mosaics of 1 meter resolution and natural color aerial photography from summer 2009. Except where otherwise noted, critical habitat units were mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum of 1983 (NAD83) coordinates.

(5) **Note:** Index map 1 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:

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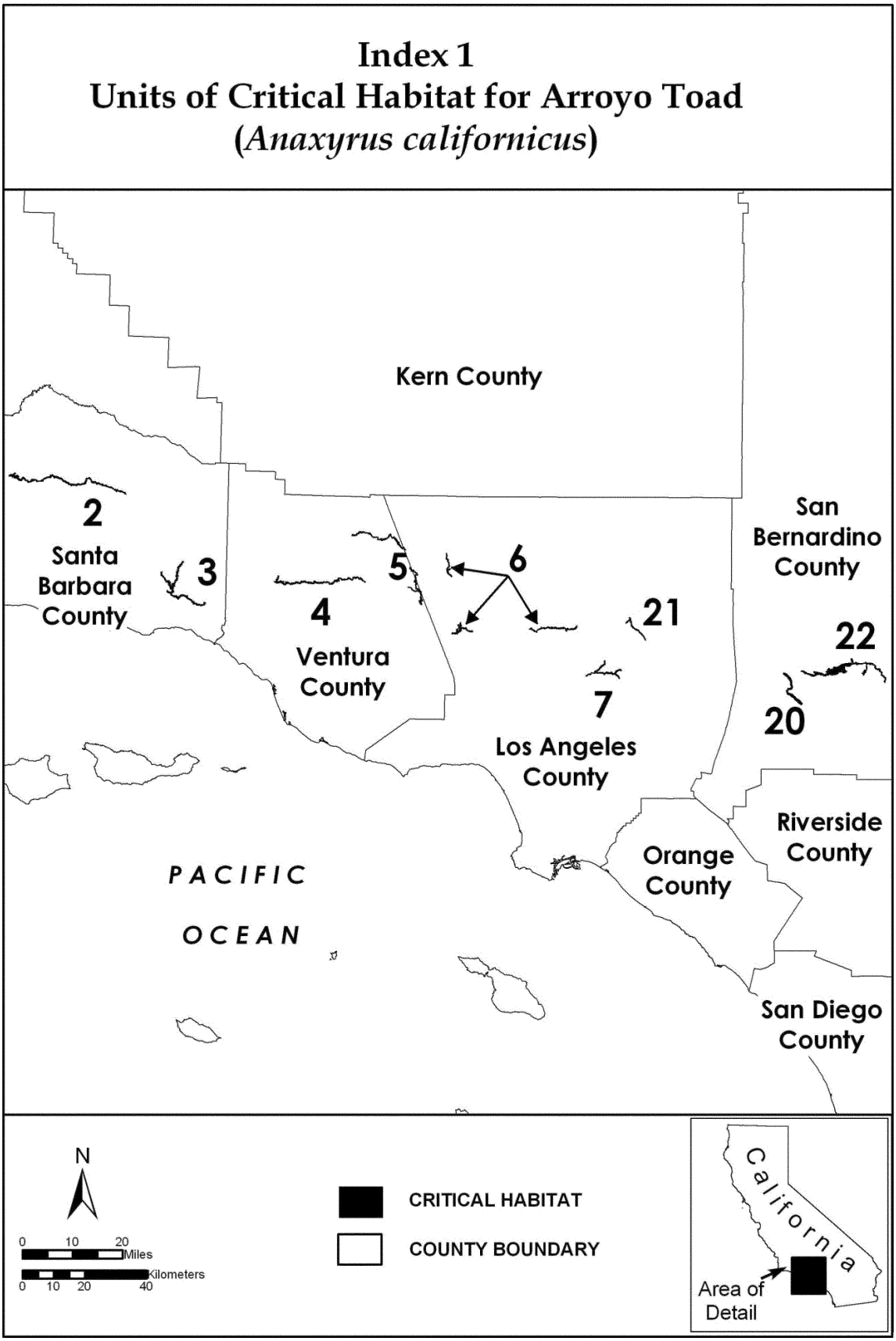
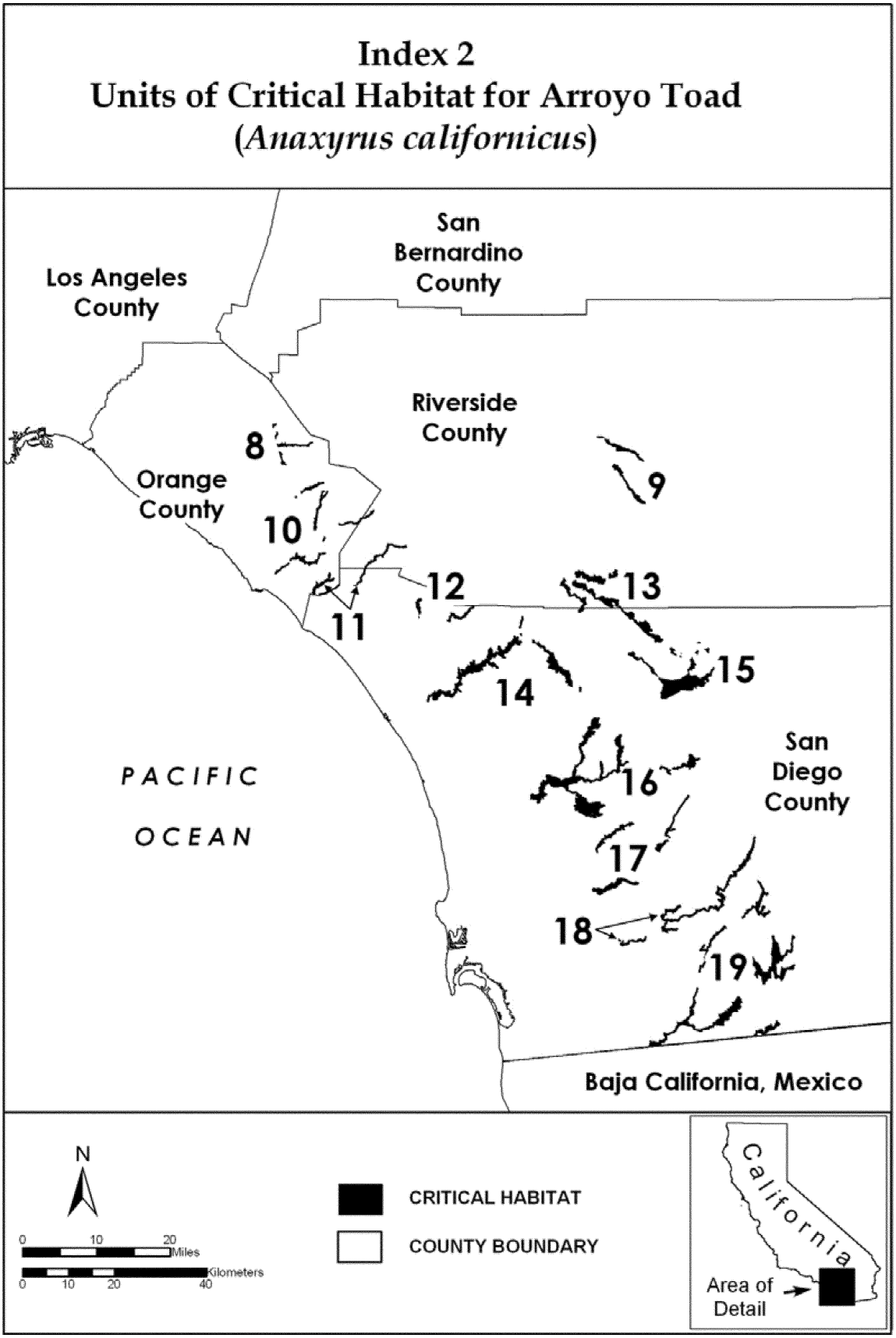

Index 1
Units of Critical Habitat for Arroyo Toad
(Anaxyrus californicus)
Kern County
2
Santa Barbara County
3
4
Ventura County
5
6
21
San Bernardino County
22
20
7
Los Angeles County
Riverside County
Orange County
PACIFIC
OCEAN
San Diego County
N
0 10 20 Miles
0 10 20 40 Kilometers
CRITICAL HABITAT
COUNTY BOUNDARY
California
Area of Detail

(6) **Note:** Index map 2 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:



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(7) Unit 2: Sisquoc River, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Foxen Canyon, Zaca Lake, Bald

Mtn., and Hurricane Deck. Beginning at 120 degrees West Longitude at UTM zone 10, NAD83 y coordinate 3858106, land bounded by the following UTM zone 10, NAD83 coordinates (E, N): 774369, 3858136; 774379, 3857806; 774379, 3857806; 774151, 3857792; 774149, 3857822; 773999, 3857813; 773997, 3857843; 773937, 3857839; 773936, 3857869; 773876, 3857866; 773874, 3857896; 773844, 3857894; 773842, 3857924; 773812, 3857922; 773810, 3857952; 773780, 3857950; 773779, 3857980; 773749, 3857978; 773740, 3858128; 773710, 3858126; 773708, 3858156; 773678, 3858154; 773676, 3858184; 773646, 3858183; 773644, 3858213; 773615, 3858211; 773613, 3858241; 773583, 3858239; 773581, 3858269; 773521, 3858265; 773519, 3858295; 773459, 3858292; 773458, 3858322; 773248, 3858309; 773246, 3858339; 773156, 3858334; 773155, 3858364; 773095, 3858360; 773093, 3858390; 773033, 3858386; 773031, 3858416; 772941, 3858411; 772940, 3858441; 772850, 3858435; 772852, 3858405; 772792, 3858402; 772784, 3858522; 772755, 3858520; 772753, 3858550; 772723, 3858548; 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(ii) Note: Map of Unit 2 is provided at paragraph (8)(ii) of this entry.

(8) Unit 3: Upper Santa Ynez River Basin, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Little Pine Mtn., Hildreth Peak, and Carpinteria, land bounded by the following UTM coordinates (E, N): 262233, 3833176; 262233, 3833146; 262263, 3833146; 262263, 3833116; 262293, 3833116; 262293, 3833086; 262323, 3833086; 262323, 3833026; 262203, 3833026; 262203, 3832996; 262113, 3832996; 262113, 3832966; 262083, 3832966; 262083, 3832936; 261963, 3832936; 261963, 3832876; 261993, 3832876; 261993, 3832846; 261963, 3832846; 261963, 3832786; 261993, 3832786; 261993, 3832666; 261933, 3832666; 261933, 3832636; 261843, 3832636; 261843, 3832666; 261753, 3832666; 261753, 3832636; 261723, 3832636; 261723, 3832576; 261753, 3832576; 261753, 3832486; 261723, 3832486; 261723, 3832456; 261693, 3832456; 261693, 3832426; 261663, 3832426; 261663, 3832396; 261693, 3832396; 261693, 3832336; 261753, 3832336; 261753, 3832306; 261723, 3832306; 261723, 3832276; 261663, 3832276; 261663, 3832246; 261633, 3832246; 261633, 3832216; 261663, 3832216; 261663, 3832186; 261693, 3832186; 261693, 3832066; 261663, 3832066; 261663, 3832006; 261633, 3832006; 261633, 3831976; 261603, 3831976; 261603, 3831916; 261543, 3831916; 261543, 3831886; 261513, 3831886; 261513, 3831916; 261393, 3831916; 261393, 3831946; 261363, 3831946; 261363, 3831976; 261333, 3831976; 261333, 3831856; 261363, 3831856; 261363, 3831706; 261333, 3831706; 261333, 3831676; 261303, 3831676; 261303, 3831616; 261333, 3831616; 261333, 3831556; 261213, 3831556; 261213, 3831496; 261183, 3831496; 261183, 3831466; 261153, 3831466; 261153, 3831436; 261123, 3831436; 261123, 3831376; 261063, 3831376; 261063, 3831346; 260973, 3831346; 260973, 3831316; 260823, 3831316; 260823, 3831256; 260793, 3831256; 260793, 3831226; 260823, 3831226; 260823, 3831196; 260853, 3831196; 260853, 3831166; 260733, 3831166; 260733, 3831106; 260703, 3831106; 260703, 3831046; 260583, 3831046; 260583, 3831016; 260523, 3831016; 260523, 3830926; 260553, 3830926; 260553, 3830896; 260613, 3830896; 260613, 3830866; 260643, 3830866; 260643, 3830806; 260673, 3830806; 260673, 3830746; 260703, 3830746; 260703, 3830656; 260673, 3830656; 260673, 3830596; 260643, 3830596; 260643, 3830536; 260613, 3830536; 260613, 3830506; 260583, 3830506; 260583, 3830476; 260523, 3830476; 260523, 3830416; 260493, 3830416; 260493, 3830356; 260523, 3830356; 260523, 3830296; 260553, 3830296; 260553, 3830236; 260583, 3830236; 260583, 3830206; 260553, 3830206; 260553, 3830176; 260583, 3830176; 260583, 3830146; 260613, 3830146; 260613, 3830116; 260643, 3830116; 260643, 3830086; 260673, 3830086; 260673, 3829996; 260553, 3829996; 260553, 3829966; 260523, 3829966; 260523, 3829936; 260493, 3829936; 260493, 3829876; 260523, 3829876; 260523, 3829786; 260493, 3829786; 260493, 3829606; 260463, 3829606; 260463, 3829546; 260433, 3829546; 260433, 3829516; 260403, 3829516; 260403, 3829486; 260373, 3829486; 260373, 3829456; 260343, 3829456; 260343, 3829426; 260313, 3829426; 260313, 3829246; 260343, 3829246; 260343, 3829216; 260373, 3829216; 260373, 3829186; 260343, 3829186; 260343, 3829096; 260313, 3829096; 260313, 3829066; 260283, 3829066; 260283, 3829036; 260253, 3829036; 260253, 3829006; 260223, 3829006; 260223, 3828976; 260193, 3828976; 260193, 3828946; 260163, 3828946; 260163, 3828796; 260193, 3828796; 260193, 3828766; 260223, 3828766; 260223, 3828736; 260313, 3828736; 260313, 3828676; 260343, 3828676; 260343, 3828616; 260373, 3828616; 260373, 3828556; 260403, 3828556; 260403, 3828526; 260433, 3828526; 260433, 3828496; 260523, 3828496; 260523, 3828466; 260643, 3828466; 260643, 3828436; 260613, 3828436; 260613, 3828406; 260583, 3828406; 260583, 3828376; 260403, 3828376; 260403, 3828346; 260253, 3828346; 260253, 3828316; 260223, 3828316; 260223, 3828286; 260193, 3828286; 260193, 3828256; 260163, 3828256; 260163, 3828196; 260193, 3828196; 260193, 3828166; 260223, 3828166; 260223, 3828136; 260253, 3828136; 260253, 3828046; 260283, 3828046; 260283, 3827986; 260253, 3827986; 260253, 3827926; 260223, 3827926; 260223, 3827866; 260193, 3827866; 260193, 3827806; 260253, 3827806; 260253, 3827776; 260343, 3827776; 260343, 3827746; 260403, 3827746; 260403, 3827716; 260373, 3827716; 260373, 3827686; 260343, 3827686; 260343, 3827566; 260313, 3827566; 260313, 3827536; 260223, 3827536; 260223, 3827506; 260193, 3827506; 260193, 3827476; 260163, 3827476; 260163, 3827356; 260133, 3827356; 260133, 3827326; 260163, 3827326; 260163, 3827236; 260283, 3827236; 260283, 3827206; 260253, 3827206; 260253, 3827176; 260223, 3827176; 260223, 3827116; 260133, 3827116; 260133, 3827086; 260103, 3827086; 260103, 3827056; 260073, 3827056; 260073, 3826936; 259983, 3826936; 259983, 3826906; 259953, 3826906; 259953, 3826846; 259833, 3826846; 259833, 3826816; 259803, 3826816; 259803, 3826786; 259773, 3826786; 259773, 3826756; 259563, 3826756; 259563, 3826576; 259593, 3826576; 259593, 3826546; 259623, 3826546; 259623, 3826516;

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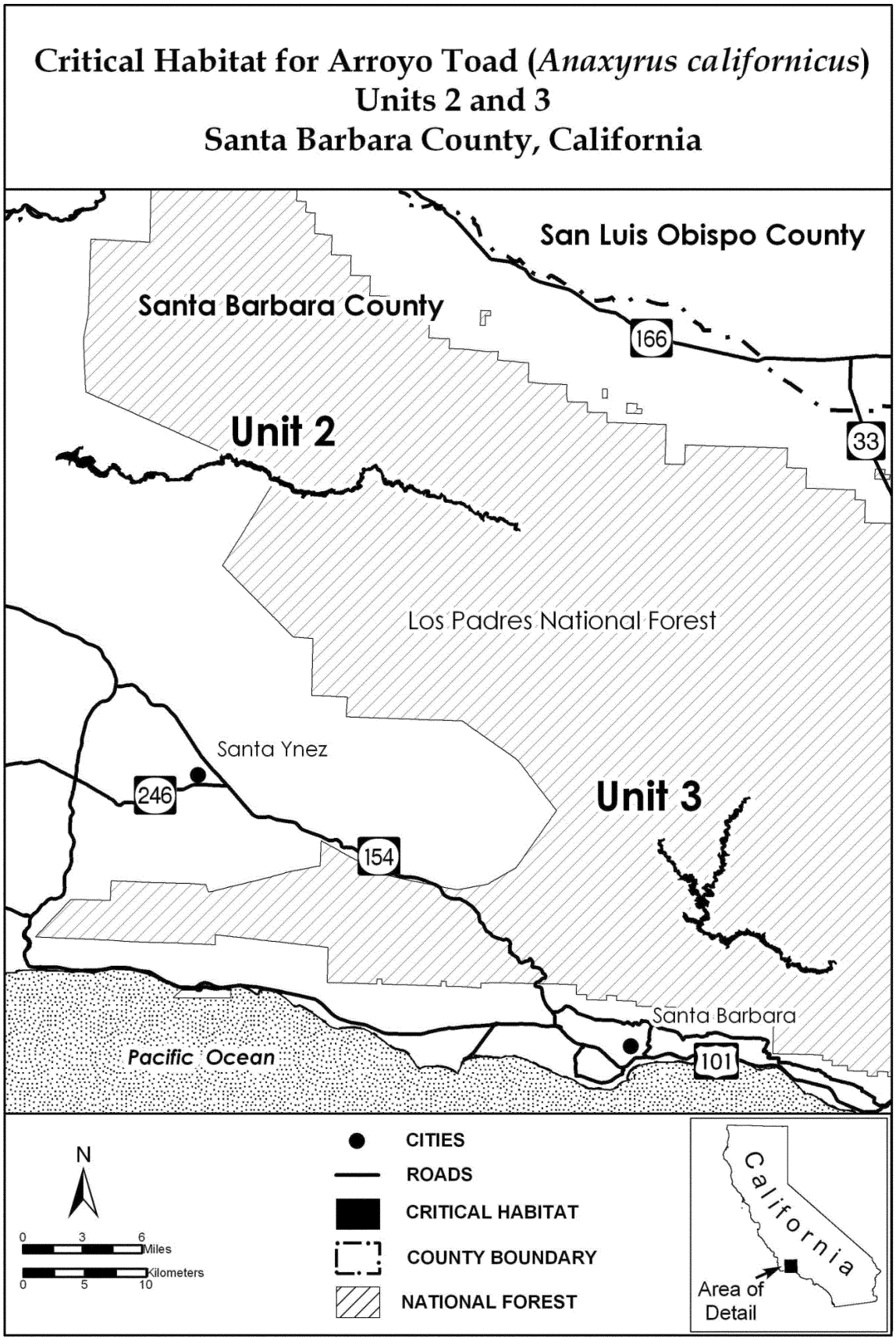
(ii) **Note:** Map of Units 2 and 3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit 4: Sespe Creek, Ventura County, California.

(i) From USGS 1:24,000 quadrangle maps Wheeler Springs, Lion Canyon,

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(ii) Note: Map of Unit 4 is provided at paragraph (10)(iii) of this entry.

(10) Unit 5: Piru Creek, Ventura and Los Angeles Counties, California.

(i) Subunit 5a: From USGS 1:24,000 quadrangle maps Lockwood Valley, Alamo Mtn., and Black Mtn., land upstream from Pyramid Lake bounded by the following UTM coordinates (E, N): 319293, 3842776; 319293, 3842746; 319353, 3842746; 319353, 3842716; 319383, 3842716; 319383, 3842626; 319413, 3842626; 319413, 3842536; 319443, 3842536; 319443, 3842506; 319473, 3842506; 319473, 3842446; 319503, 3842446; 319503, 3842476; 319533, 3842476; 319533, 3842536; 319623, 3842536; 319623, 3842506; 319683, 3842506; 319683, 3842476; 319713, 3842476; 319713, 3842446; 319773, 3842446; 319773, 3842476; 319803, 3842476; 319803, 3842536; 319833, 3842536; 319833, 3842596; 319863, 3842596; 319863, 3842686; 319923, 3842686; 319923, 3842716; 319953, 3842716; 319953, 3842746; 320013, 3842746; 320013, 3842716; 320073, 3842716; 320073, 3842686; 320103, 3842686; 320103, 3842626; 320163, 3842626; 320163, 3842656; 320193, 3842656; 320193, 3842686; 320283, 3842686; 320283, 3842656; 320313, 3842656; 320313, 3842686; 320403, 3842686; 320403, 3842716; 320433, 3842716; 320433, 3842686; 320463, 3842686; 320463, 3842596; 320523, 3842596; 320523, 3842566; 320613, 3842566; 320613, 3842596; 320643, 3842596; 320643, 3842626; 320703, 3842626; 320703, 3842596; 320733, 3842596; 320733, 3842566; 320793, 3842566; 320793, 3842506; 320823, 3842506; 320823, 3842446; 320853, 3842446; 320853, 3842356; 320883, 3842356; 320883, 3842326; 320913, 3842326; 320913, 3842296; 320973, 3842296; 320973, 3842326; 321063, 3842326; 321063, 3842356; 321123, 3842356; 321123, 3842386; 321153, 3842386; 321153, 3842356; 321213, 3842356; 321213, 3842386; 321273, 3842386; 321273, 3842356; 321363, 3842356; 321363, 3842326; 321693, 3842326; 321693, 3842356; 321723, 3842356; 321723, 3842416; 321753, 3842416; 321753, 3842356; 321783, 3842356; 321783, 3842326; 321903, 3842326; 321903, 3842296; 321933, 3842296; 321933, 3842236; 321963, 3842236; 321963, 3842206; 321993, 3842206; 321993, 3842236; 322053, 3842236; 322053, 3842266; 322143, 3842266; 322143, 3842296; 322233, 3842296; 322233, 3842326; 322293, 3842326; 322293, 3842356; 322353, 3842356; 322353, 3842326; 322413, 3842326; 322413, 3842296; 322443, 3842296; 322443, 3842266; 322473, 3842266; 322473, 3842206; 322503, 3842206; 322503, 3842086; 322473, 3842086; 322473, 3842056; 322503, 3842056; 322503, 3841966; 322563, 3841966; 322563, 3841936; 322623, 3841936; 322623, 3841906; 322713, 3841906; 322713, 3841846; 322743, 3841846; 322743, 3841816; 322773, 3841816; 322773, 3841726; 322833, 3841726; 322833, 3841696; 322863, 3841696; 322863, 3841576; 322893, 3841576; 322893, 3841456; 322953, 3841456; 322953, 3841426; 322983, 3841426; 322983, 3841276; 323013, 3841276; 323013, 3841186; 323043, 3841186; 323043, 3841156; 323103, 3841156; 323103, 3841126; 323223, 3841126; 323223, 3841096; 323253, 3841096; 323253, 3841066; 323283, 3841066; 323283, 3841006; 323313, 3841006; 323313, 3840976; 323373, 3840976; 323373, 3840886; 323433, 3840886; 323433, 3840916; 323583, 3840916; 323583, 3840946; 323613, 3840946; 323613, 3840976; 323673, 3840976; 323673, 3841006; 323763, 3841006; 323763, 3841036; 323913, 3841036; 323913, 3841006; 323973, 3841006; 323973, 3840976; 324033, 3840976; 324033, 3840946; 324063, 3840946; 324063, 3840916; 324093, 3840916; 324093, 3840886; 324243, 3840886; 324243, 3840916; 324363, 3840916; 324363, 3840946; 324483, 3840946; 324483, 3840976; 324633, 3840976; 324633, 3840946; 324783, 3840946; 324783, 3840916; 324843, 3840916; 324843, 3840886; 324873, 3840886; 324873, 3840856; 324903, 3840856; 324903, 3840826; 324933, 3840826; 324933, 3840736; 324963, 3840736; 324963, 3840646;

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(ii) Subunit 5b: From USGS 1:24,000 quadrangle maps Black Mountain, Liebre Mountain, Whitaker Peak, and Cobblestone Mountain, land between Pyramid Lake and Lake Piru bounded by the following UTM coordinates (E, N): 337443, 3829276; 337383, 3829276; 337383, 3829246; 337293, 3829246; 337293, 3829216; 337263, 3829216; 337263, 3829246; 337203, 3829246; 337203, 3829336; 337173, 3829336; 337173, 3829366; 337203, 3829366; 337203, 3829426; 337173, 3829426; 337173, 3829456; 337143, 3829456; 337143, 3829486; 337053, 3829486; 337053, 3829456; 336873, 3829456; 336873, 3829486; 336843, 3829486; 336843, 3829516; 336813, 3829516; 336813, 3829546; 336783, 3829546; 336783, 3829606; 336693, 3829606; 336693, 3829726; 336723, 3829726; 336723, 3829786; 336693, 3829786; 336693, 3829816; 336663, 3829816; 336663, 3829846; 336633, 3829846; 336633, 3829876; 336573, 3829876; 336573, 3829936; 336513, 3829936; 336513, 3829876; 336483, 3829876; 336483, 3829846; 336453, 3829846; 336453, 3829816; 336303, 3829816; 336303, 3829876; 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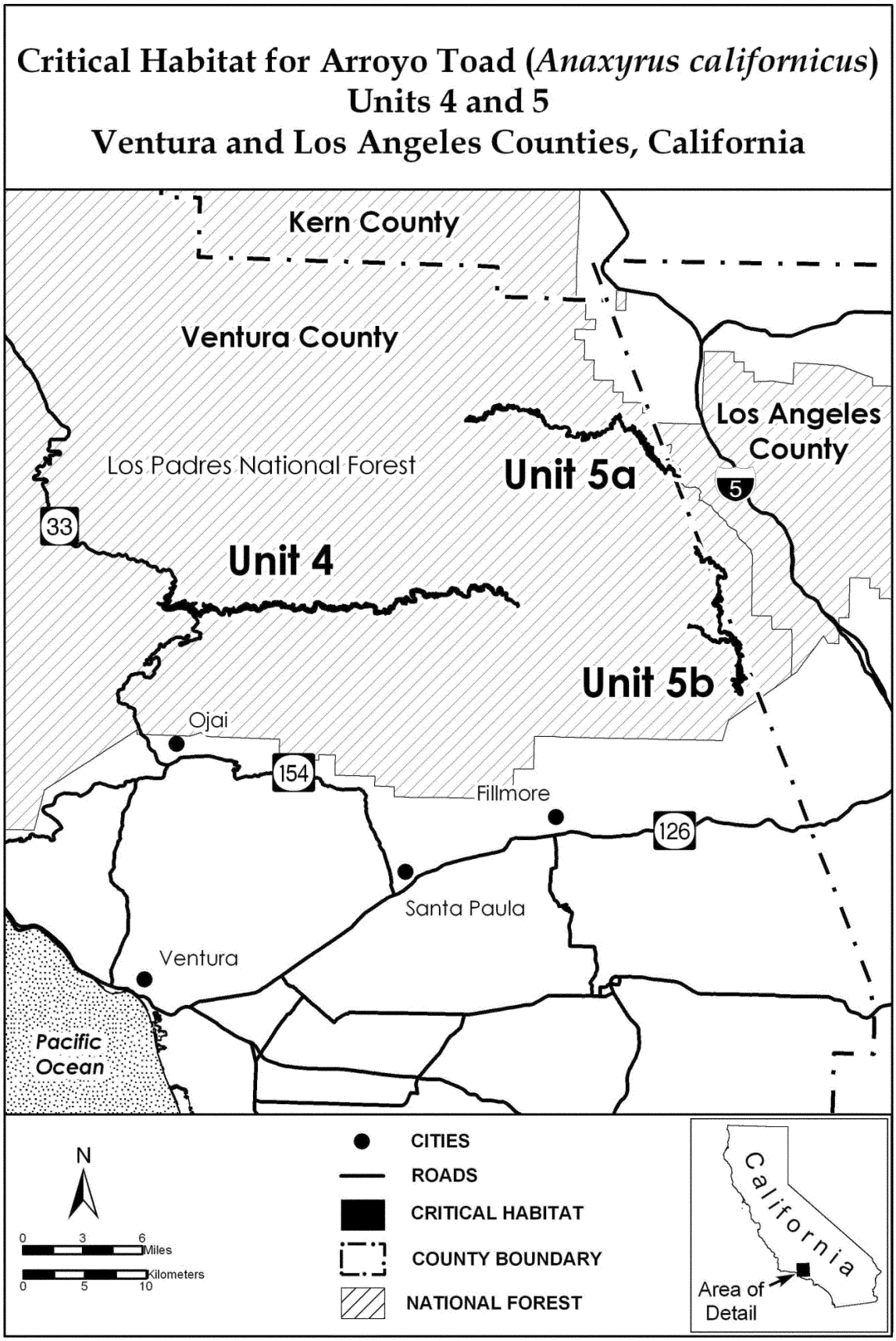
Excluding land bounded by 337443, 3829276; 337473, 3829276; 337473, 3829336; 337443, 3829336; returning to 337443, 3829276.

(iii) **Note:** Map of Units 4 and 5 follows:

BILLING CODE 4310–55–P



BILLING CODE 43107–55–C

(11) Unit 6: Upper Santa Clara River Basin, Los Angeles County, California.

(i) Subunit 6a: From USGS 1:24,000 quadrangle maps Liebre Mtn. and

Whitaker Peak, land upstream of Castaic Lake, bounded by the following UTM coordinates (E, N): 347013, 3835726; 347013, 3835696; 347043, 3835696; 347043, 3835576; 347073, 3835576; 347073, 3835546; 347103, 3835546; 347103, 3835516; 347073, 3835516; 347073, 3835426; 347103, 3835426; 347103, 3835306; 347133, 3835306; 347133, 3835276; 347163, 3835276; 347163, 3835216; 347133, 3835216; 347133, 3835186; 347163, 3835186; 347163, 3835126; 347133, 3835126; 347133, 3835036; 347163, 3835036; 347163, 3834976; 347193, 3834976; 347193, 3834946; 347223, 3834946; 347223, 3834916; 347193, 3834916; 347193, 3834886; 347163, 3834886; 347163, 3834856; 347133, 3834856; 347133, 3834766; 347163, 3834766; 347163, 3834676; 347133, 3834676; 347133, 3834646; 347103, 3834646; 347103, 3834436; 347073, 3834436; 347073, 3834406; 347043, 3834406; 347043, 3834346; 347073, 3834346; 347073, 3834226; 347043, 3834226; 347043, 3834166; 347073, 3834166; 347073, 3834136; 347103, 3834136; 347103, 3834106; 347073, 3834106; 347073, 3834046; 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(ii) Subunit 6b: From USGS 1:24,000 quadrangle maps Val Verde and Newhall, land bounded by the following UTM coordinates (E, N): 351607, 3812015; 351519, 3811959; 351509, 3811885; 351441, 3811818; 351334, 3811775; 351265, 3811817; 351198, 3811784; 351050, 3811684; 350707, 3811270; 350549, 3811035; 350461, 3810962; 350392, 3810900; 350536, 3810555; 350611, 3810615; 350651, 3810701; 350911, 3810836; 350996, 3810902; 351071, 3811080; 351233, 3811324; 351219, 3811410; 351600, 3811716; 351723, 3811700; 351817, 3811720; 351869, 3811755; 351931, 3811780; 352028, 3811785; 352275, 3811789; 352444, 3811775; 352470, 3811769; 352572, 3811731; 352656, 3811722; 352693, 3811705; 352754, 3811671; 352780, 3811675; 352794, 3811672; 352866, 3811626; 352898, 3811602; 352914, 3811598; 352942, 3811612; 352987, 3811637; 353083, 3811663; 353147, 3811702; 353216, 3811740; 353234, 3811758; 353232, 3811809; 353269, 3811790; 353276, 3811785; 353335, 3811693; 353500, 3811489; 353620, 3811270; 353712, 3811027; 353790, 3810921; 353806, 3810879; 353836, 3810829; 353902, 3810814; 354034, 3810821; 354163, 3810711; 354188, 3810661; 354219, 3810611; 354385, 3810571; 354404, 3810585; 354407, 3810621; 354340, 3810791; 354401, 3810779; 354503, 3810743; 354626, 3810700; 354675, 3810672; 354728, 3810658; 354809, 3810606; 354872, 3810556; 354931, 3810602; 354944, 3810635; 354962, 3810664; 354999, 3810679; 355059, 3810710; 355104, 3810722; 355134, 3810752; 355211, 3810742; 355239, 3810746; 355261, 3810741; 355286, 3810734; 355312, 3810731; 355340, 3810738; 355367, 3810705; 355334, 3810669; 355308, 3810641; 355272, 3810602; 355329, 3810504; 355339, 3810502; 355434, 3810487; 355489, 3810439; 355510, 3810432; 355515, 3810392; 355464, 3810402; 355405, 3810353; 355244, 3810403; 355176, 3810435; 355113, 3810417; 355091, 3810325; 354761, 3810325; 354746, 3810358; 354539, 3810348; 354510, 3810406; 354477, 3810400; 354282, 3810496; 354213, 3810530; 354144, 3810533; 354039, 3810589; 353745, 3810703; 353618, 3810835; 353493, 3810884; 353457, 3810959; 353464, 3811077; 353461, 3811117; 353440, 3811155; 353401, 3811177; 353203, 3811177; 353129, 3811231; 353097, 3811234; 353059, 3811234; 353025, 3811241; 353000, 3811258; 352943, 3811285; 352799, 3811294; 352639, 3811323; 352632, 3811323; 352526, 3811295; 352391, 3811345; 352293, 3811456; 352263, 3811456; 352263, 3811486; 352203, 3811486; 352203, 3811516; 352143, 3811516; 352143, 3811486; 352083, 3811486; 352083, 3811516; 352053, 3811516; 352053, 3811546; 351933, 3811546; 351933, 3811516; 351903, 3811516; 351903, 3811486; 351873, 3811486; 351873, 3811456; 351843, 3811456; 351843, 3811396; 351813, 3811396; 351813, 3811366; 351783, 3811366; 351783, 3811306; 351753, 3811306; 351753, 3811246; 351723, 3811246; 351723, 3811216; 351693, 3811216; 351693, 3811126; 351723, 3811126; 351723, 3811096; 351753, 3811096; 351753, 3811036; 351783, 3811036; 351783, 3811006; 351843, 3811006; 351843, 3810946; 351873, 3810946; 351873, 3810916; 351903, 3810916; 351903, 3810886; 351873, 3810886; 351873, 3810856; 351783, 3810856; 351783, 3810886; 351693, 3810886; 351693, 3810916; 351633, 3810916; 351633, 3810886; 351573, 3810886; 351573, 3810856; 351543, 3810856; 351543, 3810826; 351513, 3810826; 351513, 3810796; 351483, 3810796; 351483, 3810766; 351453, 3810766; 351453, 3810736; 351423, 3810736; 351423, 3810706; 351393, 3810706; 351393, 3810586; 351423, 3810586; 351423, 3810556; 351483, 3810556; 351483, 3810526; 351573, 3810526; 351573, 3810496; 351513, 3810496; 351513, 3810406; 351423, 3810406; 351423, 3810436; 351333, 3810436; 351333, 3810406; 351273, 3810406; 351273, 3810376; 351213, 3810376; 351213, 3810346; 351123, 3810346; 351123, 3810316; 351063, 3810316; 351063, 3810286; 350973, 3810286; 350973, 3810256; 350913, 3810256; 350913, 3810196; 350853, 3810196; 350853, 3810166; 350823, 3810166; 350823, 3810106; 350793, 3810106; 350793, 3810016; 350763, 3810016; 350763, 3809986; 350733, 3809986; 350733, 3810016; 350703, 3810016; 350703, 3810046; 350673, 3810046; 350673, 3810016; 350613, 3810016; 350613, 3809986; 350583, 3809986; 350583, 3809956; 350553, 3809956; 350553, 3809926; 350523, 3809926; 350523, 3809896; 350463, 3809896; 350463, 3809866; 350433, 3809866; 350433, 3809806; 350463, 3809806; 350463, 3809776; 350493, 3809776; 350493, 3809716; 350523, 3809716; 350523, 3809686; 350493, 3809686; 350493, 3809656; 350403, 3809656; 350403, 3809686; 350343, 3809686; 350343, 3809716; 350283, 3809716; 350283, 3809746; 350163, 3809746; 350163, 3809716; 350073, 3809716; 350073, 3809746; 349803, 3809746; 349803, 3809716; 349773, 3809716; 349773, 3809656; 349743, 3809656; 349743, 3809626; 349713, 3809626; 349713, 3809656; 349683, 3809656; 349683, 3809716; 349653, 3809716; 349653, 3809746; 349593, 3809746; 349593, 3809776; 349443, 3809776; 349443, 3809746; 349413, 3809746; 349413, 3809716; 349383, 3809716; 349383, 3809686; 349353, 3809686; 349353,

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(iii) Subunit 6c: From USGS 1:24,000 quadrangle maps Agua Dulce, and Acton, land bounded by the following UTM coordinates (E, N): 388803, 3811696; 388803, 3811636; 388833, 3811636; 388833, 3811606; 388863, 3811606; 388863, 3811576; 388833, 3811576; 388833, 3811486; 388773, 3811486; 388773, 3811426; 388683, 3811426; 388683, 3811306; 388653, 3811306; 388653, 3811276; 388623, 3811276; 388623, 3811246; 388593, 3811246; 388593, 3811216; 388353, 3811216; 388353, 3811186; 388293, 3811186; 388293, 3811126; 387965, 3811126; 387965, 3810996; 386223, 3810996; 386223, 3811006; 386163, 3811006; 386163, 3811036; 386013, 3811036; 386013, 3811066; 385953, 3811066; 385953, 3811096; 385893, 3811096; 385893, 3811186; 385773, 3811186; 385773, 3811156; 385743, 3811156; 385743, 3811036; 385773, 3811036; 385773, 3810706; 385803, 3810706; 385803, 3810646; 385833, 3810646; 385833, 3810586; 385863, 3810586; 385863, 3810526; 385773, 3810526; 385773, 3810556; 385713, 3810556; 385713, 3810586; 385623, 3810586; 385623, 3810646; 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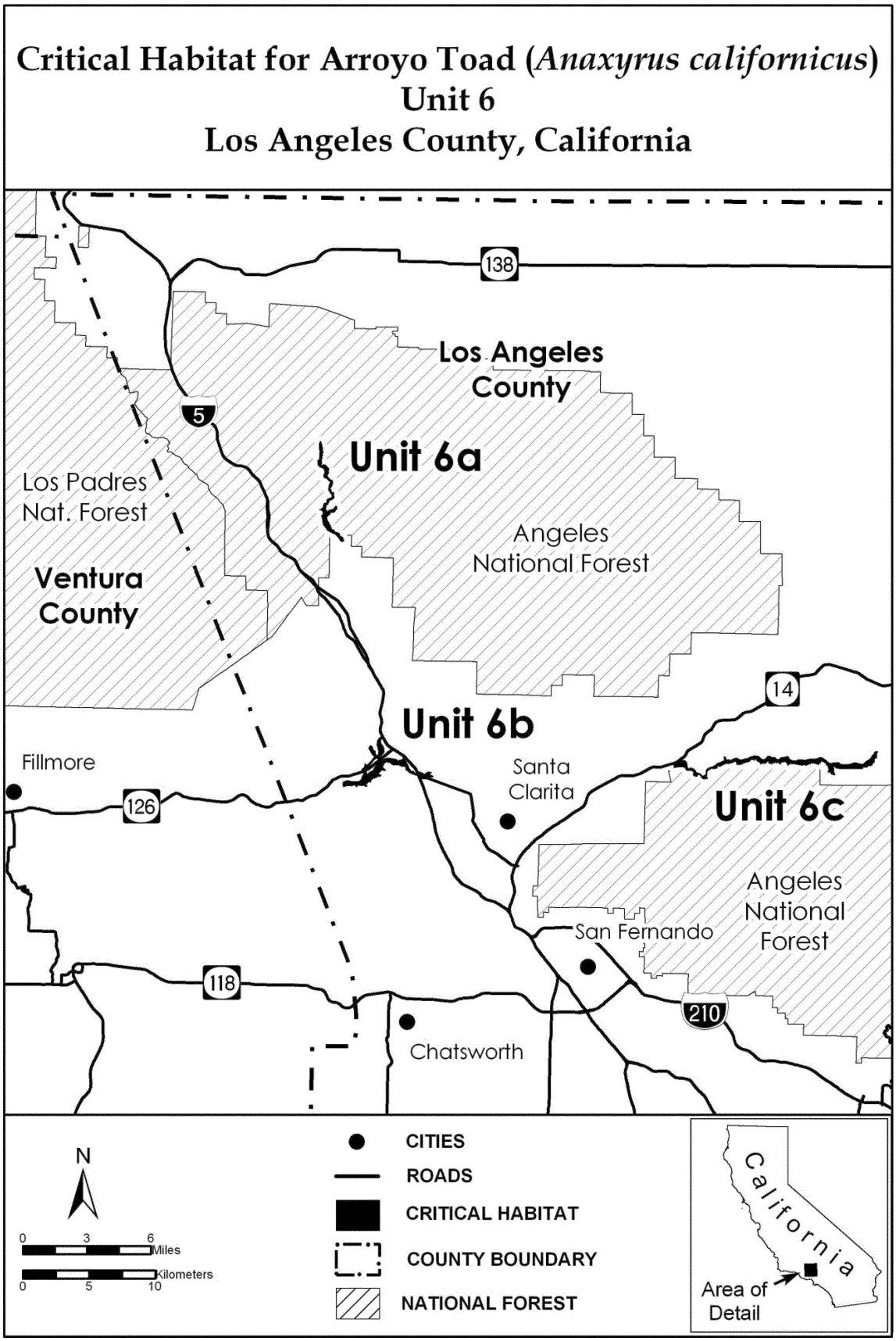
(iv) **Note:** Map of Unit 6 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(12) Unit 7: Upper Los Angeles River Basin, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Condor Peak and Chilao Flat, land

in the Big Tujunga Creek basin bounded by the following UTM zone 11, NAD83 coordinates (E, N): 398433, 3797296; 398403, 3797296; 398403, 3797326; 398433, 3797326; returning to 398433, 3797296.

(ii) Land bounded by the following UTM coordinates (E, N): 398433, 3797296; 398463, 3797296; 398463, 3797326; 398523, 3797326; 398523, 3797446; 398553, 3797446; 398553, 3797416; 398583, 3797416; 398583, 3797386; 398613, 3797386; 398613, 3797326; 398643, 3797326; 398643, 3797296; 398703, 3797296; 398703, 3797326; 398733, 3797326; 398733, 3797356; 398763, 3797356; 398763, 3797386; 398823, 3797386; 398823, 3797326; 398793, 3797326; 398793, 3797266; 398823, 3797266; 398823, 3797236; 398943, 3797236; 398943, 3797266; 399003, 3797266; 399003, 3797236; 399033, 3797236; 399033, 3797206; 399003, 3797206; 399003, 3797146; 399093, 3797146; 399093, 3797176; 399123, 3797176; 399123, 3797206; 399153, 3797206; 399153, 3797296; 399183, 3797296; 399183, 3797326; 399213, 3797326; 399213, 3797296; 399243, 3797296; 399243, 3797266; 399273, 3797266; 399273, 3797296; 399303, 3797296; 399303, 3797326; 399363, 3797326; 399363, 3797356; 399393, 3797356; 399393, 3797236; 399633, 3797236; 399633, 3797206; 399693, 3797206; 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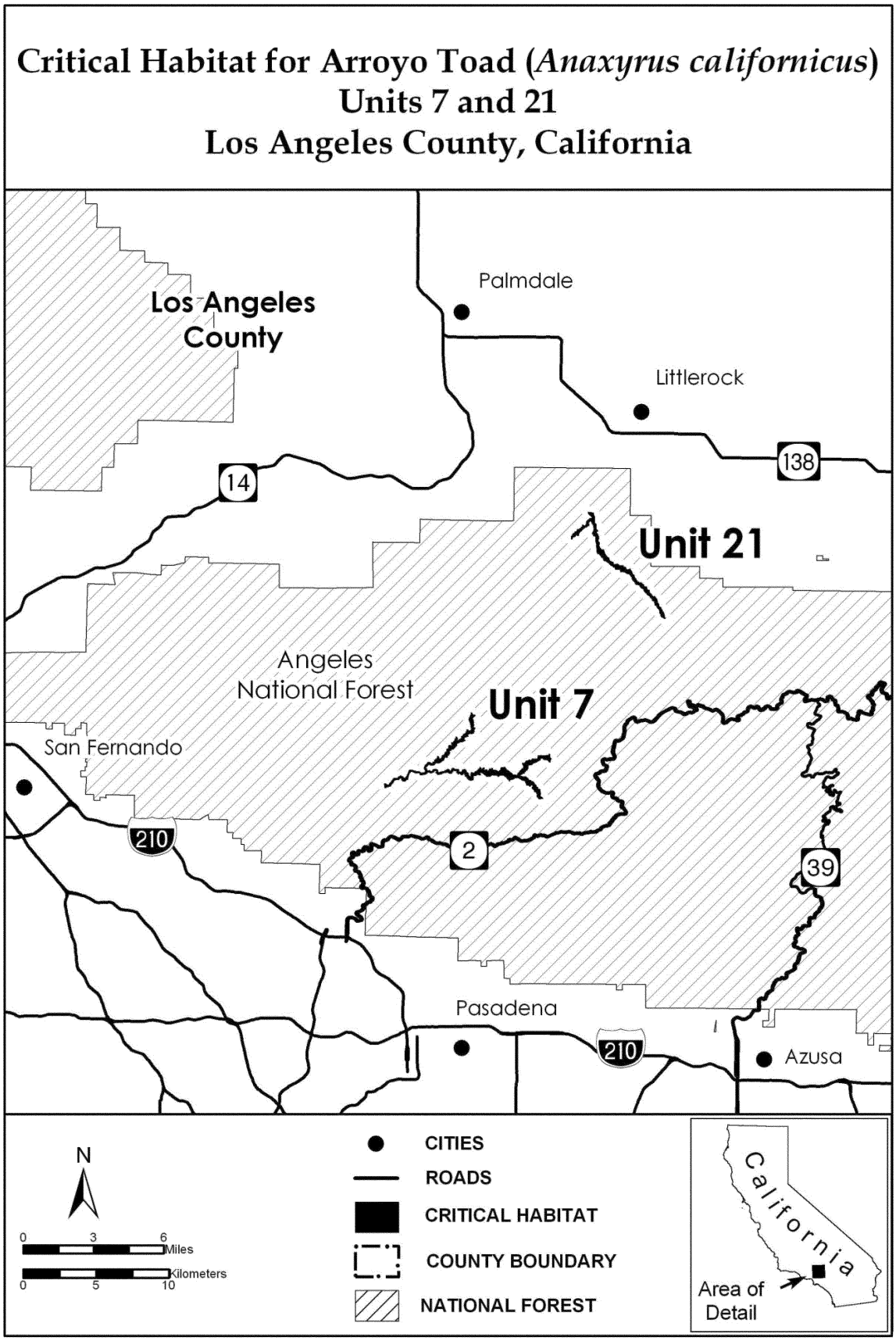
(iii) **Note:** Map of Units 7 and 21 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(13) Unit 8: Lower Santa Ana River Basin, Orange County, California.

(i) From USGS 1:24,000 quadrangle maps Black Star Canyon, Corona South,

El Toro, and Santiago Peak, land bounded by the following UTM coordinates (E, N): 439642, 3732778; 439642, 3732749; 439671, 3732749; 439671, 3732721; 439699, 3732721; 439699, 3732692; 439727, 3732692; 439727, 3732636; 439756, 3732636; 439756, 3732607; 439841, 3732607; 439841, 3732522; 439897, 3732522; 439897, 3732466; 439926, 3732466; 439926, 3732409; 439983, 3732409; 439983, 3732380; 440153, 3732380; 440153, 3732409; 440181, 3732409; 440181, 3732380; 440210, 3732380; 440210, 3732324; 440153, 3732324; 440153, 3732295; 440124, 3732295; 440124, 3732267; 440068, 3732267; 440068, 3732239; 440011, 3732239; 440011, 3732210; 439983, 3732210; 439983, 3732097; 440011, 3732097; 440011, 3732040; 440039, 3732040; 440039, 3731813; 440068, 3731813; 440068, 3731785; 440011, 3731785; 440011, 3731756; 439983, 3731756; 439983, 3731671; 440011, 3731671; 440011, 3731586; 439983, 3731586; 439983, 3731501; 440068, 3731501; 440068, 3731302; 440096, 3731302; 440096, 3731274; 440124, 3731274; 440124, 3731217; 440096, 3731217; 440096, 3731161; 440124, 3731161; 440124, 3731132; 440153, 3731132; 440153, 3731075; 440181, 3731075; 440181, 3731047; 440210, 3731047; 440210, 3730962; 440238, 3730962; 440238, 3730934; 440295, 3730934; 440295, 3730905; 440323, 3730905; 440323, 3730877; 440351, 3730877; 440351, 3730820; 440380, 3730820; 440380, 3730707; 440408, 3730707; 440408, 3730678; 440465, 3730678; 440465, 3730650; 440493, 3730650; 440493, 3730622; 440522, 3730622; 440522, 3730593; 440550, 3730593; 440550, 3730565; 440578, 3730565; 440578, 3730508; 440607, 3730508; 440607, 3730451; 440692, 3730451; 440692, 3730395; 440663, 3730395; 440663, 3730366; 440692, 3730366; 440692, 3730309; 440720, 3730309; 440720, 3730253; 440749, 3730253; 440749, 3730224; 440777, 3730224; 440777, 3730196; 440805, 3730196; 440805, 3730168; 440862, 3730168; 440862, 3730139; 440919, 3730139; 440919, 3730111; 440947, 3730111; 440947, 3730083; 440976, 3730083; 440976, 3730054; 441032, 3730054; 441032, 3730026; 441089, 3730026; 441089, 3729997; 441061, 3729997; 441061, 3729969; 441004, 3729969; 441004, 3729941; 440976, 3729941; 440976, 3729912; 440890, 3729912; 440890, 3729941; 440834, 3729941; 440834, 3729969; 440805, 3729969; 440805, 3729997; 440777, 3729997; 440777, 3730026; 440749, 3730026; 440749, 3730054; 440607, 3730054; 440607, 3730083; 440578, 3730083; 440578, 3730111; 440550, 3730111; 440550, 3730139; 440522, 3730139; 440522, 3730196; 440493, 3730196; 440493, 3730224; 440465, 3730224; 440465, 3730253; 440436, 3730253; 440436, 3730281; 440408, 3730281; 440408, 3730338; 440380, 3730338; 440380, 3730366; 440323, 3730366; 440323, 3730395; 440266, 3730395; 440266, 3730366; 440238, 3730366; 440238, 3730338; 440238, 3730281; 440266, 3730281; 440266, 3730168; 440295, 3730168; 440295, 3730083; 440323, 3730083; 440323, 3730054; 440295, 3730054; 440295, 3730026; 440266, 3730026; 440266, 3730054; 440238, 3730054; 440238, 3730083; 440181, 3730083; 440181, 3730111; 440096, 3730111; 440096, 3730083; 440068, 3730083; 440068, 3730168; 440096, 3730168; 440096, 3730224; 440068, 3730224; 440068, 3730253; 440039, 3730253; 440039, 3730281; 440068, 3730281; 440068, 3730395; 440039, 3730395; 440039, 3730423; 440011, 3730423; 440011, 3730439; 440013, 3730446; 440018, 3730467; 440024, 3730487; 440031, 3730507; 440037, 3730527; 440044, 3730546; 440051, 3730566; 440059, 3730585; 440067, 3730605; 440075, 3730624; 440084, 3730643; 440093, 3730662; 440102, 3730681; 440108, 3730691; 440108, 3730692; 440128, 3730713; 440130, 3730716; 440130, 3730717; 440129, 3730719; 440128, 3730723; 440116, 3730760; 440108, 3730799; 440104, 3730838; 440104, 3730875; 440104, 3730878; 440104, 3730881; 440106, 3730918; 440111, 3730918; 440112, 3730939; 440107, 3730939; 440109, 3730968; 440109, 3730994; 440107, 3731031; 440100, 3731067; 440090, 3731103; 440076, 3731137; 439958, 3731389; 439957, 3731392; 439956, 3731395; 439949, 3731411; 439936, 3731449; 439927, 3731487; 439922, 3731526; 439911, 3731686; 439911, 3731689; 439911, 3731692; 439910, 3731703; 439904, 3731739; 439894, 3731775; 439753, 3732205; 439751, 3732211; 439742, 3732247; 439740, 3732253; 439720, 3732354; 439719, 3732360; 439710, 3732393; 439709, 3732396; 439708, 3732399; 439643, 3732597; 439641, 3732603; 439630, 3732631; 439613, 3732664; 439594, 3732695; 439581, 3732711; 439581, 3732712; 439603, 3732730; 439642, 3732784; returning to 439642, 3732778.

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(iii) Land bounded by the following UTM coordinates (E, N): 439075, 3737033; 439075, 3737005; 439132, 3737005; 439132, 3736976; 439188, 3736976; 439188, 3736948; 439217, 3736948; 439217, 3736919; 439188, 3736919; 439188, 3736692; 439160, 3736692; 439160, 3736664; 439188, 3736664; 439188, 3736607; 439160, 3736607; 439160, 3736522; 439132, 3736522; 439132, 3736437; 439103, 3736437; 439103, 3736409; 439046, 3736409; 439046, 3736352; 439018, 3736352; 439018, 3736324; 438990, 3736324; 438990, 3736295; 438961, 3736295; 438961, 3736267; 438933, 3736267; 438933, 3736239; 438848, 3736239; 438848, 3736182; 438819, 3736182; 438819, 3736125; 438791, 3736125; 438791, 3736040; 438819, 3736040; 438819, 3735955; 438791, 3735955; 438791, 3735927; 438819, 3735927; 438819, 3735841; 438848, 3735841; 438848, 3735756; 438905, 3735756; 438905, 3735728; 438848, 3735728; 438848, 3735700; 438819, 3735700; 438819, 3735643; 438791, 3735643; 438791, 3735614; 438770, 3735614; 438763, 3735636; 438678, 3735898; 438678, 3736125; 438706, 3736125; 438706, 3736182; 438734, 3736182; 438734, 3736267; 438763, 3736267; 438763, 3736295; 438791, 3736295; 438791, 3736352; 438848, 3736352; 438848, 3736380; 438876, 3736380; 438876, 3736466; 438905, 3736466; 438905, 3736494; 438933, 3736494; 438933, 3736522; 438961, 3736522; 438961, 3736551; 438990, 3736551; 438990, 3736721; 439018, 3736721; 439018, 3736749; 439046, 3736749; 439046, 3736834; 439018, 3736834; 439018, 3736863; 439046, 3736863; 439046, 3736891; 439018, 3736891; 439018, 3737061; 439018, 3737090; 439046, 3737090; 439046, 3737118; 439075, 3737118; returning to 439075, 3737033.

(iv) Land bounded by the following UTM coordinates (E, N): 438819, 3738707; 438819, 3738650; 438791, 3738650; 438791, 3738622; 438763, 3738622; 438763, 3738593; 438678, 3738593; 438678, 3738565; 438593, 3738565; 438593, 3738593; 438536, 3738593; 438536, 3738622; 438394, 3738622; 438394, 3738593; 438337, 3738593; 438337, 3738565; 438309, 3738565; 438309, 3738423; 438337, 3738423; 438337, 3738338; 438309, 3738338; 438309, 3738224; 438280, 3738224; 438280, 3738054; 438224, 3738054; 438224, 3737997; 438216, 3737997; 438212, 3738060; 438195,

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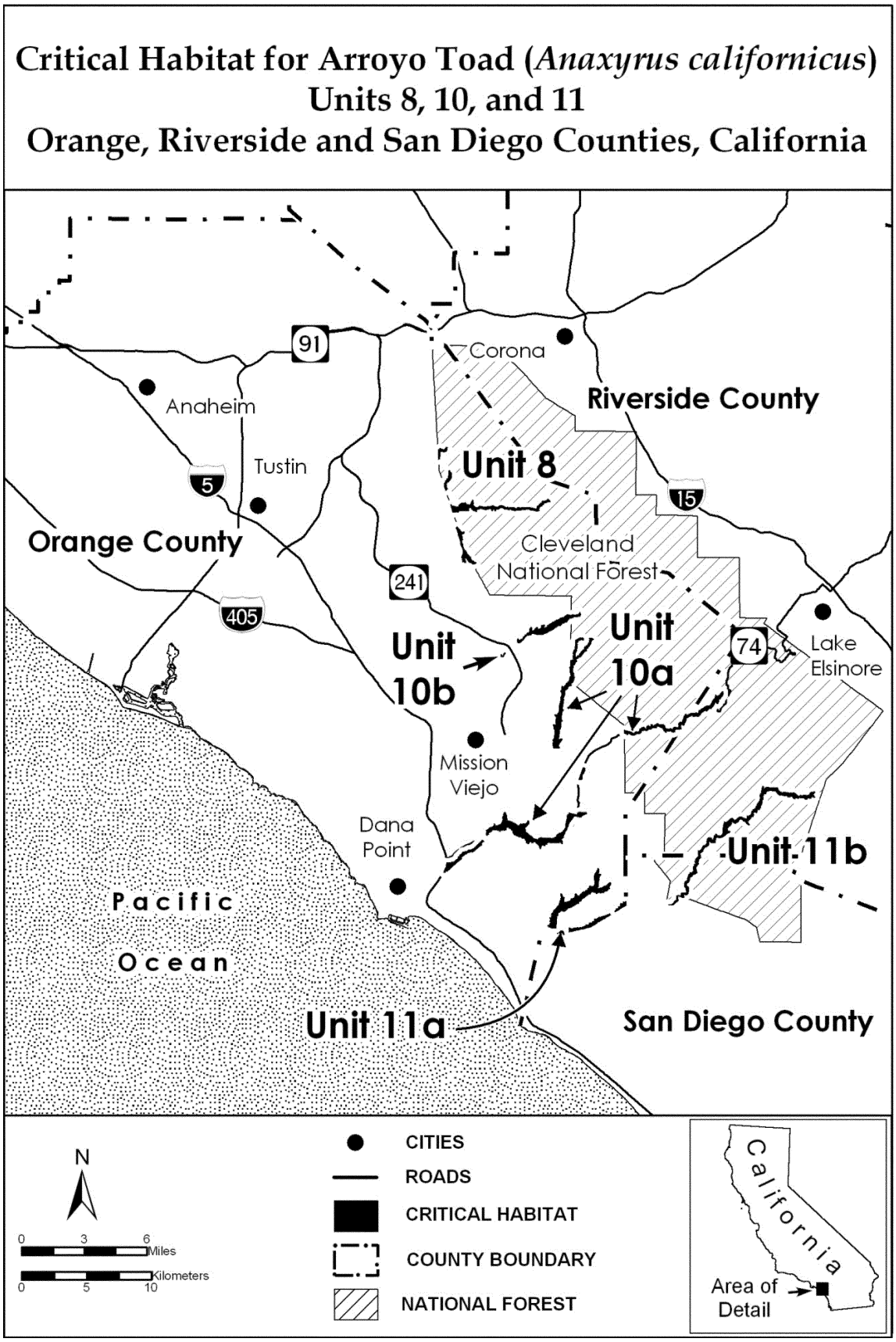
(v) **Note:** Map of Units 8, 10, and 11 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(14) Unit 9: San Jacinto River Basin, Riverside County, California.

(i) Subunit 9a: From USGS 1:24,000 quadrangle maps San Jacinto, Lake

Fulmor, Hemet and Blackburn Canyon, land bounded by the following UTM coordinates (E, N): 511446, 3735434; 511416, 3735434; 511416, 3735453; 511469, 3735455; 511469, 3735434; returning to 511446, 3735434.

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(iii) Land bounded by the following UTM coordinates (E, N): 510080, 3736102; 510444, 3735807; 510183, 3735807; 509230, 3735809; 509158, 3735887; 509092, 3735942; 509032, 3735968; 508988, 3736003; 508969, 3736079; 508994, 3736113; 509122, 3736113; 509266, 3736094; 509314, 3736096; 509464, 3736079; 509601, 3736077; 509649, 3736100; 509650, 3736103; 509652, 3736114; 509871, 3736115; 510063, 3736116; returning to 510080, 3736102.

(iv) Subunit 9b: From USGS 1:24,000 quadrangle map Blackburn Canyon, land bounded by the following UTM coordinates (E, N): 512766, 3730034; 512766, 3730004; 512796, 3730004; 512796, 3729974; 512826, 3729974; 512826, 3729944; 512886, 3729944; 512886, 3729914; 512916, 3729914; 512916, 3729884; 512946, 3729884; 512946, 3729854; 512976, 3729854; 512976, 3729824; 513006, 3729824; 513006, 3729794; 513066, 3729794; 513066, 3729764; 513096, 3729764; 513096, 3729704; 513186, 3729704; 513186, 3729734; 513216, 3729734; 513216, 3729794; 513246, 3729794; 513246, 3729824; 513426, 3729824; 513426, 3729794; 513456, 3729794; 513456, 3729764; 513486, 3729764; 513486, 3729734; 513546, 3729734; 513546, 3729704; 513516, 3729704; 513516, 3729674; 513486, 3729674; 513486, 3729644; 513456, 3729644; 513456, 3729614; 513426, 3729614; 513426, 3729554; 513396, 3729554; 513396, 3729524; 513456, 3729524; 513456, 3729494; 513486, 3729494; 513486, 3729374; 513576, 3729374; 513576, 3729344; 513606, 3729344; 513606, 3729254; 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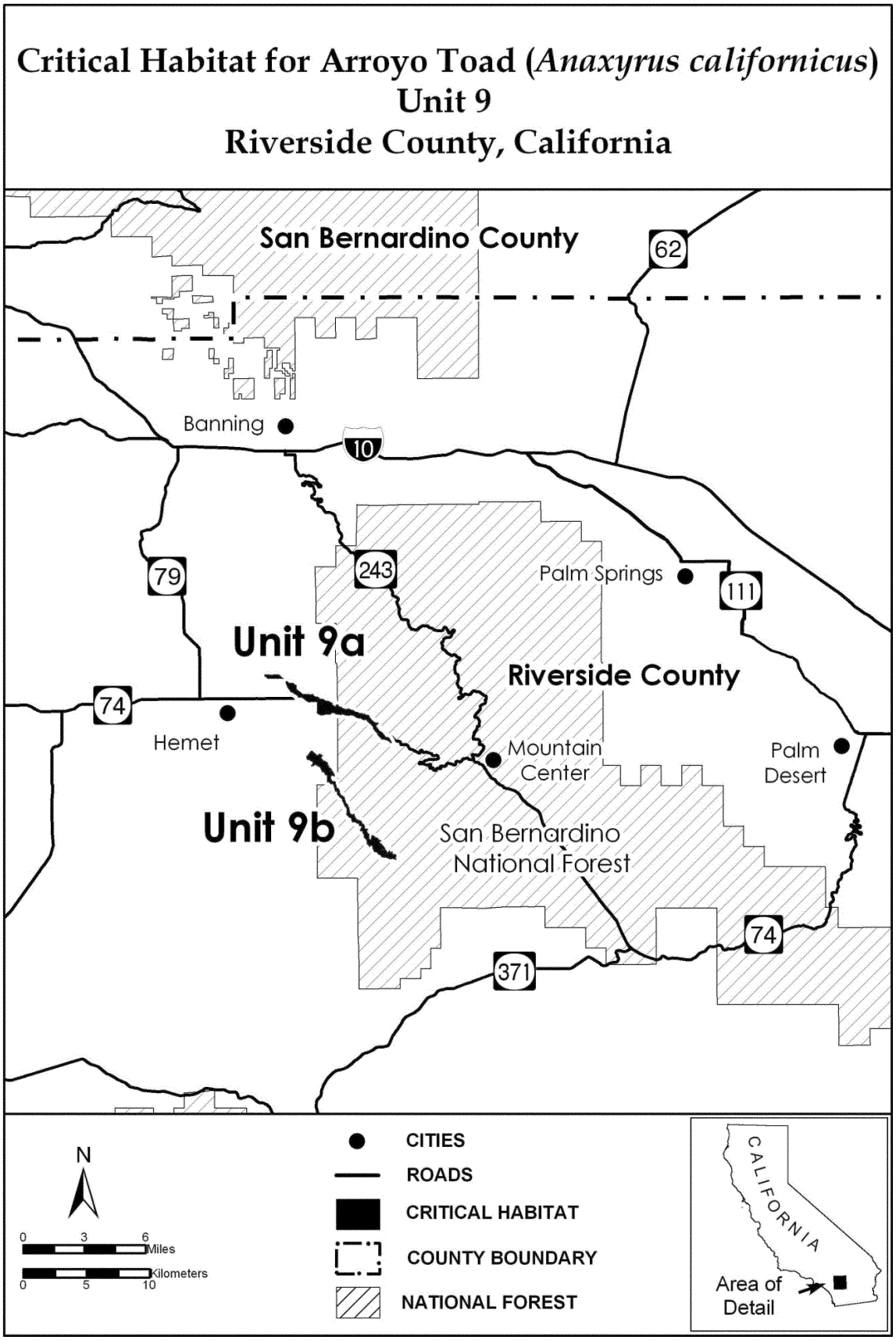
(v) **Note:** Map of Units 9 follows.

BILLING CODE 4310–55–P


Critical Habitat for Arroyo Toad (*Anaxyrus californicus*)
Unit 9
Riverside County, California
San Bernardino County
62
Banning
10
79
243
Palm Springs
111
Unit 9a
Riverside County
74
Hemet
Mountain Center
Palm Desert
Unit 9b
San Bernardino National Forest
74
371
N
0 3 6 Miles
0 5 10 Kilometers
CITIES
ROADS
CRITICAL HABITAT
COUNTY BOUNDARY
NATIONAL FOREST
CALIFORNIA
Area of Detail

BILLING CODE 4310–55–C

(15) Unit 10: San Juan Creek Basin, Orange and Riverside Counties, California.

(i) Subunit 10a: From USGS 1:24,000 quadrangle maps Dana Point, San Juan Capistrano, Canada Gobernadora, Sitton Peak and Santiago Peak, land bounded by the following UTM coordinates (E, N): 447472, 3708409; 447500, 3708409; 447500, 3708380; 447472, 3708380; returning to 447472, 3708409.

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(iii) Land bounded by the following UTM coordinates (E, N): 447500, 3708409; 447500, 3708437; 447472, 3708437; 447472, 3708409; 447330, 3708409; 447330, 3708380; 447075, 3708380; 447075, 3708409; 446905, 3708409; 446905, 3708380; 446876, 3708380; 446876, 3708409; 446820, 3708409; 446820, 3708437; 446678, 3708437; 446678, 3708409; 446621, 3708409; 446621, 3708380; 446593, 3708380; 446593, 3708352; 446564, 3708352; 446564, 3708295; 446593, 3708295; 446593, 3708267; 446536, 3708267; 446536, 3708295; 446479, 3708295; 446479, 3708324; 446394, 3708324; 446394, 3708352; 446366, 3708352; 446366, 3708267; 446394, 3708267; 446394, 3708238; 446422, 3708238; 446422, 3708182; 446366, 3708182; 446366, 3708210; 446252, 3708210; 446252, 3708238; 446167, 3708238; 446167, 3708153; 446139, 3708153; 446139, 3708068; 446110, 3708068; 446110, 3707983; 446082, 3707983; 446082, 3707926; 446054, 3707926; 446054, 3708011; 446025, 3708011; 446025, 3708097; 446018, 3708097; 446002, 3708150; 445977, 3708203; 445942, 3708250; 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(viii) Subunit 10b: From USGS 1:24,000 quadrangle map Santiago Peak, land bounded by the following UTM coordinates (E, N): 443236, 3722799; 443231, 3722788; 443185, 3722746; 443127, 3722747; 443085, 3722768; 443067, 3722796; 443053, 3722858; 443052, 3722896; 443090, 3722896; 443099, 3722835; 443114, 3722806; 443117, 3722806; 443117, 3722805; 443120, 3722805; 443120, 3722806; 443131, 3722805; 443128, 3722802; 443128, 3722799; 443143, 3722793; 443173, 3722792; 443198, 3722813; 443198, 3722825; 443218, 3722844; 443223, 3722867; 443232, 3722876; 443233, 3722907; 443223, 3722918; 443223, 3722926; 443253, 3722926; 443253, 3722946; 443262, 3722956; 443283, 3722956; 443283, 3722986; 443313, 3722986; 443313, 3723036; 443322, 3723044; 443322, 3723046; 443343, 3723046; 443343, 3723076; 443368, 3723076; 443371, 3723067; 443339, 3723002; 443314, 3722980; 443311, 3722950; 443308, 3722945; 443274, 3722909; 443272, 3722871; 443258, 3722842; 443240, 3722823; returning to 443236, 3722799.

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(x) Note: Map of Unit 10 is provided at paragraph (13)(v) of this entry.

(16) Unit 11: San Mateo Basin, Orange, Riverside, and San Diego Counties, California.

(i) Subunit 11a: From USGS 1:24,000 quadrangle map San Clemente, land bounded by the following UTM coordinates (E, N): 449613, 3702046; 449583, 3702046; 449583, 3702076; 449613, 3702076; returning to 449613, 3702046.

(ii) Land bounded by the following UTM coordinates (E, N): 449613, 3702046; 449703, 3702046; 449703, 3702016; 449733, 3702016; 449733, 3702046; 449823, 3702046; 449823, 3702076; 449853, 3702076; 449853, 3702196; 449913, 3702196; 449913, 3702166; 450033, 3702166; 450033, 3702196; 450093, 3702196; 450093, 3702256; 450153, 3702256; 450153, 3702286; 450213, 3702286; 450213, 3702316; 450243, 3702316; 450243, 3702346; 450273, 3702346; 450273, 3702436; 450243, 3702436; 450243, 3702466; 450303, 3702466; 450303, 3702496; 450393, 3702496; 450393, 3702466; 450423, 3702466; 450423, 3702496; 450483, 3702496; 450483, 3702526; 450513, 3702526; 450513, 3702556; 450603, 3702556; 450603, 3702586; 450633, 3702586; 450633, 3702646; 450663, 3702646; 450663, 3702616; 450753, 3702616; 450753, 3702646; 450813, 3702646; 450813, 3702676; 450933, 3702676; 450933, 3702706; 450963, 3702706; 450963, 3702736; 451083, 3702736; 451083, 3702766; 451203, 3702766; 451203, 3702796; 451263, 3702796; 451263, 3702826; 451293, 3702826; 451293, 3702796; 451323, 3702796; 451323, 3702826; 451383, 3702826; 451383, 3702856; 451413, 3702856; 451413, 3702886; 451473, 3702886; 451473, 3702916; 451533, 3702916; 451533, 3702976; 451563, 3702976; 451563, 3703006; 451743, 3703006; 451743, 3703036; 451818, 3703036; 450584, 3702286; 450513, 3702286; 450513, 3702256; 450453, 3702256; 450453, 3702226; 450423, 3702226; 450423, 3702188; 449917, 3701885; 449865, 3701873; 448313, 3701517; 448318, 3701806; 448320, 3701805; 448504, 3701735; 448596, 3701741; 448628, 3701756; 448657, 3701771; 448701, 3701806; 448773, 3701806; 448773, 3701776; 448803, 3701776; 448803, 3701806; 448953, 3701806; 448953, 3701836; 448983, 3701836; 448983, 3701806; 449163, 3701806; 449163, 3701836; 449223, 3701836; 449223, 3701806; 449313, 3701806; 449313, 3701836; 449343, 3701836; 449343, 3701866; 449433, 3701866; 449433, 3701896; 449463, 3701896; 449463, 3701926; 449523, 3701926; 449523, 3701956; 449613, 3701956; returning to 449613, 3702046.

(iii) Land bounded by the following UTM coordinates (E, N): 452685, 3703768; 452686, 3703564; 451833, 3703045; 451833, 3703096; 451863, 3703096; 451863, 3703126; 451893, 3703126; 451893, 3703156; 451923, 3703156; 451923, 3703216; 451953, 3703216; 451953, 3703246; 451983, 3703246; 451983, 3703306; 452013, 3703306; 452013, 3703276; 452073, 3703276; 452073, 3703306; 452103, 3703306; 452103, 3703426; 452223, 3703426; 452223, 3703456; 452253, 3703456; 452253, 3703486; 452283, 3703486; 452283, 3703636; 452313, 3703636; 452313, 3703696; 452343, 3703696; 452343, 3703636; 452433, 3703636; 452433, 3703666; 452463, 3703666; 452463, 3703696; 452493, 3703696; 452493, 3703816; 452553, 3703816; 452553, 3703786; 452583, 3703786; 452583, 3703756; 452613, 3703756; 452613, 3703786; 452643, 3703786; 452643, 3703816; 452673, 3703816; 452673, 3703876; 452684, 3703876; returning to 452685, 3703768.

(iv) Land bounded by the following UTM coordinates (E, N): 451503, 3705316; 451503, 3705346; 451533, 3705346; 451533, 3705316; returning to 451503, 3705316.

(v) Land bounded by the following UTM coordinates (E, N): 451503, 3705316; 451503, 3705166; 451473, 3705166; 451473, 3705136; 451443, 3705136; 451443, 3705046; 451413, 3705046; 451413, 3705016; 451383, 3705016; 451383, 3704926; 451413, 3704926; 451413, 3704896; 451443, 3704896; 451443, 3704836; 451383, 3704836; 451383, 3704866; 451323, 3704866; 451323, 3704776; 451263, 3704776; 451263, 3704746; 451233, 3704746; 451233, 3704686; 451203, 3704686; 451203, 3704656; 451053, 3704656; 451053, 3704626; 450993, 3704626; 450993, 3704566; 450813, 3704566; 450813, 3704536; 450753, 3704536; 450753, 3704506; 450723, 3704506; 450723, 3704536; 450483, 3704536; 450483, 3704506; 450423, 3704506; 450423, 3704476; 450393, 3704476; 450393, 3704536; 450333, 3704536; 450333, 3704566; 450273, 3704566; 450273, 3704596; 450153, 3704596; 450153, 3704626; 450033, 3704626; 450033, 3704596; 450003, 3704596; 450003, 3704566; 449973, 3704566; 449973, 3704536; 449943, 3704536; 449943, 3704476; 449913, 3704476; 449913, 3704446; 449883, 3704446; 449883, 3704416; 449763, 3704416; 449763, 3704386; 449703, 3704386; 449703, 3704356; 449673, 3704356; 449673, 3704326; 449613, 3704326; 449613, 3704296; 449583, 3704296; 449583, 3704266; 449553, 3704266; 449553, 3704236; 449523, 3704236; 449523, 3704206; 449493, 3704206; 449493, 3704176; 449433, 3704176; 449433, 3704146; 449403, 3704146; 449403, 3704116; 449343, 3704116; 449343, 3704086; 449283, 3704086; 449283, 3704056; 449253, 3704056; 449253, 3704026; 449223, 3704026; 449223, 3703906; 449163, 3703906; 449163, 3703876; 449073, 3703876; 449073, 3703846; 449043, 3703846; 449043, 3703742; 449037, 3703740; 449021, 3703726; 448893, 3703726; 448893, 3703696; 448863, 3703696; 448863, 3703666; 448833, 3703666; 448833, 3703646; 448818, 3703644; 448808, 3703636; 448803, 3703636; 448803, 3703631; 448776, 3703606; 448743, 3703606; 448743, 3703580; 448738, 3703576; 448683, 3703576; 448683, 3703546; 448653, 3703546; 448653, 3703516; 448593, 3703516; 448593, 3703486; 448503, 3703486; 448503, 3703456; 448473, 3703456; 448473, 3703426; 448443, 3703426; 448443, 3703396; 448353, 3703396; 448353, 3703366; 448203, 3703366; 448203, 3703336; 448143, 3703336; 448143, 3703281; 448143, 3703281; 448025, 3703185; 448021, 3703182; 448017, 3703179; 448014, 3703176; 448006, 3703169; 447991, 3703157; 447987, 3703154; 447983, 3703152; 447979, 3703149; 447968, 3703140; 447956, 3703132; 447948, 3703126; 447944, 3703124; 447940, 3703121; 447935, 3703119; 447931, 3703116; 447927, 3703113; 447923, 3703111; 447919, 3703108; 447915, 3703106; 447911, 3703103; 447906, 3703101; 447902, 3703099; 447898, 3703096; 447885, 3703089; 447881, 3703087; 447876, 3703084; 447873, 3703083; 447873, 3703096; 447843, 3703096; 447843, 3703126; 447603, 3703126; 447603, 3703096; 447573, 3703096; 447573, 3703066; 447543, 3703066; 447543, 3703036; 447483, 3703036; 447483, 3703006; 447453, 3703006; 447453, 3702976; 447423, 3702976; 447423, 3702796; 447393, 3702796; 447393, 3702766; 447363, 3702766; 447363, 3702706; 447333, 3702706; 447333, 3702646; 447363, 3702646; 447363, 3702586; 447333, 3702586; 447333, 3702526; 447303, 3702526; 447303, 3702316; 447309, 3702316; 447309, 3702315; 447310, 3702312; 447310, 3702309; 447310,

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(vi) Subunit 11b: From USGS 1:24,000 quadrangle map Margarita Peak, land bounded by the following UTM coordinates (E, N): 455883, 3703636; 455883, 3703606; 455943, 3703606; 455943, 3703592; 455790, 3703594; 455792, 3703606; 455853, 3703606; 455853, 3703636; returning to 455883, 3703636.

(vii) Land bounded by the following UTM coordinates (E, N): 467274, 3712323; 467274, 3712352; 467302, 3712352; 467302, 3712323; returning to 467274, 3712323;

(viii) Land bounded by the following UTM coordinates (E, N): 467274, 3712323; 467274, 3712267; 467245, 3712267; 467245, 3712238; 467217, 3712238; 467217, 3712210; 467188, 3712210; 467188, 3712182; 467160, 3712182; 467160, 3712153; 467132,

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(ix) Note: Map of Unit 11 is provided at paragraph (13)(v) of this entry.

(17) Unit 12: Lower Santa Margarita Basin, San Diego County, California.

(i) Subunit 12a: From USGS 1:24,000 quadrangle maps Fallbrook and Temecula, land bounded by the following UTM coordinates (E, N): 470019, 3696496; 470013, 3696496; 470013, 3696526; 470019, 3696526; returning to 470019, 3696496.

(ii) Land bounded by the following UTM coordinates (E, N): 470024, 3696976; 470020, 3696616; 470013, 3696616; 470013, 3696646; 469983, 3696646; 469983, 3696856; 470013, 3696856; 470013, 3696976; returning to 470024, 3696976.

(iii) Land bounded by the following UTM coordinates (E, N): 470553, 3700756; 470553, 3700726; 470583, 3700726; 470583, 3700606; 470553, 3700606; 470553, 3700576; 470523, 3700576; 470523, 3700546; 470463, 3700546; 470463, 3700456; 470493, 3700456; 470493, 3700426; 470553, 3700426; 470553, 3700396; 470583, 3700396; 470583, 3700336; 470523, 3700336; 470523, 3700306; 470313, 3700306; 470313, 3700276; 470223, 3700276; 470223, 3700246; 470163, 3700246; 470163, 3700096; 470043, 3700096; 470043, 3700126; 469923, 3700126; 469923, 3699976; 469893, 3699976; 469893, 3699886; 469923, 3699886; 469923, 3699766; 469953, 3699766; 469953, 3699706; 469983, 3699706; 469983, 3699676; 470013, 3699676; 470013, 3699646; 470043, 3699646; 470043, 3699616; 470103, 3699616; 470103, 3699586; 470073, 3699586; 470073, 3699436; 470043, 3699436; 470043, 3699406; 470013, 3699406; 470013, 3699376; 469983, 3699376; 469983, 3699286; 470073, 3699286; 470073, 3699256; 470043, 3699256; 470043, 3699196; 470013, 3699196; 470013, 3699136; 469983, 3699136; 469983, 3699076; 470013, 3699076; 470013, 3698896; 470043, 3698896; 470043, 3698866; 470073, 3698866; 470073, 3698836; 470133, 3698836; 470133, 3698806; 470223, 3698806; 470223, 3698836; 470253, 3698836; 470253, 3698866; 470313, 3698866; 470313, 3698806; 470343, 3698806; 470343, 3698746; 470313, 3698746; 470313, 3698686; 470343, 3698686; 470343, 3698596; 470313, 3698596; 470313, 3698566; 470253, 3698566; 470253, 3698446; 470223, 3698446; 470223, 3698416; 470193, 3698416; 470193, 3698446; 470163, 3698446; 470163, 3698416; 470133, 3698416; 470133, 3698356; 470103, 3698356; 470103, 3698326; 470133, 3698326; 470133, 3698266; 470163, 3698266; 470163, 3698206; 470193, 3698206; 470193, 3698176; 470283, 3698176; 470283, 3698146; 470313, 3698146; 470313, 3698116; 470283, 3698116; 470283, 3698086; 470253, 3698086; 470253, 3697936; 470283, 3697936; 470283, 3697906; 470373, 3697906; 470373, 3697876; 470433, 3697876; 470433, 3697816; 470403, 3697816; 470403, 3697786; 470313, 3697786; 470313, 3697756; 470283, 3697756; 470283, 3697696; 470253, 3697696; 470253, 3697576; 470283, 3697576; 470283, 3697546; 470343,

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(iv) Subunit 12b: From USGS 1:24,000 quadrangle maps Fallbrook and Temecula, land bounded by the following UTM coordinates (E, N): 481713, 3699166; 481713, 3699136; 481743, 3699136; 481743, 3699106; 481773, 3699106; 481773, 3699046; 481803, 3699046; 481803, 3698986; 481833, 3698986; 481833, 3698956; 481983, 3698956; 481983, 3698926; 482043, 3698926; 482043, 3698896; 481983, 3698896; 481983, 3698866; 481953, 3698866; 481953, 3698836; 481923, 3698836; 481923, 3698806; 481893, 3698806; 481893, 3698716; 481863, 3698716; 481863, 3698686; 481833, 3698686; 481833, 3698656; 481803, 3698656; 481803, 3698626; 481773, 3698626; 481773, 3698596; 481743, 3698596; 481743, 3698566; 481683, 3698566; 481683, 3698536; 481653, 3698536; 481653, 3698506; 481518, 3698506; 481519, 3698558; 481476, 3698579; 481418, 3698570; 481299, 3698509; 481259, 3698468; 481232, 3698394; 481172, 3698298; 481108, 3698204; 481085, 3698135; 481233, 3698076; 481233, 3698056; 481173, 3698056; 481173, 3698026; 481083, 3698026; 481083, 3697996; 481053, 3697996; 481053, 3697936; 480993, 3697936; 480993, 3697876; 480963, 3697876; 480963, 3697816; 480933, 3697816; 480933, 3697786; 480903, 3697786; 480903, 3697756; 480873, 3697756; 480873, 3697726; 480843, 3697726; 480843, 3697666; 480783, 3697666; 480783, 3697636; 480753, 3697636; 480753, 3697606; 480693, 3697606; 480693, 3697576; 480663, 3697576; 480663, 3697546; 480633, 3697546; 480633, 3697456; 480543, 3697456; 480543, 3697486; 480483, 3697486; 480483, 3697456; 480453, 3697456; 480453, 3697336; 480483, 3697336; 480483, 3697306; 480453, 3697306; 480453, 3697276; 480393, 3697276; 480393, 3697246; 480363, 3697246; 480363, 3697276; 480303, 3697276; 480303, 3697246; 480273, 3697246; 480273, 3697186; 480243, 3697186; 480243, 3697156; 480273, 3697156; 480273, 3697066; 480213, 3697066; 480213, 3697036; 480183, 3697036; 480183, 3697006; 480153, 3697006; 480153, 3696976; 480123, 3696976; 480123, 3696946; 480093, 3696946; 480093, 3696916; 480063, 3696916; 480063, 3696886; 480093, 3696886; 480093, 3696856; 480123, 3696856; 480123, 3696796; 480153, 3696796; 480153, 3696766; 480213, 3696766; 480213, 3696736; 480183, 3696736; 480183, 3696706; 480153, 3696706; 480153, 3696676; 480093, 3696676; 480093, 3696706; 480063, 3696706; 480063, 3696736; 479883, 3696736; 479883, 3696676; 479733, 3696676; 479733, 3696646; 479673, 3696646; 479673, 3696616; 479643, 3696616; 479643, 3696586; 479613, 3696586; 479613, 3696556; 479583, 3696556; 479583, 3696496; 479553, 3696496; 479553, 3696466; 479493, 3696466; 479493, 3696436; 479463, 3696436; 479463, 3696406; 479373, 3696406; 479373, 3696376; 479343, 3696376; 479343, 3696346; 479283, 3696346; 479283, 3696316; 479253, 3696316; 479253, 3696286; 479223, 3696286; 479223, 3696226; 479193, 3696226; 479193, 3696196; 479163, 3696196; 479163, 3696226; 479043, 3696226; 479043, 3696196; 479013, 3696196; 479013, 3696166; 478953, 3696166; 478953, 3696196; 478923, 3696196; 478923, 3696226; 478953, 3696226; 478953, 3696316; 478923, 3696316; 478923, 3696376; 478863, 3696376; 478863, 3696346; 478833, 3696346; 478833, 3696286; 478563, 3696286; 478563, 3696316; 478473, 3696316; 478473, 3696346; 478443, 3696346; 478443, 3696376; 478473, 3696376; 478473, 3696436; 478443, 3696436; 478443, 3696496; 478413, 3696496; 478413, 3696556; 478383, 3696556; 478383, 3696586; 478293, 3696586; 478293, 3696556; 478173, 3696556; 478173, 3696526; 478143, 3696526; 478143, 3696496; 478083, 3696496; 478083, 3696436; 478053, 3696436; 478053, 3696406; 478023, 3696406; 478023, 3696376; 477993, 3696376; 477993, 3696406; 477963, 3696406; 477963, 3696466; 477903, 3696466; 477903, 3696496; 477813, 3696496; 477813, 3696466; 477753, 3696466; 477753, 3696526; 477723, 3696526; 477723, 3696556; 477693, 3696556; 477693, 3696586; 477663, 3696586; 477663, 3696796; 477633, 3696796; 477633, 3696856; 477663, 3696856; 477663, 3696976; 477633, 3696976; 477633, 3697006; 477573, 3697006; 477573, 3697036; 477333, 3697036; 477333, 3697006; 477273, 3697006; 477273, 3696976; 477243, 3696976; 477243, 3696946; 477213, 3696946; 477213, 3696916; 477183, 3696916; 477183, 3696886; 477153, 3696886; 477153, 3696856; 477123, 3696856; 477123, 3696826; 477093, 3696826; 477093, 3696796; 477063, 3696796; 477063, 3696766; 477033, 3696766; 477033, 3696706; 476973, 3696706; 476973, 3696616; 477003, 3696616; 477003, 3696586; 476943, 3696586; 476943, 3696556; 476913, 3696556; 476913, 3696526; 476883, 3696526; 476883, 3696346; 476913, 3696346; 476913, 3696316; 476883, 3696316; 476883, 3696196; 476853, 3696196; 476853, 3695926;

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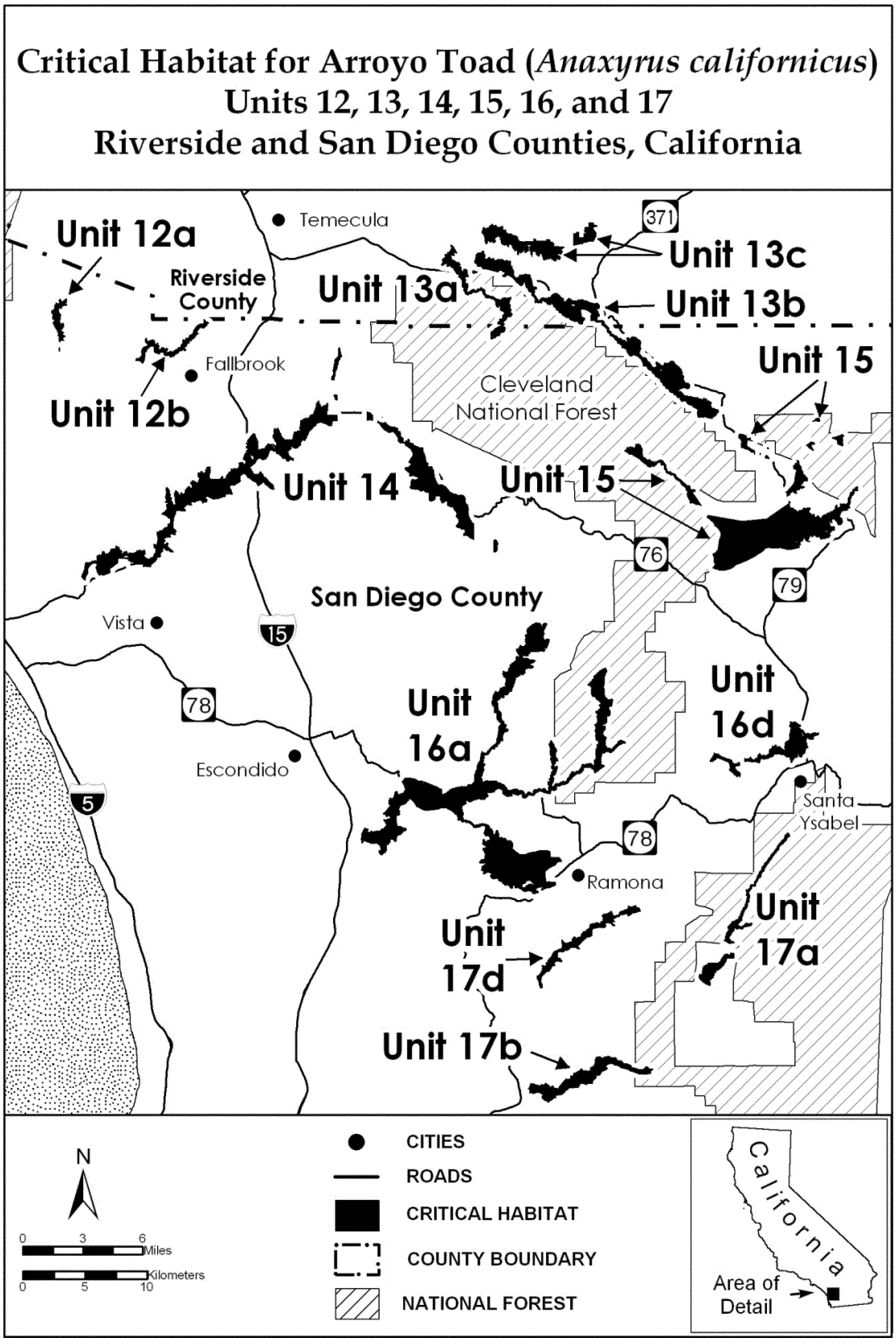
(v) **Note:** Map of Units 12, 13, 14, 15, 16, and 17 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(18) Unit 13: Upper Santa Margarita Basin, Riverside and San Diego Counties, California.

(i) Subunit 13a: from USGS 1:24,000 quadrangle map Vail Lake, land bounded by the following UTM coordinates (E, N): 505506, 3698564; 505506, 3698534; 505536, 3698534; 505536, 3698564; 505506, 3698564; 505506, 3698599; 505506, 3698624; 505536, 3698624; 505536, 3698654; 505566, 3698654; 505566, 3698624; 505626, 3698624; 505626, 3698594; 505656, 3698594; 505656, 3698624; 505686, 3698624; 505686, 3698654; 505716, 3698654; 505716, 3698684; 505686, 3698684; 505686, 3698714; 505656, 3698714; 505656, 3698744; 505626, 3698744; 505626, 3698774; 505596, 3698774; 505596, 3698804; 505446, 3698804; 505446, 3698834; 505386, 3698834; 505386, 3698924; 505446, 3698924; 505446, 3698954; 505476, 3698954; 505476, 3698984; 505506, 3698984; 505506, 3699044; 505536, 3699044; 505536, 3699134; 505566, 3699134; 505566, 3699194; 505656, 3699194; 505656, 3699224; 505746, 3699224; 505746, 3699254; 505776, 3699254; 505776, 3699314; 505806, 3699314; 505806, 3699494; 505836, 3699494; 505836, 3699554; 505866, 3699554; 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(ii) Subunit 13b: From USGS 1:24,000 quadrangle maps Vail Lake, Aguanga, and Palomar Observatory, land bounded by the following UTM coordinates (E, N): 520626, 3692624; 520656, 3692624; 520656, 3692654; 520626, 3692654; 520626, 3692624; 520596, 3692624; 520596, 3692594; 520476, 3692594; 520476, 3692624; 520356, 3692624; 520356, 3692594; 520326, 3692594; 520326, 3692564; 520266, 3692564; 520266, 3692594; 520206, 3692594; 520206, 3692654; 520176, 3692654; 520176, 3692684; 520146, 3692684; 520146, 3692744; 520116, 3692744; 520116, 3692864; 519936, 3692864; 519936, 3692894; 519906, 3692894; 519906, 3692924; 519876, 3692924; 519876, 3692984; 519846, 3692984; 519846, 3693014; 519816, 3693014; 519816, 3693044; 519786, 3693044; 519786, 3693074; 519756, 3693074; 519756, 3693104; 519726, 3693104; 519726, 3693134; 519606, 3693134; 519606, 3693164; 519576, 3693164; 519576, 3693224; 519546, 3693224; 519546, 3693284; 519456, 3693284; 519456, 3693314; 519336, 3693314; 519336, 3693344; 519306, 3693344; 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(iii) Subunit 13c: From USGS 1:24,000 quadrangle maps Vail Lake, Sage, Cahuilla Mtn., and Aguanga, land bounded by the following UTM coordinates (E, N): 508295, 3705827; 508285, 3705827; 508285, 3705874; 508289, 3705912; 508352, 3705912; 508352, 3705827; returning to 508295, 3705827.

(iv) Land bounded by the following UTM coordinates (E, N): 506990, 3704380; 506962, 3704380; 506962, 3704408; 506990, 3704408; returning to 506990, 3704380.

(v) Land bounded by the following UTM coordinates (E, N): 505004, 3706809; 505004, 3706791; 505033, 3706791; 505033, 3706735; 505203, 3706735; 505203, 3706763; 505260, 3706763; 505260, 3706678; 505231, 3706678; 505231, 3706649; 505260, 3706649; 505260, 3706621; 505373, 3706621; 505373, 3706649; 505401, 3706649; 505401, 3706621; 505628, 3706621; 505628, 3706649; 505714, 3706649; 505714, 3706678; 505770, 3706678; 505770, 3706593; 505742, 3706593; 505742, 3706564; 505770, 3706564; 505770, 3706451; 505799, 3706451; 505799, 3706423; 505855, 3706423; 505855, 3706394; 505997, 3706394; 505997, 3706423; 506026, 3706423; 506026, 3706252; 506054, 3706252; 506054, 3706224; 506082, 3706224; 506082, 3706139; 506224, 3706139; 506224, 3706110; 506253, 3706110; 506253, 3706082; 506281, 3706082; 506281, 3705940; 506309, 3705940; 506309, 3706025; 506338, 3706025; 506338, 3706054; 506394, 3706054; 506394, 3706082; 506451, 3706082; 506451, 3706054; 506479, 3706054; 506479, 3705997; 506536, 3705997; 506536, 3705969; 506678, 3705969; 506678, 3705940; 506877, 3705940; 506877, 3705855; 506905, 3705855; 506905, 3705827; 506933, 3705827; 506933, 3705855; 506990, 3705855; 506990, 3705827; 506962, 3705827; 506962, 3705742; 506990, 3705742; 506990, 3705657; 507018, 3705657; 507018, 3705600; 507047, 3705600; 507047, 3705571; 507081, 3705571; 507080, 3705462; 507387, 3705460; 507387, 3705458; 507416, 3705458; 507416, 3705430; 507557, 3705430; 507557, 3705458; 507586, 3705458; 507586, 3705459; 508287, 3705456; 508286, 3705713; 508295, 3705713; 508295, 3705628; 508409, 3705628; 508409, 3705657; 508465, 3705657; 508465, 3705458; 508494, 3705458; 508494, 3705486; 508607, 3705486; 508607, 3705373; 508636, 3705373; 508636, 3705458; 508664, 3705458; 508664, 3705486; 508749, 3705486; 508749, 3705515; 509118, 3705515; 509118, 3705486; 509260, 3705486; 509260, 3705515; 509316, 3705515; 509316, 3705543; 509345, 3705543; 509345, 3705628; 509487, 3705628; 509487, 3705600; 509572, 3705600; 509572, 3705571; 509600, 3705571; 509600, 3705401; 509628, 3705401; 509628, 3705373; 509685, 3705373; 509685, 3705401; 509799,

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(vi) Land bounded by the following UTM coordinates (E, N): 512834, 3706987; 512834, 3706962; 512891, 3706962; 512891, 3706980; 513089, 3706957; 513089, 3706933; 513061, 3706933; 513061, 3706820; 513089, 3706820; 513089, 3706848; 513146, 3706848; 513146, 3706791; 513203, 3706791; 513203, 3706763; 513288, 3706763; 513288, 3706791; 513345, 3706791; 513345, 3706763; 513373, 3706763; 513373, 3706706; 513345, 3706706; 513345, 3706678; 513146, 3706678; 513146, 3706649; 513089, 3706649; 513089, 3706621; 513061, 3706621; 513061, 3706479; 513089, 3706479; 513089, 3706423; 513146, 3706423; 513146, 3706394; 513175, 3706394; 513175, 3706337; 513203, 3706337; 513203, 3706281; 513231, 3706281; 513231, 3706252; 513260, 3706252; 513260, 3706224; 513288, 3706224; 513288, 3706196; 513316, 3706196; 513316, 3706054; 513288, 3706054; 513288, 3705912; 513260, 3705912; 513260, 3705827; 513231, 3705827; 513231, 3705770; 513203, 3705770; 513203, 3705657; 513175, 3705657; 513175, 3705628; 513146, 3705628; 513146, 3705600; 513118, 3705600; 513118, 3705543; 513089, 3705543; 513089, 3705515; 512862, 3705515; 512862, 3705486; 512636, 3705486; 512636, 3705458; 512579, 3705458; 512579, 3705430; 512323, 3705430; 512323, 3705401; 512295, 3705401; 512295, 3705373; 512238, 3705373; 512238, 3705316; 512210, 3705316; 512210, 3705288; 511955, 3705288; 511955, 3705259; 511813, 3705259; 511813, 3705231; 511671, 3705231; 511671, 3705203; 511586, 3705203; 511586, 3705174; 511535, 3705174; 511525, 3706082; 511699, 3706082; 511699, 3706110; 511728, 3706110; 511728, 3706139; 511756, 3706139; 511756, 3706167; 511784, 3706167; 511784, 3706196; 511813, 3706196; 511813, 3706224; 511898, 3706224; 511898, 3706196; 511911, 3706196; 511916, 3705800; 512341, 3705773; 512337, 3706082; 512522, 3706082; 512522, 3706110; 512579, 3706110; 512579, 3706139; 512550, 3706139; 512550, 3706196; 512437, 3706196; 512437, 3706309; 512409, 3706309; 512409, 3706366; 512437, 3706366; 512437, 3706564; 512465, 3706564; 512465, 3706630; 512761, 3706595; 512751, 3706990; 512808, 3706990; returning to 512834, 3706987.

(vii) Note: Map of Unit 13 is provided at paragraph (17)(v) of this entry.

(19) Unit 14: Lower and Middle San Luis Rey Basin, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Pechanga, San Luis Rey, Morro Hill, Bonsall, Pala, and Boucher Hill, land bounded by the following UTM coordinates (E, N): 505206, 3681404; 505206, 3681374; 505266, 3681374; 505266, 3681344; 505326, 3681344; 505326, 3681224; 505356, 3681224; 505356, 3681164; 505386, 3681164; 505386, 3681014; 505356, 3681014; 505356, 3680984; 505326, 3680984; 505326, 3680864; 505356, 3680864; 505356, 3680744; 505326, 3680744; 505326, 3680654; 505356, 3680654; 505356, 3680624; 505326, 3680624; 505326, 3680594; 505296, 3680594; 505296, 3680564; 505266, 3680564; 505266, 3680474; 505236, 3680474; 505236, 3680429; 505066, 3680430; 505061, 3680430; 505061, 3680553; 505061, 3680603; 505061, 3680603; 505061, 3680604; 505061, 3680604; 505061, 3680604; 505061, 3680605; 505061, 3680605; 505061, 3680605; 505061, 3680606; 505061, 3680606; 505061, 3680606; 505061, 3680606; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680608; 505062, 3680608; 505062, 3680608; 505062, 3680608; 505062, 3680609; 505062, 3680609; 505062, 3680609; 505062, 3680609; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680611; 505062, 3680611; 505062, 3680611; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680613; 505062, 3680613; 505062, 3680613; 505062, 3680614; 505062, 3680614; 505062, 3680614; 505062, 3680614; 505062, 3680615; 505062, 3680615; 505062, 3680616; 505062, 3680616; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680618; 505062, 3680618; 505062, 3680619; 505062, 3680620; 505062, 3680620; 505062, 3680621; 505062, 3680621; 505062, 3680622; 505062, 3680622; 505062, 3680623; 505062, 3680623; 505062, 3680623; 505061, 3680624; 505061, 3680624; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505065, 3680625; 505065, 3680726; 505066, 3680827; 505066, 3680927; 505066, 3681113; 505066, 3681123; 505066, 3681123; 505066, 3681232; 505066, 3681273; 505066, 3681344; 505146, 3681344; 505146, 3681374; 505176, 3681374; 505176, 3681404; returning to 505206, 3681404.

(ii) Land bounded by the following UTM coordinates (E, N): 496083, 3690984; 496081, 3690778; 496186, 3690777; 496188, 3690982; 496083, 3690984; 496085, 3691184; 496086, 3691184; 496086, 3691124; 496116, 3691124; 496116, 3691094; 496146, 3691094; 496146, 3691034; 496176, 3691034; 496176, 3691004; 496236, 3691004; 496236, 3690944; 496266, 3690944; 496266, 3690884; 496296, 3690884; 496296, 3690854; 496326, 3690854; 496326, 3690824; 496356, 3690824; 496356, 3690794; 496386, 3690794; 496386, 3690764; 496416, 3690764; 496416, 3690734; 496446, 3690734; 496446, 3690704; 496476, 3690704; 496476, 3690674; 496506, 3690674; 496506, 3690644; 496536, 3690644; 496536, 3690614; 496596, 3690614; 496596, 3690584; 496656, 3690584; 496656, 3690554; 496716, 3690554; 496716, 3690524; 496806, 3690524; 496806, 3690494; 497106, 3690494; 497106, 3690464; 497166, 3690464; 497166, 3690434; 497256, 3690434; 497256, 3690404; 497298, 3690404; 497300, 3690146; 497496, 3690141; 497496, 3690134; 497526, 3690134; 497526, 3689984; 497556, 3689984; 497556, 3689924; 497526, 3689924; 497526, 3689804; 497556, 3689804; 497556, 3689744; 497586, 3689744; 497586, 3689684; 497616, 3689684; 497616, 3689654; 497676, 3689654; 497676, 3689624; 497747, 3689624; 497758, 3689276; 497954, 3689277; 497951, 3689383; 498148, 3689383; 498145, 3689534; 498186, 3689534; 498186, 3689504; 498216, 3689504; 498216, 3689444; 498246, 3689444; 498246, 3689414; 498216, 3689414; 498216, 3689264; 498246, 3689264; 498246, 3689234; 498216, 3689234; 498216, 3689204; 498366, 3689204; 498366, 3689174; 498546, 3689174; 498546, 3689144; 498576, 3689144; 498576, 3689054; 498546, 3689054; 498546, 3689024; 498636, 3689024; 498636, 3688994; 498756, 3688994; 498756, 3688964; 498786, 3688964; 498786, 3688934; 498876,

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(iii) Land bounded by the following UTM coordinates (E, N): 496086, 3691274; 496085, 3691274; 496085, 3691304; 496086, 3691304; returning to 496086, 3691274.

(iv) Land bounded by the following UTM coordinates (E, N): 494886, 3691724; 494886, 3691694; 494946, 3691694; 494946, 3691664; 494916, 3691664; 494916, 3691574; 494976, 3691574; 494976, 3691604; 495006, 3691604; 495006, 3691634; 495036, 3691634; 495036, 3691664; 495126, 3691664; 495126, 3691574; 495096, 3691574; 495096, 3691544; 495126, 3691544; 495126, 3691514; 495186, 3691514; 495186, 3691484; 495265, 3691484; 495265, 3691426; 495265, 3691426; 495266, 3691034; 495216, 3691034; 495216, 3691064; 495186, 3691064; 495186, 3691094; 494946, 3691094; 494946, 3691064; 494847, 3691064; 494847, 3691104; 494848, 3691249; 494850, 3691724; returning to 494886, 3691724.

(v) Land bounded by the following UTM coordinates (E, N): 490926, 3692474; 490926, 3692444; 490956, 3692444; 490956, 3692414; 490986, 3692414; 490986, 3692384; 491016, 3692384; 491016, 3692324; 491076, 3692324; 491076, 3692174; 491106, 3692174; 491106, 3692144; 491136, 3692144; 491136, 3692114; 491196, 3692114; 491196, 3692144; 491256, 3692144; 491256, 3692174; 491346, 3692174; 491346, 3692204; 491406, 3692204; 491406, 3692234; 491436, 3692234; 491436, 3692264; 491466, 3692264; 491466, 3692267; 491596, 3692267; 491595, 3692414; 491646, 3692414; 491646, 3692324; 491676, 3692324; 491676, 3692144; 491646, 3692144; 491646, 3692114; 491616, 3692114; 491616, 3691964; 491646, 3691964; 491646, 3691858; 491596, 3691858; 491596, 3691849; 491596, 3691822; 491596, 3691803; 491596, 3691803; 491596, 3691584; 491596, 3691442; 491998, 3691441; 492404, 3691435; 492405, 3691020; 492304,

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(vi) Land bounded by the following UTM coordinates (E, N): 492402, 3693080; 492402, 3693012; 492400, 3692673; 492366, 3692673; 492366, 3692714; 492336, 3692714; 492336, 3692744; 492276, 3692744; 492276, 3692774; 492246, 3692774; 492246, 3692924; 492216, 3692924; 492216, 3692984; 492186, 3692984; 492186, 3693074; 492156, 3693074; 492156, 3693085; 492366, 3693082; 492402, 3693082; returning to 492402, 3693080.

(vii) Land bounded by the following UTM coordinates (E, N): 492606, 3696884; 492606, 3696854; 492636, 3696854; 492636, 3696794; 492666, 3696794; 492666, 3696584; 492696, 3696584; 492696, 3696404; 492726, 3696404; 492726, 3696314; 492756, 3696314; 492756, 3696284; 492786, 3696284; 492786, 3696194; 492726, 3696194; 492726, 3696164; 492696, 3696164; 492696, 3696134; 492666, 3696134; 492666, 3696104; 492636, 3696104; 492636, 3696074; 492606, 3696074; 492606, 3696014; 492636, 3696014; 492636, 3695984; 492606, 3695984; 492606, 3695954; 492576, 3695954; 492576, 3695924; 492546, 3695924; 492546, 3695864; 492516, 3695864; 492516, 3695804; 492486, 3695804; 492486, 3695564; 492456, 3695564; 492456, 3695504; 492426, 3695504; 492426, 3695444; 492396, 3695444; 492396, 3695384; 492426, 3695384; 492426, 3695354; 492396, 3695354; 492396, 3695264; 492366, 3695264; 492366, 3695144; 492336, 3695144; 492336, 3695114; 492306, 3695114; 492306, 3695054; 492276, 3695054; 492276, 3694994; 492246, 3694994; 492246, 3694664; 492216, 3694664; 492216, 3694574; 492186, 3694574; 492186, 3694514; 492156, 3694514; 492156, 3694334; 492126, 3694334; 492126, 3694317; 492019, 3694320; 491976, 3694320; 491976, 3694514; 492006, 3694514; 492006, 3694574; 492036, 3694574; 492036, 3694604; 492066, 3694604; 492066, 3694664; 492096, 3694664; 492096, 3694694; 492126, 3694694; 492126, 3694994; 492096, 3694994; 492096, 3695114; 492126, 3695114; 492126, 3695294; 492156, 3695294; 492156, 3695414; 492186, 3695414; 492186, 3695594; 492216, 3695594; 492216, 3695654; 492246, 3695654; 492246, 3695804; 492216, 3695804; 492216, 3695864; 492246, 3695864; 492246, 3695954; 492306, 3695954; 492306, 3695984; 492336, 3695984; 492336, 3696014; 492396, 3696014; 492396, 3696044; 492426, 3696044; 492426, 3696104; 492456, 3696104; 492456, 3696164; 492486, 3696164; 492486, 3696194; 492516, 3696194; 492516, 3696254; 492546, 3696254; 492546, 3696344; 492516, 3696344; 492516, 3696374; 492546, 3696374; 492546, 3696434; 492516, 3696434; 492516, 3696734; 492546, 3696734; 492546, 3696824; 492576, 3696824; 492576, 3696884; returning to 492606, 3696884.

(viii) Note: Map of Unit 14 is provided at paragraph (17)(iii) of this entry.

(20) Unit 15: Upper San Luis Rey Basin, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Palomar Observatory, and Warner Springs, land bounded by the following UTM coordinates (E, N): 529742, 3680834; 529742, 3680862; 529770, 3680862; 529770, 3680834; returning to 529742, 3680834.

(ii) Land bounded by the following UTM coordinates (E, N): 533799, 3683983;533827, 3683983; 533827, 3683954; 533799, 3683954; 533799, 3683983; thence from land bounded by the following UTM coordinates (E, N): 521912, 3684068; 522111, 3683784; 522082, 3683784; 522082, 3683813; 522054, 3683813; 522054, 3683841; 522026, 3683841; 522026, 3683898; 521997, 3683898; 521997, 3683926; 521969, 3683926; 521969, 3683983; 521941, 3683983; 521941, 3684011; 521912, 3684011; returning to 521912, 3684068; thence from land bounded by the following UTM coordinates (E, N): 521912, 3684068; 521884, 3684068; 521884, 3684096; 521855, 3684096; 521855, 3684149; returning to 521912, 3684068; thence from land bounded by the following UTM coordinates (E, N): 528806, 3684664; 528806, 3684644; 528796, 3684664; returning to 528806, 3684664; thence from land bounded by the following UTM coordinates (E, N): 533799, 3683983; 533685, 3683983; 533685, 3683954; 533657, 3683954; 533657, 3683926; 533600, 3683926; 533600, 3683869; 533629, 3683869; 533629, 3683813; 533487, 3683813; 533487, 3683784; 533458, 3683784; 533458, 3683756; 533203, 3683756; 533203, 3683727; 533175, 3683727; 533175, 3683699; 533118, 3683699; 533118, 3683671; 533090, 3683671; 533090, 3683614; 533061, 3683614; 533061, 3683586; 533033, 3683586;

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(iv) Land bounded by the following UTM coordinates (E, N): 527100, 3688218; 527189, 3688133; 527274, 3688045; 527260, 3687961; 527240, 3687969; 527188, 3687979; 527132, 3687990; 527094, 3688001; 527049, 3688024; 526996, 3688057; 526979, 3688074; 526981, 3688142; 527035, 3688139; returning to 527100, 3688218.

(v) Land bounded by the following UTM coordinates (E, N): 527302, 3688720; 527302, 3688715; 527295, 3688720; returning to 527302, 3688720.

(vi) Land bounded by the following UTM coordinates (E, N): 527274, 3688749; 527274, 3688735; 527254, 3688749; returning to 527274, 3688749.

(vii) Land bounded by the following UTM coordinates (E, N): 527217, 3688806; 527217, 3688777; 527246, 3688777; 527246, 3688754; 527171, 3688806; returning to 527217, 3688806.

(viii) Land bounded by the following UTM coordinates (E, N): 516777, 3689146; 516777, 3689118; 516806, 3689118; 516806, 3689032; 516834, 3689032; 516834, 3689061; 516891, 3689061; 516891, 3689032; 516919, 3689032; 516919, 3688976; 516948, 3688976; 516948, 3688919; 516976, 3688919; 516976, 3688891; 516948, 3688891; 516948, 3688834; 516976, 3688834; 516976, 3688806; 517004, 3688806; 517004, 3688777; 517033, 3688777; 517033, 3688749; 517061, 3688749; 517061, 3688579; 517033, 3688579; 517033, 3688550; 516948, 3688550; 516948, 3688522; 516976, 3688522; 516976, 3688493; 517004, 3688493; 517004, 3688465; 517033, 3688465; 517033, 3688408; 517004, 3688408; 517004, 3688380; 517033, 3688380; 517033, 3688238; 517004, 3688238; 517004, 3688210; 517089, 3688210; 517089, 3688096; 517118, 3688096; 517118, 3688040; 517175, 3688040; 517175, 3688011; 517288, 3688011; 517288, 3687954; 517345, 3687954; 517345, 3687926; 517373, 3687926; 517373, 3687898; 517402, 3687898; 517402, 3687869; 517430, 3687869; 517430, 3687841; 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(ix) Land bounded by the following UTM coordinates (E, N): 530905, 3689118; 530905, 3689089; 530763, 3689089; 530763, 3689118; 530735, 3689118; 530735, 3689089; 530707, 3689089; 530707, 3688891; 530735, 3688891; 530735, 3688834; 530763, 3688834; 530763, 3688806; 530792, 3688806; 530792, 3688749; 530820, 3688749; 530820, 3688720; 530848, 3688720; 530848, 3688692; 530877, 3688692; 530877, 3688635; 530820, 3688635; 530820, 3688664; 530792, 3688664; 530792, 3688692; 530763, 3688692; 530763, 3688720; 530707, 3688720; 530707, 3688749; 530678, 3688749; 530678, 3688777; 530593, 3688777; 530593, 3688806; 530508, 3688806; 530508, 3688862; 530480, 3688862; 530480, 3688891; 530451, 3688891; 530451, 3688947; 530423, 3688947; 530423, 3688976; 530366, 3688976; 530366, 3689004; 530312, 3689004; 530717, 3689283; 530990, 3689238; 530990, 3689231; 530962, 3689231; 530962, 3689203; 530934, 3689203; 530934, 3689118; returning to 530905, 3689118.

(x) Land bounded by the following UTM coordinates (E, N): 533203, 3689884; 533203, 3689855; 533288, 3689855; 533288, 3689827; 533317, 3689827; 533317, 3689798; 533288, 3689798; 533288, 3689770; 533231, 3689770; 533231, 3689713; 533203, 3689713; 533203, 3689515; 533231, 3689515; 533231, 3689430; 533203, 3689430; 533203, 3689231; 533231, 3689231; 533231, 3689032; 533203, 3689032; 533203, 3688982; 533200, 3688985; 533115, 3689037; 533039, 3689061; 532931, 3689099; 532888, 3689136; 532855, 3689184; 532827, 3689250; 532827, 3689325; 532808, 3689382; 532789, 3689448; 532742, 3689486; 532624, 3689542; 532553, 3689566; 532506, 3689575; 532440, 3689613; 532416, 3689628; 532465, 3689628; 532465, 3689657; 532636, 3689657; 532636, 3689685; 532749, 3689685; 532749, 3689657; 532834, 3689657; 532834, 3689685; 532806, 3689685; 532806, 3689742; 532834, 3689742; 532834, 3689770; 532863, 3689770; 532863, 3689798; 533033, 3689798; 533033, 3689827; 533118, 3689827; 533118, 3689855; 533175, 3689855; 533175, 3689884; returning to 533203, 3689884.

(xi) Land bounded by the following UTM coordinates (E, N): 525004, 3689940; 525004, 3689912; 525061, 3689912; 525061, 3689884; 525175, 3689884; 525175, 3689912; 525231, 3689912; 525231, 3689855; 525288, 3689855; 525288, 3689827; 525430, 3689827; 525430, 3689657; 525458, 3689657; 525458, 3689628; 525487, 3689628; 525487, 3689600; 525770, 3689600; 525770, 3689628; 525790, 3689628; 525775, 3689579; 525757, 3689503; 525768, 3689445; 525945, 3689372; 525854, 3689406; 525765, 3689436; 525641, 3689482; 525630, 3689473; 525526, 3689521; 525524, 3689317; 525483, 3689320; 525478, 3688981; 525862, 3688727; 526129, 3688570; 526141, 3688573; 526141, 3688571; 526139, 3688295; 526139, 3688295; 526139, 3688352; 526111, 3688352; 526111, 3688408; 526082, 3688408; 526082, 3688465; 525997, 3688465; 525997, 3688493; 525912, 3688493; 525912, 3688465; 525884, 3688465; 525884, 3688493; 525856, 3688493; 525856, 3688522; 525827, 3688522; 525827, 3688550; 525799, 3688550; 525799, 3688579; 525770, 3688579; 525770, 3688607; 525714, 3688607; 525714, 3688635; 525657, 3688635; 525657, 3688664; 525629, 3688664; 525629, 3688692; 525515, 3688692; 525515, 3688720; 525487, 3688720; 525487, 3688749; 525458, 3688749; 525458, 3688777; 525430, 3688777; 525430, 3688749; 525345, 3688749; 525345, 3688777; 525316, 3688777; 525316, 3688806; 525146, 3688806; 525146, 3688834; 525118, 3688834; 525118, 3688862; 525061, 3688862; 525061, 3688919; 525033, 3688919; 525033, 3689004; 525061,

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(xii) Land bounded by the following UTM coordinates (E, N): 530792, 3691018; 530792, 3691011; 530791, 3691012; 530786, 3691018; returning to 530792, 3691018.

(xiii) Land bounded by the following UTM coordinates (E, N): 531331, 3691160; 531331, 3691132; 531359, 3691132; 531359, 3691075; 531387, 3691075; 531387, 3690990; 531359, 3690990; 531359, 3690961; 531317, 3690970; 531271, 3690976; 531225, 3690973; 531199, 3690980; 531176, 3691003; 531130, 3691019; 531110, 3691026; 531080, 3691022; 531064, 3691016; 531047, 3691013; 531039, 3691012; 531039, 3691013; 531029, 3691029; 531007, 3691022; 530983, 3691008; 530962, 3690999; 530941, 3690991; 530908, 3690976; 530874, 3690968; 530847, 3690968; 530818, 3690981; 530810, 3690990; 530934, 3690990; 530934, 3691018; 530962, 3691018; 530962, 3691047; 531019, 3691047; 531019, 3691075; 531047, 3691075; 531047, 3691132; 531075, 3691132; 531075, 3691160; 531132, 3691160; 531132, 3691189; 531189, 3691189; 531189, 3691217; 531331, 3691217; returning to 531331, 3691160.

(xiv) Note:

Map of Unit 15 is provided at paragraph (17)(v) of this entry.

(21) Unit 16: Santa Ysabel Creek, San Diego County, California.

(i) Subunit 16a: From USGS 1:24,000 quadrangle maps Rodriquez Mtn., Mesa Grande, Ramona, San Pasqual, and Escondido. Land bounded by the following UTM coordinates (E, N): 508579, 3674706; 508579, 3674678; 508607, 3674678; 508607, 3674649; 508692, 3674649; 508692, 3674621; 508721, 3674621; 508721, 3674649; 508806, 3674649; 508806, 3674621; 508834, 3674621; 508834, 3674593; 508862, 3674593; 508862, 3674536; 508891, 3674536; 508891, 3674451; 508919, 3674451; 508919, 3674366; 508976, 3674366; 508976, 3674337; 509004, 3674337; 509004, 3674394; 509033, 3674394; 509033, 3674422; 509061, 3674422; 509061, 3674479; 509033, 3674479; 509033, 3674508; 509004, 3674508; 509004, 3674536; 509033, 3674536; 509033, 3674593; 509089, 3674593; 509089, 3674621; 509146, 3674621; 509146, 3674649; 509175, 3674649; 509203, 3674649; 509203, 3674621; 509231, 3674621; 509231, 3674649; 509316, 3674649; 509316, 3674593; 509345, 3674593; 509345, 3674564; 509316, 3674564; 509316, 3674508; 509288, 3674508; 509288, 3674479; 509260, 3674479; 509260, 3674422; 509231, 3674422; 509231, 3674337; 509203, 3674337; 509203, 3674281; 509175, 3674281; 509175, 3674224; 509146, 3674224; 509146, 3674195; 509118, 3674195; 509118, 3674139; 509089, 3674139; 509089, 3673912; 509118, 3673912; 509118, 3673770; 509089, 3673770; 509089, 3673685; 509061, 3673685; 509061, 3673486; 509089, 3673486; 509089, 3673401; 509118, 3673401; 509118, 3673373; 509146, 3673373; 509146, 3673344; 509175, 3673344; 509175, 3673316; 509203, 3673316; 509203, 3673288; 509260, 3673288; 509260, 3673316; 509288, 3673316; 509288, 3673344; 509316, 3673344; 509316, 3673373; 509430, 3673373; 509430, 3673401; 509515, 3673401; 509515, 3673146;

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(ii) Subunit 16d: From USGS 1:24,000 quadrangle maps Warners Ranch, Santa Ysabel, and Ramona. Land bounded by the following UTM coordinates (E, N): 522905, 3664181; 522905, 3664153; 522962, 3664153; 522962, 3664124; 522990, 3664124; 522990, 3664096; 523217, 3664096; 523217, 3664068; 523274, 3664068; 523274, 3664039; 523302, 3664039; 523302, 3664011; 523359, 3664011; 523359, 3663954; 523387, 3663954; 523387, 3663926; 523416, 3663926; 523416, 3663898; 523444, 3663898; 523444, 3663869; 523614, 3663869; 523614, 3663841; 523671, 3663841; 523671, 3663812; 523699, 3663812; 523699, 3663784; 523756, 3663784; 523756, 3663756; 523841, 3663756; 523841, 3663727; 524012, 3663727; 524012, 3663699; 524068, 3663699; 524068, 3663671; 524153, 3663671; 524153, 3663642; 524238, 3663642; 524238, 3663614; 524256, 3663614; 524256, 3663584; 524286, 3663584; 524286, 3663494; 524316, 3663494; 524316, 3663464; 524346, 3663464; 524346, 3663434; 524376, 3663434; 524376, 3663374; 524406, 3663374; 524406, 3663344; 524436, 3663344; 524436, 3663314; 524526, 3663314; 524526, 3663284; 524556, 3663284; 524556, 3663314; 524706, 3663314; 524706, 3663344; 524796, 3663344; 524796, 3663374; 524826, 3663374; 524826, 3663404; 524856, 3663404; 524856, 3663421; 524948, 3663421; 524950, 3663314; 524946, 3663314; 524946, 3663284; 524916, 3663284; 524916, 3663254; 524886, 3663254; 524886, 3663194; 524826, 3663194; 524826, 3663164; 524676, 3663164; 524676, 3663194; 524616, 3663194; 524616, 3663164; 524586, 3663164; 524586, 3663074; 524526, 3663074; 524526, 3663044; 524466, 3663044; 524466, 3663014; 524496, 3663014; 524496, 3662984; 524526, 3662984; 524526, 3662954; 524586, 3662954; 524586, 3662924; 524616, 3662924; 524616, 3662834; 524646, 3662834; 524646, 3662804; 524676, 3662804; 524676, 3662774; 524706, 3662774; 524706, 3662744; 524736, 3662744; 524736, 3662714; 524796, 3662714; 524796, 3662684; 524856, 3662684; 524856, 3662624; 524916, 3662624; 524916, 3662594; 524946, 3662594; 524946, 3662564; 524976, 3662564; 524976, 3662534; 524946, 3662534; 524946, 3662504; 524976, 3662504; 524976, 3662384; 524946, 3662384; 524946, 3662294; 524916, 3662294; 524916, 3662324; 524886, 3662324; 524886, 3662354; 524826, 3662354; 524826, 3662384; 524766, 3662384; 524766, 3662354; 524736, 3662354; 524736, 3662294; 524676, 3662294; 524676, 3662354; 524646, 3662354; 524646, 3662384; 524616, 3662384; 524616, 3662414; 524586, 3662414; 524586, 3662444; 524496, 3662444; 524496, 3662474; 524466, 3662474; 524466, 3662564; 524436, 3662564; 524436, 3662594; 524376, 3662594; 524376, 3662624; 524316, 3662624; 524316, 3662654; 524286, 3662654; 524286, 3662684; 524256, 3662684; 524256, 3662714; 524196, 3662714; 524196, 3662744; 524166, 3662744; 524166, 3662804; 524136, 3662804; 524136, 3662834; 524106, 3662834; 524106, 3662894; 524136, 3662894; 524136, 3662924; 524166, 3662924; 524166, 3662984; 524196, 3662984; 524196, 3663014; 524166, 3663014; 524166, 3663104; 524136, 3663104; 524136, 3663314; 524106, 3663314; 524106, 3663374; 524076, 3663374; 524076, 3663404; 524046, 3663404; 524046, 3663464; 524016, 3663464; 524016, 3663494; 523986, 3663494; 523986, 3663500; 523898, 3663500; 523898, 3663529; 523841, 3663529; 523841, 3663557; 523785, 3663557; 523785, 3663585; 523699, 3663585; 523699, 3663614; 523643, 3663614; 523643, 3663642; 523586, 3663642; 523586, 3663671; 523529, 3663671; 523529, 3663699; 523444, 3663699; 523444, 3663727; 523359, 3663727; 523359, 3663756; 523302, 3663756; 523302, 3663784; 523217, 3663784; 523217, 3663812; 523019, 3663812; 523019, 3663756; 522990, 3663756; 522990, 3663699; 522962, 3663699; 522962, 3663671; 522934, 3663671; 522934, 3663642; 522877, 3663642; 522877, 3663614; 522820, 3663614; 522820, 3663585; 522792, 3663585; 522792, 3663557; 522735, 3663557; 522735, 3663529; 522621, 3663529; 522621, 3663500; 522537, 3663500; 522525, 3663557; 522536, 3663557; 522536, 3663585; 522593, 3663585; 522593, 3663614; 522621, 3663614; 522621, 3663699; 522650, 3663699; 522650, 3663727; 522678, 3663727; 522678, 3663784; 522707, 3663784; 522707, 3663812; 522735, 3663812; 522735, 3663926; 522763, 3663926; 522763, 3663954; 522792, 3663954; 522792, 3663983; 522820, 3663983; 522820, 3664011; 522848, 3664011; 522848, 3664039; 522877, 3664039; 522877, 3664124; 522848, 3664124; 522848, 3664153; 522877, 3664153; 522877, 3664181; returning to 522905, 3664181.

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(iv) Note: Map of Unit 16 is provided at paragraph (17)(v) of this entry.

(22) Unit 17: San Diego River Basin, San Diego County, California.

(i) Subunit 17a: From USGS 1:24,000 quadrangle maps El Cajon Mtn., Tule Springs and Santa Ysabel, land bounded by the following UTM coordinates (E, N): 524451, 3648049; 524450, 3647699; 524437, 3647699; 524437, 3647670; 524409, 3647670; 524409, 3647653; 524248, 3647653; 524104, 3647654; 524040, 3647654; 524040, 3647670; 523926, 3647670; 523926, 3647654; 523844, 3647655; 523846, 3647557; 523841, 3647557; 523841, 3647500; 523813, 3647500; 523813, 3647415; 523785, 3647415; 523785, 3647358; 523756, 3647358; 523756, 3647302; 523728, 3647302; 523728, 3647273; 523699, 3647273; 523699, 3647245; 523671, 3647245; 523671, 3647188; 523643, 3647188; 523643, 3647103; 523614, 3647103; 523614, 3647075; 523586, 3647075; 523586, 3647046; 523558, 3647046; 523558, 3647018; 523501, 3647018; 523501, 3646990; 523473, 3646990; 523473, 3646961; 523444, 3646961; 523444, 3646876; 523387, 3646876; 523387, 3646875; 523367, 3646875; 523362, 3646848; 523359, 3646848; 523359, 3646831; 523352, 3646791; 523274, 3646791; 523274, 3646763; 523217, 3646763; 523217, 3646734; 523189, 3646734; 523189, 3646678; 523047, 3646678; 523047, 3646649; 522990, 3646649; 522990, 3646621; 522962, 3646621; 522962, 3646564; 522990, 3646564; 522990, 3646536; 523019, 3646536; 523019, 3646507; 522962, 3646507; 522962, 3646500; 522934, 3646500; 522934, 3646507; 522848, 3646507; 522848, 3646479; 522820, 3646479; 522820, 3646451; 522848, 3646451; 522848, 3646286; 522837, 3646224; 522820, 3646224; 522820, 3646195; 522763, 3646195; 522763, 3646139; 522735, 3646139; 522735, 3646110; 522763, 3646110; 522763, 3646082; 522735, 3646082; 522735, 3646025; 522650, 3646025; 522650, 3645997; 522621, 3645997; 522621, 3645968; 522593, 3645968; 522593, 3645912; 522565, 3645912; 522565, 3645883; 522480, 3645883; 522480, 3645770; 522508, 3645770; 522508, 3645741; 522536, 3645741; 522536, 3645656; 522557, 3645656; 522555, 3645458; 522451, 3645458; 522451, 3645486; 522366, 3645486; 522366, 3645514; 522309, 3645514; 522309, 3645543; 522253, 3645543; 522253, 3645571; 522196, 3645571; 522196, 3645600; 522139, 3645600; 522139, 3645628; 522082, 3645628; 522082, 3645656; 522054, 3645656; 522054, 3645685; 522026, 3645685; 522026, 3645713; 521969, 3645713; 521969, 3645741; 521941, 3645741; 521941, 3645770; 521912, 3645770; 521912, 3645798; 521884, 3645798; 521884, 3645826; 521855, 3645826; 521855, 3645855; 521827, 3645855; 521827, 3645883; 521799, 3645883; 521799, 3645912; 521770, 3645912; 521770, 3645940; 521742, 3645940; 521742, 3645968; 521714, 3645968; 521714, 3646025; 521685, 3646025; 521685, 3646053; 521657, 3646053; 521657, 3646110; 521629, 3646110; 521629, 3646125; 521641, 3646125; 521652, 3646195; 521657, 3646195; 521657, 3646226; 521666, 3646280; 521685, 3646280; 521685, 3646337; 521742, 3646337; 521742, 3646309; 521799, 3646309; 521799, 3646280; 521855, 3646280; 521855, 3646309; 521884, 3646309; 521884, 3646422; 521912, 3646422; 521912, 3646451; 521941, 3646451; 521941, 3646536; 521912, 3646536; 521912, 3646564; 521905, 3646564; 521932, 3646734; 521941, 3646734; 521941, 3646788; 521950, 3646848; 521969, 3646848; 521969, 3646876; 521997, 3646876; 521997, 3646848; 522026, 3646848; 522026, 3647018; 522139, 3647018; 522139, 3647046; 522196, 3647046; 522196, 3647075; 522253, 3647075; 522253, 3647046; 522281, 3647046; 522281, 3647103; 522338, 3647103; 522338, 3647131; 522366, 3647131; 522366, 3647217; 522394, 3647217; 522394, 3647245; 522451, 3647245; 522451, 3647249; 522613, 3647249; 522954, 3647249; 523019, 3647250; 523019, 3647245; 523217, 3647245; 523217, 3647273; 523246, 3647273; 523246, 3647302; 523302, 3647302; 523302, 3647330; 523331, 3647330; 523331, 3647358; 523359, 3647358; 523359, 3647387; 523387, 3647387; 523387, 3647415; 523416, 3647415; 523416, 3647529; 523444, 3647529; 523444, 3647557; 523473, 3647557; 523473, 3647585; 523501, 3647585; 523501, 3647614; 523529, 3647614; 523529, 3647670; 523558, 3647670; 523558, 3647699; 523586, 3647699; 523586, 3647756; 523614, 3647756; 523614, 3647812; 523643, 3647812; 523643, 3647841; 523671, 3647841; 523671, 3647869; 523699, 3647869; 523699, 3647897; 523728, 3647897; 523728, 3647926; 523785, 3647926; 523785, 3647954; 523955, 3647954; 523955, 3647926; 524012, 3647926; 524012, 3647897; 524097, 3647897; 524097, 3647869; 524153, 3647869; 524153, 3647897; 524182, 3647897; 524182, 3647983; 524153, 3647983; 524153, 3648053; 524246, 3648052; returning to 524451, 3648049.

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(iv) Subunit 17b: From USGS 1:24,000 quadrangle map El Cajon Mtn. San Vicente Reservoir, and El Cajon, land bounded by the following UTM coordinates (E, N): 514386, 3639704; 514386, 3639674; 514446, 3639674; 514446, 3639644; 514536, 3639644; 514536, 3639614; 514566, 3639614; 514566, 3639584; 514596, 3639584; 514596, 3639614; 514866, 3639614; 514866, 3639584; 514926, 3639584; 514926, 3639554; 514956, 3639554; 514956, 3639524; 514986, 3639524; 514986, 3639494; 515016, 3639494; 515016, 3639404; 515046, 3639404; 515046, 3639374; 515076, 3639374; 515076, 3639344; 515226, 3639344; 515226, 3639314; 515235, 3639314; 515286, 3639314; 515286, 3639344; 515376, 3639344; 515376, 3639314; 515406, 3639314; 515406, 3639254; 515436, 3639254; 515436, 3639224; 515496, 3639224; 515496, 3639164; 515526, 3639164; 515526, 3639134; 515586, 3639134; 515586, 3639104; 515646, 3639104; 515646, 3639134; 515796, 3639134; 515796, 3639104; 515856, 3639104; 515856, 3639074; 515916, 3639074; 515916, 3639044; 516006, 3639044; 516006, 3639014; 516066, 3639014; 516066, 3638984; 516126, 3638984; 516126, 3638924; 516156, 3638924; 516156, 3638894; 516186, 3638894; 516186, 3638834; 516216, 3638834; 516216, 3638804; 516336, 3638804; 516336, 3638774; 516426, 3638774; 516426, 3638744; 516516, 3638744; 516516, 3638714; 516606, 3638714; 516606, 3638684; 516726, 3638684; 516726, 3638654;

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(v) Subunit 17d: From USGS 1:24,000 quadrangle maps El Cajon Mtn., Ramona, and San Vicente Reservoir. Land bounded by the following UTM coordinates (E, N): 516538, 3651895; 516538, 3651738; 516595, 3651747; 516826, 3651690; 516843, 3651620; 516850, 3651614; 516846, 3651614; 516846, 3651524; 516876, 3651524; 516876, 3651434; 516726, 3651434; 516726, 3651404; 516666, 3651404; 516666, 3651374; 516606, 3651374; 516606, 3651344; 516456, 3651344; 516456, 3651314; 516396, 3651314; 516396, 3651284; 516216, 3651284; 516216, 3651254; 516186, 3651254; 516186, 3651224; 516156, 3651224; 516156, 3651194; 516126, 3651194; 516126, 3651164; 516036, 3651164; 516036, 3651104; 515976, 3651104; 515976, 3651074; 515905, 3651074; 515905, 3651177; 515844, 3651227; 515651, 3651214; 515498, 3651180; 515417, 3651156; 515395, 3651211; 515168, 3651025; 514977, 3650964; 514856, 3650913; 514642, 3650849; 514659, 3650833; 514685, 3650804; 514698, 3650791; 514722, 3650758; 514801, 3650601; 514823, 3650568; 514605, 3650564; 514608, 3650502; 514656, 3650454; 514722, 3650376; 514781, 3650355; 514826, 3650360; 514826, 3650264; 514707, 3650264; 514698, 3650285; 514615, 3650380; 514557, 3650470; 514524, 3650489; 514410, 3650476; 514339, 3650501; 514204, 3650496; 514149, 3650502; 514098, 3650460; 514061, 3650426; 514092, 3650289; 514108, 3650234; 514086, 3650234; 514086, 3650204; 514056, 3650204; 514056, 3650144; 513996, 3650144; 513996, 3650114; 513906, 3650114; 513906, 3650144; 513786, 3650144; 513786, 3650114; 513696, 3650114; 513696, 3650144; 513636, 3650144; 513636, 3650174; 513546, 3650174; 513546, 3650114; 513516, 3650114; 513516, 3650084; 513306, 3650084; 513306, 3650054; 513186, 3650054; 513186, 3650084; 513156, 3650084; 513156, 3650054; 513096, 3650054; 513096, 3650024; 513066, 3650024; 513066, 3649994; 513036, 3649994; 513036, 3649964; 513006, 3649964; 513006, 3649724; 512976, 3649724; 512976, 3649664; 512946, 3649664; 512946, 3649604; 512976, 3649604; 512976, 3649484; 512946, 3649484; 512946, 3649454; 512916, 3649454; 512916, 3649424; 512886, 3649424; 512886, 3649394; 512766, 3649394; 512766, 3649364; 512706, 3649364; 512706, 3649334; 512526, 3649334; 512526, 3649304; 512496, 3649304; 512496, 3649244; 512436, 3649244; 512436, 3649214; 512376, 3649214; 512376, 3649184; 512346, 3649184; 512346, 3649154; 512316, 3649154; 512316, 3649064; 512226, 3649064; 512226, 3649034; 512196, 3649034; 512196, 3649004; 512166, 3649004; 512166, 3648944; 512136, 3648944; 512136, 3648914; 512076, 3648914; 512076, 3648884; 512046, 3648884; 512046, 3648854; 512016, 3648854; 512016, 3648794; 511986, 3648794; 511986, 3648764; 511956, 3648764; 511956, 3648734; 511896, 3648734; 511896, 3648704; 511866, 3648704; 511866, 3648644; 511836, 3648644; 511836, 3648614; 511866, 3648614; 511866, 3648524; 511896, 3648524; 511896, 3648494; 511926, 3648494; 511926, 3648464; 511956, 3648464; 511956, 3648434; 511986, 3648434; 511986, 3648374; 511926, 3648374; 511926, 3648404; 511836, 3648404; 511836, 3648434; 511776, 3648434; 511776, 3648464; 511746, 3648464; 511746, 3648494; 511686, 3648494; 511686, 3648524; 511296, 3648524; 511296, 3648494; 511236, 3648494; 511236, 3648464; 511206, 3648464; 511206, 3648434; 511176, 3648434; 511176, 3648404; 511146, 3648404; 511146, 3648374; 511116, 3648374; 511116, 3648344; 511086, 3648344; 511086, 3648314; 510996, 3648314; 510996, 3648284; 510786, 3648284; 510786, 3648254; 510756, 3648254; 510756, 3648224; 510726, 3648224; 510726, 3648194; 510696, 3648194; 510696, 3648164; 510426, 3648164; 510426, 3648194; 510336, 3648194; 510336, 3648164; 510306, 3648164; 510306, 3648134; 510246, 3648134; 510246, 3648104; 510216, 3648104; 510216, 3648074; 510186, 3648074; 510186, 3647864; 510216, 3647864; 510216, 3647624; 510426, 3647624; 510426, 3647564; 510456, 3647564; 510456, 3647504; 510486, 3647504; 510486, 3647474; 510546, 3647474; 510546, 3647384; 510516, 3647384; 510516, 3647354; 510396, 3647354; 510396, 3647384; 510336, 3647384; 510336, 3647414; 510036, 3647414; 510036, 3647354; 510006, 3647354; 510006, 3647324; 509976, 3647324; 509976, 3647294; 509946, 3647294; 509946, 3647264; 509916, 3647264; 509916, 3647204; 509886, 3647204; 509886, 3647174; 509916, 3647174; 509916, 3647144; 509946, 3647144; 509946, 3647114;

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Excluding land bounded by 514026, 3650954; 514026, 3650924; 513966, 3650924; 513966, 3650894; 513996, 3650894; 513996, 3650864; 514026, 3650864; 514026, 3650894; 514056, 3650894; 514056, 3650954; returning to 514026, 3650954.

Excluding land bounded by 510816, 3648437; 510816, 3648434; 510906, 3648434; 510906, 3648524; 510876, 3648524; 510876, 3648554; 510846, 3648554; 510846, 3648464; 510816, 3648464; returning to 510816, 3648437.

(vi) Note: Map of Unit 17 is provided at paragraph (17)(v) of this entry.

(23) Unit 18: Sweetwater River Basin, San Diego County, California.

(i) Subunit 18a: From USGS 1:24,000 quadrangle maps Alpine, Viejas Mountain, Descanso, and Cuyamaca Peak, land bounded by the following UTM coordinates (E, N): 523206, 3628484; 523206, 3628454; 523236, 3628454; 523236, 3628484; 523206, 3628484; 523206, 3628574; 523176, 3628574; 523176, 3628604; 523146, 3628604; 523146, 3628634; 523116, 3628634; 523116, 3628664; 523086, 3628664; 523086, 3628724; 523056, 3628724; 523056, 3628754; 523026, 3628754; 523026, 3628784; 522996, 3628784; 522996, 3628844; 522966, 3628844; 522966, 3628874; 522936, 3628874; 522936, 3628904; 522966, 3628904; 522966, 3628934; 523056, 3628934; 523056, 3628964; 523086, 3628964; 523086, 3629024; 523116, 3629024; 523116, 3629084; 523266, 3629084; 523266, 3629114; 523356, 3629114; 523356, 3629144; 523416, 3629144; 523416, 3629174; 523446, 3629174; 523446, 3629204; 523506, 3629204; 523506, 3629234; 523566, 3629234; 523566, 3629264; 523626, 3629264; 523626, 3629294; 523656, 3629294; 523656, 3629354; 523686, 3629354; 523686, 3629624; 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(ii) Subunit 18c: From USGS 1:24,000 quadrangle map Alpine, land bounded by the following UTM coordinates (E, N): 513673, 3626397; 513674, 3626074; 514075, 3626046; 514077, 3625994; 514026, 3625994; 514026, 3625964; 513966, 3625964; 513966, 3625934; 513816, 3625934; 513816, 3625964; 513696, 3625964; 513696, 3626054; 513666, 3626054; 513666, 3626354; 513636, 3626354; 513636, 3626450; 513673, 3626447; returning to 513673, 3626397.

(iiii) Land bounded by the following UTM coordinates (E, N): 518196, 3626114; 518226, 3626114; 518226, 3626144; 518196, 3626144; 518196, 3626174; 518166, 3626174; 518166, 3626144; 518196, 3626144; 518196, 3626114; 518166, 3626114; 518166, 3626054; 518136, 3626054; 518136, 3625994; 518076, 3625994; 518076, 3625964; 517986, 3625964; 517986, 3625934; 517836, 3625934; 517836, 3625904; 517806, 3625904; 517806, 3625874; 517776, 3625874; 517776, 3625844; 517716, 3625844; 517716, 3625814; 517656, 3625814; 517656, 3625754; 517536, 3625754; 517536, 3625724; 517476, 3625724; 517476, 3625694; 517386, 3625694; 517386, 3625724; 517176, 3625724; 517176, 3625754; 517116, 3625754; 517116, 3625784; 517056, 3625784; 517056, 3625814; 517026, 3625814; 517026, 3625844; 516996, 3625844; 516996, 3625874; 516936, 3625874; 516936, 3625904; 516786, 3625904; 516786, 3625874; 516666, 3625874; 516666, 3625904; 516606, 3625904; 516606, 3625934; 516456, 3625934; 516456, 3625964; 516186, 3625964; 516186, 3625934; 516066, 3625934; 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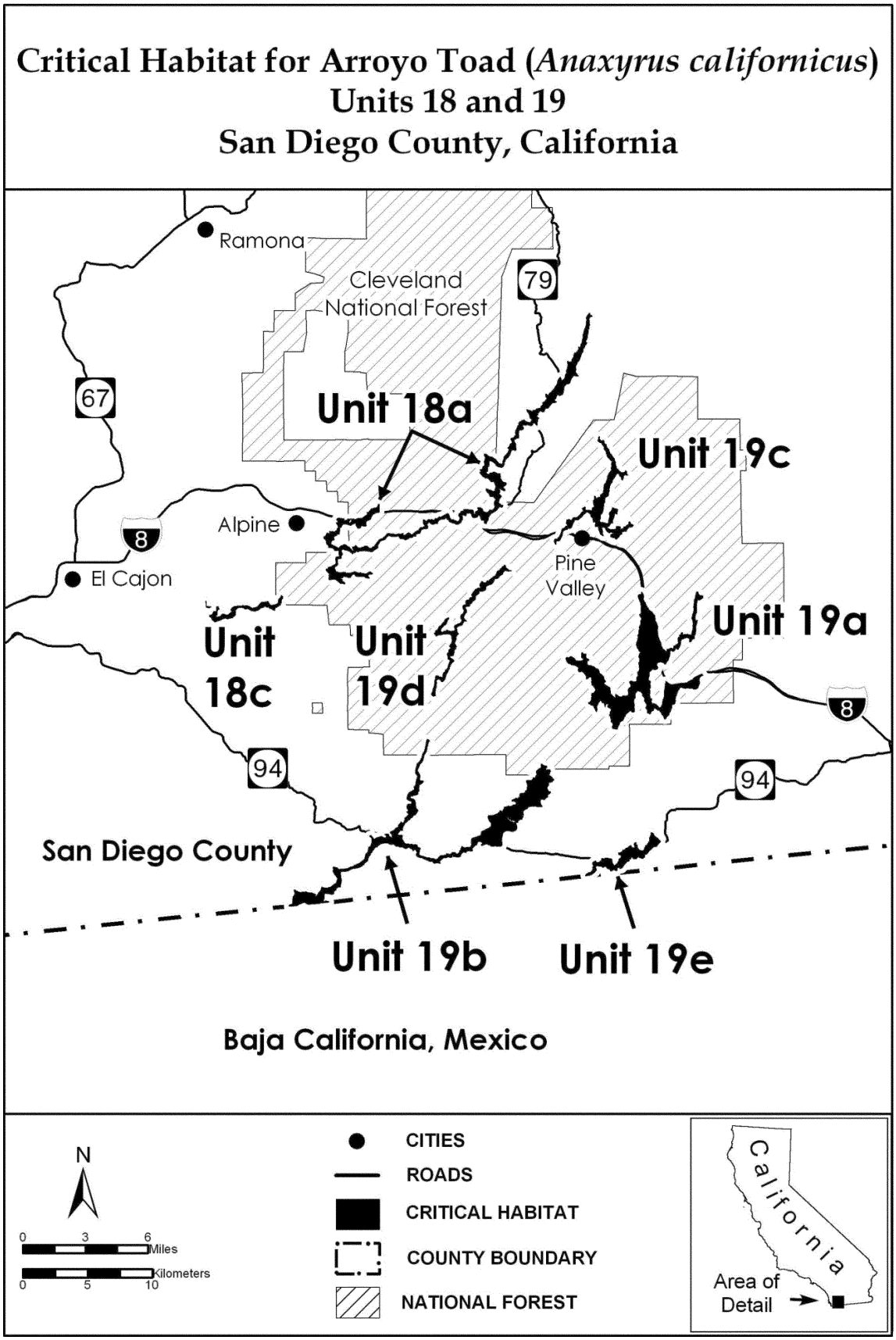
(iv) **Note:** Map of Units 18 and 19 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(24) Unit 19: Cottonwood Creek Basin, San Diego County, California.

(i) Subunit 19a: From USGS 1:24,000 quadrangle maps Morena Reservoir,

Cameron Corners and Mount Laguna, land bounded by the following UTM coordinates (E,N): 544887, 3619754; 544891, 3619395; 544918, 3619372; 544919, 3619283; 545309, 3618949; 545299, 3619235; 545332, 3619274; 545346, 3619274; 545346, 3619244; 545376, 3619244; 545376, 3619214; 545436, 3619214; 545436, 3619184; 545496, 3619184; 545496, 3619124; 545526, 3619124; 545526, 3619094; 545616, 3619094; 545616, 3619064; 545826, 3619064; 545826, 3619094; 545856, 3619094; 545856, 3619124; 545886, 3619124; 545886, 3619154; 546036, 3619154; 546036, 3619124; 546156, 3619124; 546156, 3619154; 546186, 3619154; 546186, 3619184; 546276, 3619184; 546276, 3619214; 546306, 3619214; 546306, 3619514; 546276, 3619514; 546276, 3619604; 546306, 3619604; 546306, 3619694; 546336, 3619694; 546336, 3619724; 546366, 3619724; 546366, 3619754; 546396, 3619754; 546396, 3619784; 546456, 3619784; 546456, 3619814; 546486, 3619814; 546486, 3619904; 546516, 3619904; 546516, 3619994; 546486, 3619994; 546486, 3620054; 546456, 3620054; 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(ii) Subunit 19b: From USGS 1:24,000 quadrangle maps Barrett Lake, Tecate, Potrero and Morena Reservoir, land bounded by the following UTM coordinates (E, N): 529986, 3613334; 529986, 3613304; 530016, 3613304; 530016, 3613274; 530046, 3613274; 530046, 3613244; 530076, 3613244; 530076, 3613184; 530106, 3613184; 530106, 3613154; 530136, 3613154; 530136, 3613124; 530166, 3613124; 530166, 3613034; 530196, 3613034; 530196, 3612794; 530166, 3612794; 530166, 3612644; 530196, 3612644; 530196, 3612584; 530406, 3612584; 530406, 3612554; 530466, 3612554; 530466, 3612524; 530406, 3612524; 530406, 3612494; 530376, 3612494; 530376, 3612434; 530346, 3612434; 530346, 3612404; 530316, 3612404; 530316, 3612374; 530286, 3612374; 530286, 3612344; 530256, 3612344; 530256, 3612314; 530226, 3612314; 530226, 3612284; 530136, 3612284; 530136, 3612224; 530106, 3612224; 530106, 3612164; 530136, 3612164; 530136, 3612104; 530106, 3612104; 530106, 3611864; 530136, 3611864; 530136, 3611834; 530106, 3611834; 530106, 3611774; 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(iii) Subunit 19c: From USGS 1:24,000 quadrangle maps Descanso, and Cuyamaca Peak, land bounded by the following UTM coordinates (E, N): 544040, 3639046; 544040, 3639018; 544068, 3639018; 544068, 3638990; 544097, 3638990; 544097, 3638961; 544125, 3638961; 544125, 3638876; 544324, 3638876; 544324, 3638905; 544380, 3638905; 544380, 3638848; 544409, 3638848; 544409, 3638678; 544437, 3638678; 544437, 3638649; 544494, 3638649; 544494, 3638593; 544579, 3638593; 544579, 3638422; 544607, 3638422; 544607, 3638337; 544636, 3638337; 544636, 3638309; 544664, 3638309; 544664, 3638280; 544693, 3638280; 544693, 3638252; 544721, 3638252; 544721, 3638224; 544749, 3638224; 544749, 3638195; 544778, 3638195; 544778, 3638054; 544806, 3638054; 544806, 3637997; 544834, 3637997; 544834, 3637912; 544863, 3637912; 544863, 3637883; 544834, 3637883; 544834, 3637827; 544948, 3637827; 544948, 3637798; 544976, 3637798; 544976, 3637741; 545005, 3637741; 545005, 3637685; 545033, 3637685; 545033, 3637656; 545090, 3637656; 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(iv) Subunit 19d: From USGS 1:24,000 quadrangle maps Barrett Lake, Viejas Mtn., and Descanso, land bounded by the following UTM coordinates (E, N): 536796, 3629174; 536796, 3629144; 536826, 3629144; 536826, 3629054; 536856, 3629054; 536856, 3629024; 536886, 3629024; 536886, 3628994; 536916, 3628994; 536916, 3628964; 536946, 3628964; 536946, 3628934; 536976, 3628934; 536976, 3628904; 537036, 3628904; 537036, 3628874; 537066, 3628874; 537066, 3628844; 537246, 3628844; 537246, 3628814; 537036, 3628814; 537036, 3628784; 537006, 3628784; 537006, 3628814; 536886, 3628814; 536886, 3628844; 536736, 3628844; 536736, 3628814; 536706, 3628814; 536706, 3628784; 536676, 3628784; 536676, 3628754; 536646, 3628754; 536646, 3628724; 536616, 3628724; 536616, 3628694; 536586, 3628694; 536586, 3628574; 536556, 3628574; 536556, 3628544; 536526, 3628544; 536526, 3628514; 536466, 3628514; 536466, 3628484; 536406, 3628484; 536406, 3628454; 536346, 3628454; 536346, 3628394; 536316, 3628394; 536316, 3628334; 536286, 3628334; 536286, 3628304; 536226, 3628304; 536226, 3628244; 536136, 3628244; 536136, 3628214; 536076, 3628214; 536076, 3628244; 535986, 3628244; 535986, 3628214; 535956, 3628214; 535956, 3628154; 535926, 3628154; 535926, 3628094; 535896, 3628094; 535896, 3628064; 535866, 3628064; 535866, 3627944; 535836, 3627944; 535836, 3627914; 535806, 3627914; 535806, 3627884; 535776, 3627884; 535776, 3627854; 535746, 3627854; 535746, 3627794; 535716, 3627794; 535716, 3627764; 535656, 3627764; 535656, 3627734; 535506, 3627734; 535506, 3627704; 535476, 3627704; 535476, 3627734; 535446, 3627734; 535446, 3627704; 535386, 3627704; 535386, 3627674; 535356, 3627674; 535356, 3627644; 535326, 3627644; 535326, 3627614; 535266, 3627614; 535266, 3627554; 535206, 3627554; 535206, 3627524; 535266, 3627524; 535266, 3627404; 535236, 3627404; 535236, 3627314; 535146, 3627314; 535146, 3627284; 535116, 3627284; 535116, 3627254; 535056, 3627254; 535056, 3627224; 534726, 3627224; 534726, 3627164; 534756, 3627164; 534756, 3627104; 534726, 3627104; 534726, 3627074; 534696, 3627074; 534696, 3627044; 534666, 3627044; 534666, 3627014; 534636, 3627014; 534636, 3626984; 534576, 3626984; 534576, 3626954; 534546, 3626954; 534546, 3626924; 534516, 3626924; 534516, 3626864; 534486, 3626864; 534486, 3626624; 534456, 3626624; 534456, 3626564; 534426, 3626564; 534426, 3626534; 534366, 3626534; 534366, 3626504; 534246, 3626504; 534246, 3626414; 534216, 3626414; 534216, 3626384; 534186, 3626384; 534186, 3626324; 534156, 3626324; 534156, 3626294; 534096, 3626294; 534096, 3626264; 534036, 3626264; 534036, 3626144; 534006, 3626144; 534006, 3626084; 533946, 3626084; 533946, 3626054; 533766, 3626054; 533766, 3626024; 533706, 3626024; 533706, 3625994; 533676, 3625994; 533676, 3625934; 533706, 3625934; 533706, 3625904; 533736, 3625904; 533736, 3625844; 533766, 3625844; 533766, 3625784; 533796, 3625784; 533796, 3625604; 533766, 3625604; 533766, 3625574;

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(v) Subunit 19e: From USGS 1:24,000 quadrangle maps Potrero and Campo, land bounded by the following UTM coordinates (E, N): 544664, 3605968; 544693, 3605968; 544693, 3605997; 544664, 3605997; 544664, 3605968; 544551, 3605968; 544551, 3605940; 544494, 3605940; 544494, 3605968; 544466, 3605968; 544466, 3605940; 544380, 3605940; 544380, 3605911; 544352, 3605911; 544352, 3605883; 544295, 3605883; 544295, 3605911; 544267, 3605911; 544267, 3605940; 544239, 3605940; 544239, 3605968; 544012, 3605968; 544012, 3605997; 543785, 3605997; 543785, 3605940; 543756, 3605940; 543756, 3605826; 543785, 3605826; 543785, 3605770; 543813, 3605770; 543813, 3605684; 543785, 3605684; 543785, 3605628; 543756, 3605628; 543756, 3605599; 543728, 3605599; 543728, 3605571; 543700, 3605571; 543700, 3605514; 543643, 3605514; 543643, 3605486; 543615, 3605486; 543615, 3605458; 543586, 3605458; 543586, 3605429;

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(vi) Note: Map of Unit 19 is provided at paragraph (24)(v) of this entry.

(25) Unit 20: Upper Santa Ana River Basin, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Cajon and Devore, land bounded by the following UTM coordinates (E, N): 457095, 3792110; 457067, 3792110; 457067, 3792138; 457095, 3792138; returning to 457095, 3792110.

(ii) Land bounded by the following UTM coordinates (E, N): 457208, 3796209; 457208, 3796237; 457236, 3796237; 457236, 3796209; returning to 457208, 3796209; thence from land bounded by the following UTM coordinates (E, N): 457208, 3796209; 457208, 3796153; 457180, 3796153; 457180, 3796069; 457208, 3796069; 457208, 3796040; 457236, 3796040; 457236, 3796012; 457264, 3796012; 457264, 3795984; 457320, 3795984; 457320, 3795956; 457404, 3795956; 457404, 3795928; 457517, 3795928; 457517, 3795872; 457545, 3795872; 457545, 3795816; 457573, 3795816; 457573, 3795760; 457601, 3795760; 457601, 3795704; 457629, 3795704; 457629, 3795676; 457657, 3795676; 457657, 3795647; 457685, 3795647; 457685, 3795619; 457713, 3795619; 457713, 3795591; 457741, 3795591; 457741, 3795563; 457769, 3795563; 457769, 3795535; 457797, 3795535; 457797, 3795507; 457825, 3795507; 457825, 3795451; 457853, 3795451; 457853, 3795395; 457910, 3795395; 457910, 3795339; 457994, 3795339; 457994, 3795254; 458022, 3795254; 458022, 3795086; 458050, 3795086; 458050, 3794974; 458078, 3794974; 458078, 3794946; 458106, 3794946; 458106, 3794889; 458134, 3794889; 458134, 3794777; 458162, 3794777; 458162, 3794749; 458190, 3794749; 458190, 3794693; 458218, 3794693; 458218, 3794637; 458246, 3794637; 458246, 3794553; 458275, 3794553; 458275, 3794244; 458303, 3794244; 458303, 3794131; 458331, 3794131; 458331, 3793823; 458359, 3793823; 458359, 3793738; 458387, 3793738; 458387, 3793710; 458359, 3793710; 458359, 3793654; 458331, 3793654; 458331, 3793486; 458303, 3793486; 458303, 3793402; 458275, 3793402; 458275, 3793205; 458303, 3793205; 458303, 3793149; 458331, 3793149; 458331, 3793121; 458415, 3793121; 458415, 3793037; 458387, 3793037; 458387, 3792980; 458359, 3792980; 458359, 3792868; 458387, 3792868; 458387, 3792812; 458415, 3792812; 458415, 3792784; 458471, 3792784; 458471, 3792756; 458527, 3792756; 458527, 3792700; 458499, 3792700; 458499, 3792616; 458527, 3792616; 458527, 3792503; 458555, 3792503; 458555, 3792447; 458527, 3792447; 458527, 3792363; 458499, 3792363; 458499, 3792335; 458471, 3792335; 458471, 3792138; 458443, 3792138; 458443, 3792054; 458415, 3792054; 458415, 3791998; 458387, 3791998; 458387, 3791970; 458359, 3791970; 458359, 3791914; 458331, 3791914; 458331, 3791858; 458359, 3791858; 458359, 3791801; 458331, 3791801; 458331, 3791829; 458275, 3791829; 458275, 3791858; 458190, 3791858; 458190, 3791829; 458078, 3791829; 458078, 3791858; 457966, 3791858; 457966, 3791829; 457910, 3791829; 457910, 3791801; 457881, 3791801; 457881, 3791773; 457853, 3791773; 457853, 3791745; 457825, 3791745; 457825, 3791717; 457769, 3791717; 457769, 3791689; 457601, 3791689; 457601, 3791661; 457404, 3791661; 457404, 3791689; 457320, 3791689; 457320, 3791661; 457264, 3791661; 457264, 3791633; 457236, 3791633; 457236, 3791577; 457208, 3791577; 457208, 3791549; 457152, 3791549; 457152, 3791521; 457095, 3791521; 457095, 3791493; 457067, 3791493; 457067, 3791465; 457039, 3791465; 457039, 3791408; 457011, 3791408; 457011, 3791212; 456983, 3791212; 456983, 3791100; 457011, 3791100; 457011, 3790959; 457039, 3790959; 457039, 3790903; 457067, 3790903; 457067, 3790875; 457095, 3790875; 457095, 3790819; 457124, 3790819; 457124, 3790678; 457152, 3790678; 457152, 3790650; 457180, 3790650; 457180, 3790622; 457264, 3790622; 457264, 3790594; 457320, 3790594; 457320, 3790566; 457348, 3790566; 457348, 3790510; 457376, 3790510; 457376, 3790482; 457404, 3790482; 457404, 3790454; 457573, 3790454; 457573, 3790426; 457601, 3790426; 457601, 3790454; 457629, 3790454; 457629, 3790482; 457657, 3790482; 457657, 3790454; 457685, 3790454; 457685, 3790426; 457713, 3790426; 457713, 3790398; 457769, 3790398; 457769, 3790426; 457797, 3790426; 457797, 3790482; 457825, 3790482; 457825, 3790454; 457853, 3790454; 457853, 3790426; 457881, 3790426; 457881, 3790370; 457910, 3790370; 457910, 3790342; 457938, 3790342; 457938, 3790314; 457966, 3790314; 457966, 3790342; 458106, 3790342; 458106, 3790314; 458162, 3790314; 458162, 3790285; 458190, 3790285; 458190, 3790257; 458246, 3790257; 458246, 3790229; 458275, 3790229; 458275, 3790257; 458387, 3790257; 458387, 3790229; 458443, 3790229; 458443, 3790201; 458527, 3790201; 458527, 3790173; 458555, 3790173; 458555, 3790117; 458583, 3790117; 458583, 3790061; 458611, 3790061; 458611, 3790033; 458668, 3790033; 458668, 3790005; 458696, 3790005; 458696, 3789977; 458724, 3789977; 458724, 3789949; 458780, 3789949; 458780, 3789892; 458808, 3789892; 458808, 3789864; 458836, 3789864; 458836, 3789808; 458864, 3789808; 458864, 3789752; 458892, 3789752; 458892, 3789724; 458948, 3789724; 458948, 3789668; 458976, 3789668; 458976, 3789640; 459004, 3789640; 459004, 3789584; 459032, 3789584;

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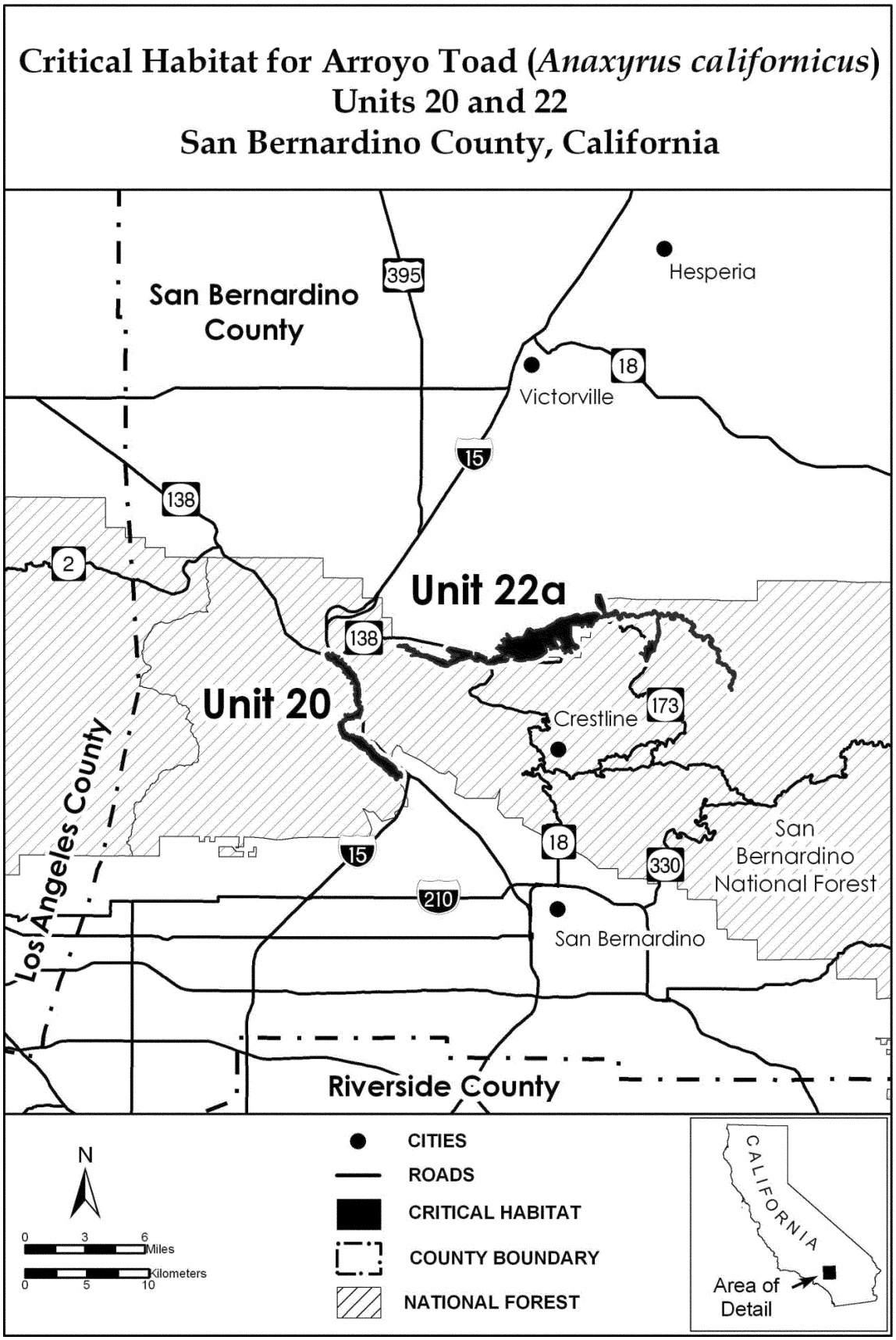
(iii) **Note:** Map of Units 20 and 22 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(26) Unit 21: Little Rock Creek Basin, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Juniper Hills and Pacifico Mtn.,

land bounded by the following UTM coordinates (E, N): 406323, 3814876; 406323, 3814756; 406353, 3814756; 406353, 3814726; 406383, 3814726; 406383, 3814696; 406413, 3814696; 406413, 3814426; 406383, 3814426; 406383, 3814396; 406413, 3814396; 406413, 3814216; 406443, 3814216; 406443, 3814186; 406473, 3814186; 406473, 3814156; 406503, 3814156; 406503, 3813796; 406533, 3813796; 406533, 3813766; 406563, 3813766; 406563, 3813736; 406593, 3813736; 406593, 3813706; 406623, 3813706; 406623, 3813676; 406593, 3813676; 406593, 3813646; 406563, 3813646; 406563, 3813616; 406533, 3813616; 406533, 3813556; 406563, 3813556; 406563, 3813496; 406593, 3813496; 406593, 3813436; 406623, 3813436; 406623, 3813376; 406653, 3813376; 406653, 3813316; 406683, 3813316; 406683, 3813196; 406713, 3813196; 406713, 3813166; 406683, 3813166; 406683, 3813136; 406653, 3813136; 406653, 3813076; 406623, 3813076; 406623, 3813046; 406653, 3813046; 406653, 3812926; 406683, 3812926; 406683, 3812896; 406743, 3812896; 406743, 3812746; 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(ii) Note: Map of Unit 21 is provided at paragraph (12)(iii) of this entry

(27) Unit 22: Upper Mojave River Basin, San Bernardino County, California.

(i) Subunit 22a: From USGS 1:24,000 quadrangle maps Cajon, Silverwood Lake, Lake Arrowhead and Butler Peak, land bounded by the following UTM coordinates (E, N): 478323, 3800176; 478263, 3800176; 478263, 3800146; 478323, 3800146; 478323, 3800176; 478383, 3800176; 478383, 3800206; 478473, 3800206; 478473, 3800236; 478503, 3800236; 478503, 3800266; 478563, 3800266; 478563, 3800296; 478623, 3800296; 478623, 3800326; 478743, 3800326; 478743, 3800356; 478773, 3800356; 478773, 3800386; 478803, 3800386; 478803, 3800416; 478833, 3800416; 478833, 3800446; 478863, 3800446; 478863, 3800476; 478923, 3800476; 478923, 3800506; 479073, 3800506; 479073, 3800476; 479103, 3800476; 479103, 3800446; 479133, 3800446; 479133, 3800416; 479163, 3800416; 479163, 3800386; 479193, 3800386; 479193, 3800326; 479223, 3800326; 479223, 3800146; 479253, 3800146; 479253, 3800056; 479283, 3800056; 479283, 3800026; 479313, 3800026; 479313, 3799996; 479373, 3799996; 479373, 3800056; 479403, 3800056; 479403, 3800116; 479433, 3800116; 479433, 3800206; 479463, 3800206; 479463, 3800236; 479523, 3800236; 479523, 3800266; 479583, 3800266; 479583, 3800296; 479763, 3800296; 479763, 3800266; 479793, 3800266; 479793, 3800236; 479823, 3800236; 479823, 3800176; 479853, 3800176; 479853, 3800146; 479883, 3800146; 479883, 3800116; 479973, 3800116; 479973, 3800146; 480003, 3800146; 480003, 3800176; 480093, 3800176; 480093, 3800206; 480423, 3800206; 480423, 3800176; 480513, 3800176; 480513, 3800146; 480543, 3800146; 480543, 3800116; 480603, 3800116; 480603, 3800086; 480633, 3800086; 480633, 3800056; 480663, 3800056; 480663, 3800026; 480783, 3800026; 480783, 3800056; 480843, 3800056; 480843, 3800086; 480903, 3800086; 480903, 3800116; 480933, 3800116; 480933, 3800146; 480993, 3800146; 480993, 3800176; 481113, 3800176; 481113, 3800206; 481323, 3800206; 481323, 3800236; 481383, 3800236; 481383, 3800266; 481413, 3800266; 481413, 3800296; 481443, 3800296; 481443, 3800266; 481533, 3800266; 481533, 3800296; 481593, 3800296; 481593, 3800326; 481803, 3800326; 481803, 3800296; 481863, 3800296; 481863, 3800266; 481893, 3800266; 481893, 3800296; 481923, 3800296; 481923, 3800326; 481953, 3800326; 481953, 3800446; 481983, 3800446; 481983, 3800476; 482013, 3800476; 482013, 3800506; 482163, 3800506; 482163, 3800476; 482223, 3800476; 482223, 3800416;

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(ii) **Note:** Map of Unit 22 is provided at paragraph (25)(iii) of this entry.

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Dated: January 20, 2011.

Signed:

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–1703 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–55–P