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50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
Acanthomintha ilicifolia (San Diego
thornmint); Final Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS-R8-ES-2007-0007; 92210-1117-0000-B4]

RIN 1018-AU86

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Acanthomintha ilicifolia* (San Diego thornmint)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Acanthomintha ilicifolia* (San Diego thornmint) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 671 acres (ac) (272 hectares (ha)) of land in San Diego County, California, fall within the boundaries of the critical habitat designation.

DATES: This rule becomes effective on September 25, 2008.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat are available on the Internet at <http://www.regulations.gov>. Supporting documentation we 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, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760-431-9440; facsimile 760-431-5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone 760-431-9440; facsimile 760-431-5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Acanthomintha ilicifolia* in this final rule. For more information on the taxonomy, biology, and ecology of *A. ilicifolia*, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54938), and the proposed critical habitat rule published in the **Federal Register** on March 14,

2007 (72 FR 11946). We did not receive any new information pertaining to the species description, life history, distribution, ecology, or habitat of *A. ilicifolia* following the publication of the proposed designation of critical habitat for this species; therefore, please refer to the documents listed above for a complete detailed discussion of this species.

Acanthomintha ilicifolia is an annual member of the mint family in the genus *Acanthomintha*. This plant ranges in height from 2 to 6 inches (in) (5 to 15 centimeters (cm)) and has white, two-lipped, tubular flowers with rose-colored markings on the lower lip (Jokerst 1993, p. 713). Members of this genus have paired leaves and several sharp, spiny bracts (modified leaves) below whorled flowers. *Acanthomintha ilicifolia* can be distinguished from other members of the genus by its flower, which has hairless anthers and style.

Acanthomintha ilicifolia usually occurs on heavy clay soils in open areas surrounded by shrubby vegetation. These openings are generally found within coastal sage scrub, chaparral, and native grassland of coastal San Diego County and south to San Telmo in northern Baja California, Mexico (Beauchamp 1986, p. 175; Reiser 2001, pp. 3-5). *Acanthomintha ilicifolia* is frequently associated with gabbro soils, which are derived from igneous rock, and gray calcareous clays derived from soft calcareous sandstone (Oberbauer and Vanderwier 1991, pp. 208-209). This species is endemic to San Diego County, California, and northwestern Baja California, Mexico, and grows on open clay lenses described as friable, meaning that these soils have a loose, crumbly texture.

Previous Federal Actions

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for this species as well as four other plant species (*Center for Biological Diversity v. Norton*, C-04-3240 JL (N. D. Cal.)). In a settlement agreement dated December 21, 2004, we agreed to submit for publication in the **Federal Register** a proposed designation of critical habitat, if prudent and determinable, on or before February 28, 2007, and a final determination by February 28, 2008. We published a proposed critical habitat designation for *Acanthomintha ilicifolia* in the **Federal Register** on March 14, 2007 (72 FR 11946). As part of that 2007 proposed designation, we determined that it was prudent to designate critical habitat for this species (72 FR 11946;

March 14, 2007). We accepted public comments on the proposed designation for 60 days, ending May 14, 2007.

On November 27, 2007, we published a notice announcing the availability of the draft economic analysis (DEA) and reopening the public comment period on the proposed rule (72 FR 66122). This comment period closed on December 27, 2007. In light of new information received, we requested an extension of the due date of the final critical habitat rule. On April 16, 2008, the extension request was granted allowing us to open an additional comment period. On May 13, 2008, we opened a third comment period on the DEA and the proposed rule. This comment period closed on June 12, 2008 (73 FR 27483). Please refer to the "Previous Federal Actions" section of the proposed critical habitat rule for *Acanthomintha ilicifolia*, which published in the **Federal Register** on March 14, 2007 (72 FR 11946), for a discussion of additional Federal actions that occurred prior to the proposed designation of critical habitat for this species. This final rule complies with the December 21, 2004, settlement agreement and April 16, 2008, extension.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Acanthomintha ilicifolia* in the proposed rule that published on March 14, 2007 (72 FR 11946), and in the notice of availability of the draft EA published in the **Federal Register** on November 27, 2007 (72 FR 66122). We received significant information during the second comment period; therefore, we opened a third comment period on the proposed rule and the draft EA. The third comment period opened on May 13, 2008, and closed June 12, 2008 (73 FR 27483). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the draft EA.

During the comment period that opened on March 14, 2007, and closed on May 14, 2007, we received two comments directly addressing the proposed critical habitat designation. One comment was from a Federal agency and the other was from a non-governmental organization. During the second comment period open from November 27, 2007 to December 27, 2007, we received four comment letters. Of these latter comments, one was from a Federal agency, one was from a local government, one was from a peer

reviewer, and one was from an organization. We did not receive any additional comments during the third comment period. All comments received were grouped into general issue categories relating to the proposed designation of critical habitat for *Acanthomintha ilicifolia*, and are addressed in the following summary and incorporated into this final rule as appropriate. We did not receive requests for a public hearing or comments on the draft EA.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region where the species occurs, and conservation biology principles. We received a response from one peer reviewer. The peer reviewer agreed with our characterization of the known physical and biological features for *Acanthomintha ilicifolia*.

We reviewed all comments we received from the peer reviewer and the public for substantive issues and new information regarding critical habitat for *Acanthomintha ilicifolia*. The comments are addressed in the following summary.

Peer Reviewer Comments

Comment 1: The peer reviewer concurred with our characterization of the known physical and biological features that are essential to the conservation of this species based on extensive research on *Acanthomintha ilicifolia*. Additionally, the peer reviewer highlighted several areas of interest that have not been studied at this time, but may provide more information on the physical and biological features essential for the survival of *A. ilicifolia*. The topics that the peer reviewer indicated require further research include population genetics, pollinator studies, and additional soil studies. The peer reviewer stated that additional population genetics studies of *A. ilicifolia* could show that some populations display greater genetic diversity, or that some genetic characters are contained in only one or two populations. Additionally, the peer reviewer indicated that studies are needed to determine habitat requirements for pollinators and to understand the effect that habitat fragmentation may have on *A. ilicifolia*.

Our Response: We agree with the peer reviewer's assessment of information needs for *Acanthomintha ilicifolia*. We

used the best available scientific and commercial data to designate critical habitat for this species. The peer reviewer's comments support the designation, and the peer reviewer did not identify any significant data that we did not consider. We look forward to working with stakeholders, researchers, and other organizations to study the important issues identified by the peer reviewer. The California Department of Fish and Game is funding a study on the pollinators of *A. ilicifolia*. This and other future projects will help us to better understand the conservation needs of this species.

Comment 2: The peer reviewer applauded and reiterated the importance of our inclusion of newly discovered populations of *Acanthomintha ilicifolia* in the proposed critical habitat. The peer reviewer also commented that our criterion for population stability is reasonable and further tracking of population dynamics may help refine this criterion. The peer reviewer supported our inclusion of up to 500 ft (152 m) of habitat adjacent to mapped occurrences where the habitat is contiguous with occupied habitat and supports the physical and biological features essential to the conservation of this species. The peer reviewer indicated these areas capture unmapped clay soil patches, minimize the effects of fragmentation, and help alleviate our lack of specific knowledge regarding pollinators for this species by minimizing the encroachment of irrigated areas that support nonnative insect fauna (which may compete with native insect pollinators or affect the hydrology that supports *A. ilicifolia*).

Our Response: We appreciate the peer reviewer's positive evaluation of our criteria used to identify critical habitat.

Comment 3: The peer reviewer commented that we should not exclude the area within the pending Encinitas subarea plan under the Multiple Habitat Conservation Plan (MHCP) as proposed. The peer reviewer indicated this plan has not progressed towards completion at a timely rate and that until a conservation plan has been developed, we should designate the area as critical habitat.

Our Response: Following the publication of the proposed rule, we reevaluated the City of Encinitas' pending habitat conservation plan (HCP) subarea plan under the MHCP in San Diego County, California. We concluded that, at this time, the City of Encinitas' subarea plan is not complete and progress on the completion has slowed. However, the majority of subunit 1C is part of the Manchester

Avenue Mitigation Bank and is actively managed for *Acanthomintha ilicifolia* (Spiegelberg 2005, p. 1–33). Preservation and management of the Manchester Avenue Mitigation Bank is independent of the completion of the City of Encinitas' subarea plan. We determined that the benefits of excluding the lands within the Manchester Avenue Mitigation Bank outweigh the benefits of including these lands in a critical habitat designation and that their exclusion will not result in extinction of this species. Therefore, we excluded 70 ac (28 ha) of subunit 1C under section 4(b)(2) of the Act (see "Exclusions Under Section 4(b)(2) of the Act" section of this final rule for a detailed discussion of this exclusion), and we designated the remaining 9 ac (4 ha) of private lands outside the Manchester Avenue Mitigation Bank as critical habitat.

Public Comments

Comment 4: One commenter stated that at a minimum, all occupied habitat needs to be designated as critical habitat. The commenter stated the definitions of "recovery" and "conservation" are synonymous, and therefore, any critical habitat designation must include all areas the Service finds essential to the conservation (i.e., recovery) of the species. This commenter reiterated that *Acanthomintha ilicifolia* is widely scattered in a discontinuous distribution, and stated that this type of distribution can lead to a high level of within-species genetic diversity. The commenter stated that it is essential to conserve within-species diversity represented by occurrences on varying soil types as well as geographically distinct populations. The commenter stated that within-species diversity helps species preserve their ability to respond to diseases, climate change, pollution, and other current and future threats. The commenter concluded that in the face of uncertainty, designation of all occupied habitat, regardless of ownership, is legally necessary to conserve this species.

Our Response: We agree with the commenter that the term conservation is defined in the Act as using all methods and procedures necessary to bring any listed species to the point at which the measures provided under the Act are no longer necessary (i.e., recovery). The provisions within section 4 of the Act require the Secretary to determine whether a species is endangered or threatened based on threats to the species, and therefore, recovery is linked to the alleviation of threats to the species.

The Act defines critical habitat as 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 (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and 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. We believe that our proposed and final designations accurately capture all areas essential to the conservation of *Acanthomintha ilicifolia* as required by the Act. The areas delineated as critical habitat in this final rule: (1) Support populations that occur on rare or unique habitat within the species' range; (2) support the largest known populations of *A. ilicifolia*; and (3) support the most stable populations of *A. ilicifolia*. Further, this final designation identifies threats to the physical and biological features essential to the conservation of the species within each subunit and identifies special management considerations or protection needed to alleviate those threats and thereby will contribute to the recovery of *A. ilicifolia*. Although there is no recovery plan for this species, we believe that recovery for *A. ilicifolia* can be achieved through the implementation of conservation measures to protect the physical and biological features on the areas occupied by this species that meet the definition of critical habitat (see the "Special Management Considerations or Protection" section for details about the type of management needed for this species).

The commenter stated that we need to include all occupied habitat in order to conserve the species' geographic and genetic diversity. Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott *et al.* 2001, pp. 1297–1300); our criteria identified multiple locations across the entire range of the species as essential habitat to prevent range collapse. Genetic variation in plants can result from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt 1996, pp. 291–295); and our criteria identified populations that occur on rare or unique habitat within the species' range in order to capture the range of plant communities, soil types, and

environmental gradients in which *Acanthomintha ilicifolia* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt 1996, pp. 299–301; Millar and Libby 1991, pp. 150, 152–155). Locations that possess unique ecological characteristics are those that represent the full range of environmental variability where *A. ilicifolia* have evolved, and, therefore, are likely to promote the adaptation of this species to different environmental conditions. We believe we captured the within-species diversity that the commenter is referring to by including areas that support populations on rare or unique habitat types, the largest known populations of *A. ilicifolia*, and the most stable populations of *A. ilicifolia*. At this time, no one has investigated the genetic structure of this species; however, if such genetic studies are conducted for this species in the future, we may revise this critical habitat designation if we determine that this final designation does not adequately represent the species' range of genetic diversity.

Our designation relies on the best available scientific information to capture the geographic range of the species. The commenter did not specifically identify any geographically distinct populations that we did not capture in our designation. Our criteria do not capture populations where we had information indicating that the habitat had been lost to development and, therefore, the populations were likely extirpated. Furthermore, our criteria limited the designation to areas where we had data indicating the location of a known population and demographic or specific habitat data to assess its importance to the overall conservation of this species. As described above, our designation includes areas that support populations of *Acanthomintha ilicifolia* on rare or unique habitat types, the largest known populations of *A. ilicifolia*, and the most stable populations of *A. ilicifolia*, thereby capturing species' diversity. We determined that designating these areas, each of which was occupied at the time of listing and contains the physical and biological features essential to the conservation of *A. ilicifolia* fulfills the plant's biological needs and is adequate to conserve this species (for a more detailed discussion see the "Criteria Used To Identify Critical Habitat" section). We concluded that there are no areas outside the geographical area occupied by the species at the time of

listing essential to the conservation of the species and, therefore, consistent with section 3(5)(c) of the Act, we did not include the entire geographical area currently occupied by this species.

We recognize that our designation does not encompass all known occurrences of this species; however, we believe that our criteria and the designation are adequate to provide for the conservation and recovery of this species throughout its extant range. Although there is no recovery plan for this species, we believe that recovery for *A. ilicifolia* can be achieved through the implementation of conservation measures to protect the physical and biological features in the areas occupied by this species that meet the definition of critical habitat (see the "Special Management Considerations or Protection" section for details about the type of management needed for this species).

The commenter expressed concern that the proposed designation may not capture all areas necessary to allow *Acanthomintha ilicifolia* to respond to diseases, climate change, pollution, and other current and future threats. As stated above, the designation identifies all known threats to the physical and biological features essential to the conservation of the species in each individual subunit and identifies special management considerations or protection needed to alleviate those threats. We recognize these threats may change in the future; however, we base our critical habitat designations on the information available at the time of the designation and do not speculate as to what areas may be found essential if better information became available or what areas may become essential over time. The commenter did not include any specific data on future threats to the features essential to this species nor are we aware of any studies that include additional information that we did not consider. Should additional data become available concerning future threats, we may revise this critical habitat designation if it is determined that the designation did not capture an area essential to the conservation of the species based on the identification of additional threats.

Comment 5: One commenter stated that the Act specifically allows critical habitat designations to include areas both within and outside the geographical area occupied by the species at the time it is listed as well as currently unoccupied habitat in order to capture all areas essential to the recovery of listed species. The commenter continued to state that the proposed designation of critical habitat

for *Acanthomintha ilicifolia* fails to meet the government's legal requirements to promote recovery of *A. ilicifolia*.

Our Response: We agree with the commenter that the Act does provide the flexibility to include areas within the designation that were not occupied at the time a species was listed (including currently unoccupied habitat) if those areas are determined to be essential to the conservation of the species. We evaluated all known occurrences of *Acanthomintha ilicifolia* for inclusion in our proposed critical habitat designation and identified two subunits in the proposed rule, 3E and 4D, for inclusion in the designation that were not known to be occupied at the time the species was listed. We now consider subunits 3E and 4D to be occupied at the time of listing. Even though these occurrences were not discovered until after the species was listed in 1998, over 1,000 plants were recorded at each of these sites when they were first discovered. We believe the large population size indicates that the occurrences were established for several years because the seeds of *A. ilicifolia* do not disperse in large numbers and any new population of *A. ilicifolia* would likely start out small and take several years to reach a population size greater than 1,000 plants. In our proposed rule, we did not identify any areas outside the geographical area occupied by *A. ilicifolia* as essential for the conservation of this species. As discussed in response to comment 4, we believe our proposed rule and this final designation of critical habitat meet the requirements of the Act and are consistent with 50 CFR 424.12(e). We are not designating any areas outside the geographical area occupied by this species as we believe this designation is adequate to ensure the conservation of the species.

We recognize the designation of critical habitat may not include all habitat areas that may eventually be determined to be necessary for the species' recovery. Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations based on the best available information at the time of designation will not control the direction and substance of future

recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Comment 6: One commenter stated that the proposed exclusions, which if finalized will exclude over 67 percent of occupied habitat, violate the principles of the Act, and are not legal because excluding areas from a critical habitat designation will not promote the recovery of this species as is required by the Act. The commenter noted that, because all the units identified in the proposed rule are described as requiring special management considerations to conserve the primary constituent elements, that all units must be designated.

Our Response: Section 4(a)(3)(A) of the Act generally mandates that the Secretary designate any habitat which is considered to be critical habitat, as defined in section 3(5)(A), concurrently with listing and provides that such designations may be revised thereafter as appropriate. Section 4(b)(2) of the Act further requires that in making critical habitat designations, the Secretary take into account the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Therefore, consistent with the Act, we must consider the relevant impacts of designation on those areas that are determined to meet the definition of critical habitat using the best scientific data available prior to finalizing a critical habitat designation.

After determining all areas that meet the definition of critical habitat under section 3(5)(A) of the Act, we considered the economic impact, the impact on national security, and other relevant impacts of specifying any particular area as critical habitat. In this final designation, we recognize that designating critical habitat in areas where we have partnerships with landowners that have led to conservation and management of *Acanthomintha ilicifolia* on non-Federal lands has a relevant perceived impact to those landowners and a relevant impact to future partnership and conservation efforts on non-Federal lands. Based on these relevant impacts, we evaluated the benefits of designating those particular areas as critical habitat against the

benefits of excluding the areas from the designation, and we determined that the benefits of excluding a portion of subunits 1A and 1C and all of subunits 1B, 2A, 2B, 2C, 2D, 3A, 3B, 4A, 4B, 4C, and 4D outweigh the benefits of including these areas in the final critical habitat designation and that the exclusion of these areas will not result in extinction of this species. Therefore, these exclusions are in full compliance with the Act. We also concluded that the conservation and management that will occur on the non-Federal lands we are excluding will contribute to the recovery of this species even though the Act does not require that areas excluded from a critical habitat designation contribute to recovery of a species, but rather that the benefits analysis demonstrate that the benefits of exclusion outweigh the benefits of inclusion and that the exclusion will not result in the extinction of the species. For a complete analysis and discussion of the exclusions, please refer to the "Exclusions Under Section 4(b)(2) of the Act" section below.

Comment 7: One commenter specifically questioned the ability of the San Diego Multiple Habitat Conservation Program (MHCP) and the San Diego Multiple Species Conservation Program (MSCP) to prevent extinction of this species, therefore questioning our determination that excluding these areas would not lead to the extinction of *Acanthomintha ilicifolia*. The commenter stated that habitat conservation plans (HCPs), like the MHCP and MSCP, are often ineffective conservation vehicles. The commenter listed three studies and stated that the studies conclude that species covered by multiple-species HCPs may be less likely to be recovered than those outside such HCPs. The commenter goes on to state that the MHCP and MSCP are in relatively early stages of implementation and are untested. The commenter states there are substantial questions as to whether these HCPs will provide sufficient habitat or species conservation for *A. ilicifolia*. The commenter stated that designating critical habitat in areas covered by the MHCP and MSCP would not undermine those HCPs and that the additional protection that a critical habitat designation provides would be especially beneficial if project proponents in those areas elect not to follow the guidelines set forth in the HCPs, suggesting that designating critical habitat would provide a useful and needed "safety net." The commenter requested that we reconsider

our proposed exclusion of non-Federal lands covered by the MHCP and MSCP.

Our Response: We reevaluated our proposed exclusions of non-Federal land covered by the MHCP and MSCP. Although the commenter grouped the two HCPs together, we evaluated the proposed exclusion of each HCP separately in relation to the comments.

We reevaluated our proposed exclusion of non-Federal land covered by the MHCP under the approved Carlsbad Habitat Management Plan (HMP) and the draft Encinitas subarea plan. The MHCP is a framework plan that has been in place for 5 years and is structured to be implemented through the approval of individual, constituent subarea plans.

The City of Carlsbad received an incidental take permit based on the Carlsbad HMP, an individual subarea plan under the MHCP framework plan on November 9, 2004. All 59 ac (24 ha) of land that meet the definition of critical habitat within the boundaries of the Carlsbad HMP are already conserved under the Carlsbad HMP. In addition to the two areas that we proposed as critical habitat in the Carlsbad HMP, there are other populations of *A. ilicifolia* that are conserved under the subarea plan. Not all areas placed in conservation are actively managed under the plan at this time; however, we believe the Carlsbad HMP conserves *A. ilicifolia* within its boundaries. According to the Service's biological opinion for the Carlsbad HMP, coverage of *Acanthomintha ilicifolia* under this plan is contingent upon compliance with the conservation measures outlined in the HMP (i.e., a funded management plan in place) and the completion of the San Marcos subarea plan under the MHCP. However, we did not identify any lands in San Marcos that meet the definition of critical habitat as described in the "Criteria Used to Identify Critical Habitat" section. As a result, we analyzed the exclusion of subunits 1A and 1B in more detail and concluded that exclusion is appropriate because the essential habitat under the Carlsbad HMP is conserved. Management plans were developed and are being implemented for conserved lands in both of these subunits, although some management differs between these two areas because these management plans were developed over different periods of time (i.e., the management plan for subunit 1A was developed after the Carlsbad HMP was completed, whereas the management plan for lands within subunit 1B was developed prior to development of the Carlsbad HMP). Regardless, conservation and

management of *A. ilicifolia* in these subunits is occurring and we believe it is contributing to the conservation of the species. Overall, the extent of habitat preservation and management that has taken place through implementation of the Carlsbad HMP since it was permitted in 2004 is significant, and demonstrates the City of Carlsbad's commitment to fully implement this HCP.

A detailed accounting of preservation, conservation, and management requirements of the Carlsbad HMP can be found in the "Exclusions Under Section 4(b)(2) of the Act" section. The comprehensive framework of the subarea plan and area-specific management plans developed as areas are preserved under the subarea plan contain requirements to conserve and adaptively manage *Acanthomintha ilicifolia* habitats and provide for the conservation of this species' primary constituent elements (PCEs), thereby contributing to the recovery of this species. The Carlsbad HMP provides for management and monitoring for *A. ilicifolia* at several sites, including habitat in subunit 1A that is currently actively managed by the Center for Natural Lands Management. Activities that benefit *A. ilicifolia* in subunit 1A include mapping and census projects, removal of nonnative invasive species, and the restoration of areas degraded by past human use (Tierra Data, Inc. 2005, p. 34–63; Carlsbad HMP 2004, p. D–97). Land in subunit 1B was permanently preserved prior to the creation of the HMP. Management of the conserved land in subunit 1B is the responsibility of the homeowners' associations who own the open space in this subunit. These lands are signed and fenced and considered part of Carlsbad's habitat preserve.

The Encinitas subarea plan under the MHCP is not complete, and significant progress has not occurred towards its completion. Therefore, we are not excluding from the final designation essential habitat within the draft Encinitas subarea plan.

We also reevaluated our proposed exclusion of non-Federal land covered by approved subarea plans under the MSCP. The MSCP is a framework plan that has been in place for 10 years. Both the City and the County of San Diego received incidental take permits for their individual subarea plans under the MSCP framework plan. Approximately 948 ac (383 ha) of land that meet the definition of critical habitat are within the City and County subarea plan boundaries under the MSCP. The MSCP subarea plans provide for the conservation of *Acanthomintha*

ilicifolia through the establishment of preserve lands within the Multi-Habitat Planning Area (MHPA) (City) and Pre-Approved Mitigation Areas (PAMA) (County). In 10 years of implementing the subarea plans, approximately 787 ac (319 ha), or 83 percent, of lands that meet the definition of critical habitat are conserved. Although some areas placed in conservation are not yet fully managed under the plans, we believe the subarea plans under the MSCP will conserve essential habitat of *A. ilicifolia* within the subarea plan boundaries. The extent of habitat preservation and management that has taken place through implementation of the MSCP subarea plans is significant, and demonstrates the City's and County's commitments to fully implement their subarea plans.

The commenter indicated concern that species may more likely recover outside of HCPs and questioned the habitat and species conservation provided by the MSCP for *Acanthomintha ilicifolia*. The subarea plans under the MSCP contain requirements to monitor and adaptively manage *A. ilicifolia* habitats and provide for the conservation of this species' PCE. The framework and area-specific management plans required under the subarea plans are comprehensive and address a broad range of management needs at the preserve and species levels that are intended to reduce the threats to covered species and thereby contribute to the recovery of the species. These plans include the following: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor/interpretive and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and/or homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes of covered species; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (MSCP 1998).

Eight major populations of *Acanthomintha ilicifolia* are included within preserve lands under the approved MSCP subarea plans, each of which will be conserved from 80 to 100 percent, with 85 percent overall coverage. A detailed accounting of preservation, conservation, and management requirements can be found in the "Exclusions Under Section 4(b)(2) of the Act" section. In sum, all but 89 ac (36 ha) of the total 948 ac (383 ha)

of lands that meet the definition of critical habitat within the MSCP plan area are conserved or otherwise assured of conservation. Consistent with the narrow endemics requirements of the MSCP, the remaining 89 ac (36 ha) will be surveyed for *A. ilicifolia* prior to any development occurring on these lands. Under the City of San Diego's subarea plan, impacts to narrow endemic plants, including *A. ilicifolia*, inside the MHPA will be avoided and outside the MHPA will be protected by: (1) Avoidance; (2) management; (3) enhancement; and/or (4) translocation to areas identified for preservation (City of San Diego 1997, p. 105–106; Service 1997, p. 15). Under the County of San Diego's subarea plan, narrow endemic plants, including *A. ilicifolia*, will be conserved under the Biological Mitigation Ordinance using a process that: (1) Requires avoidance to the maximum extent feasible; (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible; and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property (County of San Diego (BMO) 1997, p. 11; Service 1998, p. 12). These measures will ameliorate any habitat loss within the 89 ac (36 ha) of lands that are not currently preserved or otherwise assured of conservation under the MSCP, by requiring in situ conservation or mitigation of impacts to *A. ilicifolia* and its habitat. Although some losses may occur to this species, the preservation, conservation, and management of *A. ilicifolia* required under the City and County MSCP subarea plans ensures the long-term conservation of this species and its habitat within the plan areas.

We evaluated the relevant impacts of designating critical habitat within areas covered by the City and County MSCP subarea plans and determined that the benefits of excluding non-Federal lands covered by the MSCP outweigh the benefits of specifying those areas as critical habitat and determined that excluding these lands will not lead to the extinction of *Acanthomintha ilicifolia*. Therefore, we excluded all non-Federal lands covered by the City and County subarea plans under the MSCP from this final designation (please see “Exclusions Under Section 4(b)(2) of the Act” section below for a detailed analysis).

The commenter also expressed concern that HCPs are ineffective conservation vehicles. We respectfully disagree. Numerous processes are incorporated into HCPs that provide for Service oversight of implementation to

ensure compliance with the provisions to protect *Acanthomintha ilicifolia*. For example, the MSCP imposes annual reporting requirements and provides for Service review and approval of proposed subarea plan amendments and preserve boundary adjustments and for Service review and comment on projects during the California Environmental Quality Act review process. The Service also chairs the MSCP Habitat Management Technical Committee and the Monitoring Subcommittee (MSCP 1998, p. 5–11—5–23). The Carlsbad HMP also incorporates many processes to ensure the Service an active role in implementation of the HCP. For example, Habitat Management Plans, reviewed and approved by the Service, must be developed for each preserve area within the Carlsbad HMP, and monitoring and management objectives must be established for each preserve. Progress towards meeting these objectives is measured through the submission of annual reports. There are also regular coordination meetings between the Service and the City of Carlsbad to discuss on-going conservation issues. Both the MSCP subarea plans and the Carlsbad HMP must account annually for the progress they are making in assembling conservation areas. The Service must receive annual reports that include, both by project and cumulatively, the habitat acreage destroyed and conserved within the HCPs. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and, the Carlsbad HMP, and the plans' associated implementing agreements.

The commenter did not provide copies of the citations that they stated conclude that multi-species HCPs are not likely to contribute to the recovery of listed species, nor did the commenter identify any examples of projects that may not comply with the Carlsbad HMP or the City and County MSCP subarea plans by impacting *Acanthomintha ilicifolia*. In light of our summary above, we continue to believe that implementation of the Carlsbad HMP and the City and County MSCP subarea plans will benefit *A. ilicifolia* recovery, and we believe there is adequate oversight of these plans to ensure compliance.

Comment 8: One commenter supported our exclusion of lands covered by the MSCP and requested that we exclude proposed critical habitat areas within the pending North County MHCP in San Diego County. The commenter stated that the designation of critical habitat in these areas may

have a negative effect on entities pursuing the MHCP and deter the completion of the plan.

Our Response: At this time, the HCP for northern San Diego County (North County MHCP) is being developed and a draft plan is not available for public review. We understand the commenters' concern that a designation of critical habitat in areas that may be addressed in the future by the North County MHCP may have a negative effect on entities pursuing the HCP and deter its completion. This concern is consistent with our discussion of conservation partnerships in the “Exclusions Under Section 4(b)(2) of the Act” section of this final rule. However, we also recognize that there is a regulatory and recovery benefit to designating critical habitat in areas that are not protected through existing management or conservation plans. Exclusions under section 4(b)(2) of the Act must be considered on a case-by-case basis. Because a draft of the northern San Diego County MHCP has not been released for public comment or formally evaluated by the Service, it is not clear that this framework plan will adequately address the conservation and recovery needs of *Acanthomintha ilicifolia*. Nor is it clear which areas will actively develop subarea plans under the North County MHCP. Therefore, we cannot presently determine that the regulatory and recovery benefits of a critical habitat designation in these areas would be minimized by the measures provided under this future plan. Therefore, we did not exclude lands that may be covered under this plan from critical habitat (the portion of subunit 1A owned by the County of San Diego). However, if this designation is revised in the future, we will re-evaluate for potential exclusion areas conserved under the plan. In the meantime, we are committed to continue working with all partners to the North County MHCP to minimize any additional regulatory burden attributable to this critical habitat designation.

Comment 9: One commenter questioned discussion in the proposed rule concerning critical habitat designations and public perceptions, stating that we did not present any empirical or quantitative evidence to support our claim that landowners fear a decline in property value due to real or perceived restrictions on land-use options and that participants in pending HCPs or other conservation plans may abandon the planning process in part due to perceived additional regulatory compliance with a critical habitat designation. The commenter noted that the MSCP and MHCP and their

respective subarea plans were presumably approved only after a public education program that would have explained the consequences of having listed species on private property. The commenter further stated that if the MSCP and MHCP function as promised by the proposed rule, critical habitat designation should create few or no additional burdens for permittees and finally that the Service inappropriately considers an exclusion as an “either-or” situation with regard to HCP implementation. The commenter stated that critical habitat and habitat conservation plans can coexist.

Our Response: The proposed designation cites several studies that have examined the issue of conservation of threatened and endangered species on private lands to support our discussion of the impacts to non-Federal landowners (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). As discussed in detail in the “Conservation Partnerships on Non-Federal Lands” section below, at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Although many non-Federal landowners derive satisfaction from contributing to listed species recovery, many private landowners are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found (Main *et al.* 1999; Brook *et al.* 2003). According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). Such voluntary conservation actions may be particularly important for listed plant species that are not subject to the take prohibition under section 9 of the Act or the incidental take permitting requirements of section 10(a)(1)(B) of the Act. For this reason, we actively encourage participants developing HCPs under section 10 of the Act to include measures that address the conservation of listed plant species

in their plans even though such measures are not required. Designating critical habitat for plant species on lands voluntarily protected in an HCP or other conservation management plan could undermine our efforts. Therefore, we believe the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

Furthermore, our proposed critical habitat designations often draw significant public comment on the real and perceived impacts of the designation to Federal and non-Federal landowners. We received significant comments on multiple rules concerning impacts to private and non-Federal lands covered by HCPs and other land management conservation plans, including comment on this rule stating that the designation of critical habitat in areas covered by HCPs may have a negative effect on entities pursuing an HCP and may deter the completion of pending subarea plans under either the MSCP or MHCP (see Comment 8). As discussed in response to Comment 7 above and in the “Conservation Partnerships on Non-Federal Lands” section below, we continue to recognize that designating critical habitat in areas where we have partnerships with landowners that have led to conservation or management of listed species on non-Federal lands has a relevant perceived impact to landowners and a relevant impact to future partnership and conservation efforts on non-Federal lands.

Finally, we agree with the commenter that implementing a signed and permitted HCP is not an “either-or” situation when determining whether to designate an area that meets the definition of critical habitat as critical habitat. Rather, as stated in section 4(b)(2) of the Act, the Secretary shall designate critical habitat, or make revisions thereto, on the basis of the best available data *and after* (emphasis added) taking into consideration the economic impact, the impact on national security, 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. We agree with the commenter that designation of an area covered by an HCP should create few or no additional regulatory burdens for permittees, and our analyses of the benefits of including areas covered by an HCP demonstrates how the

regulatory benefit of inclusion is small. And while we agree that critical habitat and habitat conservation plans can coexist, we recognize that the designation has a relevant real impact to future partnerships and conservation efforts on non-Federal lands and a perceived impact to those landowners already in partnership with us. We consider that impact in weighing the benefits of inclusion against the benefits of exclusion on a case-by-case basis to determine if exclusion of those lands is appropriate.

Comment 10: One commenter objected to the discussion in the proposed rule concerning the inundation of lawsuits relative to critical habitat and suggested that litigation would be unnecessary or unsuccessful if the Service complied with the law. The commenter suggested that policymakers make choices that avoid compliance with the Act’s critical habitat requirements and underfund species and habitat conservation programs, starving the Service of funds and staff. The commenter concluded that compliance with the law would be a more fiscally, biologically, and legally responsible choice.

Our Response: We removed the discussion of litigation-driven workload from this final rule. We believe this final rule is scientifically sound and compliant with the Act and our implementing regulations.

Comment 11: One commenter indicated that portions of subunit 1A are developed or used for agriculture and do not have the potential to support *Acanthomintha ilicifolia*. The commenter provided a map depicting the areas they believe do not support this species and requested that we remove these lands from critical habitat.

Our Response: We reassessed the areas described by the commenter. We removed the lands in subunit 1A that do not contain the PCE, including active agricultural fields, navigational aids associated with McClellan-Palomar Airport, a dirt maintenance road, and development areas in the City of Carlsbad. We remapped the boundary of subunit 1A, and verified that the revised subunit contains the features essential to the conservation of species which may require special management considerations or protection. As a result of the changes described above, we removed 26 ac (11 ha) that do not support *A. ilicifolia* and do not contain the PCE, resulting in 62 ac (25 ha) designated as critical habitat within subunit 1A.

Comment 12: One commenter provided information on the management of lands owned by the

Center for Natural Lands Management (CNLM). The commenter indicated that portions of subunits 1A and 1C are owned by the CNLM, and are managed and monitored for *Acanthomintha ilicifolia* on an annual basis. Funding for the perpetual management of these sites is obtained from a monetary endowment. The CNLM prepared a Property Analysis Record (PAR) to determine how much money is needed to manage and monitor *A. ilicifolia* on these lands. The commenter indicated that the CNLM reduces the threats to *A. ilicifolia* by managing weeds, erecting fences, closing trails, and distributing educational literature to the public. Additionally, the commenter indicated that high school students are involved with annual monitoring for this species and that an entomologist is working to determine potential pollinators for *A. ilicifolia* on lands in subunit 1C.

Our Response: We appreciate the detailed information provided by the commenter, and we incorporated this information as appropriate into the final rule.

Comments From Other Federal Agencies

Comment 13: The U.S. Forest Service (USFS) commented that laws, regulations, policies, and current Land Management Plan (LMP) direction currently in place provide protection at least equivalent to the protection that critical habitat designation would provide. The agency stated that the LMP in place at the Cleveland National Forest (CNF) incorporates management direction that provides sufficient protection and management for *Acanthomintha ilicifolia* and its habitat, and that the section 7 consultation on the LMP resulted in the Service coming to a similar conclusion, resulting in the issuance of a non-jeopardy biological opinion. Additionally, the Cleveland National Forest (CNF) has a Species Management Guide for *A. ilicifolia* that provides for exclusion of grazing, recreation, development, and soil disturbance (USFS 1991). The USFS commented that due to management and conservation standards, there should not be any reason to adversely modify the habitat's primary constituent elements for *A. ilicifolia* on the CNF. Furthermore, they commented that designation of critical habitat on CNF lands would not provide any additional benefit to the conservation of the species or its habitat since all site-specific projects proposed by the CNF are subject to section 7(a)(2) consultation with the Service and that designation would unnecessarily add to their analysis burden by requiring CNF to make a determination of effect

regarding critical habitat when consulting under section 7 of the Act. The USFS acknowledged their responsibility to conserve and recover listed species and that they will continue to provide necessary management, regardless of critical habitat designation.

Our Response: We determined that the lands identified on the CNF contain the physical and biological features essential to the conservation of *Acanthomintha ilicifolia* and meet the definition of critical habitat (see "Criteria Used to Identify Critical Habitat" section below). We acknowledge that the LMP for CNF will benefit *A. ilicifolia* and its habitat, and that the CNF has completed many of the actions outlined in the 1991 Management Guide (USFS 1991) to avoid and minimize impacts to *A. ilicifolia*. The LMP contains general provisions for conservation of this species and the Management Guide suggests specific management and conservation actions that should address known threats to this species on USFS lands. However, the LMP is a guidance document and does not require or assure funding for management actions outlined in the plan. Additionally, the LMP does not preclude projects from occurring outside of the framework of the plan that could negatively impact areas designated as critical habitat.

The Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of specifying such area, unless he determines that the exclusion would result in the extinction of the species concerned. We considered the request from the USFS that we exclude their lands because it would unnecessarily add work in the future to determine the effect regarding critical habitat for actions on their lands and the fact that they already completed consultation under Section 7(a)(2) of the Act on the LMP.

As part of our section 7 consultation with the USFS on the LMP, the USFS already consulted on various activities carried out on national forest lands including: Roads and trail management; recreation management; special use permit administration; administrative infrastructure; fire and fuels management; livestock grazing and range management; minerals management; and law enforcement. In our 2005 biological opinion on the LMP,

we determined that implementation of the plan was not likely to jeopardize the continued existence of *Acanthomintha ilicifolia*. Since critical habitat has not been previously proposed or designated for this species, it is anticipated that consultation with the USFS regarding the LMP will be reinitiated. However, because the USFS has already consulted with us on potential impacts to the species related to activities outlined in the LMP, the USFS can supplement its analysis for those activities already analyzed in the LMP with the additional analysis required for critical habitat areas. We do not believe that this additional analysis would place an undue burden on the USFS in this case.

Based on the record before us, we elected not to exclude these lands and are designating lands identified on the CNF that meet the definition of critical habitat and are essential to the conservation of *Acanthomintha ilicifolia*. We will continue to consider on a case-by-case basis in future critical habitat rules whether to exclude specific lands from such designation when we determine that the benefits of such exclusion outweigh the benefits of their inclusion.

Comment 14: One commenter indicated that the critical habitat proposal, if finalized, may adversely affect the Federal Aviation Administration's (FAA's) and San Diego County's ability to continue to operate McClellan-Palomar Airport in a safe and efficient manner because navigational aides (e.g., lights, maintenance road to access navigational aides) are within the area proposed as subunit 1A.

Our Response: As stated above in our response to comment 11 above, we removed the lands in subunit 1A that do not contain the PCE, including all active agricultural fields, lands containing navigational aides associated with McClellan-Palomar Airport, a dirt maintenance road, and development areas in the City of Carlsbad. We remapped the boundary of subunit 1A, and we have verified that this area meets the definition of critical habitat. Based on currently available information, we believe that we have removed all existing navigational aides from the designated critical habitat. Additionally, we do not believe that regular maintenance of any navigational aides that we are currently unaware of, but have been inadvertently included in the designation, will adversely modify critical habitat. We are committed to working with the FAA and staff of McClellan-Palomar Airport to ensure that the designation of critical habitat does not impact the future safe and efficient operation of the airport.

Summary of Changes From the Proposed Rule

In our March 14, 2007, proposed rule we identified 1,936 acres (ac) (783 hectares (ha)) of essential habitat for *Acanthomintha ilicifolia* in four units and seventeen subunits (72 FR 11946). At that time we proposed to exclude 1,302 ac (527 ha) under section 4(b)(2) of the Act (72 FR 11946; March 14, 2007). As we continued work on the proposed designation, we made two types of changes that affected the total area considered to meet the definition of

critical habitat (what we will refer to as “essential habitat”). First, we corrected simple mapping errors; for example, in one case we tallied a single piece of land twice in calculating the total number of acres thought to be essential habitat. Second, we removed areas that did not qualify as essential habitat either because they were developed and degraded or because they did not contain the PCE and were not otherwise considered essential. Table 1 depicts the changes made to the proposed rule published on March 14, 2007, and

indicates how much area was removed (or added as was the case for some of the corrections) for each of the two reasons discussed above. As we continued work on the designation, we notified the public of new information we were using to make changes to the critical habitat (72 FR 66122, November 27, 2007; 73 FR 27483, May 13, 2008). However, Table 1 and this discussion focus on the changes from the March 14, 2007, proposed rule (72 FR 11946) to this final rule. The details related to these changes are explained below.

TABLE 1—AREAS PROPOSED AS CRITICAL HABITAT (72 FR 11946, MARCH 14, 2007), AREA REMOVED OR ADDED AS A CORRECTION, AREA REMOVED AS NON-ESSENTIAL HABITAT, AND FINAL CRITICAL HABITAT DESIGNATION

Critical habitat unit/subunit	Essential habitat in the March 14, 2007 proposed rule *	Area subtracted or added as a correction *	Area removed because it was not essential habitat *	Essential habitat as of this final rule *
Unit 1: Northern San Diego County:				
1A. Palomar Airport	88 ac (36 ha) .....	.....	26 ac (11 ha)	62 ac (25 ha).
1B. Southeast Carlsbad	73 ac (29 ha) .....	.....	16 ac (6 ha)	57 ac (23 ha).
1C. Manchester	92 ac (37 ha) .....	.....	13 ac (5 ha)	79 ac (32 ha).
Unit 2: Central San Diego County:				
2A. Los Peñasquitos Canyon	63 ac (25 ha) .....	.....	.....	63 ac (25 ha).
2B. Sabre Springs	52 ac (22 ha)	Subtracted: 0 ac (1 ha)	.....	52 ac (21 ha).
2C. Sycamore Canyon	306 ac (124 ha) .....	.....	.....	306 ac (124 ha).
2D. Slaughterhouse Canyon	77 ac (31 ha) .....	.....	.....	77 ac (31 ha).
Unit 3: Viejas Mountain and Poser Mountain:				
3A. Viejas Mountain	33 ac (13 ha) .....	.....	1 ac (<1 ha)	32 ac (13 ha).
3B. Viejas Mountain	208 ac (84 ha) .....	.....	15 ac (6 ha)	193 ac (78 ha).
3C. Viejas Mountain	318 ac (128 ha) .....	.....	42 ac (16 ha)	276 ac (112 ha).
3D. Viejas Mountain	82 ac (33 ha) .....	.....	.....	82 ac (33 ha).
3E. Poser Mountain	34 ac (14 ha) .....	.....	.....	34 ac (14 ha).
3F. Poser Mountain	163 ac (66 ha) .....	.....	8 ac (3 ha)	155 ac (63 ha).
Unit 4: Southern San Diego County:				
4A. McGinty Mountain	18 ac (7 ha)	Added: 2 ac (1 ha) .....	.....	20 ac (8 ha).
4B. McGinty Mountain	220 ac (89 ha)	Subtracted: 72 ac (29 ha).	.....	148 ac (60 ha).
4C. McGinty Mountain	27 ac (11 ha)	Added: 1 ac (0 ha) .....	.....	28 ac (11 ha).
4D. Hollenbeck Canyon	84 ac (34 ha) .....	.....	.....	84 ac (34 ha).
Total	1,936 ac (783 ha) **	Subtracted: 69 ac (29 ha).	121 ac (48 ha)	1,748 ac (707 ha).

* The values in this table do not represent an actual conversion of acres to hectares.

** The sum of the values in this column is 1,938 ac (783 ha), whereas the value given for the total in the Table 1 of the March 14, 2007, **Federal Register** notice was 1,936 ac (783 ha). This difference is due to rounding and the conversion of values from acres to hectares on a subunit-by-subunit basis rather than for the critical habitat as a whole.

(1) In the proposed rule (72 FR 11946; March 14, 2007), we proposed to exclude a total of 95 ac (38 ha) of private lands in subunits 3C, 3D, and 3F from the final critical habitat designation under section 4(b)(2) of the Act. We believed these lands were within the planning boundary for the County of San Diego approved subarea plan under the San Diego MSCP. However, the private lands in subunits 3C, 3D, and 3F are not within the planning boundary for the County of San Diego subarea plan under the MSCP; therefore, consideration for exclusion under that HCP was inappropriate. All lands that meet the definition of critical habitat in

subunits 3C, 3D, and 3F are now designated as critical habitat.

(2) In the proposed rule (72 FR 11946; March 14, 2007), the maps and boundary descriptions of subunits 4A and 4B were delineated correctly; however, the area estimates were incorrect. The correct area for subunit 4A is 20 ac (8 ha) rather than 18 ac (7 ha), and the correct area for subunit 4B is 148 ac (60 ha) rather than 220 ac (89 ha) (see Table 1). Non-Federal lands in subunits 4A and 4B are excluded from critical habitat, and the federally owned lands in subunit 4A are designated as critical habitat.

(3) In the proposed rule (72 FR 11946; March 14, 2007), we did not identify that subunit 4A contained 2 ac (1 ha) of federally owned land, and subunit 4C contained 1 ac (<1 ha) of federally owned land. Both of these subunits include land in the Service’s San Diego National Wildlife Refuge (SDNWR). We proposed to exclude all non-Federal lands in subunits 4A and 4C from the final designation based on the benefits provided to *Acanthomintha ilicifolia* by the County of San Diego subarea plan under the MSCP. While we are excluding all private and non-Federal public lands covered by the subarea plan in this final rule, this exclusion

does not apply to Federal lands; therefore, we are designating 3 ac (1 ha) on the SDNWR in Unit 4.

(4) We re-evaluated the areas proposed as critical habitat based on more up-to-date aerial imagery, field visits, and the most recent version of the HabiTrak database (i.e., a database that shows areas lost to development in the area covered by the MSCP). We determined that some areas proposed as critical habitat no longer contain the PCE. Therefore, we removed these areas from critical habitat. Below we describe the specific areas that we removed from critical habitat:

(a) Subunit 1A, Palomar Airport—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 88 ac (36 ha). After re-evaluating this area, we found that approximately 26 ac (11 ha) do not contain the PCE, including all active agricultural fields, lands containing navigational aides associated with McClellan-Palomar Airport, a dirt maintenance road, and development areas in the City of Carlsbad (see Table 1). As a result, we determined that 62 ac (25 ha) meet the definition of critical habitat in subunit 1A. Of the 62 ac (25 ha), we are designating 60 ac (24 ha) as critical habitat, and we are excluding 2 ac (1 ha) from critical habitat under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section).

(b) Subunit 1B, Southeast Carlsbad—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 73 ac (30 ha). After re-evaluating this area, we found that approximately 16 ac (7 ha) are regularly maintained wildland-urban interface and do not support the PCE for *Acanthomintha ilicifolia*; therefore, we removed these 16 ac (7 ha) from critical habitat (see Table 1). As a result, we determined that 57 ac (23 ha) meet the definition of critical habitat in subunit 1B. We are excluding all of the 57 ac (7 ha) from critical habitat under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section).

(c) Subunit 1C, Manchester—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 92 ac (37 ha). After re-evaluating this area, we found that approximately 13 ac (5 ha) are fragmented by suburban development or are too steep to support the PCE for *Acanthomintha ilicifolia*; therefore, we removed these 13 ac (5 ha) from critical habitat (see Table 1). As a result, we determined that 79 ac (32 ha) meet the definition of critical habitat in subunit 1C. Of the 79 ac (32 ha) that meet the

definition of critical habitat, we are designating 9 ac (4 ha) as critical habitat, and we are excluding 70 ac (28 ha) from critical habitat under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section).

(d) Subunit 3A, Viejas Mountain—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 33 ac (13 ha). After re-evaluating this area, we found that approximately 1 ac (<1 ha) is developed and no longer supports the PCE for *Acanthomintha ilicifolia*; therefore, we removed this 1 ac (<1 ha) from critical habitat (see Table 1). As a result, we determined that 32 ac (13 ha) meet the definition of critical habitat in subunit 3A. We are excluding all of the 32 ac (13 ha) from critical habitat under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section).

(e) Subunit 3B, Viejas Mountain—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 208 ac (84 ha). After re-evaluating this area, we found that approximately 15 ac (6 ha) are developed and no longer support the PCE for *Acanthomintha ilicifolia*; therefore, we removed these 15 ac (6 ha) from critical habitat (see Table 1). As a result, we determined that 193 ac (78 ha) meet the definition of critical habitat in subunit 3B. Of the 193 ac (78 ha) that meet the definition of critical habitat in subunit 3B, we are designating 52 ac (21 ha) as critical habitat, and we are excluding 141 ac (57 ha) from critical habitat under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section).

(f) Subunit 3C, Viejas Mountain—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 318 ac (128 ha). After re-evaluating this area, we found that approximately 42 ac (16 ha) are impacted by rural development and do not contain the PCE; therefore, we removed these 42 ac (16 ha) from critical habitat (see Table 1). As a result, we determined that 276 ac (112 ha) meet the definition of critical habitat in subunit 3C. We are designating all of the 276 ac (112 ha), which are federally owned, as critical habitat.

(g) Subunit 3F, Poser Mountain—In the proposed rule (72 FR 11946; March 14, 2007), we indicated that this subunit contained 163 ac (66 ha). After re-evaluating this area, we found that approximately 8 ac (3 ha) are impacted by rural development or agricultural activities and do not contain the PCE; therefore, we removed these 8 ac (3 ha) from critical habitat (see Table 1). As a

result, we determined that 155 ac (63 ha) meet the definition of critical habitat in subunit 3F. We are designating the 155 ac (63 ha), all of which are federally owned, as critical habitat.

(5) In the proposed rule (72 FR 11946; March 14, 2007), we proposed the exclusion of lands in subunit 1A and 1B covered by the Carlsbad Habitat Management Plan (HMP) under the MHCP from the designation of critical habitat under section 4(b)(2) of the Act. Upon further analysis of the Carlsbad HMP, we found that coverage of *Acanthomintha ilicifolia* under this HCP is contingent on compliance with the conservation measures outlined in the HMP (i.e., a funded management plan in place) and the completion of the San Marcos subarea plan under the MHCP. We announced that we were reconsidering this exclusion in our May 13, 2008, **Federal Register** notice (73 FR 27483); we did not receive public comments on this subject. However, we did not identify any lands in San Marcos that meet the definition of critical habitat as described in the “Criteria Used to Identify Critical Habitat” section. Therefore, we analyzed the exclusion of subunit 1A and 1B in more detail and concluded that exclusion is appropriate because the essential habitat under the Carlsbad HMP is conserved and has management in place (see “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion). We are designating the remaining 60 ac (24 ha) of land owned by the County of San Diego in subunit 1A because it is not covered by the Carlsbad HMP.

(6) In the proposed rule (72 FR 11946; March 14, 2007), we proposed the exclusion of lands in subunit 1C covered by the pending Encinitas subarea plan under the MHCP from the designation of critical habitat under section 4(b)(2) of the Act. At this time, the Encinitas subarea plan under the MHCP has not been completed. However, the majority of subunit 1C is part of the Manchester Avenue Mitigation Bank and is actively managed for *Acanthomintha ilicifolia* (Spiegelberg 2005, p. 1–33). We determined that the benefits of excluding lands within the conservation bank area from critical habitat designation outweigh the benefits of including the area, and that their exclusion will not result in extinction of this species. Therefore, we are excluding 70 ac (28 ha) of subunit 1C under section 4(b)(2) of the Act (see “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion),

and we are designating the remaining 9 ac (4 ha) of private lands outside the Manchester Avenue Mitigation Bank as critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section of this final rule for a detailed discussion of this exclusion).

(7) In the proposed rule (72 FR 11946; March 14, 2007), we proposed the exclusion of non-Federal lands covered by the City of San Diego subarea plan under the MSCP in subunits 2A and 2B and the exclusion of non-Federal lands covered by the County of San Diego subarea plan under the MSCP in subunits 2C, 2D, 3A, 3B, 4A, 4B, 4C, and 4D from the designation of critical habitat under section 4(b)(2) of the Act. In this final rule, we determined that the benefits of exclusion outweigh the benefits of inclusion of these lands and that their exclusion will not result in extinction of this species. Therefore, we excluded all non-Federal lands in subunits 2A and 2B covered by the City of San Diego subarea plan and all non-Federal lands in subunits 2C, 2D, 3A, 3B, 4A, 4B, 4C, and 4D covered by the County of San Diego subarea plan, under section 4(b)(2) of the Act (see "Exclusions Under Section 4(b)(2) of the Act" section of this final rule for a detailed discussion of this exclusion). Federally owned lands in subunits 3B, 4A, and 4C are designated as critical habitat.

(8) In our March 14, 2007, proposed rule (72 FR 11946), we indicated that all subunits except 3E and 4D were known to be occupied by the species at the time of listing (October 13, 1998). We now consider subunits 3E and 4D to have been occupied at the time of listing. Even though these occurrences were not discovered until after the species was listed in 1998, over 1,000 plants were recorded at each of these sites when they were first discovered in 2000 and 2001, respectively. We believe the large population size indicates that the occurrences were established for several years prior to their discovery and were established at the time the species was listed. *Acanthomintha ilicifolia* seeds do not disperse in large numbers and any new population of *A. ilicifolia* would likely start out small and take several years to reach a population size greater than 1,000 plants. Therefore, since these large populations were discovered 2 to 3 years after listing, we consider all subunits proposed or designated as critical habitat to have been occupied at the time of listing (see "Criteria Used To Identify Critical Habitat" section). We designated critical habitat in subunit 3E, and we excluded subunit 4D as discussed above.

(9) We made two corrections to our description of the PCE. First, in the proposed rule (72 FR 11946; March 14, 2007), we omitted grassland vegetation as one of the vegetation types in which *Acanthomintha ilicifolia* is commonly found. This information was discussed in the proposed rule, but was inadvertently left out of the PCE. We included it in the PCE in this final rule. Second, in the proposed rule (72 FR 11946; March 14, 2007), we indicated that deep fissures in the clay soils associated with *A. ilicifolia* are approximately 2 feet (60 cm) deep. However, there are only observational discussions and no formal studies on this topic. We broadened the statement on this habitat feature in the PCE to state that the fissures in the soil range in depth from approximately 1 to 2 feet (30 to 60 cm).

As a result of the removals and corrections outlined above, a total of approximately 1,748 ac (707 ha) meets the definition of critical habitat and is considered essential habitat for *Acanthomintha ilicifolia*. We are excluding approximately 1,077 ac (435 ha) of essential habitat under section 4(b)(2) of the Act because we determined that the benefits of excluding those lands from the critical habitat designation outweigh the benefits of including them in the designation (see "Exclusions Under Section 4(b)(2) of the Act" section). In conclusion, we are designating 671 ac (272 ha) of land in San Diego County as critical habitat for *A. ilicifolia* in this final rule.

Critical Habitat

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

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

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not

limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, or transplantation.

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

For inclusion in a critical habitat designation, 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. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the

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

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. In the case of *Acanthomintha ilicifolia*, several botanists and land managers conducted field assessments and management experiments that were helpful in identifying the areas that meet the definition of critical habitat. There is no recovery plan for *A. ilicifolia*.

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

Areas that support populations, but are outside the critical habitat designations, will continue to be subject to conservation actions we implement under section 7 of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the Federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the

best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These physical and biological features include, but are not limited to:

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

We derived the specific primary constituent element required for *Acanthomintha ilicifolia* from its biological needs, as described in the proposed critical habitat rule published in the **Federal Register** on March 14, 2007 (72 FR 11946), and below.

Space for Individual and Population Growth and Normal Behavior

Acanthomintha ilicifolia occurs on isolated patches of clay soils derived from gabbro and soft calcareous sandstone substrates (Oberbauer and Vanderwier 1991, pp. 208–209). The soils derived from gabbro substrates are red to dark brown clay soils, and those derived from soft calcareous sandstone are gray clay soils. These patches of clay soils are called “clay lenses.” In San Diego County, California, and northern Baja California, Mexico, clay lenses are known to support a variety of narrow endemic (restricted to a specific geographic area) plants. Clay lenses tend to have an open or unpopulated look because many common species cannot tolerate living on these clay soils. Clay lenses are typically devoid of woody, perennial shrubs (Oberbauer and

Vanderwier 1991, pp. 208–209) (PCE). Shrubs have difficulty surviving on these soils because in the rainy winter months these soils become saturated with water and the large root systems of shrubs are not able to get oxygen (Oberbauer and Vanderwier 1991, pp. 208–209). Another reason it is difficult for shrubs to take root and become established on the clay soil is because as the soils become saturated with water they expand and when the soils dry they contract and crack. The harsh conditions that clay soils exhibit make clay lenses a difficult microhabitat for annual native plants to grow on, which limits the number and density of common native plants on clay lenses. Due to the absence of most common native vegetation from clay lenses, the areas where *A. ilicifolia* occurs appear as open areas surrounded by areas populated by denser vegetation.

In addition to the characteristics discussed above, the texture and structure of the clay lenses are essential for supporting the seedling establishment and growth of *Acanthomintha ilicifolia*. This soil provides many small pockets and deeper fissures where seeds from *A. ilicifolia* become lodged as they fall from decomposing plants (Bauder and Sakrison 1999, p. 28). The seeds stay in the soils until the temperatures become cooler in the winter months and the soil becomes saturated with the winter rains (Bauder and Sakrison 1997, p. 28–29). The seedlings then germinate and grow to mature plants. These plants do best when they are not crowded or shaded by other plants (Bauder and Sakrison 1999, p. 12). The loose, crumbly texture of the soil provides the proper substrate to hold the seed bank and allow for root growth.

Clay lenses are generally inhabited by a specific flora that consists of forbs, native grasses, and geophytes (perennial plants propagated by buds on underground bulbs, tubers, or corms, such as lilies, iris, and onions) (Oberbauer and Vanderwier 1991, pp. 208–209), which are better adapted to the harsh conditions mentioned above. Native plant species that characterize the vegetation found with *Acanthomintha ilicifolia* on clay lenses include *Hesperervax sparsiflora* var. *sparsiflora* (erect evax), *Harpagonella palmeri* (Palmer's grappling-hook), *Convolvulus simulans* (bindweed), *Apiastrum angustifolium* (mock parsley), and *Microseris douglasii* ssp. *platycarpa* (small flowered microseris) (Bauder et al. 1994, pp. 9–10; McMillan 2006, p. 1; Vinje 2006b, pp. 1–2).

Clay lenses generally form on gentle slopes. An analysis of 20 sites where

Acanthomintha ilicifolia was observed found that the slopes range from 0 to 25 degrees, with the majority of the sites having slopes below 20 degrees (Bauder *et al.* 1994, pp. 10–11). This study found that many thriving, natural populations were on slopes that faced southeast, south, southwest, and west (Bauder *et al.* 1994, pp. 10–11). Using GIS, we found that the known populations of *A. ilicifolia* range in elevation from sea level to 3,000 ft (914 m). *Acanthomintha ilicifolia* occurs on soils mapped as Las Posas, Olivenhain, Redding, Huerhuero, Altamont, Cienega, and Linne (Service GIS database; soils described by Bowman 1973, pp. 22–24, 38–40, 54–55, 61–64, 67–68, and 71–72).

Water and Hydrology

The loose, crumbly clay soils that support *Acanthomintha ilicifolia* act like a sponge and are saturated by winter rains. The saturation of these soils allows for seeds of *A. ilicifolia* to imbibe with water and germinate in the cool winter months of the Mediterranean-type climate (Bauder and Sakrison, 1997, p. 32). As such, the species requires a natural hydrological regime to reproduce. However, we do not have specific information on the hydrological regime that this species requires, other than the general characteristics of a Mediterranean-type climate; therefore, we did not include hydrological regime as a primary constituent element.

Reproduction and Pollination

The breeding system of *Acanthomintha ilicifolia* has not been studied, but it has been determined that other members of the genus *Acanthomintha* are self-compatible (Steeck 1995, pp. 27–33). A 1996 study (Bauder and Sakrison 1997, p. 38) found that several insect species visited the flowers and moved from plant to plant. These insects represented possible pollinators of *A. ilicifolia*; however, none were thought to represent species-specific pollinators (Bauder and Sakrison 1997, p. 39). Since we do not have information on any species-specific pollinators that visit *A. ilicifolia*, we did not include pollinators as a primary constituent element.

Primary Constituent Element for *Acanthomintha ilicifolia*

Within the geographical area known to be occupied by *Acanthomintha ilicifolia*, at the time of listing we must identify the physical and biological features that may require special management considerations or protection.

In this case, we identified one PCE with multiple parts. All areas designated as critical habitat for *Acanthomintha ilicifolia* are occupied, occur within the species' historic geographic range, and contain the PCE required to support at least one life history function. The data provided in the PCE is summarized from existing scientific data. It is important to note that the variable amounts and timing of precipitation in southern California do not result in favorable conditions for *A. ilicifolia* in every year.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCE for *Acanthomintha ilicifolia* is:

Clay lenses that provide substrate for seedling establishment and space for growth and development of *Acanthomintha ilicifolia* that are:

- (a) Within chaparral, grassland, and coastal sage scrub;
- (b) On gentle slopes ranging from 0 to 25 degrees;
- (c) Derived from gabbro and soft calcareous sandstone substrates with a loose, crumbly structure and deep fissures approximately 1 to 2 feet (30 to 60 cm); and
- (d) Characterized by a low density of forbs and geophytes, and a low density or absence of shrubs.

This designation encompasses those areas containing the PCE necessary to support one or more of the species' life history functions laid out in the appropriate quantity and spatial arrangement for the conservation of the species. All units and subunits in this designation contain the PCE and support multiple life processes. As stated in the "Criteria Used To Identify Critical Habitat" section of this rule, we believe that we can conserve *Acanthomintha ilicifolia* through the designation of critical habitat within its extant range and are not including any areas outside of the geographical area occupied by the species.

Special Management Considerations or Protection

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

As stated in the final listing rule, threats to *Acanthomintha ilicifolia* include trampling and grazing, the presence of exotic plant species, off-road vehicles (ORVs), mining, and

urbanization (63 FR 54938). Through our review of the existing data on *A. ilicifolia*, we conclude that the threats listed in the final listing rule continue to impact this species and its essential physical and biological features.

Urban development near *Acanthomintha ilicifolia* populations may alter the habitat characteristics required by this species. The destruction of habitat can change the slope and aspect of a site, making it uninhabitable for *A. ilicifolia* (PCE 1(b)). The close proximity of development to populations of *A. ilicifolia* may affect other aspects of the site. For example, increased water runoff from developments may erode the clay lense and change the topography of the site (Bauder *et al.* 1994, p. 23) (PCE 1(b and c)).

The introduction of exotic plant species such as *Centaurea melitensis* can drastically change the species present in (PCE 1(a)), and eliminate the open character of, the clay lense habitat (PCE 1(d)). *Centaurea melitensis* has been shown, in field and greenhouse experiments, to negatively effect the biomass (growth) and seed production (reproduction) of *Acanthomintha ilicifolia* (Bauder and Sakrison 1999, p. 16). Populations of *A. ilicifolia* that are close to urbanized areas or in areas that are heavily grazed generally have a high density of exotic plant species (PCE 1(a)). In disturbed soils, *C. melitensis* is a common weed. When this and other exotic plant species become established, they can out-compete *A. ilicifolia* for light, water, nutrients, and space. *Acanthomintha ilicifolia* often grows larger and at a higher density when competition with exotic weeds is reduced (Bauder and Sakrison 1999, pp. 12–16; Vinje 2007, p. 10).

The final listing rule (63 FR 54938) discusses the impacts of ORV activity and trampling. In recent years, the impacts associated with the use of mountain bikes have been documented to cause similar impacts (Vinje 2006a, p. 1). Trampling, ORV activity, and mountain bike use in *Acanthomintha ilicifolia* habitat can compact the loose, crumbly soils (PCE 1(c)). Repeated travel over a trail or track degrades the habitat of *A. ilicifolia* in two ways: (1) By displacing soil; and (2) by compacting soil. These activities, in turn, can destroy individual plants and can reduce the amount of water that can percolate into the soil, thus reducing the plant's ability to grow and reproduce.

Mining is documented as a threat at two sites known to support *Acanthomintha ilicifolia* (63 FR 54938; Bauder *et al.* 1994, p. 17). Mining can alter many aspects of *A. ilicifolia*

habitat. Heavy machinery can compact or remove clay lenses (PCE 1(c)) or alter the slope of an area (PCE 1(b)). The grading of large areas adjacent to *A. ilicifolia* habitat can make those areas vulnerable to invasion by exotic plant species and lead to the subsequent crowding and shading of *A. ilicifolia* habitat (PCE 1(d)). These impacts may in turn lead to the disruption of the growth and reproduction of *A. ilicifolia*.

The protection of habitat for *Acanthomintha ilicifolia* from development is the first measure of protection needed for populations of this species (PCE 1(a)). The control of exotic plant species, the maintenance and enhancement of clay lense habitat, the control of incompatible and often illegal activities such as off-road vehicle use and other unauthorized recreational impacts, and careful oversight of adjacent activities such as mining, will help to ensure the long-term conservation for *A. ilicifolia* and the physical and biological features essential for the conservation of the species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining the specific occupied areas that contain the features essential to the conservation of species which may require special management considerations or protection, as well as when determining if any specific areas outside the geographical area occupied by the species are essential to the conservation of the species. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott *et al.* 2001, pp. 1297–1300); therefore, essential habitat should include multiple locations across the entire range of the species to prevent range collapse and contribute to recovery of the species. Conserving habitat variability throughout the range of this species is important to capture the range of habitat diversity and, potentially, genetic variability, the preservation of which is likely to ensure the conservation of those *Acanthomintha ilicifolia* occurrences that are most likely to persist under future environmental conditions and to contribute to species recovery. Genetic

variation generally results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt 1996, pp. 291–295). We sought to include the range of ecological conditions in which *A. ilicifolia* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt 1996, pp. 299–301; Millar and Libby 1991, pp. 150, 152–155). Locations that possess unique ecological characteristics are those that represent the full range of environmental variability where *A. ilicifolia* has evolved, and therefore, are likely to promote the adaptation of the species to different environmental conditions and contribute to species recovery.

All critical habitat subunits discussed in this designation are occupied by the species. Occupied areas were determined from survey data and element occurrence data in the California Natural Diversity Database (CNDDDB) (CNDDDB 2006). For the purpose of this designation, we assumed that each element occurrence represents a population of *Acanthomintha ilicifolia*, except in cases where there are several element occurrences located within 1 mile (1.6 km) of each other and the habitat is not fragmented by manmade features. In these cases, we considered the group of element occurrences as a single population. Examples of this include the Manchester Avenue Mitigation Bank in Encinitas (element occurrence (EO) 28, EO 42, and EO 54), McGinty Mountain near Jamul (EO 21, EO 22, and EO 30), and Viejas and Poser Mountains near Alpine (EO 12, EO 50, EO 51, EO 62, EO 73, EO 74, and EO 75).

Using GIS data in the areas identified as occupied by this species as a guide, we identified the areas that contained the physical and biological features essential to the conservation of *Acanthomintha ilicifolia* (the PCE). To map the areas that meet the definition of critical habitat, we identified areas that contain the PCE in the quantity and spatial distribution essential for the conservation of this species using the following criteria: (1) Support populations that occur on rare or unique habitat within the species' range; (2) support the largest known populations of *A. ilicifolia*; or (3) support the most stable populations of *A. ilicifolia*. These criteria are explained in greater detail below. Areas containing the PCE and that meet at least one of the above criteria were considered to meet the

definition of critical habitat. We included adjacent areas up to 500 ft (128 m) that contained habitat for *A. ilicifolia* to capture the full extent of each population including the seed bank, as this species fluctuates annually in population density and spatial distribution. Data from past survey efforts and recent field work conducted by Service biologists frequently found occurrences of *A. ilicifolia* located outside the exact areas where this species was mapped (Bauder *et al.* 1994, pp. 14–15; CNDDDB 2006, pp. 11, 28–29, and 70; Service unpublished data 2006).

The resulting areas meet the definition of critical habitat. To evaluate locations occupied by this species we used the CNDDDB (CNDDDB 2006, pp. 1–74), a survey of *A. ilicifolia* habitat and populations by Bauder *et al.* (1994, pp. 7–23), biological surveys (City of San Diego 2000, pp. 2–6; City of San Diego 2001, pp. 1–10; City of San Diego 2003, pp. 1–11; City of San Diego 2004, pp. 1–7; City of San Diego 2005, pp. 1–5; Conservation Biology Institute 2002, p. A3–1; County of San Diego 2002, p. 17; Dudek and Associates, Inc. 2006, Appendix A, pp. 3–4; Helix Environmental Planning, Inc. 2002, p. 6; REC Consultants, Inc. 2004, figure 5), and interviews with botanists working on this species (Kelley 2005, p. 1; McMillan 2006, p. 1; Vinje 2006b, pp. 1–2).

The first criterion we used to identify critical habitat is any area that supports a population in rare or unique habitat within the species' range. The majority of areas that currently support *Acanthomintha ilicifolia* are on dark brown to reddish brown clay soils derived from gabbro substrates. Historically, *A. ilicifolia* also occurred on gray clay soils that are derived from soft calcareous sandstone substrates. Conserving unique habitats for *A. ilicifolia* may help to reduce the risk of extinction for this species as it may capture remaining ecological diversity within the range of the species and contribute to the recovery of this species. This ecological diversity may be reflected in genetic diversity; however, at this time, no one has investigated the genetic structure of this species. The only remaining population on the calcareous clay soil type is northeast of the intersection of Palomar Airport Road and El Camino Real, in the City of Carlsbad.

The second criterion we used to identify critical habitat is any area that supports one of the largest known populations of *Acanthomintha ilicifolia*. The CNDDDB includes data for this species that date back to 1978. Populations of this species range from

just a few individuals to several thousand plants. The majority of the known populations range from 50 to 2,000 plants. Yet, there are four populations that stand out as the largest, each having greater than 25,000 plants. These large populations are vital for the conservation of this species and occur within large blocks of open space that are less likely to be impacted by edge effects associated with the smaller populations in highly urbanized areas. Therefore, the conservation of these large populations will increase the persistence of the species across its range and the overall recovery of this species. The four largest populations and the estimated population at each location are: Sycamore Canyon, 31,000 plants; Slaughterhouse Canyon, 60,000 plants; Viejas and Poser Mountains, 29,650 plants; and Hollenbeck Canyon, 100,000 plants. These four populations represent approximately 75 percent of the total known plants of this species.

The third criterion we used to identify critical habitat is any area that supports one of the most stable populations of *Acanthomintha ilicifolia*. For the purpose of this critical habitat designation, we defined the most stable populations as those that contained more than 1,000 plants at least once during the period for which we have survey data. We evaluated the population data from the CNDDDB and determined that populations with more than 1,000 plants at some time had the ability to rebound following years with low population numbers. Therefore, we considered populations with more than 1,000 plants to have a high probability of persisting into the future and contributing to the conservation of the species. Although these areas are not

free from exotic plant competitors, these populations have persisted over time without being out-competed by the exotic plant species present. This may partially be a result of the low density of exotic plant species at these locations and, in some cases, the management of exotic plant species. All of the areas that meet criterion two also meet criterion three. Five additional areas have populations of *A. ilicifolia* that meet criterion three: the southeast portion of the City of Carlsbad; the Manchester Avenue Mitigation Bank; Los Peñasquitos Canyon; Sabre Springs; and McGinty Mountain. These areas support the most stable populations of *A. ilicifolia*.

All 10 areas that we identified as meeting the criteria for critical habitat contain the PCE essential for the conservation of this species. These areas support the only population on calcareous clay soil, the largest populations, and the most stable populations of *Acanthomintha ilicifolia*. Application of these criteria captures the physical and biological features essential to the conservation of the species in the appropriate quantity and spatial arrangement and represents the range of environmental variability for this species. Although a genetic analysis of *A. ilicifolia* is not available, these criteria likely capture the full breadth of important habitat types and are expected to protect the genetic variability of this species. The identified habitat areas, if managed for threats to the physical and biological features, are adequate to ensure the conservation of *A. ilicifolia*.

When determining the critical habitat boundaries for this final rule, we made every effort to avoid including

developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the PCE for *Acanthomintha ilicifolia*. 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 structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this critical habitat rule have been excluded by text in this final rule. Therefore, a 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 Critical Habitat Designation

We are designating approximately 671 ac (272 ha) of critical habitat for *Acanthomintha ilicifolia* in three of the four units proposed as critical habitat with a total of 10 subunits. Table 2 outlines the areas that meet the definition of critical habitat, the areas excluded from this final critical habitat, and the area designated as critical habitat. Table 2 also shows a breakdown of the critical habitat based on the ownership of these areas. The critical habitat areas we describe below constitute our current best assessment of areas designated as critical habitat for *A. ilicifolia*. In this section, we did not discuss the details of the areas that are excluded from critical habitat under section 4(b)(2) of the Act. For more information on the areas that are excluded, please see the “Exclusions Under Section 4(b)(2) of the Act” section.

TABLE 2—AREAS THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR ACANTHOMINTHA ILICIFOLIA, AREAS EXCLUDED FROM THIS FINAL CRITICAL HABITAT, AND AREAS DESIGNATED AS CRITICAL HABITAT; INCLUDING THE OWNERSHIP OF EACH AREA

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area excluded from final critical habitat	Area designated as critical habitat
Unit 1: Northern San Diego County:				
1A. Palomar Airport	Private	2 ac (1 ha)	2 ac (1 ha)	0 ac (0 ha).
	State/Local	60 ac (24 ha)	0 ac (0 ha)	60 ac (24 ha).
1B. Southeast Carlsbad	Private	57 ac (23 ha)	57 ac (23 ha)	0 ac (0 ha).
1C. Manchester	Private	79 ac (32 ha)	70 ac (28 ha)	9 ac (4 ha).
Unit 2: Central San Diego County:				
2A. Los Peñasquitos Canyon	State/Local	63 ac (25 ha)	63 ac (25 ha)	0 ac (0 ha).
2B. Sabre Springs	Private	1 ac (<1 ha)	1 ac (<1 ha)	0 ac (0 ha).
	State/Local	51 ac (21 ha)	51 ac (21 ha)	0 ac (0 ha).
	Private	30 ac (12 ha)	30 ac (12 ha)	0 ac (0 ha).
2C. Sycamore Canyon	State/Local	276 ac (112 ha)	276 ac (112 ha)	0 ac (0 ha).
	Private	77 ac (31 ha)	77 ac (31 ha)	0 ac (0 ha).
2D. Slaughterhouse Canyon	Private	77 ac (31 ha)	77 ac (31 ha)	0 ac (0 ha).
Unit 3: Viejas Mountain and Poser Mountain:				
3A. Viejas Mountain	Private	32 ac (13 ha)	32 ac (13 ha)	0 ac (0 ha).
3B. Viejas Mountain	Private	141 ac (57 ha)	141 ac (57 ha)	0 ac (0 ha).

TABLE 2—AREAS THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR *ACANTHOMINTHA ILICIFOLIA*, AREAS EXCLUDED FROM THIS FINAL CRITICAL HABITAT, AND AREAS DESIGNATED AS CRITICAL HABITAT; INCLUDING THE OWNERSHIP OF EACH AREA—Continued

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area excluded from final critical habitat	Area designated as critical habitat
3C. Viejas Mountain	Federal	52 ac (21 ha)	0 ac (0 ha)	52 ac (21 ha).
	Federal	276 ac (112 ha)	0 ac (0 ha)	276 ac (112 ha).
3D. Viejas Mountain	Private	50 ac (20 ha)	0 ac (0 ha)	50 ac (20 ha).
	Federal	32 ac (13 ha)	0 ac (0 ha)	32 ac (13 ha).
3E. Poser Mountain	Federal	34 ac (14 ha)	0 ac (0 ha)	34 ac (14 ha).
3F. Poser Mountain	Federal	155 ac (63 ha)	0 ac (0 ha)	155 ac (63 ha).
Unit 4: Southern San Diego County:				
4A. McGinty Mountain	Private	18 ac (7 ha)	18 ac (7 ha)	0 ac (0 ha).
	Federal	2 ac (1 ha)	0 ac (0 ha)	2 ac (1 ha).
4B. McGinty Mountain	Private	141 ac (57 ha)	141 ac (57 ha)	0 ac (0 ha).
	State/Local	7 ac (3 ha)	7 ac (3 ha)	0 ac (0 ha).
4C. McGinty Mountain	Private	27 ac (11 ha)	27 ac (11 ha)	0 ac (0 ha).
	Federal	1 ac (<1 ha)	0 ac (0 ha)	1 ac (<1 ha).
4D. Hollenbeck Canyon	Private	23 ac (9 ha)	23 ac (9 ha)	0 ac (0 ha).
	State Local	61 ac (25 ha)	61 ac (25 ha)	0 ac (0 ha).
Total .....	.....	1,748 ac (707 ha)*	1,077 ac (435 ha)*	671 ac (272 ha)*.

* Values in this table may not sum due to rounding and the conversion of values from acres to hectares.

Unit Descriptions

Unit 1: Northern San Diego County

Unit 1 is located in northern San Diego County, California. The area was occupied at the time of listing, is currently occupied, and contains the features essential to the conservation of *Acanthomintha ilicifolia* that may require special management considerations or protection for *A. ilicifolia*. The habitat in Unit 1 is gently sloping and occurs in the north coastal portion of San Diego County. The habitat included in this unit provides for the conservation of populations of this species that are at the lowest elevations where this species is found. These areas represent coastal terrace terrain and, therefore, are edaphically and ecologically distinct from the other units of critical habitat (subunit 1A) (see “Criteria Used to Identify Critical Habitat” section criterion 1). This unit contains some of the most stable populations of *A. ilicifolia* (subunits 1B and 1C) (see “Criteria Used to Identify Critical Habitat” section criterion 3). Below, we present a brief description of subunits designated as critical habitat in this unit.

Subunit 1A, Palomar Airport

Subunit 1A is located in Carlsbad, California, northeast of the intersection of Palomar Airport Road and El Camino Real. Subunit 1A consists of 60 ac (24 ha) of land owned by the County of San Diego. Subunit 1A meets our selection criteria because it supports a population on a unique soil type (see “Criteria Used to Identify Critical Habitat” section

criterion 1). This is the only area where *A. ilicifolia* is still known to occupy calcareous clay soils. The features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from exotic plant species and unauthorized recreational activities.

A portion of the land that meets the definition of critical habitat in this area (2 ac (1 ha)) is covered by the Carlsbad HMP of the San Diego MHCP. We excluded the portion of critical habitat covered by the Carlsbad HMP from critical habitat because we determined the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation. Furthermore, exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 1B, Southeast Carlsbad

Subunit 1B is located in Carlsbad, California, east of Calle Acervo and west of Paseo Esmerado. All lands within this subunit (57 ac (23 ha)) are covered by the Carlsbad HMP of the San Diego MHCP. We excluded the lands covered by the Carlsbad HMP under the MHCP in this subunit because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation. Furthermore, exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2)

of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 1C, Manchester

Subunit 1C is located in Encinitas, California, northeast of the intersection of Manchester Avenue and South El Camino Real. Subunit 1C consists of 9 ac (4 ha) of private land. Subunit 1C meets our selection criteria because it supports one of the most stable populations of *Acanthomintha ilicifolia* (criterion 3). The features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from exotic plant species and unauthorized recreational activities.

The majority of the land that meets the definition of critical habitat in this area (70 ac (28 ha)) is in the Manchester Avenue Mitigation Bank. The Manchester Avenue Mitigation Bank is owned and managed by the Center for Natural Lands Management (CNLM). There is long-term management in place on this site to conserve several sensitive species, including *Acanthomintha ilicifolia* (Spiegelberg 2005, p. 1). We excluded the portion of critical habitat covered by the Manchester Habitat Conservation Area Management Plan (Spiegelberg 2005) from critical habitat because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation; exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2)

of the Act” section of this final rule for a detailed discussion of this exclusion).

Unit 2: Central San Diego County

Unit 2 is located in an east-west line starting in the County of San Diego on private land east of the Sycamore Canyon/Goodan Ranch Preserve (subunit 2D), occurring on County-owned open space in the Sycamore Canyon/Goodan Ranch Preserve (subunit 2C), occurring on City of San Diego-owned land in Los Peñasquitos Canyon near the border or the City of San Diego and the City of Poway (subunit 2B), and occurring in Peñasquitos Canyon Preserve (subunit 2A). The unit was occupied at the time of listing, is currently occupied, and contains the features essential to the conservation of *Acanthomintha ilicifolia* that may require special management considerations or protection for *A. ilicifolia*. This unit contains some of the largest populations of *A. ilicifolia* (subunits 2C and 2D) (criterion 2) and some of the most stable populations of *A. ilicifolia* (subunits 2A and 2B) (criterion 3). All lands that meet the definition of critical habitat in Unit 2 are covered by either the City of San Diego subarea plan (subunits 2A and 2B) or the County of San Diego subarea plan (subunits 2C and 2D) under the San Diego MSCP and are excluded from the designation. We determined that the benefits of excluding these lands outweigh the benefits of including these lands in the designation and that exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Unit 3: Viejas Mountain and Poser Mountain

Unit 3 is located in San Diego County, California, on Viejas Mountain and Poser Mountain. The area was occupied at the time of listing, is currently occupied, and contains the features essential to the conservation of *Acanthomintha ilicifolia* that may require special management considerations or protection for *A. ilicifolia*. Unit 3 is divided into six subunits, five of which are designated as critical habitat. Due to the proximity of the occurrences in this area and the fact that the habitat is not fragmented by any manmade barriers, we consider these occurrences to be a single population of *A. ilicifolia*. Unit 3 is designated as critical habitat because it supports one of the largest recorded populations of the species (criterion 2). This population is estimated to have greater

than 25,000 plants based on the maximum number of plants observed at the different CNDDDB element occurrences (EO 12, 6,650 plants in 1991 (subunit 3F); EO 50, 5,600 plants in 1994 (subunit 3B); EO 51, 8,300 plants in 2003 (subunit 3C); EO 62, 1,115 plants in 2000 (subunit 3C); EO 73, 8,750 plants in 1997; and EO 74, 2,000 plants in 2000 (subunit 3E)). The habitat in unit 3 is more mountainous than the other units and provides for the conservation of this species at the highest elevations where this species is found. Therefore, this unit is ecologically distinct from the other units of critical habitat and provides for the largest population of *A. ilicifolia* as measured by the area occupied by the species. Below, we present a brief description of subunits designated as critical habitat in this unit.

Subunit 3A, Viejas Mountain

Subunit 3A is located east of Peutz Valley Road on the western flank of Viejas Mountain. All lands that meet the definition of critical habitat in this area (32 ac (13 ha)) are covered by the County of San Diego subarea plan of the San Diego MSCP. We excluded the lands covered by the County of San Diego subarea plan in this subunit because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation. Furthermore, exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 3B, Viejas Mountain

Subunit 3B is located east of Alpine, California, and north of Interstate 8 on the western slope Viejas Mountain. Subunit 3B consists of 52 ac (21 ha) of land in the Cleveland National Forest (CNF) owned by the U.S. Forest Service (USFS). This subunit was occupied by the species at the time of listing and is currently occupied. Subunit 3B meets our selection criteria because this subunit is part of one of the largest recorded populations of *Acanthomintha ilicifolia* (criterion 2). The features essential to the conservation of the species in this subunit may require special management considerations or protection to address the threat from exotic plant species and recreational activities.

The privately owned lands that meet the definition of critical habitat in this area (141 ac (57 ha)) are covered by the County of San Diego subarea plan of the San Diego MSCP. We excluded the

lands covered by the County of San Diego subarea plan in this subunit because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation and that exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 3C, Viejas Mountain

Subunit 3C is located east of Alpine, California, and north of Interstate 8 on southern slope of Viejas Mountain. Subunit 3C consists of 276 ac (112 ha) of land in the CNF owned by the USFS. This subunit was occupied by the species at the time of listing and is currently occupied. Subunit 3C meets our selection criteria because this subunit is part of one of the largest recorded populations of *Acanthomintha ilicifolia* (criterion 2). The features essential to the conservation of the species in this subunit may require special management considerations or protection to address the threat from exotic plant species and recreational activities.

Subunit 3D, Viejas Mountain

Subunit 3D is located east of Alpine, California, and north of Interstate 8 on the eastern slope of Viejas Mountain. Subunit 3D consists of 32 ac (13 ha) of land in the CNF owned by the USFS and 50 ac (20 ha) of private land. This subunit was occupied by the species at the time of listing and is currently occupied. Subunit 3D meets our selection criteria because this subunit is part of one of the largest recorded populations of *Acanthomintha ilicifolia* (criterion 2). The features essential to the conservation of the species in this subunit may require special management considerations or protection to address the threat from exotic plant species and recreational activities.

Subunit 3E, Poser Mountain

Subunit 3E is located east of Alpine, California, and north of Interstate 8 on western slope of Poser Mountain. Subunit 3E consists of 34 ac (14 ha) of land in the CNF owned by the USFS. This subunit was occupied by the species at the time of listing and is currently occupied. Subunit 3E meets our selection criteria because this subunit is part of one of the largest recorded populations of *Acanthomintha ilicifolia* (criterion 2). The features essential to the conservation of the species in this subunit may require

special management considerations or protection to address the threat from exotic plant species and recreational activities.

Subunit 3F, Poser Mountain

Subunit 3F is located east of Alpine, California, and north of Interstate 8 on southern slope of Poser Mountain. Subunit 3F consists of 155 ac (63 ha) of land in the CNF owned by the USFS. This subunit was occupied by the species at the time of listing and is currently occupied. Subunit 3F meets our selection criteria because this subunit is part of one of the largest recorded populations of *Acanthomintha ilicifolia* (criterion 2). The features essential to the conservation of the species in this subunit may require special management considerations or protection to address the threat from exotic plant species and recreational activities.

Unit 4: Southern San Diego County

Unit 4 is located in southern San Diego County, California near the City of Jamul. The area was occupied at the time of listing, is currently occupied, and contains the features essential to the conservation of *Acanthomintha ilicifolia* that may require special management considerations or protection. This critical habitat unit contains some of the largest populations of *A. ilicifolia* (subunit 4D) (criterion 2) and some of the most stable populations of *A. ilicifolia* (subunits 4A, 4B, and 4C) (criterion 3). The habitat for *A. ilicifolia* in southern San Diego County is located in proximity to rural residential development and in relatively undeveloped areas. Below, we present a brief description of subunits designated as critical habitat in this unit.

Subunits 4A and 4C, McGinty Mountain

Subunits 4A and 4C are located east of Jamul, California, on the southwestern slope of McGinty Mountain. The land designated is part of the San Diego National Wildlife Refuge (SDNWR) and is owned by the Service. We are designating 3 ac (1 ha) of critical habitat in subunits 4A and 4C for *Acanthomintha ilicifolia*. These subunits were occupied by the species at the time of listing and are currently occupied. Subunits 4A and 4C meet our selection criteria because these subunits are part of one of the most stable populations of *A. ilicifolia* (criterion 3). The features essential to the conservation of the species in subunits 4A and 4C may require special management considerations or protection to address the threat from exotic plant species and recreational activities.

The non-Federal lands that meet the definition of critical habitat in this area (18 ac (7 ha) in subunit 4A and 27 ac (11 ha) in subunit 4C) are covered by the County of San Diego subarea plan of the San Diego MSCP. We excluded the lands covered by the County of San Diego subarea plan under the MSCP in this subunit because we have determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation and that exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 4B, McGinty Mountain

All of the lands in subunit 4B that meet the definition of critical habitat in

this area (148 ac (60 ha)) are non-Federal and are covered by the County of San Diego subarea plan of the San Diego MSCP. We excluded the lands covered by the County of San Diego subarea plan under the MSCP in this subunit because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in the critical habitat designation, and that exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Subunit 4D, Hollenbeck Canyon

All of the lands in subunit 4D that meet the definition of critical habitat in this area (84 ac (34 ha)) are non-Federal and are covered by the County of San Diego subarea plan of the San Diego MSCP. We excluded the lands in this subunit because we determined that the benefits of excluding these lands outweigh the benefits of including these lands in a critical habitat designation, and that exclusion of these lands will not result in the extinction of this species (see Table 3 and “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for a detailed discussion of this exclusion).

Table 3 below provides approximate areas (ac (ha)) of lands that meet the definition of critical habitat, but are excluded from this final critical habitat designation. Table 3 provides our reason for the exclusion. Also see the “Exclusions Under Section 4(b)(2) of the Act” section of this final rule for detailed discussion of the exclusions listed in Table 3.

TABLE 3—EXCLUSIONS UNDER SECTION 4(b)(2) OF THE ACT BY CRITICAL HABITAT SUBUNIT

Critical habitat unit and subunit description	Reason for exclusion under section 4(b)(2) of the act	Areas meeting the definition of critical habitat	Areas excluded from critical habitat
Unit 1: Northern San Diego County:			
1A. Palomar Airport *	Carlsbad HMP under the MHCP	62 ac (25 ha)	2 ac (1 ha).*
1B. Southeast Carlsbad	Carlsbad HMP under the MHCP	57 ac (23 ha)	57 ac (23 ha).
1C. Manchester *	Manchester Avenue Mitigation Bank	79 ac (32 ha)	70 ac (28 ha).*
Unit 2: Central San Diego County:			
2A. Los Peñasquitos Canyon	City of San Diego subarea plan under the MSCP	63 ac (25 ha)	63 ac (25 ha).
2B. Sabre Springs	City of San Diego subarea plan under the MSCaP	52 ac (21 ha)	52 ac (21 ha).
2C. Sycamore Canyon	County of San Diego subarea plan under the MSCP.	306 ac (124 ha)	306 ac (124 ha).
2D. Slaughterhouse Canyon	County of San Diego subarea plan under the MSCP.	77 ac (31 ha)	77 ac (31 ha).
Unit 3: Viejas Mountain and Poser Mountain:			
3A. Viejas Mountain	County of San Diego subarea plan under the MSCP.	32 ac (13 ha)	32 ac (13 ha).
3B. Viejas Mountain *	County of San Diego subarea plan under the MSCP.	193 ac (78 ha)	141 ac (57 ha).*
Unit 4: Southern San Diego County:			

TABLE 3—EXCLUSIONS UNDER SECTION 4(b)(2) OF THE ACT BY CRITICAL HABITAT SUBUNIT—Continued

Critical habitat unit and subunit description	Reason for exclusion under section 4(b)(2) of the act	Areas meeting the definition of critical habitat	Areas excluded from critical habitat
4A. McGinty Mountain *	County of San Diego subarea plan under the MSCP.	20 ac (8 ha)	18 ac (7 ha).*
4B. McGinty Mountain	County of San Diego subarea plan under the MSCP.	148 ac (60 ha) ...	148 ac (60 ha).
4C. McGinty Mountain *	County of San Diego subarea plan under the MSCP.	28 ac (11 ha)	27 ac (11 ha).*
4D. Hollenbeck Canyon	County of San Diego subarea plan under the MSCP.	84 ac (34 ha)	84 ac (34 ha).

* A portion of these subunits have been designated as critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

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

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

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

adversely affect, listed species or critical habitat.

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

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

Federal activities that may affect *Acanthomintha ilicifolia* or its

designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the “Adverse Modification” Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCE to an extent that appreciably reduces the conservation value of critical habitat for *Acanthomintha ilicifolia*. Generally, the conservation role of *A. ilicifolia* critical habitat units is to support viable core populations 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 those activities that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and

therefore should result in consultation for *Acanthomintha ilicifolia* include, but are not limited to:

(1) Actions that disturb or remove the clay soils (PCE 1(c)) within a subunit of critical habitat. Such activities include, but are not limited to, clearing areas for development and roads, creation of trails, and installation of pipelines or other underground infrastructure. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of *Acanthomintha ilicifolia*.

(2) Actions that introduce exotic plant species or alter the natural habitat in a way that increases the likelihood for the invasion of exotic plant species (PCE 1(d)). Such activities include, but are not limited to, the introduction of fill dirt to development sites adjacent to *Acanthomintha ilicifolia* critical habitat, grading areas for agriculture, clearing native vegetation, and the use of mountain bikes and off-highway vehicles. These activities could create space for populations of exotic plants to grow and then invade *A. ilicifolia* habitat or bring the seeds of exotic plants into *A. ilicifolia* habitat, thus filling the open space needed for the growth and reproduction (PCE 1(b)) of this species with exotic plant competitors.

(3) Actions that alter the hydrology of critical habitat subunits. Such activities include, but are not limited to, runoff from developed streets, runoff from irrigated landscapes, and increased flow or erosion from storm drains. These activities could alter the timing and amount of water that *Acanthomintha ilicifolia* plants receive, altering their phenology and fecundity. These activities could also cause the erosion of the clay soils (PCE 1(b and c)) that are necessary for the growth of *A. ilicifolia*. Please see the "Special Management Considerations or Protection" section for a more detailed discussion on the impacts of these actions to the listed species.

We consider all of the subunits designated as critical habitat, as well as those that are excluded from the final designation, to contain the features essential to the conservation of *Acanthomintha ilicifolia*. All subunits are within the geographic area occupied by the species at the time of listing and are currently occupied by *A. ilicifolia* (see "Summary of Changes From Proposed Rule" section of this final rule and the proposed rule (72 FR 11946; March 14, 2007) for more information on the occupied subunits). Federal agencies already consult with us on activities in areas occupied by *A. ilicifolia* or if the species may be

affected by the action to ensure that their actions do not jeopardize the continued existence of *A. ilicifolia*.

Exclusions

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

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

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

In the following sections, we address a number of general issues that are relevant to the exclusions we consider. Additionally, the Service conducted a draft economic analysis (draft EA) of the impacts of the proposed critical habitat designation and related factors. The draft EA was made available for public review and comment from November 27, 2007, to December 27, 2007 (72 FR 66122). We then reopened the comment period on the draft EA from May 13, 2008, to June 12, 2008 (73 FR 27483). We did not receive any comments on the draft EA during these open comment periods. Based on the draft EA, the proposed critical habitat, and the information in this revised final designation of critical habitat, we excluded areas from critical habitat under the provisions of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19; however, we did not exclude any areas for economic reasons.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed or protected, could provide for the survival and recovery of the species.

The identification of areas that contain features essential for the conservation of the species, which if managed or protected, will provide for the recovery of a species, is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not be included in the Service's determination of essential habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of 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. 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 the species. Thus, 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, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on

the species. However, the regulatory standard is different, as the jeopardy analysis looks at the action's impact on survival and recovery of the species and the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require private property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation is initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat; therefore, implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is low when compared to the conservation benefit that can be achieved through implementing Habitat Conservation Plans (HCPs) under section 10 of the Act or other habitat management plans. The conservation achieved through such plans is typically greater than what we achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection for particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed action. Thus, implementation of an HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Acanthomintha ilicifolia*. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational

benefits of a critical habitat designation. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

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

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

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

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting

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

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

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

Benefits of Excluding Lands With HCPs or Other Approved Management Plans

The benefits of excluding lands with HCPs or other approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Most HCPs and other conservation plans take years to develop, and upon completion, are consistent with

recovery objectives for listed species that are covered within the plan area. Many also provide conservation benefits to unlisted sensitive species. Although the Act does not prohibit the take of listed plant species (so there is no requirement to cover listed plant species in an HCP), we encourage non-Federal public and private landowners to include protections for listed plants in their plans. Imposing an additional regulatory review as a result of the designation of critical habitat of a listed plant species, in particular, may undermine our efforts to encourage inclusion of plant species in HCPs and undermine other conservation efforts and partnerships as well. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat for a plant species in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process or elect to exclude the plant species from the plan, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands covered by approved HCPs and management plans that cover listed plant species 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. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new

partnerships to develop these plans, particularly plans that address landscape-level conservation of plant species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Both HCPs and Natural Communities Conservation Plan (NCCP)-HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification, even without the critical habitat designation. Additionally, all other Federal actions that may affect the listed species still require consultation under section 7(a)(2) of the Act, and we review these actions for possibly significant habitat modification in accordance with the jeopardy standard under Section 7.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

At the request of the USFS, we evaluated the appropriateness of excluding Federal lands in the CNF from the final designation of critical habitat for *Acanthomintha ilicifolia* under section 4(b)(2) of the Act based on management provided under the USFS LMP and specifically under the Species Management Guide developed for the CNF (USFS 1991). As indicated in our response to Comment 13 in the "Public Comments" section above, we have concluded based on the record before us not to exclude Forest Service lands in this instance. Therefore, as previously discussed we are designating approximately 549 ac (222 ha) of Forest Service lands in subunits 3B, 3C, 3D, 3E, and 3F as critical habitat for *A. ilicifolia*.

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

After considering the following areas under section 4(b)(2) of the Act, we are excluding them from the critical habitat designation for *Acanthomintha ilicifolia*. We are excluding approximately 59 ac (24 ha) of non-Federal lands from the *A. ilicifolia* critical habitat designation in subunits 1A and 1B that are covered by the Carlsbad HMP within the San Diego Multiple Species Habitat Program (MHCP) plan area. We are excluding approximately 948 ac (383 ha) of non-Federal lands from the *A. ilicifolia* critical habitat designation in subunits 2A; 2B; 2C; 2D; 3A; 3B; 4A; 4B; 4C; and

4D that are within San Diego Multiple Species Conservation Program (MSCP) plan area. These lands are covered by the City of San Diego subarea plan under the MSCP and the County of San Diego subarea plan under the MSCP. Additionally, we are excluding 70 ac (28 ha) of private land from the *A. ilicifolia* critical habitat designation in subunit 1C that is within the Manchester Avenue Mitigation Bank. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs below.

We excluded these areas because we believe that:

- (1) Their value for conservation will be preserved for the foreseeable future by existing protective actions; or
- (2) They are appropriate for exclusion under the "other relevant impact" provisions of section 4(b)(2) of the Act.

In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

In reviewing approved HCPs for potential exclusion under section 4(b)(2) of the Act, we consider (in addition to the general partnership relationships identified above) whether the plan provides for protection and appropriate management, if necessary, of essential habitat within the plan area and whether the plan incorporates conservation management strategies and actions consistent with currently accepted principles of conservation biology.

We believe the framework plans and associated subarea plans discussed in the paragraphs below fulfill these criteria. Therefore, we are excluding lands covered by these subarea plans that provide for the conservation of *Acanthomintha ilicifolia* from the final designation of critical habitat.

Carlsbad HMP Under the San Diego Multiple Habitat Conservation Program (MHCP)

The San Diego MHCP is a comprehensive, multi-jurisdictional planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County. The MHCP is a framework plan that has been in place for 5 years. It is also a regional subarea plan under the State of California's Natural Communities Conservation Plan (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). The MHCP is designed to be implemented through

approved individual subarea plans. The MHCP preserve system is intended to protect viable populations of native plant and animal species and their habitats in perpetuity, while accommodating continued economic development and quality of life for residents of northern San Diego County. The MHCP includes an approximately 112,000-ac (45,324-ha) study area within the cities of Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach.

Under the MHCP framework plan, the majority of all known *Acanthomintha ilicifolia* populations fall within Focused Planning Areas (FPA) (core areas and linkages important for conservation of sensitive species) and will be conserved at levels of 95 to 100 percent. According to the MHCP, 91 percent of the major populations and critical locations of *Acanthomintha ilicifolia* (as identified in the MHCP) in the study area will be conserved under the FPA design. In addition to the conserved populations, an estimated 3,403 acres of potentially suitable habitat will be conserved as a result of the existing preserve design and preserve policies. Any populations that fall outside of FPAs will be conserved at a minimum 80 percent level based on the Narrow Endemic Plant Policy. The Narrow Endemic Policy requires the conservation of new populations of narrow endemic species (80 percent outside of FPAs) and mitigation for unavoidable impacts as well as management practices designed to achieve no net loss of narrow endemic populations. Additionally, cities that apply for subarea permits cannot permit more than 5 percent gross cumulative loss of narrow endemic populations or occupied acreage within the FPAs and no more than 20 percent cumulative loss of narrow endemic locations, population numbers, or occupied acreage outside of FPAs (AMEC Earth and Environmental, Inc. 2003).

The City of Carlsbad received a permit on their individual subarea plan under the MHCP framework plan on November 9, 2004. Approximately 2 ac (1 ha) of land in subunit 1A and all of the approximately 57 ac (23 ha) of land in subunit 1B are protected by the Carlsbad subarea plan also known as the Carlsbad Habitat Management Plan (HMP). *Acanthomintha ilicifolia* is a conditionally covered species under the Carlsbad HMP. "Conditional" coverage means that the City of Carlsbad receives coverage for this species as identified in the associated biological opinion, as long as the City complies with the conservation measures outlined in the HMP. Under the HMP, coverage for

Acanthomintha ilicifolia is also conditional until the City of San Marcos completes their subarea plan under the MHCP. However, in developing this critical habitat rule we did not identify any lands in San Marcos that meet the definition of critical habitat as described in the "Criteria Used to Identify Critical Habitat" section. Therefore, we believe it is appropriate to exclude essential habitat protected by the Carlsbad HMP where the City of Carlsbad has demonstrated compliance with the conservation measures for *A. ilicifolia* required to be implemented by the City under the HMP.

Consistent with the framework provided under the MHCP, the Carlsbad HMP contains requirements to conserve and adaptively manage *Acanthomintha ilicifolia* habitats and provide for the conservation of this species' PCE, thereby contributing to the recovery of this species. The Carlsbad HMP will provide management and monitoring for *A. ilicifolia* at several sites, including approximately 2 ac (1 ha) of habitat in subunit 1A managed by the Center for Natural Lands Management. All of the land in subunit 1A addressed by the Carlsbad HMP is actively managed; activities that benefit *A. ilicifolia* in subunit 1A include mapping and census projects, removal of nonnative invasive species, and the restoration of areas degraded by past human use (Tierra Data, Inc. 2005, pp. 34–63; Carlsbad HMP 2004, p. D–97). All of the approximately 57 ac (23 ha) of land in subunit 1B was preserved in perpetuity prior to the creation of the Carlsbad HMP. These lands are signed and fenced and are a component of Carlsbad's habitat preserve. Management of the conserved land in subunit 1B remains the responsibility of the private owner of the open space area; however, the future management of this area will be bolstered by the inclusion of this area in the Carlsbad HMP. The management approaches developed for *Acanthomintha ilicifolia* in other areas will be easily applied to subunit 1B because the area is part of the Carlsbad HMP.

The Carlsbad HMP also incorporates many processes to ensure that the Service has an active role in proper implementation of the HCP. For example, Habitat Management Plans, reviewed and approved by the Service, must be developed for each preserve area within the Carlsbad HMP, and monitoring and management objectives must be established for each preserve. Progress towards meeting these objectives is measured through the submission of annual reports. There are also regular coordination meetings

between the Service and the City of Carlsbad to discuss on-going conservation issues. Under the Carlsbad HMP the City must account annually for the progress it is making in assembling conservation areas. The City is required to provide the Service with an annual report that includes, both by project and cumulatively, the habitat acreage destroyed and conserved within the HMP. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and is in compliance with the Carlsbad HMP and associated implementing agreement.

All of the lands that meet the definition of critical habitat within the boundaries of the Carlsbad HMP are already conserved under the plan. Consistent with the Narrow Endemic Policy and FPA design of the MHCP framework plan, additional populations of *A. ilicifolia* beyond the two areas we identified that meet the definition of critical habitat are also conserved under Carlsbad's subarea plan. Conservation of these additional populations will contribute to the ultimate recovery of this species. Although not all areas placed in conservation are actively managed under the plan at this time, we believe the Carlsbad HMP will conserve *A. ilicifolia* within its boundaries because *A. ilicifolia* is one of the focus species for this plan and the City of Carlsbad has an interest to conserve this species throughout the Carlsbad HMP area. The extent of habitat preservation and management that has taken place due to implementation of the Carlsbad HMP since it was permitted in 2004 is significant, and demonstrates the City of Carlsbad's commitment to fully implement this HCP.

In the 1998 final rule listing this species as threatened (63 FR 54938; October 13, 1998), we identified habitat destruction and fragmentation from urban development; off-road vehicle activity; non-native, invasive plant species; livestock trampling and grazing; and mining as primary threats to the species. The Carlsbad HMP incorporates conservation measures to address these threats into the management of its preserve area, which will include the entire preserve area including subunits 1A and 1B. The Carlsbad HMP provides protection and appropriate management for *Acanthomintha ilicifolia*, its habitat, and its PCE through implementation of conservation strategies that are consistent with generally accepted principles of conservation biology. The Carlsbad HMP preserves habitat that supports identified core populations of this species and provides for its recovery.

Benefits of Inclusion—Carlsbad HMP

The inclusion of approximately 2 ac (1 ha) of land in subunit 1A and all of the approximately 57 ac (23 ha) of land in subunit 1B could be beneficial because it identifies lands to be managed for the conservation and recovery of *Acanthomintha ilicifolia*. The process of proposing and finalizing a critical habitat provided the Service with the opportunity to determine the features or PCEs essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to landowners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat. However, identification of important habitat for *A. ilicifolia* within the City of Carlsbad and efforts to conserve the species and its habitat were initiated through development of the Carlsbad HMP prior to the proposed critical habitat rule and will continue into the future.

The educational benefits of designation are small and largely redundant to those derived through conservation efforts already in place or underway on the 2 ac (1 ha) of land in subunit 1A and all of the approximately 57 ac (23 ha) of land in subunit 1B that are protected under the Carlsbad HMP. The process of developing the MHCP and Carlsbad HMP has involved extensive public review and input and the involvement of several Federal, state, and local government partners including (but not limited to): The City of Carlsbad; California Department of Fish and Game; the Service; and other Federal agencies. Therefore, the educational benefits of designating the private lands in Unit 1 (Pan Hot Springs Meadow) as critical habitat are minimal.

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. However, all of the approximately 57 ac (23 ha) of land in subunit 1B that is being excluded is protected open space on private property, with no expected Federal nexus for future consultation for *Acanthomintha ilicifolia*. Therefore,

designating this area as critical habitat is unlikely to provide a regulatory benefit under section 7(a) of the Act. The approximately 2 ac (1 ha) of land in subunit 1A is also privately owned and protected from future development with no expected Federal nexus for future consultation; therefore, we do not anticipate a regulatory benefit result from designation of such lands.

Benefits of Exclusion—Carlsbad HMP

The City of Carlsbad HMP provides substantial protection and management for *Acanthomintha ilicifolia* and its essential habitat features in contrast to designation of critical habitat, which only precludes destruction or adverse modification. Moreover, the educational benefits that result from critical habitat designation, including informing the public of areas that are necessary for the long-term conservation of the species, are already in place both as a result of material provided on our Web site and through public notice-and-comment procedures required to establish the MHCP and the Carlsbad HMP. Finally, we have not identified a likely Federal nexus for future section 7 consultations on lands in subunit 1A and subunit 1B because the lands are privately owned and already protected from development; therefore, we do not anticipate a regulatory benefit from designation.

In contrast to the lack of an appreciable benefit of including these lands as critical habitat, the exclusion of these lands from critical habitat will help preserve the partnerships that we developed with the City of Carlsbad in the development of the MHCP and Carlsbad subarea plan. As discussed above, 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 MHCP and Carlsbad HMP. For these reasons, we believe that designating critical habitat has little benefit in the City of Carlsbad, and such minor benefit is outweighed by the benefit of maintaining partnerships with the City and private landowners covered by the Carlsbad HMP.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Carlsbad HMP

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands covered by the Carlsbad HMP as critical habitat for *Acanthomintha ilicifolia*. Based on this evaluation, we find that the benefit of excluding lands in areas covered by the City of Carlsbad HMP under the MHCP

outweighs the benefit of including those lands as critical habitat for *A. ilicifolia*.

Exclusion Will Not Result in Extinction of the Species—Carlsbad HMP

Exclusion of these 59 ac (24 ha) of non-Federal lands from the final designation of critical habitat will not result in the extinction of *Acanthomintha ilicifolia* because these lands are permanently conserved and are or will be managed for the benefit of this species under the Carlsbad HMP under the MHCP. The jeopardy standard of section 7 and routine implementation of habitat protection through the section 7 process also provide assurances that the species will not go extinct. The protections afforded to *A. ilicifolia* under the jeopardy standard will remain in place for the areas excluded from critical habitat.

San Diego Multiple Species Conservation Program (MSCP)—City and County Subarea Plans

The MSCP is a framework plan that has been in place for more than 10 years. The plan area encompasses 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, 4–2—4–4) and provides for the conservation of 85 federally listed and sensitive species (“covered species”), including *Acanthomintha ilicifolia*, through the establishment of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several covered species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. Four of the 12 jurisdictions include areas that support *A. ilicifolia*: The City of San Diego, the City of Chula Vista, the County of San Diego, and the City of Poway, all of which have approved subarea plans. Areas that we determined meet the definition of critical habitat are within the subarea plans for the City of San Diego and the County of San Diego. The Service issued permits to the City of San Diego on June 6, 1997 (Service 1997), and to the County of San Diego on March 12, 1998 (Service 1998), based on their subarea plans.

Upon completion of preserve assembly, approximately 171,920 ac (69,574 ha) of the 582,243 ac (235,626

ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1, 4–2—4–4). The City of San Diego’s preserve is delineated by mapped preserve boundaries referred to as “hardline” boundaries (i.e., MHPA). County of San Diego preserve areas do not have “hardline” boundaries, but the County’s subarea plan identifies areas where mitigation activities should be focused to assemble its preserve areas (i.e., PAMA). Those areas of the MSCP preserve that are already conserved as well as those areas that are designated for inclusion in the preserve under the plan are referred to as the “preserve area” in this final designation. When the preserve is completed, the public sector (i.e., Federal, State, and local government, and general public) will have contributed 108,750 ac (44,010 ha) (63.3 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands currently, and in the future will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1, 4–2—4–4).

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

Numerous processes are incorporated into the MSCP that allow for Service oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements and provides for Service review and approval of proposed subarea plan amendments and preserve boundary adjustments and for Service review and comment on projects during the California Environmental Quality Act review process. The Service also chairs the MSCP Habitat Management Technical Committee and the Monitoring Subcommittee (MSCP 1998, pp. 5–11—5–23). Each MSCP subarea plan must account annually for

the progress it is making in assembling conservation areas. The Service must receive annual reports that include, both by project and cumulatively, the habitat acreage destroyed and conserved within the subareas. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans’ associated implementing agreements.

The subarea plans under the MSCP contain requirements to monitor and adaptively manage *Acanthomintha ilicifolia* habitats and provide for the conservation of this species’ PCE. The framework and area-specific management plans are comprehensive and address a broad range of management needs at the preserve and species levels that are intended to reduce the threats to covered species and thereby contribute to the recovery of the species. These plans include the following: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor/interpretive and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and/or homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes of covered species; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (MSCP 1998).

Eight major populations of *Acanthomintha ilicifolia* are included within preserve lands under the MSCP, each of which will be conserved from 80 to 100 percent, with 85 percent overall coverage. In 10 years of implementing the City and County of San Diego’s subarea plans, approximately 787 ac (319 ha), or 83 percent, of lands that meet the definition of critical habitat for *A. ilicifolia* have already been conserved. An additional 72 ac (28 ha) are inside the PAMA and MHPA, and, although they have not yet been formally committed to the preserve, these lands are reasonably assured of conservation for *A. ilicifolia* (see Table 4) in accordance with the subarea plans. Similarly, although some areas placed in conservation are not yet fully managed, such management will occur over time as the subarea plans continue to be implemented. The extent of habitat preservation and management that has taken place to date through implementation of the MSCP and its subarea plans in the City and County of

San Diego is significant, and demonstrates the City and County of San Diego's commitment to fully implement the MSCP.

TABLE 4—NON-FEDERAL LANDS WITHIN THE MSCP PLAN AREA EXCLUDED FROM CRITICAL HABITAT DESIGNATION AND THE CONSERVATION OF THESE LANDS UNDER THE MSCP *

Critical habitat unit	Land ownership	Currently conserved	Lands within the PAMA or MHPA; not yet conserved	Lands at risk of development
2A. Los Peñasquitos Canyon.	State/Local	63 ac (25 ha).		
2B. Sabre Springs	Private		1 ac (<1 ha).	
	State/Local	45 ac (19 ha)	1 ac (<1 ha)	5 ac (2 ha).
2C. Sycamore Canyon	Private		30 ac (12 ha).	
	State/Local	276 ac (112 ha).		
2D. Slaughterhouse Canyon.	Private	77 ac (31 ha).		
3A. Viejas Mountain	Private	25 ac (10 ha)		7 ac (3 ha).
3B. Viejas Mountain	Private	80 ac (32 ha)		61 ac (25 ha).
4A. McGinty Mountain	Private	17 ac (7 ha)	1 ac (<1 ha).	
4B. McGinty Mountain	Private	139 ac (56 ha)	2 ac (1 ha).	
	State/Local	7 ac (3 ha).		
5+7+61+164C. McGinty Mountain.	Private	22 ac (9 ha)	5 ac (2 ha).	
4D. Hollenbeck Canyon	Private		7 ac (3 ha)	16 ac (6 ha).
	State Local	61 ac (25 ha).		
Total		787 ac (319 ha)	72 ac (28 ha)	89 ac (36 ha).

* Values in this table may not sum due to rounding and the conversion of values from acres to hectares.

Approximately 166 ac (67 ha) of lands that meet the definition of critical habitat are outside the PAMA and MHPA boundaries (preserve areas) (see Table 4); however, of these 166 ac (67 ha), 77 ac (31 ha) in subunit 2D are currently being conserved under an “existing-use permit” issued by the County of San Diego to the landowner in this subunit for the continued operation of an adjacent sand and gravel mining operation. As part of the “existing-use permit” the landowner is required to keep portions of the property as open space. Therefore, we believe that only 89 ac (36 ha), or 9 percent of the total 948 ac (383 ha) that meet the definition of critical habitat within the plan area of the MSCP, could potentially be developed. Consistent with the narrow endemics requirements of the MSCP, the remaining 89 ac (36 ha) will be surveyed for *Acanthomintha ilicifolia* prior to any development occurring on these lands. Under the City of San Diego’s subarea plan, impacts to narrow endemic plants, including *A. ilicifolia*, inside the MHPA will be avoided and outside the MHPA will be protected as appropriate by: (1) Avoidance; (2) management; (3) enhancement; and/or (4) transplantation to areas identified for preservation (City of San Diego 1997, pp. 105–106; Service 1997, p. 15). Under the County of San Diego’s subarea plan, narrow endemic plants, including *A. ilicifolia*, are conserved under the Biological Mitigation Ordinance using a process

that: (1) Requires avoidance to the maximum extent feasible; (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible; and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property (County of San Diego (BMO) 1997, p. 11; Service 1998, p. 12). These measures help protect *A. ilicifolia* and its essential habitat whether located on lands targeted for preserve status within the MHPA and PAMA or located outside of those areas. The narrow endemic policy for both the City of San Diego and County of San Diego subarea plans require in situ conservation of *A. ilicifolia* or mitigation to ameliorate any habitat loss. Therefore, although some losses may occur to this species within the 89 ac (36 ha) of lands that are not currently preserved or otherwise designated for conservation under the MSCP, the preservation, conservation, and management of *A. ilicifolia* provided under the City and County MSCP subarea plans ensures the long-term conservation of this species and its habitat within all areas addressed by the subarea plans under the MSCP.

We are excluding from the final critical habitat designation for *Acanthomintha ilicifolia* all non-Federal lands (i.e., approximately 948 ac (383 ha) of lands that meet the definition of critical habitat) within the City of and County of San Diego’s subarea plans under section 4(b)(2) of the Act (see

Table 4). The non-Federal lands we are excluding include: 63 ac (25 ha) public lands in the City of San Diego’s Los Peñasquitos Canyon Preserve (subunit 2A); 52 ac (21 ha) of public and private lands in Los Peñasquitos Canyon east of Interstate 15 near Sabre Springs (subunit 2B); 306 ac (124 ha) of public and private lands in and adjacent to the Goodan Ranch and Sycamore Canyon Open Space County Park (subunit 2C); 77 ac (31 ha) of private lands in Slaughterhouse Canyon (subunit 2D); 32 ac (13 ha) of private lands on the western flank of Viejas Mountain (subunit 3A); 141 ac (57 ha) of private lands on the southwestern flank of Viejas Mountain (subunit 3B); 18 ac (7 ha) of private lands on the northern portion of McGinty Mountain (subunit 4A); 148 ac (60 ha) of public and private lands on the central portion of McGinty Mountain (subunit 4B); 27 ac (11 ha) of private lands on the southern portion of McGinty Mountain (subunit 4C); and 84 ac (34 ha) of public and private lands in and adjacent to the Hollenbeck Wildlife Area (subunit 4D).

In the 1998 final rule listing this species as threatened (63 FR 54938; October 13, 1998), we identified habitat destruction and fragmentation from urban development, off-road vehicle activity, nonnative invasive plant species, livestock trampling and grazing, and mining as primary threats to the species. As described above, the MSCP provides protection and appropriate management for *Acanthomintha*

ilicifolia, its habitat, and its PCE through implementation of conservation strategies that are consistent with generally accepted principles of conservation biology. The MSCP preserves habitat that supports identified core populations of this species and provides for its recovery.

Benefits of Inclusion—MSCP

The inclusion of approximately 948 ac (383 ha) of non-Federal lands within the MSCP could be beneficial because it identifies lands to be managed for the conservation and recovery of *Acanthomintha ilicifolia*. The process of proposing and finalizing a critical habitat rule provided the Service with the opportunity to determine the features or PCEs essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat. Identification of important habitat and habitat features for *A. ilicifolia* within the City of San Diego and the County of San Diego and efforts to conserve the species and its habitat were initiated prior to the proposed critical habitat rule through the development of the MSCP framework plan and the City and County MSCP subarea plans and will continue into the future.

We believe that some losses may occur to *Acanthomintha ilicifolia* within the 89 ac (36 ha) of lands that are not currently preserved or otherwise designated for conservation under the MSCP. Therefore, the benefits of inclusion of these lands within designated critical habitat are higher than for those lands within the PAMA or MHPA because the protections are less.

The educational benefits of designation are small and largely redundant to those derived through conservation efforts already in place or underway on the approximately 948 ac (383 ha) of non-Federal lands within the MSCP subarea plans. The process of developing the MSCP has involved several partners including (but not limited to) the 12 participating jurisdictions, California Department of Fish and Game, the Service and other Federal agencies. Therefore, the

educational benefits of designating the non-Federal lands in subunits 2A, 2B, 2C, 2D; 3A; 3B; 4A, 4B, 4C, and 4D as critical habitat are minimal.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating land 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. However, all of the approximately 948 ac (383 ha) of non-Federal lands in subunits 2A, 2B, 2C, 2D; 3A; 3B; 4A, 4B, 4C, and 4D that is being excluded is on non-Federal land and lacks an expected Federal nexus for future section 7 consultation on *Acanthomintha ilicifolia*. Therefore, designating these areas as critical habitat is unlikely to provide a regulatory benefit under section 7(a) of the Act.

Benefits of Exclusion—City and County Subarea Plans

The City and County MSCP subarea plans provide for protection and active management of the features essential to the conservation of *Acanthomintha ilicifolia* on lands in subunits 2A, 2B, 2C, 2D; 3A; 3B; 4A, 4B, 4C, and 4D, in contrast to the designation of critical habitat, which only precludes destruction or adverse modification of essential habitat. Moreover, the educational benefits that result from critical habitat designation, including informing state and local governments, landowners and the public of areas that are necessary for the long-term conservation of the species, are already in place both as a result of material provided on our Web site and through public notice-and-comment procedures required to establish the MSCP and City and County subarea plans. Finally, we did not identify a likely regulatory benefit from designation of the City or County lands because the lands are non-Federal and we are not aware of a Federal nexus that would trigger future section 7 consultation for *A. ilicifolia* on these lands.

We acknowledge that there are 89 acres of private and State lands that contain essential habitat features that are located outside of the City MHPA and County PAMA lands identified for conservation under the MSCP subarea plans, and are potentially at risk of development. However, as discussed above, these lands are subject either to City of San Diego's the narrow endemic species requirements or to the County's Biological Mitigation Ordinance, both of which provide substantial protection for *A. ilicifolia* and its habitat. While there could be some additional benefits to

designating the 89 acres as critical habitat, we continue to believe the potential benefits would be minor. As discussed above, the development of the MSCP and subarea plans has already resulted in public identification of lands important to the conservation of *A. ilicifolia*. Additionally, development of the MSCP and subarea plans resulted in the creation and implementation of conservation measures identified in the subarea plans to protect the species and its essential habitat, both within and outside of the City and County preserve areas, thus minimizing any additional educational benefit from designation. Further, as is the case for all of the other MSCP lands excluded from the designation, none of the 89 acres is Federal land, and we are not aware of a Federal nexus that would trigger future section 7 consultation with regard to the lands. Therefore, we do not anticipate a regulatory benefit from designation of these lands.

We developed and continue to maintain close partnerships with the City of San Diego, the County of San Diego, other local jurisdictions, and several other stakeholders through the development of the MSCP, a plan that incorporates appropriate protections and management for *Acanthomintha ilicifolia*, its habitat, and the features essential for the conservation of this species. Those protections are consistent with statutory mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. As we discussed above under "Benefits of Excluding Lands With HCPs or Other Approved Management Plans", by excluding these lands from designation, we are helping to preserve our ongoing partnerships with the City and County permittees and to encourage new partnerships with other landowners and jurisdictions. Those partnerships, and the landscape level, multiple-species conservation planning efforts they promote, are critical for the conservation of *A. ilicifolia*.

Benefits of Exclusion Outweigh the Benefits of Inclusion—City and County Subarea Plans

We reviewed and evaluated the exclusion of approximately 948 ac (383 ha) of non-Federal lands within the MSCP from the designation of final critical habitat. We determined that the regulatory benefit of designating non-Federal lands in subunits 2A, 2B, 2C, 2D, 3A, 3B, 4A, 4B, 4C, and 4D is minimal because none of the excluded

lands have an expected Federal nexus that would trigger a future section 7 consultation for *Acanthomintha ilicifolia* or its essential habitat. Furthermore, any potential regulatory benefits would be small because 91 percent of essential *A. ilicifolia* habitat within the plan area is assured of conservation and management under the MSCP and the 89 acres of essential habitat for *A. ilicifolia* within the City and County that occur outside of the MHPA and PAMA and are subject to possible future development, receive substantial protection under City and County subarea plan measures established to protect this species. The educational benefits of critical habitat designation are also small. Those benefits, which include informing the public of areas that are necessary for the long-term conservation of the species, are already in place both as a result of material provided on our Web site and through public notice-and-comment procedures required to establish the MSCP and City and County subarea plans. The minimal educational and potential regulatory benefits of including non-Federal lands covered by the City and County MSCP subarea plans are small when compared to the impact such a designation could have on our current and future partnerships. Designation of lands covered by the MSCP may discourage other partners from seeking or completing subarea plans under the MSCP framework plan or from pursuing other HCPs. Therefore, we determined that the minor benefits of critical habitat designation are outweighed by benefits of exclusion in consideration of the relevant impact to current and future partnerships as summarized above, and in the "Conservation Partnerships on Non-Federal Lands" section. As discussed above, the City and County MSCP subarea plans will provide for significant preservation and management of habitat for *A. ilicifolia* and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species—City and County MSCP Subarea Plans

Exclusion of these 948 ac (383 ha) of non-Federal lands from the final designation of critical habitat will not result in the extinction of *Acanthomintha ilicifolia* because virtually all of the lands determined to contain the features essential to the conservation of this species either are already or will be permanently conserved and managed for the benefit of this species and its PCE under the approved MSCP subarea plans.

Currently, the majority of these lands are part of the preserve area and are receiving management that benefits the species. Importantly, as we stated in our biological opinion for the City of San Diego subarea plan under the MSCP (Service 1997) and the County of San Diego subarea plan under the MSCP, while some loss of habitat for *A. ilicifolia* is anticipated due to implementation of the MSCP, implementation of the plan will not jeopardize the continued existence of this species.

The jeopardy standard of section 7(a)(2) of the Act and routine implementation of habitat protection through the section 7(a)(2) process also provide assurances that the species will not go extinct. The protections afforded to *Acanthomintha ilicifolia* under the jeopardy standard will remain in place for the areas excluded from critical habitat.

Other Lands With Management That Benefits Acanthomintha ilicifolia—Exclusions Under Section 4(b)(2) of the Act

Manchester Habitat Mitigation Bank Area

The Manchester Avenue Mitigation Bank encompasses 123 ac (50 ha) in Encinitas, California. The Manchester Avenue Mitigation Bank was approved by the Service and CDFG in 1996. The primary goal of creating the Manchester Avenue Mitigation Bank was to protect the federally listed coastal California gnatcatcher (*Polioptila californica californica*), *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), and *Acanthomintha ilicifolia*, as well as 15 other plant and animal species that are known to be "sensitive" or "rare" species in the area. The Manchester Avenue Mitigation Bank overlaps with 70 ac (28 ha) of subunit 1C and is covered by the 2005–2010 Management Plan, developed by the Center for Natural Lands Management (CNLM) when they took responsibility for the ownership and management of the Manchester Avenue Mitigation Bank (Spiegelberg 2005, pp. 1–33).

Ongoing management and monitoring activities conducted by the CNLM on the Manchester Avenue Mitigation Bank benefit *Acanthomintha ilicifolia*, its habitat, and the features essential for the conservation of this species. Specifically, the CNLM conducts annual monitoring of the population of *A. ilicifolia* within the Manchester Avenue Mitigation Bank and uses adaptive management techniques to support this species and its PCE. CNLM has fenced areas where this species occurs to

exclude adverse impacts from recreation. The CNLM conducts annual removal of nonnative, invasive species from the areas where *A. ilicifolia* occurs. The CNLM also facilitates the recovery of this species by providing educational opportunities for students from La Costa Canyon High School and Rancho Santa Ana Botanic Garden to use the preserve for field trips and research. Local residents are educated about the conservation occurring on the Manchester Avenue Mitigation Bank through information about this species and other rare species that the CNLM posts at kiosks throughout the Manchester Avenue Mitigation Bank on trails open to the public. The CNLM works with the Service and CDFG to implement research projects funded under section 6 of the Act. The Manchester Avenue Mitigation Bank is an important part of the City of Encinitas' open space areas and future habitat preserve under the City of Encinitas draft subarea plan under the MHCP. The CNLM regularly meets with representatives from the City of Encinitas to ensure the City's cooperation in preservation of the Manchester Avenue Mitigation Bank. The partnerships that exist on the Manchester Avenue Mitigation Bank result in the conservation of *A. ilicifolia* and its essential habitat and help increase knowledge of this species through ongoing education and research programs facilitated by the CNLM.

Benefits of Inclusion—Manchester Habitat Mitigation Bank Area

The inclusion of 70 ac (28 ha) of land in the Manchester Avenue Mitigation Bank could be beneficial because it identifies lands to be managed for the conservation and recovery of *Acanthomintha ilicifolia*. The process of proposing and finalizing a critical habitat rule provided the Service with the opportunity to determine the features or PCEs essential for conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat. However, identification of important habitat and habitat features for *A. ilicifolia* within the area covered by Manchester Avenue Mitigation Bank and efforts to conserve the species and its habitat were initiated prior to the proposed critical habitat rule through the development of the

mitigation bank and will continue into the future. The educational benefits of designation are largely redundant to those derived from ongoing conservation efforts already being implemented on the 70 ac (28 ha) of non-Federal lands within the Manchester Avenue Mitigation Bank. Therefore, the educational benefits of designating the private lands in subunit 1C as critical habitat are minimal.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of inclusion for 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. Because all of the mitigation bank lands are permanently protected from development and dedicated to the protection of *Acanthomintha ilicifolia* and other sensitive species, the likelihood of a Federal action occurring on these lands that could result in an adverse modification of the species essential habitat feature is extremely small. Moreover, all of the 70 ac (28 ha) of non-Federal lands within the Manchester Avenue Mitigation Bank that is being excluded is on private property, and we are not aware of a Federal nexus that would trigger future section 7 consultation in this area. Therefore, we do not anticipate a regulatory benefit under Section 7(a)(2) from designation of lands within the Manchester Avenue Mitigation Bank.

Benefits of Exclusion—Manchester Avenue Mitigation Bank Area

The 2005–2010 Management Plan for the Manchester Avenue Mitigation Bank (Spiegelberg 2005, pp. 1–33) provides for conservation of bank lands in a coordinated, integrated manner. The protection and active management of *Acanthomintha ilicifolia* and its essential habitat features on Manchester Avenue Mitigation Bank lands conserves *A. ilicifolia* at this site and directly contributes to the survival and recovery of this species in contrast to designation of critical habitat, which only precludes destruction or adverse modification of essential habitat. Moreover, the educational benefits that result from critical habitat designation, including informing the public of areas that are necessary for the long-term conservation of the species, are already in place both as a result of the development of the Manchester Avenue Mitigation Bank and the ongoing, substantial public outreach that is conducted by CNLM manager of the bank, and the involvement of the public

and local government representatives in the day-to-day operation of the bank.

Finally, we did not identify a likely Federal nexus for future section 7 consultations on lands within the Manchester Avenue Mitigation Bank because the lands are privately owned and already protected from development; therefore, we do not anticipate a regulatory benefit from designation.

In contrast to the lack of an appreciable educational or regulatory benefit of including these lands as critical habitat, the exclusion of these lands from critical habitat will help preserve the partnerships that we developed with CNLM, the California Department of Fish and Game, and the City of Encinitas, all of which were involved with the creation and remain involved with the management of the Manchester Avenue Mitigation Bank. As discussed above, many landowners and local jurisdictions perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing conservation plans such as the Manchester Avenue Mitigation Bank. The exclusion of this area signals to other private landowners that if they take steps to put their lands into conservation, they may avoid an additional layer of regulation, which, as we described above in the “Conservation Partnerships on Non-Federal Lands” section, sometimes acts as a disincentive for private landowners.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Manchester Habitat Conservation Area Management Plan

We reviewed and evaluated the proposed designation of essential habitat in the Manchester Avenue Mitigation Bank and determined that the benefits of excluding critical habitat on 70 ac (28 ha) of land in the Manchester Avenue Mitigation Bank outweigh the benefits of designating these lands as critical habitat. This area, now owned by the CNLM, is protected by a conservation easement and the permanent management of this area is funded by an endowment supported by a Property Analysis Record (PAR). These measures provide assurance that the features essential to the conservation of *Acanthomintha ilicifolia* at the Manchester Avenue Mitigation Bank site will be permanently protected and managed to conserve this species. In light of the conserved status of the lands and the absence of an expected Federal nexus for future section 7 consultation on these privately owned lands, we conclude that the potential regulatory

benefit of designating this area as critical habitat is minimal. Likewise, educational benefit of designation is also small and largely redundant to the educational benefit already provided though CNLM’s ongoing environmental education programs to promote public understanding and appreciation of the natural resources on the Manchester Avenue Mitigation Bank as summarized above. The minimal educational and potential regulatory benefits of including the privately owned Manchester Avenue Mitigation Bank in critical habitat are small when compared to the impact such a designation could have on our current and future partnerships. Designation of lands covered by the bank may discourage other private landowners from seeking or completing similar conservation efforts. Therefore, we conclude that the minor benefits of critical habitat designation are outweighed by benefits of exclusion in consideration of the relevant impact to current and future partnerships as summarized above, and in the “Conservation Partnerships on Non-Federal Lands” section. As discussed above, Manchester Avenue Mitigation Bank will provide for significant preservation and management of habitat for *A. ilicifolia* and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species—Manchester Habitat Conservation Area Management Plan

The exclusion of 70 ac (28 ha) of private lands in the Manchester Avenue Mitigation Bank from the final critical habitat designation will not result in the extinction of *Acanthomintha ilicifolia* because these lands are permanently conserved and managed for the benefit of this species under the agreements in place for the Manchester Avenue Mitigation Bank. The management activities implemented on the Manchester Avenue Mitigation Bank provide for the enhancement and preservation of the features essential to the conservation of *A. ilicifolia*.

The jeopardy standard of section 7(a)(2) of the Act and routine implementation of habitat protection through the section 7(a)(2) process also provide assurances that the species will not go extinct. The protections afforded to *Acanthomintha ilicifolia* under the jeopardy standard will remain in place for the areas excluded from critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information

available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusions exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (draft EA) was made available for public review on November 27, 2007 (72 FR 66122). We accepted comments and information on the draft analysis until December 27, 2007. A final economic analysis was completed on January 24, 2008.

The primary purpose of the final economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Acanthomintha ilicifolia*. This 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. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. The economic analysis separates the costs associated with conservation measures and economic impacts that occurred pre-designation from those that are likely to occur as a result of the designation. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. The economic analysis separated the costs associated with the areas that we proposed to exclude from the areas that we proposed to designate at the time of the March 14, 2007, proposed rule (72 FR 11946). 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.

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 20-year time frame from when the proposed rule became available to the public (72 FR 11946; March 14, 2007). The 20-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 become increasingly speculative.

Based on our analysis, we concluded that the designation of critical habitat would not result in a significant economic impact. The total future potential economic impact is estimated to be \$0.6 to \$2.8 million in undiscounted dollars over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is \$0.4 to \$2.1 million (\$25,000 to \$137,000 annualized); applying a 7 percent discount rate, it is \$0.3 to \$1.5 million (\$25,000 to \$136,000 annualized). Impacts associated with development represent the largest proportion of future impacts, accounting for 96 percent of forecasted impacts in the areas proposed for final designation. Impacts from recreation management and exotic plant species management make up the remaining 4 percent. Under the final designation scenario, approximately 98 percent of the anticipated post-designation impacts are forecast to occur in subunits 3D (71 percent), 3C (17 percent), and 3F (11 percent). The remaining 2 percent of forecasted impacts are expected to occur in subunits 3B, 1A, and 3E. Impacts associated with development, recreation, and exotic plant species management are quantified for the areas that we proposed as critical habitat. Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including and excluding areas from critical habitat. We did not exclude any areas from this designation of critical habitat based on economic impacts.

A copy of the final economic analysis, with supporting documents, may be

obtained by contacting U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or for downloading from the Internet at <http://www.regulations.gov> or <http://www.fws.gov/carlsbad>.

Required Determinations

In our March 14, 2007, proposed rule (72 FR 11946), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the economic analysis. In this final rule, we affirm the information contained in the proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951).

Regulatory Planning and Review

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

(a) 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.

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

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

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 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 (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for *Acanthomintha ilicifolia* 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 (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as 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 rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the rule could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the “substantial number” test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.” Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities

potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Acanthomintha ilicifolia* (see Section 7 Consultation section). 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 reinstate consultation for ongoing Federal activities (see Application of the “Adverse Modification” Standard section).

In our final economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Acanthomintha ilicifolia* and the proposed designation of critical habitat. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Chapters 2 through 4 and Appendices A, B, C, and F of the analysis and evaluates the potential for economic impacts related to three categories: Development and HCP implementation; recreation management; and invasive, nonnative plant management.

The U.S. Forest Service (USFS), the California Department of Fish and Game (CDFG), and the U.S. Fish and Wildlife Service are not considered small entities by the Small Business Administration. Two non-profit organizations, The Nature Conservancy (TNC) and the Center for Natural Lands Management (CNLM), are involved with conservation activities for *Acanthomintha ilicifolia*; however, the primary mission of both of these organizations is to preserve, restore, and protect natural resources. Therefore, impacts from species conservation on these organizations are not considered in the small business impacts analysis.

Additionally, the boundaries of four city governments encompass portions of the proposed critical habitat—Carlsbad, Encinitas, San Diego, and Poway—with the remainder of the proposed critical habitat located within unincorporated San Diego County. All four cities and the County exceed the criteria to be

considered a “small entity” under the RFA.

The final economic analysis identified 18 privately owned, undeveloped parcels within areas proposed as critical habitat. The 18 parcels are owned by nine individual landowners. For the nine individual landowners that may be affected by the proposed designation of critical habitat, the final economic analysis could not determine if any of these landowners qualify as small businesses. For the two landowners of proposed subunits 3D, 3E, and 3F, the final economic analysis estimates annualized impacts associated with conservation activities for *Acanthomintha ilicifolia* could range from a low of \$700 to \$35,700, with an average range of annualized impact of \$5,300 to \$42,300 per landowner over the next 20 years. The remaining seven landowners of the 14 parcels in subunits we excluded from the final designation, annualized impacts are estimated to range from a low of \$300 in subunit 4D up to \$18,700 in subunit 2C, with an average annualized impact ranging from \$17,000 to \$84,000.

We determined that nine individual private landowners do not constitute a substantial number of small entities according to the SBA. However, even if the landowners were to represent small development businesses, nine small businesses would not be a significant number of businesses for San Diego County. Additionally, any developer directly impacted by the designation of critical habitat would not be expected to bear the additional cost of conservation measures for *Acanthomintha ilicifolia*; it is anticipated that additional costs that could arise from the designation would be passed on to individual homebuyers if the parcels were to be developed. Please refer to our final economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

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

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the final economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (see ADDRESSES for information on obtaining a copy of the final economic analysis).

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 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. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared without the regulatory action under consideration. The final economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the final economic analysis, energy-related impacts associated with *Acanthomintha ilicifolia* conservation activities within the final critical habitat designation are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental

mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not result in the destruction or adverse modification of critical habitat. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. 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.

(b) 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 designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for *Acanthomintha ilicifolia* 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 designation of critical habitat for *Acanthomintha ilicifolia* does not pose significant takings implications.

Federalism

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 critical habitat designation with appropriate State resource agencies in California. 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 PCE of the habitat necessary to the conservation of the species is specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the

physical and biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of *Acanthomintha ilicifolia*.

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 U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the 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 U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 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. We determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of *Acanthomintha ilicifolia*. Therefore, we are not designating critical habitat for *A. ilicifolia* on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon

request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this rulemaking are the staff members of 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. Amend § 17.12(h), by revising the entry for "*Acanthomintha ilicifolia*" under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Acanthomintha ilicifolia</i> .	San Diego thornmint	U.S.A. (CA), Mexico	Lamiaceae	T	649	17.96(a)	NA
*	*	*	*	*	*	*	*

■ 3. Amend § 17.96(a), by adding an entry for "*Acanthomintha ilicifolia* (San Diego thornmint)," in alphabetical order under family Lamiaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*
* * * * *

Family Lamiaceae: *Acanthomintha ilicifolia* (San Diego thornmint)

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

(2) The primary constituent element of critical habitat for *Acanthomintha*

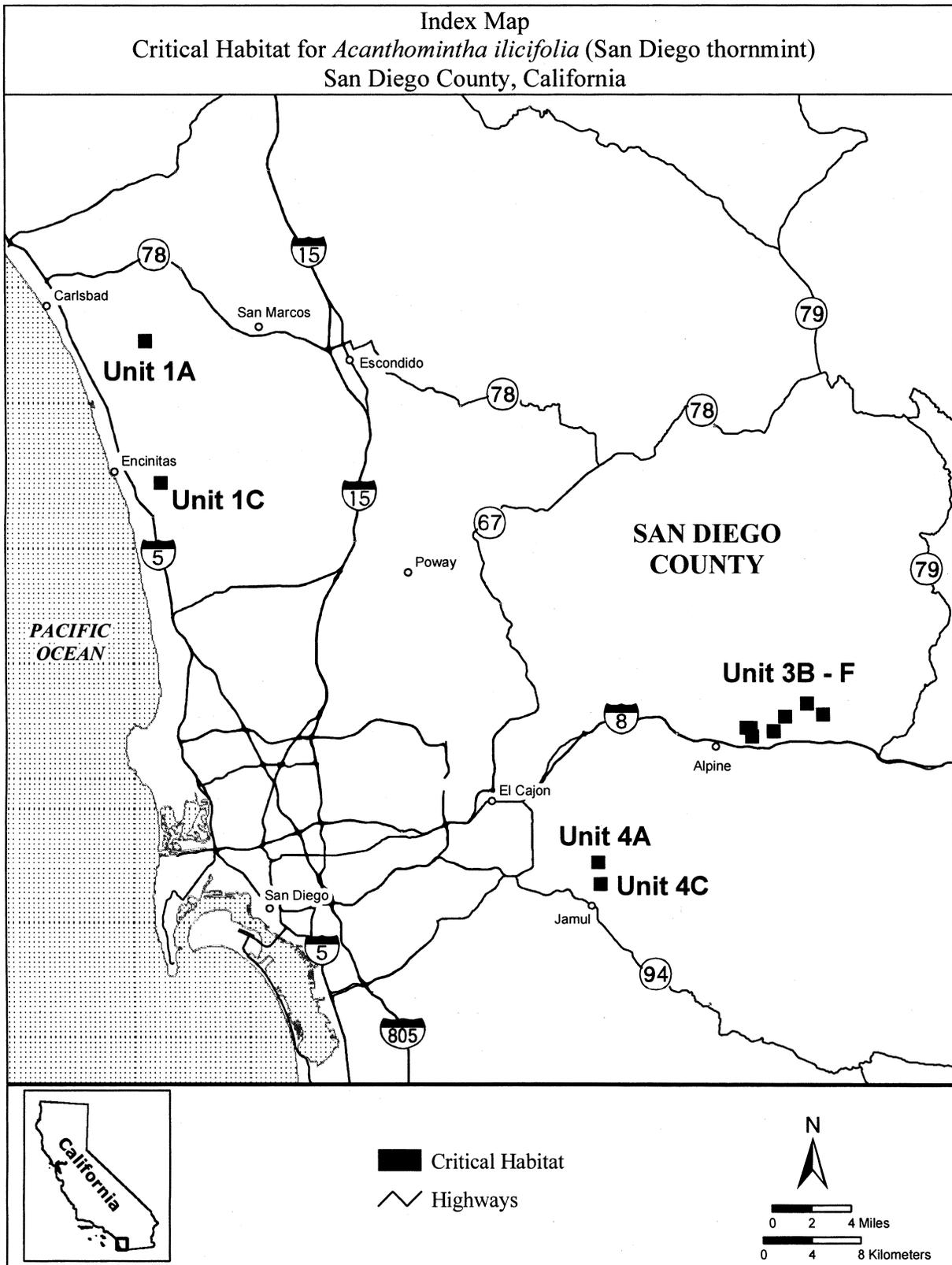
ilicifolia is clay lenses that provide substrate for seedling establishment and space for growth and development of *Acanthomintha ilicifolia* that are:

- (i) Within chaparral, grassland, and coastal sage scrub;
- (ii) On gentle slopes ranging from 0 to 25 degrees;
- (iii) Derived from gabbro and soft calcareous sandstone substrates with a loose, crumbly structure and deep fissures (approximately 1 to 2 feet (30 to 60 cm)); and
- (iv) Characterized by a low density of forbs and geophytes, and a low density or absence of shrubs.

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

(4) Critical habitat map units. Data layers defining map units were created using a base of U.S. Geological Survey 7.5' quadrangle maps, and the critical habitat units were then mapped using UTM coordinates.

(5) **Note:** Index map of critical habitat units for *Acanthomintha ilicifolia* (San Diego thornmint) follows:



(6) Unit 1: San Diego County, California. From USGS 1:24,000 quadrangle maps San Luis Rey, San Marcos, Encinitas, and Rancho Santa Fe.

(i) Subunit 1A. Land bounded by the following UTM NAD27 coordinates (E,N): 475715, 3666433; 475721, 3666303; 475701, 3666286; 475680, 3666267; 475668, 3666256; 475657, 3666252; 475640, 3666251; 475636, 3666235; 475627, 3666226; 475627, 3666225; 475624, 3666222; 475614, 3666214; 475604, 3666209; 475588, 3666206; 475577, 3666207; 475570, 3666200; 475651, 3666200; 475724, 3666204; 475729, 3666090; 475729, 3666089; 475715, 3666078; 475725, 3665997; 475684, 3665976; 475692, 3665942; 475678, 3665937; 475677, 3665937; 475667, 3665934; 475660, 3665932; 475625, 3665959; 475555, 3665930; 475456, 3665852; 475471, 3665837; 475502, 3665823; 475526, 3665825; 475595, 3665822; 475610, 3665823; 475639, 3665823; 475697, 3665853; 475706, 3665850; 475706, 3665850; 475707, 3665847; 475709, 3665845; 475710, 3665842; 475711, 3665840; 475713, 3665837; 475714, 3665834; 475715, 3665832; 475716, 3665829; 475717, 3665826; 475718, 3665823; 475719, 3665821; 475720, 3665818; 475721, 3665815; 475721, 3665812; 475722, 3665809; 475723, 3665807; 475723, 3665804; 475724, 3665801; 475724, 3665798; 475725, 3665795; 475725, 3665792; 475726, 3665789; 475726, 3665787; 475726, 3665784; 475726, 3665781; 475726, 3665778; 475726, 3665775; 475726, 3665772; 475726, 3665769; 475726, 3665766; 475726, 3665763; 475726, 3665760; 475726, 3665758; 475725, 3665755; 475725, 3665752; 475725, 3665751; 475690, 3665758; 475660, 3665748; 475573, 3665707; 475497, 3665712; 475443, 3665727; 475419, 3665730; 475402, 3665733; 475390, 3665731; 475389, 3665722; 475387, 3665635; 475393, 3665625; 475384, 3665621; 475363, 3665616; 475351, 3665612; 475329, 3665607; 475298, 3665608; 475276, 3665597; 475267, 3665596; 475257, 3665597; 475244, 3665599; 475234, 3665595; 475221, 3665587; 475170, 3665590; 475172, 3665599; 475154, 3665640; 475145, 3665651; 475119, 3665668; 475104, 3665685; 475097, 3665688; 475098, 3665697; 475100, 3665707; 475103, 3665716; 475107, 3665725; 475111,

3665735; 475114, 3665741; 475117, 3665745; 475123, 3665756; 475124, 3665759; 475129, 3665767; 475135, 3665775; 475142, 3665783; 475148, 3665790; 475156, 3665797; 475161, 3665801; 475175, 3665813; 475178, 3665815; 475186, 3665821; 475195, 3665826; 475203, 3665831; 475212, 3665835; 475215, 3665836; 475216, 3665844; 475216, 3665854; 475218, 3665864; 475220, 3665873; 475223, 3665883; 475227, 3665892; 475231, 3665901; 475236, 3665910; 475241, 3665919; 475247, 3665927; 475253, 3665934; 475260, 3665942; 475267, 3665948; 475286, 3665965; 475286, 3665965; 475294, 3665972; 475302, 3665977; 475310, 3665983; 475319, 3665987; 475328, 3665991; 475337, 3665995; 475338, 3665995; 475339, 3665996; 475372, 3666006; 475381, 3666009; 475390, 3666011; 475400, 3666013; 475410, 3666014; 475420, 3666014; 475430, 3666014; 475440, 3666013; 475450, 3666011; 475452, 3666011; 475478, 3666005; 475474, 3666011; 475472, 3666014; 475466, 3666022; 475461, 3666030; 475456, 3666039; 475452, 3666048; 475448, 3666057; 475445, 3666067; 475443, 3666077; 475441, 3666087; 475440, 3666096; 475440, 3666106; 475440, 3666116; 475441, 3666126; 475443, 3666134; 475446, 3666150; 475446, 3666152; 475448, 3666162; 475451, 3666171; 475455, 3666181; 475459, 3666190; 475464, 3666199; 475468, 3666205; 475479, 3666223; 475480, 3666225; 475486, 3666233; 475492, 3666241; 475496, 3666245; 475511, 3666260; 475514, 3666263; 475518, 3666267; 475517, 3666269; 475517, 3666272; 475517, 3666275; 475516, 3666278; 475516, 3666281; 475516, 3666284; 475516, 3666287; 475516, 3666289; 475516, 3666292; 475516, 3666295; 475516, 3666298; 475517, 3666301; 475517, 3666304; 475517, 3666307; 475518, 3666310; 475518, 3666313; 475519, 3666315; 475519, 3666318; 475520, 3666321; 475520, 3666324; 475521, 3666327; 475522, 3666330; 475523, 3666332; 475524, 3666335; 475524, 3666338; 475525, 3666341; 475526, 3666343; 475528, 3666346; 475529, 3666349; 475530, 3666351; 475531, 3666354; 475532, 3666357; 475534, 3666359; 475535, 3666362; 475536, 3666364; 475538, 3666367; 475539, 3666369; 475541,

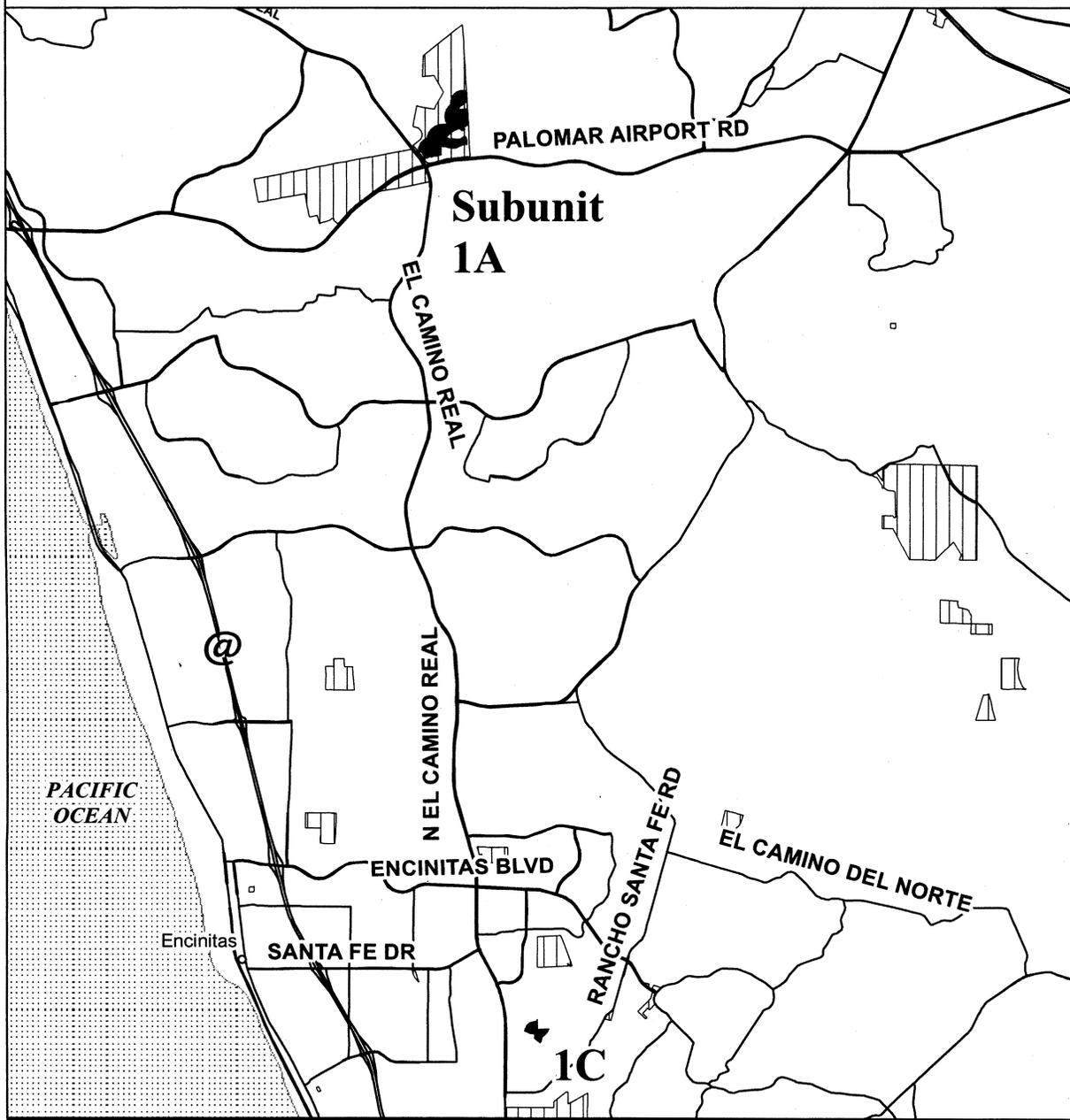
3666372; 475543, 3666374; 475544, 3666376; 475546, 3666379; 475548, 3666381; 475550, 3666383; 475551, 3666386; 475553, 3666388; 475555, 3666390; 475557, 3666392; 475559, 3666394; 475561, 3666396; 475563, 3666398; 475565, 3666400; 475568, 3666402; 475570, 3666404; 475572, 3666406; 475574, 3666408; 475577, 3666410; 475579, 3666411; 475581, 3666413; 475584, 3666415; 475586, 3666416; 475589, 3666418; 475591, 3666419; 475594, 3666421; 475596, 3666422; 475599, 3666424; 475601, 3666425; 475604, 3666426; 475607, 3666427; 475609, 3666428; 475612, 3666430; 475615, 3666431; 475617, 3666432; 475620, 3666433; 475623, 3666433; 475626, 3666434; 475628, 3666435; 475631, 3666436; 475634, 3666437; 475637, 3666437; 475640, 3666438; 475643, 3666438; 475645, 3666439; 475648, 3666439; 475651, 3666439; 475654, 3666440; 475657, 3666440; 475660, 3666440; 475663, 3666440; 475666, 3666440; 475669, 3666440; 475671, 3666440; 475674, 3666440; 475677, 3666440; 475680, 3666440; 475683, 3666440; 475686, 3666439; 475689, 3666439; 475692, 3666439; 475695, 3666438; 475697, 3666438; 475700, 3666437; 475703, 3666437; 475706, 3666436; 475709, 3666435; 475712, 3666434; 475714, 3666433; returning to 475715, 3666433.

(ii) Subunit 1C. Land bounded by the following UTM NAD27 coordinates (E,N): 476734, 3654344; 476773, 3654344; 476753, 3654337; 476753, 3654314; 476730, 3654283; 476699, 3654259; 476670, 3654230; 476667, 3654190; 476654, 3654166; 476578, 3654226; 476581, 3654228; 476586, 3654259; 476577, 3654287; 476576, 3654287; 476519, 3654289; 476485, 3654306; 476451, 3654315; 476452, 3654320; 476457, 3654334; 476457, 3654335; 476461, 3654344; 476465, 3654353; 476467, 3654358; 476474, 3654370; 476476, 3654374; 476481, 3654383; 476487, 3654391; 476488, 3654392; 476497, 3654403; 476502, 3654409; 476509, 3654417; 476515, 3654423; 476519, 3654426; 476609, 3654448; 476615, 3654465; 476615, 3654341; 476616, 3654341; returning to 476734, 3654344.

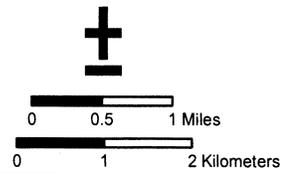
(iii) **Note:** Map of Unit 1, Subunits 1A and 1C, follows:

BILLING CODE 4310-55-P

Critical Habitat for *Acanthomintha ilicifolia* (San Diego thornmint)
Unit 1: Subunits 1A and 1C, San Diego County, California



-  Critical Habitat
-  County lands
-  Roads



BILLING CODE 4310-55-C

(7) Unit 3: San Diego County, California. From USGS 1:24,000 quadrangle map Viejas Mountain.

(i) Subunit 3B. Land bounded by the following UTM NAD27 coordinates (E,N): 524469, 3634407; 524471,

3634409; 524477, 3634418; 524483, 3634425; 524490, 3634433; 524497, 3634439; 524505, 3634446; 524513, 3634452; 524522, 3634457; 524530, 3634461; 524539, 3634466; 524549, 3634469; 524557, 3634472; 524601, 3634484; 524603, 3634484; 524607, 3634485; 524617, 3634500; 524621, 3634504; 524627, 3634512; 524634, 3634519; 524641, 3634526; 524647, 3634531; 524683, 3634560; 524686, 3634562; 524694, 3634568; 524702, 3634573; 524711, 3634578; 524720, 3634582; 524729, 3634585; 524739, 3634588; 524749, 3634590; 524758, 3634592; 524768, 3634593; 524778, 3634593; 524783, 3634593; 524811, 3634592; 524816, 3634592; 524826, 3634591; 524836, 3634590; 524845, 3634587; 524855, 3634584; 524864, 3634581; 524873, 3634577; 524882, 3634572; 524891, 3634567; 524899, 3634561; 524907, 3634555; 524914, 3634548; 524917, 3634544; 524933, 3634527; 524937, 3634523; 524943, 3634516; 524949, 3634508; 524954, 3634499; 524959, 3634490; 524963, 3634481; 524966, 3634472; 524986, 3634414; 524987, 3634413; 524990, 3634403; 524992, 3634394; 524993, 3634384; 524994, 3634374; 524995, 3634364; 524994, 3634354; 524993, 3634344; 524992, 3634334; 524990, 3634325; 524987, 3634315; 524985, 3634311; 524970, 3634270; 524968, 3634265; 524964, 3634255; 524959, 3634247; 524957, 3634243; 524957, 3634242; 524953, 3634220; 524952, 3634214; 524950, 3634204; 524947, 3634194; 524943, 3634185; 524939, 3634176; 524935, 3634167; 524929, 3634159; 524923, 3634150; 524917, 3634143; 524913, 3634139; 524890, 3634114; 524887, 3634111; 524880, 3634104; 524872, 3634098; 524864, 3634092; 524856, 3634087; 524847, 3634082; 524838, 3634078; 524832, 3634076; 524804, 3634066; 524801, 3634065; 524791, 3634062; 524781, 3634059; 524774, 3634058; 524755, 3634055; 524744, 3634054; 524741, 3634053; 524732, 3634052; 524731, 3634341; 524634, 3634343; 524436, 3634347; 524436, 3634347; 524439, 3634356; 524444, 3634365; 524448, 3634374; 524452, 3634380; 524454, 3634383; returning to 524469, 3634407.

Land bounded by the following UTM NAD27 coordinates (E,N): 524386, 3634381; 524389, 3634377; 524400, 3634360; 524402, 3634356; 524406, 3634348; 524348, 3634349; 524325,

3634350; 524325, 3634407; 524325, 3634407; 524324, 3634436; 524342, 3634425; 524344, 3634424; 524352, 3634418; 524360, 3634411; 524367, 3634405; 524374, 3634397; 524374, 3634397; 524381, 3634390; 524385, 3634384; returning to 524386, 3634381.

Land bounded by the following UTM NAD27 coordinates (E,N): 524764, 3633867; 524774, 3633864; 524783, 3633860; 524792, 3633856; 524801, 3633851; 524810, 3633846; 524818, 3633840; 524826, 3633834; 524833, 3633827; 524840, 3633820; 524846, 3633812; 524852, 3633804; 524857, 3633796; 524862, 3633787; 524866, 3633778; 524869, 3633768; 524871, 3633763; 524896, 3633679; 524897, 3633675; 524900, 3633665; 524901, 3633655; 524902, 3633645; 524902, 3633635; 524902, 3633625; 524901, 3633615; 524900, 3633606; 524897, 3633596; 524894, 3633586; 524891, 3633577; 524887, 3633568; 524882, 3633559; 524877, 3633551; 524871, 3633542; 524865, 3633535; 524858, 3633527; 524851, 3633521; 524844, 3633515; 524805, 3633485; 524768, 3633441; 524765, 3633438; 524749, 3633418; 524749, 3633418; 524749, 3633467; 524735, 3633871; 524745, 3633870; 524755, 3633869; 524758, 3633868; returning to 524764, 3633867.

(ii) **Note:** Subunit 3B for *Acanthomintha ilicifolia* is depicted on the map in paragraph (7)(x) of this entry.

(iii) Subunit 3C. Land bounded by the following UTM NAD27 coordinates (E,N): 527110, 3634008; 527113, 3633915; 527118, 3633794; 527114, 3633788; 527113, 3633774; 527112, 3633774; 527093, 3633707; 527076, 3633649; 527047, 3633595; 526929, 3633588; 526900, 3633612; 526851, 3633672; 526802, 3633692; 526764, 3633652; 526723, 3633606; 526709, 3633575; 526535, 3633564; 526387, 3633555; 526378, 3633555; 526380, 3633421; 526384, 3633149; 526237, 3633148; 526221, 3633170; 526221, 3633170; 526215, 3633178; 526209, 3633187; 526205, 3633195; 526201, 3633205; 526197, 3633214; 526194, 3633223; 526194, 3633225; 526175, 3633297; 526173, 3633306; 526171, 3633315; 526171, 3633325; 526170, 3633335; 526170, 3633340; 526173, 3633452; 526174, 3633458; 526175, 3633468; 526176, 3633478; 526179, 3633487; 526181, 3633497; 526185, 3633506; 526189, 3633515; 526194, 3633524; 526199, 3633532; 526192, 3633537; 526183, 3633543; 526176, 3633549; 526169, 3633555; 526138, 3633586; 526137, 3633587; 526131, 3633594; 526124, 3633602; 526118, 3633610; 526113, 3633618; 526109, 3633627; 526104, 3633636; 526101, 3633646; 526098, 3633655; 526096,

3633665; 526094, 3633675; 526093, 3633684; 526090, 3633734; 526085, 3633793; 526074, 3633870; 526074, 3633871; 526064, 3633943; 526064, 3633944; 526063, 3633954; 526062, 3633964; 526063, 3633974; 526064, 3633984; 526064, 3633986; 526073, 3634048; 526074, 3634056; 526076, 3634066; 526079, 3634076; 526083, 3634085; 526084, 3634088; 526100, 3634123; 526100, 3634133; 526091, 3634181; 526070, 3634267; 526069, 3634273; 526068, 3634278; 526058, 3634337; 526058, 3634342; 526057, 3634352; 526057, 3634353; 526054, 3634397; 526054, 3634406; 526054, 3634416; 526055, 3634426; 526057, 3634435; 526059, 3634445; 526062, 3634455; 526066, 3634464; 526070, 3634473; 526074, 3634482; 526080, 3634490; 526085, 3634498; 526092, 3634506; 526099, 3634513; 526102, 3634517; 526123, 3634536; 526127, 3634540; 526134, 3634546; 526143, 3634552; 526151, 3634557; 526160, 3634562; 526169, 3634566; 526178, 3634570; 526187, 3634572; 526213, 3634579; 526214, 3634580; 526224, 3634582; 526234, 3634584; 526235, 3634584; 526261, 3634587; 526270, 3634588; 526277, 3634588; 526310, 3634612; 526318, 3634617; 526320, 3634620; 526340, 3634682; 526341, 3634684; 526344, 3634694; 526348, 3634703; 526353, 3634712; 526358, 3634720; 526364, 3634728; 526370, 3634736; 526377, 3634743; 526385, 3634750; 526392, 3634756; 526400, 3634762; 526403, 3634764; 526449, 3634794; 526455, 3634797; 526464, 3634802; 526473, 3634806; 526483, 3634810; 526492, 3634812; 526502, 3634815; 526512, 3634816; 526522, 3634817; 526532, 3634818; 526542, 3634817; 526549, 3634817; 526586, 3634812; 526589, 3634812; 526598, 3634810; 526608, 3634808; 526618, 3634805; 526627, 3634802; 526636, 3634798; 526645, 3634793; 526653, 3634788; 526662, 3634782; 526669, 3634775; 526677, 3634769; 526683, 3634761; 526690, 3634754; 526695, 3634745; 526701, 3634737; 526705, 3634728; 526710, 3634719; 526712, 3634713; 526738, 3634641; 526739, 3634638; 526742, 3634628; 526744, 3634619; 526746, 3634609; 526747, 3634599; 526747, 3634589; 526747, 3634583; 526744, 3634492; 526761, 3634446; 526790, 3634400; 526792, 3634397; 526796, 3634389; 526797, 3634389; 526807, 3634393; 526814, 3634395; 526876, 3634412; 526877, 3634413; 526887, 3634415; 526897, 3634417; 526902, 3634417; 526973, 3634424; 526978, 3634425; 526988, 3634425; 526998, 3634425; 527008, 3634424; 527017, 3634422; 527027,

3634420; 527029, 3634419; 527087, 3634403; 527095, 3634401; 527104, 3634397; 527113, 3634393; 527120, 3634389; 527111, 3634389; 527111, 3634111; returning to 527110, 3634008.

(iv) **Note:** Subunit 3C for *Acanthomintha ilicifolia* is depicted on the map in paragraph (7)(x) of this entry.

(v) Subunit 3D. Land bounded by the following UTM NAD27 coordinates (E,N): 527502, 3634924; 527484,

3634918; 527477, 3634916; 527467, 3634914; 527460, 3634912; 527393, 3634902; 527391, 3634902; 527381, 3634901; 527371, 3634901; 527314, 3634901; 527314, 3634901; 527304, 3634901; 527294, 3634902; 527284, 3634904; 527275, 3634906; 527265, 3634909; 527256, 3634912; 527247, 3634917; 527238, 3634921; 527229, 3634927; 527221, 3634932; 527214, 3634939; 527206, 3634945; 527200, 3634953; 527199, 3634953; 527164, 3634993; 527158, 3635001; 527152, 3635009; 527147, 3635017; 527142, 3635026; 527138, 3635035; 527134, 3635045; 527132, 3635054; 527129, 3635064; 527128, 3635074; 527127, 3635076; 527120, 3635142; 527119, 3635150; 527119, 3635160; 527119, 3635170; 527120, 3635180; 527121, 3635189; 527124, 3635199; 527127, 3635209; 527130, 3635218; 527130, 3635219; 527172, 3635317; 527176, 3635326; 527180, 3635335; 527186, 3635343; 527191, 3635351; 527196, 3635357; 527263, 3635436; 527265, 3635438; 527272, 3635445; 527279, 3635452; 527280, 3635453; 527285, 3635457; 527376, 3635529; 527378, 3635530; 527386, 3635536; 527395, 3635541; 527403, 3635546; 527413, 3635550; 527422, 3635554; 527430, 3635556; 527514, 3635580; 527516, 3635580; 527525, 3635582; 527535, 3635584; 527545, 3635585; 527555, 3635585; 527565, 3635585; 527566, 3635585; 527661, 3635578; 527671, 3635577; 527680, 3635576; 527690, 3635573; 527763, 3635554; 527823, 3635540; 527827, 3635539; 527837, 3635536; 527846, 3635532; 527855, 3635528; 527864, 3635524; 527872, 3635518; 527881, 3635513; 527888, 3635506; 527895, 3635500; 527900, 3635252; 527901, 3635233; 527900, 3635233; 527896, 3635228; 527895, 3635227; 527529, 3635219; 527494, 3635218; returning to 527502, 3634924.

(vi) **Note:** Subunit 3D for *Acanthomintha ilicifolia* is depicted on the map in paragraph (7)(x) of this entry.

(vii) Subunit 3E. Land bounded by the following UTM NAD27 coordinates (E,N): 529307, 3636146; 529297, 3636146; 529297, 3636146; 529284, 3636147; 529274, 3636148; 529264, 3636149; 529260, 3636150; 529249, 3636153; 529243, 3636154; 529233,

3636157; 529224, 3636161; 529215, 3636165; 529210, 3636167; 529197, 3636175; 529193, 3636177; 529184, 3636182; 529176, 3636188; 529168, 3636194; 529161, 3636201; 529154, 3636208; 529148, 3636216; 529143, 3636223; 529135, 3636235; 529134, 3636236; 529129, 3636245; 529124, 3636253; 529120, 3636263; 529116, 3636272; 529114, 3636279; 529111, 3636290; 529110, 3636292; 529108, 3636302; 529107, 3636311; 529106, 3636321; 529105, 3636331; 529106, 3636341; 529107, 3636351; 529107, 3636356; 529110, 3636370; 529111, 3636376; 529113, 3636386; 529116, 3636395; 529119, 3636405; 529123, 3636413; 529129, 3636426; 529130, 3636427; 529134, 3636435; 529140, 3636444; 529145, 3636451; 529160, 3636471; 529161, 3636472; 529167, 3636480; 529174, 3636487; 529181, 3636494; 529189, 3636500; 529195, 3636505; 529214, 3636518; 529216, 3636519; 529224, 3636524; 529233, 3636529; 529242, 3636533; 529251, 3636537; 529258, 3636539; 529276, 3636544; 529279, 3636544; 529288, 3636547; 529297, 3636548; 529319, 3636551; 529321, 3636552; 529331, 3636553; 529340, 3636553; 529350, 3636553; 529360, 3636552; 529370, 3636550; 529373, 3636549; 529388, 3636546; 529394, 3636544; 529404, 3636542; 529413, 3636538; 529416, 3636537; 529428, 3636532; 529434, 3636529; 529443, 3636524; 529451, 3636519; 529459, 3636513; 529467, 3636507; 529474, 3636500; 529481, 3636493; 529483, 3636490; 529495, 3636476; 529499, 3636471; 529505, 3636463; 529510, 3636454; 529515, 3636446; 529519, 3636437; 529523, 3636427; 529525, 3636420; 529531, 3636398; 529532, 3636396; 529534, 3636386; 529536, 3636376; 529537, 3636366; 529537, 3636356; 529537, 3636356; 529537, 3636345; 529537, 3636336; 529536, 3636326; 529534, 3636316; 529532, 3636306; 529529, 3636296; 529525, 3636287; 529521, 3636278; 529519, 3636273; 529512, 3636262; 529510, 3636258; 529505, 3636249; 529499, 3636241; 529493, 3636233; 529492, 3636233; 529480, 3636219; 529474, 3636212; 529466, 3636205; 529459, 3636199; 529451, 3636193; 529442, 3636188; 529439, 3636186; 529419, 3636175; 529414, 3636173; 529405, 3636169; 529402, 3636167; 529379, 3636159; 529373, 3636156; 529363, 3636153; 529354, 3636151; 529347, 3636150; 529330, 3636147; 529327, 3636147; 529317, 3636146; returning to 529307, 3636146.

(viii) **Note:** Subunit 3E for *Acanthomintha ilicifolia* is depicted on the map in paragraph (7)(x) of this entry.

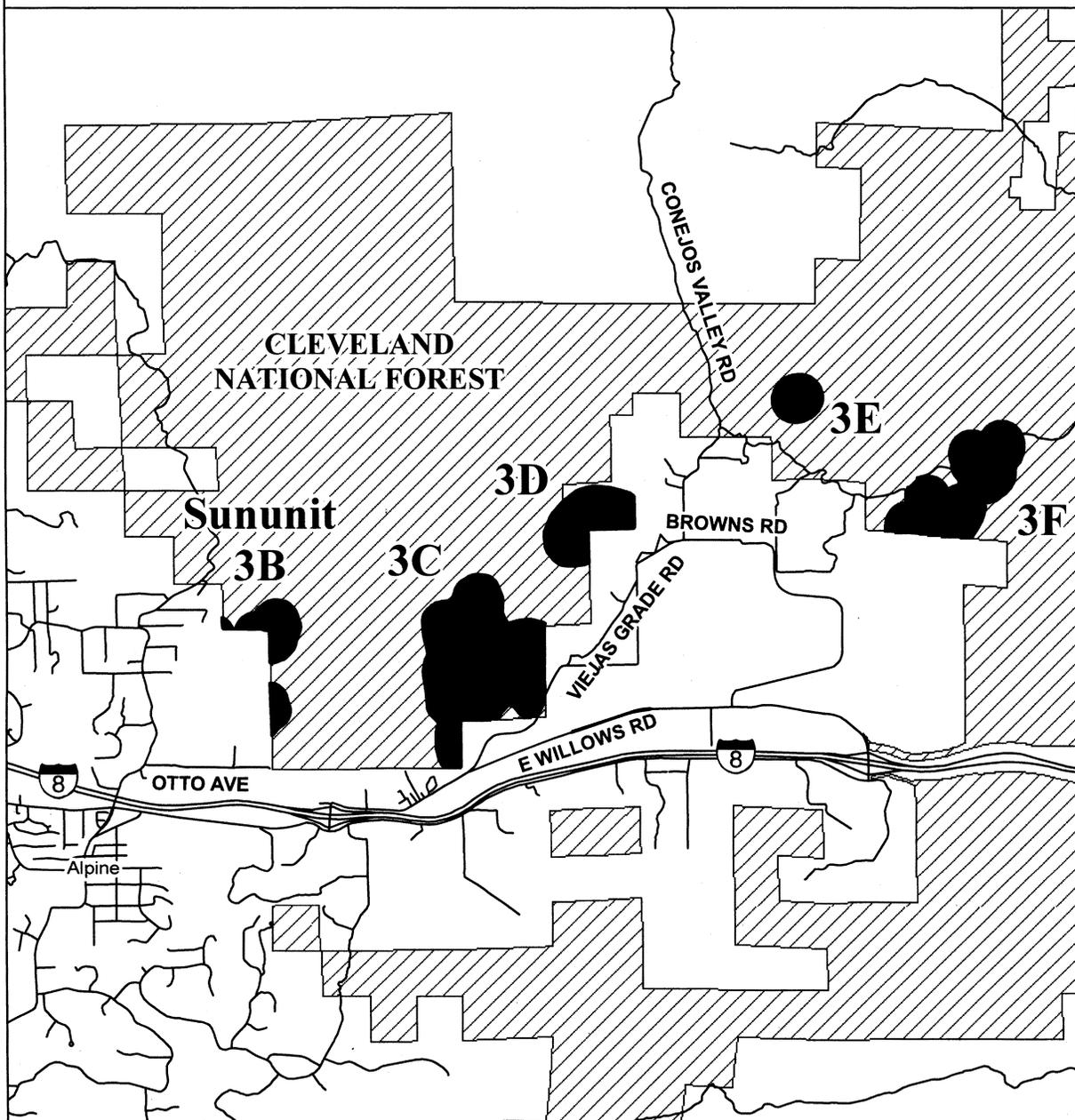
(ix) Subunit 3F. Land bounded by the following UTM NAD27 coordinates (E,N): 530315, 3635191; 530282, 3635194; 530276, 3635194; 530273, 3635195; 530266, 3635195; 530213, 3635199; 530116, 3635207; 530086, 3635210; 530086, 3635212; 530086, 3635218; 530085, 3635235; 530085, 3635238; 530086, 3635248; 530087, 3635258; 530087, 3635259; 530089, 3635277; 530091, 3635285; 530093, 3635295; 530096, 3635304; 530099, 3635314; 530100, 3635316; 530109, 3635336; 530112, 3635344; 530117, 3635352; 530122, 3635361; 530128, 3635369; 530133, 3635374; 530140, 3635383; 530142, 3635386; 530149, 3635393; 530156, 3635400; 530164, 3635406; 530172, 3635412; 530176, 3635415; 530186, 3635421; 530191, 3635424; 530200, 3635428; 530209, 3635432; 530218, 3635436; 530228, 3635439; 530237, 3635441; 530246, 3635443; 530255, 3635444; 530257, 3635444; 530265, 3635445; 530264, 3635448; 530263, 3635458; 530263, 3635458; 530261, 3635472; 530260, 3635481; 530260, 3635491; 530260, 3635501; 530261, 3635510; 530262, 3635522; 530263, 3635523; 530264, 3635533; 530266, 3635542; 530269, 3635552; 530273, 3635561; 530275, 3635567; 530279, 3635575; 530281, 3635578; 530291, 3635578; 530311, 3635593; 530327, 3635609; 530347, 3635630; 530361, 3635647; 530364, 3635658; 530367, 3635660; 530377, 3635663; 530386, 3635666; 530386, 3635666; 530395, 3635669; 530405, 3635672; 530415, 3635673; 530425, 3635674; 530432, 3635674; 530446, 3635675; 530449, 3635675; 530459, 3635674; 530469, 3635673; 530479, 3635672; 530488, 3635670; 530491, 3635669; 530507, 3635664; 530514, 3635662; 530523, 3635659; 530532, 3635655; 530541, 3635650; 530549, 3635645; 530558, 3635639; 530565, 3635632; 530571, 3635627; 530581, 3635617; 530582, 3635616; 530589, 3635609; 530595, 3635601; 530601, 3635593; 530606, 3635585; 530611, 3635576; 530613, 3635571; 530618, 3635560; 530620, 3635556; 530628, 3635562; 530636, 3635567; 530645, 3635572; 530649, 3635574; 530671, 3635584; 530677, 3635587; 530686, 3635590; 530696, 3635593; 530705, 3635595; 530713, 3635597; 530733, 3635600; 530735, 3635600; 530729, 3635610; 530729, 3635611; 530725, 3635620; 530721, 3635630; 530718, 3635639; 530717, 3635643; 530715, 3635652; 530712, 3635655; 530705, 3635663; 530698, 3635670; 530693, 3635678; 530691, 3635681; 530686, 3635689; 530682, 3635695; 530677, 3635704; 530673, 3635713; 530670,

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 3635319; 530910, 3635289; 530910,
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 3635275; 530888, 3635245; 530885,
 3635240; 530880, 3635232; 530828,
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 3635176; 530329, 3635190; returning to
 530315, 3635191.

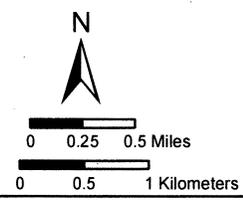
(x) Note: Map of Unit 3, Subunits 3B, 3C, 3D, 3E, and 3F, follows:

BILLING CODE 4310-55-P

Critical Habitat for *Acanthomintha ilicifolia* (San Diego thornmint)
Unit 3: Subunits 3B, 3C, 3D, 3E and 3F, San Diego County, California



-  Critical Habitat
-  Cleveland National Forest
-  Roads



BILLING CODE 4310-55-C

(8) Unit 4: San Diego County, California. From USGS 1:24,000 quadrangle maps Alpine and Dulzura.

(i) Subunit 4A. Land bounded by the following UTM NAD27 coordinates (E,N): 512272, 3623323; 512234, 3623334; 512185, 3623361; 512163, 3623400; 512214, 3623403; 512216, 3623412; 512233, 3623405; 512281, 3623398; 512302, 3623368; 512301, 3623330; 512297, 3623324; returning to 512272, 3623323.

(ii) **Note:** Subunit 4A for *Acanthomintha ilicifolia* is depicted on the map in paragraph (8)(iv) of this entry.

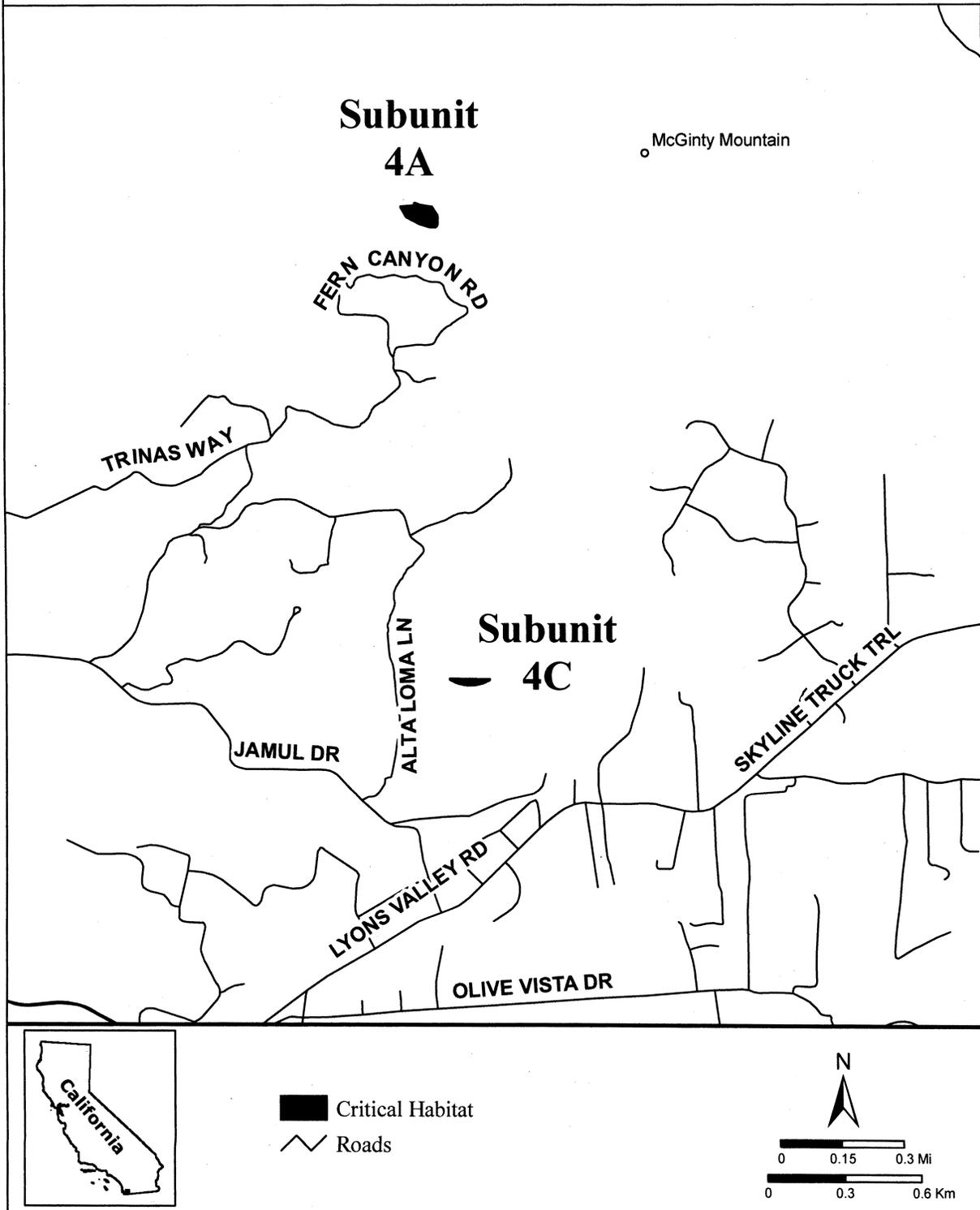
(iii) Subunit 4C Land bounded by the following UTM NAD27 coordinates (E,N): 512490, 3621562; 512502, 3621562; 512500, 3621561; 512498, 3621559; 512495, 3621558; 512493, 3621557; 512490, 3621556; 512487, 3621555; 512485, 3621553; 512482, 3621552; 512479, 3621551; 512476, 3621550; 512474, 3621550; 512471, 3621549; 512468, 3621548; 512465, 3621547; 512462, 3621546; 512460, 3621546; 512457, 3621545; 512454, 3621545; 512451, 3621544; 512448, 3621544; 512445, 3621543; 512442, 3621543; 512439, 3621543; 512437, 3621543; 512434, 3621543; 512431, 3621543; 512428, 3621542; 512425, 3621543; 512422, 3621543; 512419,

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(iv) **Note:** Map of Unit 4, Subunits 4A and 4C follows:

BILLING CODE 4310-55-P

Critical Habitat for *Acanthomintha ilicifolia* (San Diego thornmint)
Unit 4: Subunits 4A and 4C, San Diego County, California



* * * * *

Dated: August 13, 2008.

David M. Verhey,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. E8-19194 Filed 8-25-08; 8:45 am]

BILLING CODE 4310-55-P