

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

Activities on Federal lands that may affect *Polygonum hickmanii* or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 of the Act consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 of the Act consultation.

Both of the units we are designating are considered to be occupied by either standing *Polygonum hickmanii* plants or a seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Therefore, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as section 404 of the Clean Water Act permits from the U.S. Army Corps of Engineers;

(2) Restoration projects sponsored by the Natural Resources Conservation Service; and

(3) Pest control projects undertaken by the Animal and Plant Health Inspection Service, permits from Housing and Urban Development, or authorization of Federal grants or loans.

Such activities would be subject to the section 7 of the Act consultation process. Where federally listed wildlife species occur on private lands proposed for development, any HCPs submitted by the applicant to secure an incidental

take permit according to section 10(a)(1)(B) of the Act would be subject to the section 7 of the Act consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a federally endangered species, occurs in close proximity to *C. r. var. hartwegii* within grasslands on the east side of Carbonero Creek on the Glenwood Development parcel. We anticipate that an HCP will be developed to cover incidental take for the tiger beetle and will address conservation measures for *C. r. var. hartwegii* as well as *Polygonum hickmanii* during development of the management plan for the open space portion of the parcel.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Polygonum hickmanii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

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

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

If you have questions about whether specific activities may constitute

adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see ADDRESSES*).

#### Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include *Polygonum hickmanii* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although the Act only prohibits take of listed wildlife species, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Polygonum hickmanii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *P. hickmanii*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for lands essential for the long-term conservation of *P. hickmanii*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

#### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area