

adjusted the boundaries of Unit 9 to remove the steep terrain in and around Impossible and Wildcat Canyons, for reasons discussed in the Summary of Changes From the Proposed Rule section. This has resulted in the removal of one of the above-mentioned parcels from this critical habitat designation. A 13 ac (5.3 ha) BLM development parcel remains in critical habitat.

Comment 15: The Army requests that we exclude areas from *Lasthenia conjugens* critical habitat within former Fort Ord (Unit 9) that are designated for future development under the Army's Habitat Management Plan (HMP). They state that their HMP, which describes the conservation strategy for cleanup, disposal, and reuse of the former base, meets the three criteria we use to consider whether a plan provides adequate special management or protection. The Army suggests these areas be excluded pursuant to section 3(5)(A) of the Act, because they do not require additional special management or protection under the HMP. The Army also requests that we exclude these areas, pursuant to section 4(b)(2) of the Act, because the benefits of excluding them outweigh the benefits of including them in critical habitat. The specific parcels they request be excluded are the BLM development parcel, the Military Operations-Urban Terrain Facility, Wolf Hill, and those portions of East Garrison identified for future development, a total of fewer than 200 ac (90 ha).

Our Response: The 28,000 (11,331 ha) former Army base at Fort Ord is managed under an HMP that, along with several additional commitments from the Army, provided the basis for a non-jeopardy biological opinion in 1999 on the effects of base closure and reuse on *Lasthenia conjugens*. This biological opinion encompassed the full base and, therefore, the entire critical habitat unit. We determined at that time that the configuration of habitat reserve and development lands in the HMP will not jeopardize the continued existence of *Lasthenia conjugens*. The HMP requires that management of designated development parcels that border habitat reserve lands incorporate measures to avoid erosion and vehicle access that could degrade habitat reserve lands, including those designated as critical habitat for *Lasthenia conjugens*. However we conclude that, at this time, the conservation strategy outlined in the HMP for base reuse and closure does not provide sufficient management and protections to the extent that these lands do not meet the definition of critical habitat. Completion of the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) process in which the Army is currently engaged, and completion of an HCP by entities that are to receive transferred lands, followed by our issuance of an incidental take permit for these lands, would likely be considered adequate special management such that these lands could be removed from critical habitat.

We have reviewed the circumstances at former Fort Ord and conclude that exclusions under sections 3(5)(A) and 4(b)(2) of the Act are not appropriate for lands in this unit. In past circumstances, we have either not included or excluded lands from critical habitat, pursuant to section 3(5)(A) of the Act, when we have determined that the lands are either not essential to the conservation of the species, or have adequate special management considerations or protections. If an area has adequate management or protections for the species and its habitat then the area does not meet the definition of critical habitat and consequently either not included or excluded if originally proposed. At former Fort Ord, the lands for which exclusions were requested are designated for development under the base closure and reuse plan and the management of these lands for vernal pool habitat and species is not adequately addressed under the HMP. The lands are also not intended to receive further protection under that plan. Therefore, a definitional exclusion from critical habitat pursuant to section 3(5)(A) of the Act, where lands would not require special management considerations or protections because those provisions are already in place, would not be warranted for these lands.

We also evaluated these parcels for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. Section 4(b)(2) of the Act allows the Secretary to "exclude any area from critical habitat if [it is determined] that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, * * * unless the failure to designate such area * * * would result in the extinction of the species." In evaluating whether the benefits of excluding these lands outweigh the benefits of including them, we considered economic impact and any other relevant impact associated with their inclusion. In the case of former Fort Ord, we evaluated whether an increase in Federal consultations was likely to occur due to the inclusion of these lands, resulting in an economic cost. We concluded that Federal consultation requirements would be essentially unchanged by the inclusion of these lands. Therefore, none of the

costs associated with increased consultation requirements base-wide are likely to result from inclusion of these lands. The Army did not indicate any other costs associated with inclusion of these lands, nor could we identify any. Therefore, we concluded there are no benefits of excluding these lands from critical habitat. We weighed this against any benefits that might accrue from inclusion of these lands in critical habitat. We determined that a small benefit of inclusion would be the increased attention the designation would bring to those parcels designated for development that are adjacent to, and likely within the watershed of, vernal pools. The inclusion of these lands in critical habitat would remind land managers of the need to consider the presence of the vernal pool watershed in planning and implementing Federal actions. We weighed this benefit of inclusion against the benefits of exclusion. We conclude that the benefits of exclusion do not outweigh the benefits of inclusion. We have, therefore, included these lands in the critical habitat designation, except as discussed below.

We have adjusted the boundaries of the Fort Ord Unit to remove the steep terrain in and around Impossible and Wildcat Canyons, for reasons discussed in the Summary of Changes From the Proposed Rule section. The Military Operations-Urban Terrain Facility and Wolf Hill parcels (totaling about 110 ac (44.5 ha) discussed above are located in this region and are therefore not part of designated critical habitat.

Comment 16: The U.S. Air Force requests that lands at Beale Air Force Base (AFB) and Travis AFB be excluded because the designation would increase the costs and regulatory requirements and hamper the Air Force on carrying out the mission objectives for the two AFBs.

Our Response: In response to the U.S. Air Force's requests that lands at Beale AFB and Travis AFB be excluded because the designation would increase the costs and regulatory requirements and hamper the Air Force's ability to carry out their mission objectives for the two AFBs, we have excluded these AFB installations from final designated critical habitat pursuant to section 4(b)(2) of the Act. Please refer to the Relationship of Critical Habitat to Military Lands section of this final rule for a detailed discussion of our rationale for excluding these AFBs pursuant to section 4(b)(2) of the Act.

Comment 17: Several commenters expressed concern that the designation would curtail or eliminate livestock grazing in areas containing vernal pools.