

exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in § 102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT-13; and

(C) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, USPTO claims no exemption under 5 U.S.C. 552a(k) (3), (4), (6) and (7).

#### Appendix to Part 102—Systems of Records Noticed by Other Federal Agencies<sup>1</sup> and Applicable to USPTO Records and Applicability of This Part Thereto

| Category of records                                      | Other Federal agency                                  |
|----------------------------------------------------------|-------------------------------------------------------|
| Federal Personnel Records.                               | Office of Personnel Management. <sup>2</sup>          |
| Federal Employee Compensation Act Program.               | Department of Labor. <sup>3</sup>                     |
| Equal Employment Opportunity Appeal Complaints.          | Equal Employment Opportunity Commission. <sup>4</sup> |
| Formal Complaints/ Appeals of Adverse Personnel Actions. | Merit Systems Protection Board. <sup>5</sup>          |

<sup>1</sup> Other than systems of records noticed by the Department of Commerce. Where the system of records applies only to USPTO, these regulations apply. Where the system of records applies generally to components of the Department of Commerce, the regulations of that department attach at the point of any denial for access or for correction or amendment.

<sup>2</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

<sup>3</sup> The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that department attach at the point of any denial for access or for correction or amendment.

<sup>4</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

<sup>5</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

Dated: June 29, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AG28**

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Zayante Band-Winged Grasshopper

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*) under the Endangered Species Act of 1973, as amended (Act). We propose designation of critical habitat within an approximately 4,230-hectare (10,560-acre) area occupied by the Zayante band-winged grasshopper in Santa Cruz County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary elements of critical habitat for the Zayante band-winged grasshopper are those habitat components that are essential for the primary physical and biological needs of the species. These needs include: food, water, sunlight, air, minerals and other nutritional or physiological needs; cover or shelter; sites for breeding and reproduction and dispersal; protection from disturbance; and habitat that is representative of the historical geographic and ecological

distribution of the Zayante band-winged grasshopper.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments from all interested parties until September 5, 2000. Public hearing requests must be received by August 21, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may hand-deliver written comments to our Ventura Office, 2493 Portola Road, Suite B, Ventura, California.

3. You may send comments by electronic mail (e-mail) to [fw1grasshopper@r1.fws.gov](mailto:fw1grasshopper@r1.fws.gov).

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 805/644-1766.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*), Order Orthoptera and Family Acrididae, was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (mm) (0.54

to 0.68 inches (in.); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984). The Zayante band-winged grasshopper is most similar in appearance to *T. oculans* and *T. koebelei*; neither of these species is known from the Santa Cruz Mountains (Otte 1984; Rentz and Weissman 1984). *Trimerotropis thalassica* and *T. pallidipennis pallidipennis* have been observed in the vicinity of Zayante band-winged grasshopper, but are morphologically distinct from it and appear to prefer different microhabitats (Rentz and Weissman 1984; Arnold 1999a,b).

The flight season for adult Zayante band-winged grasshopper extends from late May through October with peak activity during July and August (White, *in litt.* 1993; Morgan, *in litt.* 1994; Arnold 1999a,b). Specimens have been collected as late as November 4 (Arnold 1999a). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), producing a buzzing sound while in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the color of the hind wings and the buzzing sound made by the wings (Borror *et al.* 1976). No additional information on the life cycle of this species is available.

The Zayante band-winged grasshopper is known only from Santa Cruz County, California. The species was described in 1984 from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia Sand Quarry. Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent surveys near the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley, California (Hovore 1996; USFWS 1998).

Little is known of the historical distribution of the species. A review of museum specimens yielded Zayante band-winged grasshoppers from "Santa Cruz Mountains, no date", "Alma, 1928", "Felton, 1959", and "Santa Cruz, 1941" (Rentz and Weissman 1984). No subsequent collections have been recorded that substantiate the existence of a population in the vicinity of Alma. Furthermore, the town of Alma is currently beneath a reservoir, and the cited specimens cannot be located in the listed depository for verification (D. Weissman, California Academy of Sciences, pers. comm. 1994, 2000). Therefore, because no specific location or habitat descriptions accompanied these historic specimens, they were not

considered in our assessment of the current range and status of the species.

The Zayante band-winged grasshopper occurs in association with the Zayante soil series (USDA Soil Conservation Service 1980). The Zayante soils in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley are dominated by maritime coast range ponderosa pine (*Pinus ponderosa*) forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of these two plant communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and silver-leafed manzanita (*Arctostaphylos silvicola*) mixed chaparral. These communities are collectively referred to as "Zayante sand hills habitat" and harbor a diversity of rare and endemic plant species (Thomas 1961; Griffin 1964; Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone-dominated ridges, and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

The role of landscape-level processes, including hydrology, seed dispersal, succession, fire, and other disturbances, in forming Zayante sand hills habitats is poorly understood. Historically, the Zayante sand hills included a continually changing pattern of habitat patches, each with specific disturbance histories, sizes, and species compositions. At any one time, patches of all possible stages of succession may be present (Lee 1994). Populations of the Zayante band-winged grasshopper evolved within this dynamic landscape and most likely are adapted to disturbance and change.

The habitat of the Zayante band-winged grasshopper was originally described as "sandy substrate sparsely covered with *Lotus* and grasses at the base of pines" (Rentz and Weissman 1984). All of the locations where grasshoppers were found during surveys completed between 1989 and 1994 were on Zayante soils. The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White, *in litt.* 1993; Morgan, *in litt.* 1994). In 1997, at the time of the listing of this species, all of its known locations occurred within 7 discrete areas of sand parkland habitat as characterized by Lee (1994). Recent studies indicated that the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover,

extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief (Hovore 1996; Arnold 1999a, b). However, Zayante band-winged grasshoppers have also recently been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a, b), indicating that Zayante band-winged grasshoppers are not restricted solely to sand parkland.

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Historically, approximately 2,533 ha (6,265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of the Zayante sand hills habitat, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities. These activities include: sand mining, urban development, recreational activities, and agriculture (Marangio and Morgan 1987; Lee 1994; R. Morgan, pers. comm. 1992). Approximately 200 to 240 hectares (ha) (500 to 600 acres (ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional, lower-quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in plant communities, which has reduced the extent and quality of habitat available for the Zayante band-winged grasshopper. For example, active suppression of fire has resulted in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Increase shading from the mixed evergreen forest appears to restrict the use of areas by the Zayante band-winged grasshopper and results in lower population numbers (Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in this area and resulted in areas with more exposure to sunlight. In addition, nonnative plant species, including Portuguese broom (*Cystis striatus*) and sea fig (*Carpobrotus chilensis*), are out-competing native species and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threats to the Zayante band-winged grasshopper (USFWS 1998).

### Previous Federal Action

On July 16, 1992, Dr. David Weissman, of the California Academy of Sciences, petitioned us to list the Zayante band-winged grasshopper as an endangered species. During our status review of the Zayante band-winged grasshopper, we examined the available literature and data on the species' life history, ecology, locality records, and range. Sources of information on the status of and threats to the Zayante band-winged grasshopper included reports supplied by proponents of the listing, plans supplied by reviewing agencies for development projects, and published and unpublished data from scientists with expertise on the species and its habitat needs.

On May 10, 1994, we published a proposed rule in the **Federal Register** (59 FR 24112) to list the Zayante band-winged grasshopper and two other insect species as endangered. The proposed rule constituted the final finding for the petitioned actions for the Zayante band-winged grasshopper in accordance with section 4(b)(3)(B)(ii) of the Act. Publication of the proposed rule opened a 60-day public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. We held a public hearing on July 18, 1994, in Santa Cruz, California, that included presentations of oral testimony and written comments. We published a notice on September 1, 1994 (59 FR 45254) reopening the public comment period through October 31, 1994, to allow submission of additional comments and information concerning the proposed rule.

Using information received during the cited public comment periods, we published a final rule on January 24, 1997 (62 FR 3616), determining the Zayante band-winged grasshopper and Mount Hermon June beetle (*Polyphylla barbata*), both occurring within the Zayante sand hills habitat, to be endangered species. At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent because such designation would not benefit the species since all known populations of the species occur on non-Federal lands where Federal involvement in land-use activities would not generally occur. On September 30, 1997, we made a draft recovery plan for the Zayante band-winged grasshopper, Mount Hermon June beetle, and three plants (Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), Ben Lomond

wallflower (*Erysimum teretifolium*), and Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*)) available for public comment (62 FR 51126). We published the final recovery plan in September 1998.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District Court of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior, for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper, the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity v. U.S. Fish and Wildlife*, CIV 99-1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit according to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic 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 (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical

habitat, provided the exclusion will not result in extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

This critical habitat designation identifies an area that has features that are essential to the conservation of the Zayante band-winged grasshopper and that may require special management considerations or protection. The proposed critical habitat contains a mosaic of habitats that provide breeding, foraging, sheltering, and living spaces for the grasshopper.

### Methods

In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). The area we are proposing to designate as critical habitat currently provides those habitat components essential for the primary biological needs of the Zayante band-winged grasshopper, as defined by the primary constituent elements, and maintains the ecosystem functions.

### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, and other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; protection from disturbance; and habitats that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Zayante band-winged grasshopper are those physical and biological features that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) The presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered

tree and shrub cover, bare or sparsely vegetated ground, and loose sand (Arnold 1999a, b). Zayante sand hills habitat is often characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral as described by Marangio (1985) and Lee (1994). Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine, silver-leafed manzanita, California lilac (*Ceanothus* sp.), *Adenostoma* sp., yerba santa (*Eriodictyon* sp.), sandwort (*Minuartia* sp.), pussypaws (*Calyptidium umbellatum*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinus bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum* ssp. *decurrens*), Ben Lomond wallflower, and Ben Lomond spineflower (Lee 1984; USFWS 1998; McGraw *in litt.* 1999). Of these plant species, Ben Lomond wallflower and Ben Lomond spineflower are also federally endangered and are addressed within the same recovery plan as the Zayante band-winged grasshopper and the Mount Hermon June beetle.

Areas where surveys for Zayante band-winged grasshopper have not been conducted, but are adjacent or contiguous with known occupied habitat, are also essential to the species. Not only is there a potential that these areas contain grasshoppers, the areas are necessary because they: (1) Provide and maintain the ecosystem functions, including, but not limited to, hydrologic processes, succession, seed dispersal, and natural disturbance regimes, necessary to support populations of the Zayante band-winged grasshopper; (2) provide a means of connecting occupied areas so that the deleterious effects of isolation are minimized; and (3) increase the area available to the species in case of localized, random catastrophic events, thus decreasing the potential for extirpation of populations. As successional changes occur over time, these adjacent areas will also provide the grasshopper with suitable habitat.

### Criteria Used To Identify Critical Habitat

In an effort to identify areas essential for the conservation of the species, we evaluated information on Zayante soils, plant communities associated with these soils, and the distribution, life history, and habitat requirements of the Zayante band-winged grasshopper. Using a geographic information system (GIS), maps of the Zayante soil series were generated. We determined that published maps of the Zayante soil

series were imprecise for our needs and did not always account for gradients between soil types. Therefore, a 60-m (200-ft) zone was mapped around the soils to account for possible inaccuracies in the current maps. We arrived at a 60-m zone based on recommendations by the Natural Resources Conservation Service (NRCS), the agency familiar with the techniques used to map soils and the distribution of Zayante soils (R. Casale, NRCS, USDA, pers comm. 2000).

Next, the known locations of the Zayante band-winged grasshopper were overlaid on the map of Zayante soil series. Areas considered occupied by the grasshopper, and included within the boundaries of critical habitat, are areas where grasshoppers have been located and areas with Zayante soils that were adjacent to or contiguous with known locations of the grasshopper. These contiguous and adjacent areas were included in order to create patches large enough in size to maintain ecosystem functions and to connect habitat patches into a larger area so that populations do not become isolated and localized random or catastrophic events do not cause smaller populations to be extirpated. Over time, as succession occurs and vegetation encroaches on areas currently inhabited by the Zayante band-winged grasshopper, populations may disperse into these adjacent patches of habitat.

We considered sites identified in the recovery plan as important for the recovery of the Zayante band-winged grasshopper. While recovery units were not specifically described, the recovery plan recommends protecting the 7 discrete areas of sand parkland (Lee 1994), containing the 10 sites occupied by the species, as one criterion for down-listing to threatened status. These seven areas were included within the boundaries of the proposed critical habitat. Additional areas were also included that have the constituent elements for the species, because new information about the range, distribution, and habitat requirements of the Zayante band-winged grasshopper indicates that the species occupies areas that are outside of these seven discrete areas and that are not considered sand parkland. Furthermore, sand hills habitat adjacent and contiguous with these seven areas is essential to maintain landscape level processes.

We determined that approximately 3,620 ha (8,700 ac) of Zayante soils are scattered throughout Santa Cruz County. The soils occur from west of the community of Bonny Doon east to Corralitos, and from the northern portion of Wilder Ranch State Park

north to the communities of Boulder Creek, Lompico, and Zayante. Several patches are also located near the City of Scotts Valley. The largest cluster of these soils occurs between Highways 9 and 17, surrounding the communities of Scotts Valley, Zayante, Lompico, Ben Lomond, Felton, and Mount Hermon. Surveyors of the Zayante band-winged grasshopper have focused their efforts in this region, and, at present, all of the known locations of this species are from this region. Zayante soils located in the eastern portion of Santa Cruz County in the vicinity of Corralitos do not support vegetation characteristic of the Zayante sand hills habitat.

We excluded from the proposed critical habitat areas that have not been surveyed for the Zayante band-winged grasshopper and that are not part of a continuous corridor of Zayante soils that include known localities of the grasshopper. Although these areas have been excluded, we recognize that they may still include habitat presently or historically occupied by the Zayante band-winged grasshopper. In addition, these unsurveyed areas may include habitat appropriate for introduction of Zayante band-winged grasshoppers in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

We defined the boundaries for the proposed critical habitat using township, range, and section numbers from the public land survey. We propose to designate approximately 4,230 ha (10,560 ac) of land as critical habitat for the Zayante band-winged

grasshopper. Of this area, 1,600 ha (3,950 ac) are lands with Zayante soils and sand hills habitat. The remaining 2,630 ha (6,610 ac) of critical habitat are areas that either support the processes necessary to maintain ecosystem functions and required habitat conditions or were included due to insufficient mapping detail (as described below).

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other similar lands. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, do not contain one or more of the primary constituent elements and do not support the processes necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. Section 10(a) 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 a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal lands that are covered by an existing operative HCP and executed implementation agreement (IA) for the Zayante band-winged grasshopper

under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not proposed for inclusion in critical habitat since they do not meet the definition of critical habitat as defined by section 3(5) of the Act.

We expect that critical habitat may be used as a tool to help identify areas within the range of the Zayante band-winged grasshopper that are essential for the conservation of the species. Critical habitat designation is not intended to discourage the development of HCPs for such areas on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout the development of HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

#### Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat within Santa Cruz County by land ownership is shown in Table 1. The proposed critical habitat includes Zayante band-winged grasshopper habitat throughout the existing known range of the species. Land proposed for critical habitat is under private, local government, and State ownership, and is described within one unit. A brief description of this unit is presented below.

TABLE 1.—APPROXIMATE AREA WITHIN SANTA CRUZ COUNTY ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

| County           | Federal Land | Local/State Land   | Private Land           | Total <sup>1</sup>      |
|------------------|--------------|--------------------|------------------------|-------------------------|
| Santa Cruz ..... | N/A .....    | 250 ha<br>(610 ac) | 3,980 ha<br>(9,950 ac) | 4,230 ha<br>(10,560 ac) |

<sup>1</sup> Area estimates reflect critical habitat unit boundaries, not the extent of the primary constituent elements within the unit.

#### Proposed Critical Habitat Unit

The Proposed Critical Habitat Unit (Unit) encompasses approximately 4,230 ha (10,560 ac) between Highways 9 and 17. Most of the lands designated as critical occur from the southeastern portion of Henry Cowell Redwoods State Park west to the City of Scotts Valley and north to the communities of Ben Lomond, Lompico, and Zayante. A small area proposed for critical habitat is located east of Zayante in the vicinity of Weston Road.

Public lands that occur in this Unit include approximately 130 ha (310 ac) in Henry Cowell Redwoods State Park, owned and managed by the California Department of Parks and Recreation, and all of Quail Hollow Park (120 ha (300 ac)), jointly owned and managed by the County of Santa Cruz and the California Department of Fish and Game. Areas covered in the Revised Habitat Conservation Plan for Quail Hollow Quarry (Graniterock 1998) and the Habitat Conservation Plan for

Hanson Aggregates' Felton Plant (Hanson Aggregates 1999) have been excluded from designation as critical habitat. See section "Relationship to Habitat Conservation Plans" for further discussion of these plans.

#### 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 do not destroy or

adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid the destruction or adverse modification of 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 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 private or State lands requiring a permit from a Federal agency or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

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 adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Zayante band-winged grasshopper 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 destroy or

adversely modify critical habitat include, but are not limited to:

(1) Excavating, compacting, grading, or discing of soil, and vegetation removal;

(2) Violations of grading, mining, or construction permits within critical habitat;

(3) Recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use in critical habitat;

(4) Application of pesticides within critical habitat beyond the boundaries of maintained lawns and gardens or in violation of label restrictions;

(5) Activities that could lead to the introduction of exotic species into critical habitat; and

(6) Activities that cause erosion of soils in critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying critical habitat of the listed species. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species survival and recovery. Actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat for the Zayante band-winged grasshopper is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. We believe that designation of critical habitat would have little effect on Federal agencies because no proposed critical habitat occurs on Federal lands, and we are not aware of any federally funded or federally permitted actions planned to take place in critical habitat.

### *Relationship to Habitat Conservation Plans*

Two HCPs have been completed within the range of the Zayante band-winged grasshopper. Both HCPs are for sand mining operations and both provide take authorization for the Zayante band-winged grasshopper. The Revised Habitat Conservation Plan for the Quail Hollow Quarry owned and operated by Granite Rock Company provides for the permanent protection and management of three conservation areas known to be occupied by the Zayante band-winged grasshopper and that total 26.3 ha (65.8 ac) in area (Granite Rock 1998). The Habitat Conservation Plan for the Felton Plant owned and operated by Hanson Aggregates provides for the permanent protection and management of two habitat set-asides known to be occupied by the Zayante band-winged grasshopper and that total 8.5 ha (21.3 ac) in area (Hanson Aggregates 1999). In addition, both HCPs provide minimization measures to reduce the potential impacts of the sand-mining operations on the Zayante band-winged grasshopper. Because the habitat for the Zayante band-winged grasshopper preserved in the conservation areas is managed for the benefit of this species, there are no additional management considerations or protections required for those lands covered under the HCP. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Zayante band-winged grasshopper do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

Habitat conservation plans that may be developed in the future will be intended to provide for protection and management of habitat areas essential for the conservation of the Zayante band-winged grasshopper, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the grasshopper. The process also enables 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 fully expect that HCPs undertaken by local jurisdictions (*e.g.*, cities and counties) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of

the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

### **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 as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude such areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

### **Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this

proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of habitat for the Zayante band-winged grasshopper, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, especially, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the Zayante band-winged grasshopper, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal lands within the boundaries of an existing approved HCP with an executed IA for the Zayante band-winged grasshopper approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat for the grasshopper. We believe that, since an existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the Zayante band-winged grasshopper, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; and

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to



require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Zayante band-winged grasshopper is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Zayante band-winged grasshopper in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Zayante band-winged grasshopper:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Zayante band-winged grasshopper we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment

process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

If comments are submitted electronically, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include Attn: RIN 1018-AG28 and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644-1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek

the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or



other units of government. The Zayante band-winged grasshopper was listed as an endangered species in 1997. In fiscal years 1997 through 1999, we received no requests for consultation from other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Zayante band-winged grasshopper.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal

persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (Table 2). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered

as "jeopardy" under the Act. Accordingly, the designation of critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning take of the species).

TABLE 2.—IMPACTS OF ZAYANTE BAND-WINGED GRASSHOPPER LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities                                                    | Activities potentially affected by species listing only <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                      | Additional Activities Potentially Affected by Critical Habitat Designation <sup>1</sup> |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Federal Activities Potentially Affected <sup>2</sup> .                      | None (there is no Federal land within the range of the species) .....                                                                                                                                                                                                                                                                                                                                                                                     | None.                                                                                   |
| Private or other non-Federal Activities Potentially Affected <sup>3</sup> . | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Zayante band-winged grasshopper habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat). | None.                                                                                   |

<sup>1</sup> These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Zayante band-winged grasshopper since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in the proposed critical habitat. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of critical habitat. We expect little effect given that there are no Federal lands designated as critical habitat, and no Federal nexuses for lands designated as critical habitat have been identified at this time.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for

determining critical habitat contained in the Endangered Species Act.

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

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we propose designation of property owned by State and local governments and private property and identify the types of Federal actions or authorized activities that are of potential concern. If these activities are sponsored by Federal agencies, they may be carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat. For actions on non-Federal property that do not have a Federal connection (such as funding or

authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat.

*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.):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits

or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule 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.

#### *Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Zayante band-winged grasshopper. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Zayante band-winged grasshopper.

#### *Federalism*

In accordance with Executive Order 13132, the 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, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the

Zayante band-winged grasshopper with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the Zayante band-winged grasshopper imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Zayante band-winged grasshopper.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

#### *National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the

Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### *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) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We have determined that no Tribal lands are essential for the conservation of the Zayante band-winged grasshopper because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for the Zayante band-winged grasshopper on Tribal lands.

#### *References Cited*

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### *Author*

The primary author of this notice is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### **List of Subjects in 50 CFR Part 17**

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

#### **Proposed Regulation Promulgation**

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

#### **PART 17—[AMENDED]**

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

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

2. In § 17.11(h) revise the entry for "grasshopper, Zayante band-winged" under "Insects" to read as follows:

#### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

| Species                              |                                     | Historic range        | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|--------------------------------------|-------------------------------------|-----------------------|------------------------------------------------------|--------|-------------|------------------|---------------|
| Common name                          | Scientific name                     |                       |                                                      |        |             |                  |               |
| * INSECTS *                          | * *                                 | * *                   | * *                                                  |        | *           |                  | *             |
| * Grasshopper, Zayante band-winged * | * <i>Trimerotropis infantilis</i> * | * U.S.A. (CA) ..... * | * NA *                                               | E      | 605         | 17.95(i)         | NA            |
| * *                                  | * *                                 | * *                   | * *                                                  |        | *           |                  | *             |

3. Amend § 17.95(i) by adding critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*), in the same alphabetical order as the species occurs in § 17.11(h).

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

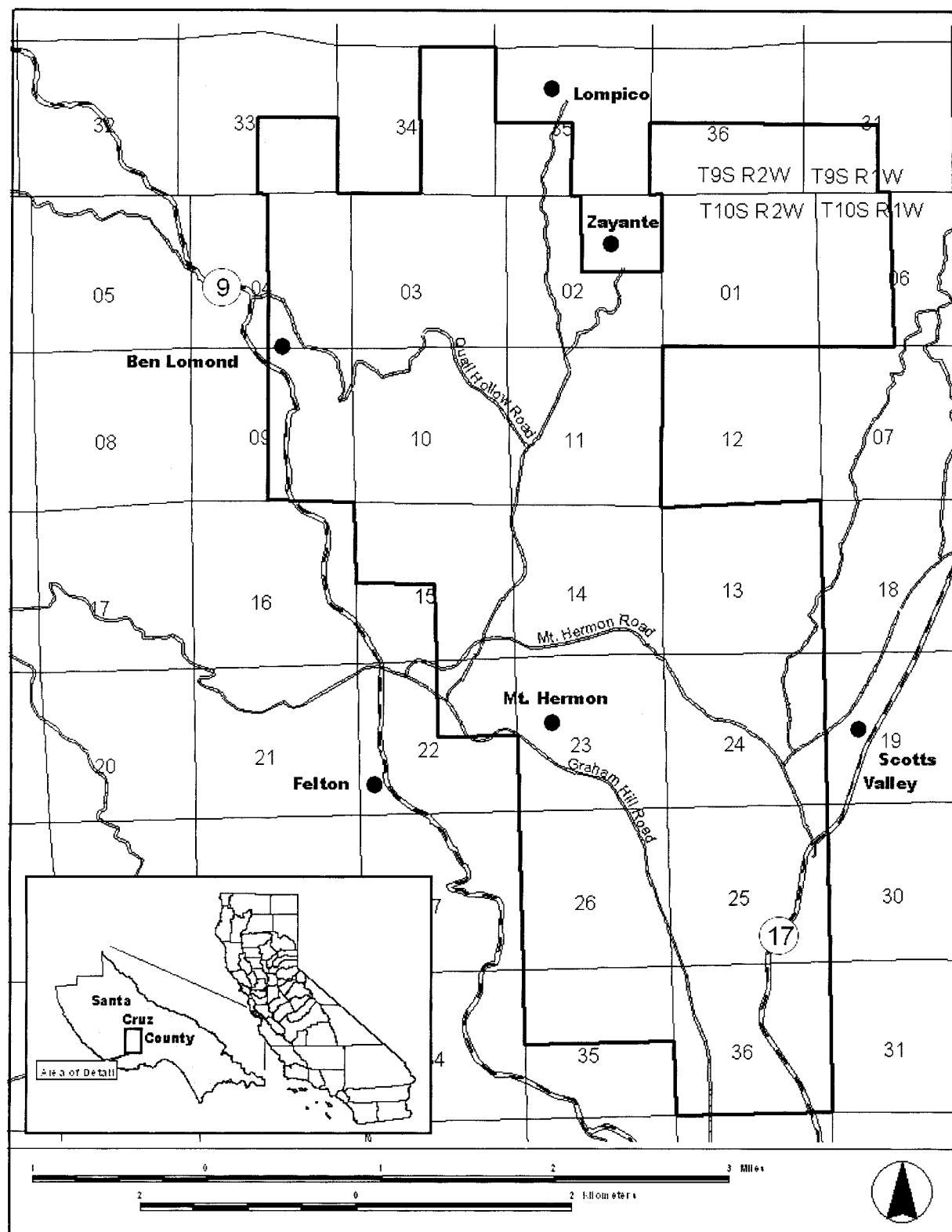
(i) *Insects.*

\* \* \* \* \*

ZAYANTE BAND-WINGED  
GRASSHOPPER (*Trimerotropis infantilis*)

1. The unit of critical habitat is depicted for Santa Cruz County, California, on the map below.

**BILLING CODE 4310-55-P**



2. Within this area, the primary constituent elements for the Zayante band-winged grasshopper are those physical and biological elements that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: (a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand. Zayante sand hills habitat is characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral. Plant species that may occur within the boundaries include, but are not limited to: ponderosa pine (*Pinus ponderosa*), silver-leafed manzanita (*Arctostaphylos silvicola*), California lilac (*Ceanothus sp.*), Adenostoma sp., yerba santa

(*Eriodictyon sp.*), sandwort (*Minuartia sp.*), pussypaws (*Calyptidium umbellatum*), Ben Lomond spineflower (*Erysimum teretifolium*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinus bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum ssp. decurrens*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*).

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayanta, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of

California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE $\frac{1}{4}$  sec. 31; T.9 S., R.2 W., SE $\frac{1}{4}$  sec. 33, E $\frac{1}{2}$  sec. 34, SW $\frac{1}{4}$  sec. 35, S $\frac{1}{2}$  sec. 3; T.10 S., R.1 W., W $\frac{1}{2}$  sec. 6; T.10 S., R.2 W., sec. 1, S $\frac{1}{2}$  NW $\frac{1}{4}$  sec. 2, sec. 3, W $\frac{1}{2}$  sec. 4, W $\frac{1}{2}$  sec. 9, sec. 10, sec. 11, sec. 13, sec. 14, N $\frac{1}{2}$  SE $\frac{1}{4}$  sec. 15, NE $\frac{1}{4}$  sec. 22, secs. 23–26, N $\frac{1}{2}$  sec. 35, sec. 36, excluding all lands covered under the Revised Habitat Conservation Plan for the Quail Hollow Quarry and the Habitat Conservation Plan for the Hanson Aggregates' Felton Plant.

Dated: June 28, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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