

of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants. Approximately 27 percent of the proposed critical habitat on Lanai, including portions of proposed unit D, are zoned Agriculture. Although the Service's economic analysis did not find it likely, the landowner and other commenters nevertheless believe that there is a risk that the critical habitat designation will result in the rezoning of lands, that State and county permits will contain additional requirements and expense for protection of lands designated as critical habitat, and that there is an increased risk of third-party litigation. We believe that the landowner's concerns over these potential negative impacts would affect its voluntary conservation efforts, which we believe are necessary to conserve these species.

As described earlier, Castle and Cooke Resorts, LLC, has a history of entering into conservation agreements with various Federal and State agencies and nongovernmental organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Awehi Gulch Partners for Fish and Wildlife project, Puhielelu Exclosure (funded through section 6 of the Act), Lanai Summit Fence project in concert with NRCS and the Service, Lanai Snail Fence, Lanai Forest Stewardship Project, Lanai Forest and Watershed Partnership, and the Kanepuu Preserve (perpetual easement to TNCH).

Thus, we believe it is essential for the recovery of these 28 species to build on the previous voluntary conservation efforts. Because the Federal government owns no land on Lanai, and because large tracts of land suitable for conservation of threatened and endangered species are owned by one private landowner, successful recovery of listed species on Lanai is especially dependent upon working partnerships and the voluntary cooperation of this landowner. Without additional voluntary conservation efforts for these 28 species, recovery will not occur.

(3) *The Benefits of Exclusion Outweigh the Benefits of Inclusion*

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of

excluding proposed unit Lanai D as critical habitat outweigh the benefits of including it as critical habitat for *Abutilon eremitopetalum*, *Adenophorus periens*, *Bonamia menziesii*, *Brighamia rockii*, *Centaurium sebaeoides*, *Cenchrus agrimonioides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiensis*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahlana* var. *remyi*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Isodendron pyrifolium*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, *Neraudia sericea*, *Solanum incompletum*, *Spermolepis hawaiiense*, *Tetramolopium remyi*, *Vigna o-wahuensis*, and *Viola lanaiensis*.

This conclusion is based on the following factors:

1. Large portions of proposed unit D (Lanaihale area) are currently being managed under the Lanai Forest and Watershed Partnership by the landowner on a voluntary basis in cooperation with us and the State of Hawaii to achieve important conservation goals. Building on this partnership approach, Castle and Cooke Resorts, LLC, has entered into a long-term agreement with the Service to manage the area within proposed unit D and adjacent areas for conservation. In the past, Castle and Cooke Resorts, LLC, has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

2. Simple regulation of "harmful activities" is not sufficient to conserve these species. Landowner cooperation and support will be required to prevent the extinction and promote the recovery of all of the listed species on this island due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation. This need for landowner cooperation is especially acute because the proposed unit Lanai D is unoccupied by eleven of the 28 species. Future conservation efforts, such as translocation of these eleven plant species back into unoccupied habitat on the island, will require the cooperation of Castle and Cooke Resorts, LLC.

3. Excluding proposed unit Lanai D will foster participation in ongoing and future voluntary conservation efforts on the island. We believe the memorandum of agreement with Castle and Cooke Resorts, LLC, documents this

commitment to voluntary conservation efforts on their lands on Lanai. This cooperation is essential to the conservation of the species.

4. Given the current watershed partnership and recent conservation agreements between the Service and the landowner, the Service believes the overall regulatory and educational benefits of including this unit as critical habitat are relatively small in comparison. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal will be effectively accomplished through the identification of this area in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because, as described in the economic analysis and in this rule, there is a low likelihood that this proposed critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The Service is unable to identify any other potential benefits associated with critical habitat for this proposed unit.

In conclusion, we find that the net benefits of excluding proposed unit Lanai D from critical habitat for these species outweigh the benefits of including it. As described above, the overall benefits to these species of a critical habitat designation for this unit are relatively small. We conclude there is a higher likelihood of beneficial conservation activities occurring on this portion of Lanai without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because active management is integral to the recovery of these species, which are found almost entirely on private land. The landowner is more likely to continue and increase their ongoing voluntary conservation efforts on the island if this area is not designated as critical habitat.

(4) *Exclusion of This Unit Will Not Cause Extinction of the Species*

In considering whether or not exclusion of proposed unit D might result in the extinction of any of these 28 species, the Service first considered the impacts to the seven species endemic to Lanai (*Abutilon eremitopetalum*, *Cyanea macrostegia* ssp. *gibsonii*, *Gahnia lanaiensis*, *Hedyotis schlechtendahlana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, and *Viola lanaiensis*), and second to the 21