

various projects as a result of designation of lands in proposed proposed Unit 5a. The commenters suggested indirect costs approximating \$415 million. Furthermore, the commenters stated that the DEA fails to address broader economic impacts to the community of Kailua-Kona and the State such as costs approximating \$24 million as a result of potential loss of land development.

Our Response: We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(54) *Comment:* Table ES-1: Under "Residential Development," needs to add reference to Kaloko Properties Development.

Our Response: The Kaloko Properties development is referenced in section 3.e. of the Addendum and it is included in the heading "Other Residential Development, Agricultural District" in Table Add-1.

(55) *Comment:* Page VI-11, second to last paragraph: Based on maps supplied by the Service, MID/TSA estimates that 15 ha (37 ac) are in the Urban District (Kaloko Industrial Park, Phases III & IV). Assuming the referenced 5 ha (13 ac) refers to lands north of Hina Lani Street, the second sentence should be revised to reflect that there are plans to develop golf course and residential uses on Urban lands proposed for critical habitat designation. Page VI-13, 2nd paragraph: The second sentence should be revised to reflect that as part of the Kaloko Properties development, there are plans to develop golf course and residential uses on lands proposed for critical habitat designation. Development is planned within the next 10 years. Page VI-14, 2nd paragraph under 3.c: The paragraph should be revised to reflect that: (1) The developer is TSA Corporation, and (2) county zone change allowing for commercial-industrial mixed use development was granted. Page VI-28, section 3.i.(2) New Roads: In the first paragraph, the County of Hawaii no longer plans to extend Olowalu Street. As such, this paragraph should be deleted. Page VI-39, section 3.m.(2) Planned Golf Courses: The discussion should add the planned Kaloko Golf Course in proposed Unit 5a that has Urban zoning and is planned to be constructed on approximately 78 ha (194 ac) in TMK Parcel 7-3-09: 25.

Our Response: This information is included in section 3.l. of the Addendum; however, there is no change in the DEA cost estimate.

(56) *Comments:* Page VI-64, last paragraph: Need to also add reference to the Kaloko Properties development; Page VI-65, Previous Expenditures and Future Profits: Need to add reference to

the economic impacts from Kaloko Properties development; Page VI-65, 7th paragraph regarding Kaloko Industrial Park: We estimate up to 33 lots would be affected, with an economic loss of \$15 million based on property sales in the latest phase; Page VI-69, 3rd paragraph, Potential Redistricting Costs: The potential economic cost range of \$255 million to \$550 million appears to be grossly understated given our own estimate of the loss of \$415 million on our Properties in proposed Unit 5a, but even then, this cost range (including Kaloko Properties costs) should be included in the summary tables, rather than being dismissed as "speculative."

Our Response: All of this information is included in section 4.b. of the Addendum. The potential economic impacts to the Kaloko Industrial Park expansion in proposed Unit 5a (island of Hawaii) include a loss of \$500,000 in previous expenditures and \$12 million in future profits. The potential impacts to the Kaloko Properties development in proposed Unit 5a (island of Hawaii) include \$4.2 million in previous expenditures and \$13 million to \$25 million in future profits. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(57) *Comment:* HCDCH commented that the DEA incorrectly concluded that economic impacts to the VOLA project would be moderate or modest because there is not likely to be any Federal involvement. The VOLA project may in the future request Federal funding to assist with development of affordable housing. The State would then lose money due to the direct impacts of various required consultations. Furthermore, the DEA does not acknowledge the cost of developing affordable housing at VOLA in lieu of Federal funding assistance.

Our Response: Section 3.c. of the Addendum specifically addresses HCDCH concerns. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(58) *Comment:* The DLNR identified five parcels (TMK (2) 1-8-001:005; TMK (2) 2-1-004:049; TMK (2) 2-1-006:076; TMK (2) 2-1-006:077; and TMK (2) 2-1-006:078) that should be excluded from designation because the DEA failed to establish that the benefits of including these parcels in the designation outweigh the costs of including these parcels in the designation.

Our Response: Two of the five parcels (TMK (2) 1-8-001:005 and TMK (2) 2-1-004:049) are leased for pasture purposes. The other three parcels (TMK (2) 2-1-006:076, TMK (2) 2-1-006:077, and TMK (2) 2-1-006:078) are

identified as lands with either high land values or with development potential.

Section 3.g. of the Addendum evaluated the direct economic impact of critical habitat designation on these two parcels under lease for pasture purposes and concluded that no direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

Sections 4.a. and 4.b. of the Addendum discussed indirect costs, specifically the possibility of mandated conservation management measures that would interfere with the ability to lease these lands for pasture purposes, and the possibility of restrictions on the State's ability to develop the land in the future as a result of redistricting.

As discussed in section 4.a., mandated conservation management of all of the land in critical habitat is not reasonably foreseeable. The concern expressed by some is that the prohibition on taking endangered and threatened species could be triggered by designation of critical habitat if courts apply the principles of *Palila v. Hawaii Department of Land and Natural Resources* 471 F. Supp. 985 (D. Haw. 1979), *aff'd* 639 F.2d 495 (9th Cir. 1981) and *Palila v. Hawaii Department of Land and Natural Resources* 649 F. Supp. 1070 (D. Haw. 1986) *aff'd* 852 F.2d 1106 (9th Cir. 1988). While the circumstances considered by these cases happened to occur in the palila's critical habitat, the legal issues involved interpretation of "harm" in the Act's definition of "take" affirming that habitat degradation can constitute "harm" to a listed species. They did not announce a rule that degradation of designated critical habitat automatically constitutes take. While critical habitat may provide information to help a landowner identify where take through habitat modification may occur, the Federal and State take prohibitions are triggered by the listing of a species. These prohibitions apply whether or not critical habitat has been designated. In addition, there is legal interpretation Federal, State, or county law or regulation that mandates conservation management for critical habitat. As such, this analysis concludes that mandated conservation management based on critical habitat designation is not likely.

Section 4.b. of the Addendum discussed the possible impact on future development on the three parcels identified by DLNR. The Addendum recognized that while it is possible that redistricting of these parcels (should it occur) could restrict the ability of DLNR to develop these lands in the future, the economic impact of such a restriction