

there is no certainty that any or all of these indirect costs would be incurred, these figures are illustrative of the order of magnitude of the indirect impacts that could occur from the designation.

(1) Benefits of Inclusion

These areas proposed for development or other uses are proposed Units 5A and 5B. Proposed Unit 5A absent this exclusion would consist of 226 acres of State and private land. Proposed Unit 5B absent this exclusion would consist of 232 acres of State land. Both units are unoccupied by the moth.

If these areas were designated as critical habitat, any Federal agency which proposed to approve, fund or undertake any action which might adversely modify the critical habitat would be required to consult with us. This is commonly referred to as a "Federal nexus" for requiring the consultation. Since the areas in question are not occupied by the plants, this consultation would not be required absent the critical habitat designation.

The draft economic analysis and final addendum indicate no projects within the areas proposed for exclusion which have a Federal nexus, and thus there is no expectation that there would be any section 7 consultations if these areas were designated as critical habitat for the moth.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. These units have already been identified through the draft proposal and final designation. In addition, the State has included a preserve for listed plants within its VOLA development project, which will contribute to the long-term educational benefit of conserving the habitat of listed species.

In summary, we believe that a critical habitat designation for the moth on these properties would provide relative low additional Federal regulatory benefits. There is no Federal activity which might trigger the section 7 consultation process for these species known or anticipated for the lands to be excluded. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the notice and comments which accompanied the development of this regulation, and the proposed critical habitat is known to the landowners. In addition, the State is

planning for a preserve for the listed plants within the VOLA development which will provide ongoing educational benefits regarding the habitat of listed species.

(2) Benefits of Exclusion

There are two development projects currently planned within the pre-exclusion boundaries of proposed Units 5A and 5B which could suffer significant economic impacts due to indirect effects of the critical habitat designation.

The Housing and Community Development Corporation of Hawaii has since 1990 had a master-planned community development project known as "Villages at Laiopua" (VOLA), much of which is within the pre-exclusion boundary of proposed Unit 5B. This includes a planned 570 "affordable housing" homes within the area proposed for designation. The State of Hawaii has already invested \$30 million in infrastructure costs, including roads, utilities, a High School, planning and expanding the local waste-water treatment plant, and some of the project has been constructed.

There are real but undeterminable possibilities that designation of these areas as critical habitat would lead to loss or significant restriction of the project through actions not under the control of the Federal government but resulting from the critical habitat designation. These include redistricting of land, rezoning and other regulatory approvals, and litigation related to both.

Hawaii has statewide land classifications of Urban, Rural, Agricultural and Conservation, with restrictions on what type of activities can be conducted within the different classifications. The State Department of Land and Natural Resources commented on this proposal that they would be required to initiate rezoning of lands designated as critical habitat into the "Conservation" classification, which prohibits development.

While there is a low probability that the State Land Use Commission would finally vote to redistrict the lands proposed for the VOLA project, that possibility exists. In addition, there could well be litigation designed to either force the Commission to act or to have a court make the decision.

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the \$30 million in sunk

costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of \$2.7 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

The second project within the excluded areas is known as the Kaloko Properties/Kaloko Town Center. This project has been underway since 1987, and covers 1,150 acres, of which 240, or 21%, is within the preexclusion boundary of the proposed units. The developers have already expended over \$20 million for infrastructure improvements, engineering and related costs, which approximately \$4.2 (by percentage allocation) is associated with the portion of the project within the proposed critical habitat. This project will need both redistricting from the State and rezoning from the county for portions of the land. The final addendum to the economic analysis finds there is a reasonably foreseeable chance that the designation of critical habitat would affect this development.

In the worst-case scenario, the State or county might decide not to grant the discretionary approvals needed for the project—redistricting and rezoning—or might be prevented from doing so by litigation. This could lead to loss of the \$4.2 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire \$20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between \$40 to \$80 million. Using a present value discount, the loss would range between \$13 and \$25 million.

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

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