

available information indicates that there are no other affordable housing projects planned within the next 10 years.

We accordingly do not find that the benefits from the designation of critical habitat for lands within the VOLA project, as discussed above, exceed the benefits of avoiding the possible economic and social costs which could well arise from this designation.

For the Kaloko Properties/Kaloko Town Center, there is also the real possibility that the designation of critical habitat could lead to loss of necessary regulatory approvals. This in turn 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, this loss would range between \$13 and \$25 million. (There could also be the loss of all project revenues in the event the inability to utilize the lands within the critical habitat designation caused the failure of the entire project.)

The possibility of significant economic impacts to this project, while not certain, clearly exist. As noted above, we cannot find offsetting benefits from the designation of critical habitat in these two units which exceed the benefits of avoiding these possible economic costs.

There are two other factors of which we take note but upon which our decision does not rest. First, in June 2002, the State enacted legislation allowing State entities to enter into Safe Harbor agreements and Habitat Conservation Plans for three designated areas, including the VOLA project. There were previously specimens of the moth's larval host plant, which presumably could be reintroduced. There are also populations of the various plants on which adult moths feed. This area is thus a candidate for a Safe Harbor agreement. Absent the exclusion, it is highly unlikely the State would pursue these conservation options.

Secondly, the developers of this project contacted us after the close of the comment period offering to undertake a number of actions designed to provide conservation benefits to the species. Specifically, the offer included: (1) To set aside 100 to 130 acres within the proposed Unit 13; (2) enter into good faith negotiations with the Federal, State or county entities for acquisition of the area; (3) agree to enter into a Safe

Harbor agreement with us; and (4) to enter into a memorandum of understanding or cooperative agreement to address habitat protection, monitoring and management actions for the remainder of their property relating to Blackburn's sphinx moth and two species of endangered plants.

Due to the court-ordered date by which this designation must be completed, we were unable to conclude such an agreement with the developers or to enter into a Safe Harbor agreement with the State prior to issuing this notice and regulation. However, if we had been, these are the types of agreements for which we have found in other cases that the benefits of the agreement exceed the benefits of designation and thus warrant exclusion (See previous discussions of exclusions under section 4(b)(2)).

It has been our policy not to make exclusions under section 4(b)(2) based on offers of conservation agreements, and we are not doing so in either case here. However, we find it highly unlikely that either party would pursue them absent the exclusions, and note the ability to pursue the agreements as a secondary benefit of the exclusions. A decision by the developers to follow through on their offer and by the State to pursue a Safe Harbor agreement might well be in both their and the species best interest.

(4) Exclusion Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of the proposed critical habitat might result in the extinction of Blackburn's sphinx moth, we considered the impacts on the species. Given that the units in question are unoccupied, we find, based on all of the information available to us, that the projects proposed for the areas to be excluded will not adversely impact existing populations of the moth.

The exclusions will provide an opportunity to pursue beneficial conservation agreements with the landowners, as noted above, that most likely would not exist without the exclusions.

Critical habitat for the moth is also designated on Molokai, Maui, and Kahoolawe, and in other locations on the island of Hawaii.

We accordingly find no basis for any conclusion that these exclusions would cause extinction of the species.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of

Blackburn's sphinx moth and the special management needs of this species, and are based on the best scientific and commercial information available. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for this species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

Descriptions of Critical Habitat Units

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 2.

Critical habitat includes habitat for the Blackburn's sphinx moth on the islands of Hawaii, Kahoolawe, Maui, and Molokai. Lands designated as critical habitat have been divided into 9 units. A brief description of each unit is presented below.

Unit 1: Puu O Kali (Maui)

Unit 1 consists of approximately 1,604 ha (3,965 ac) on State and private land, encompassing portions of the leeward slope of Haleakala and adjacent portions of the upper southeast isthmus. The unit is bounded on the north and the south by pasture lands, on the east by the lower slopes of Haleakala below the area of Kula, and on the west by the coastal town of Kihei. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones, including the highly visible Puu O Kali. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 1993).

Along with Units 2, 3, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium*, and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide temporary (ephemeral) habitat for migrating Blackburn's sphinx moths.

Unit 2: Cape Kinau (Maui)

Unit 2 consists of approximately 603 ha (1,490 ac) on State and private land, encompassing Cape Kinau and the entire Ahihi-Kinau NAR. The unit is