

preserve for the areas occupied by *N. ovata* in proposed Unit Y2, which will provide ongoing educational benefits.

(2) Benefits of Exclusion

There are three development projects currently planned within the pre-exclusion boundaries of proposed Units Y1 and Y2 which could suffer significant economic impacts due to indirect effects of the critical habitat designation. In addition, the \$5.1 million in project modification costs to the K2020 landfill remediation project discussed above would likely be shifted from the State or from housing developers to the non-profit K2020 group.

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 Y2. This includes a planned 1,700 homes within the area proposed for designation, of which 1,020, or 60%, would be classified as "affordable housing". The State of Hawaii has already invested \$30 million in infrastructure costs, including roads, utilities, a High School, planning and expanding the local wastewater treatment plant, and some of the project has been constructed.

The plan includes two areas totaling 38 acres to be set aside as preserves for the listed plants. As noted above, the final addendum to our economic analysis indicates it would likely cost \$5.1 million over the next 10 years to manage these preserves. Absent the development being largely constructed, it is not likely that these plants would benefit from the management envisioned for the preserves.

Critical habitat provides primarily prohibitive regulatory benefits. But in Hawaii, simply preventing "harmful activities" will not slow the extinction of listed plant species (see detailed discussion under "Queen Liliuokalani Trust", below). Establishment of plant preserves as planned here provide positive benefits to the species. In addition, 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. Absent the exclusion, it is unlikely the State would pursue either of these conservation options.

In addition, 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 state-wide 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.

If the project were unable to proceed, 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 \$4.8 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 335, or 29%, is within the pre-exclusion boundary of the proposed units. The developers have already expended over \$20 million for infrastructure improvements, engineering and related costs, which approximately \$5.8 (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 \$5.8 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 \$39 to \$78 million. Using a present value discount, this loss would range between \$17 and \$34 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.

Alternatively, in an effort to avoid those situations, the developer might offer additional restrictions on the development. The final addendum estimates, with admitted imprecision, that these costs might range from \$1.1 to \$2 million for the portion of the project within the proposed designation.

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.

The last project for which we are excluding areas for economic reasons is the environmental remediation of an old landfill by the non-profit K2020 organization discussed above. The landfill adjoins the pre-exclusion boundaries of proposed unit Y2 on 3 sides, and has internal fires. K2020 plans to secure Federal grants to remediate the site, including extinguishing the fires.

This will require use of unoccupied habitat within the boundary of proposed unit Y2 for the landfill material while the remediation is conducted. The economic analysis further indicates that this project will be to the long-term benefit to the listed plants by reducing the possibilities of wildfires. However, it is anticipated that as mitigation for the temporary loss of this portion of the critical habitat, the K202 group would be required to obtain funding to manage two preserves to be established in connection with the VOLA project, at a cost of \$5.1 million over the next 10 years. Requiring this non-profit group to mitigate for use of unoccupied critical habitat to remediate an environmental problem, when the remediation will ultimately benefit the species, does not provide an overall conservation benefit to the species. This funding could well come from funds otherwise intended for conservation purposes in Hawaii, or the cost could cause the group to abandon the project.