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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 14, 2022

Director of Council Services
Traci N. T. Fujita, Esq.
Deputy Director of Council Services
David M. Raatz, Jr., Esq.

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: AMENDMENT TO BILL 154 (2022) (PAF 22-360)

May I request the attached proposed amendment to Bill 154 (2022), entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19 AND 20, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY DISTRICTS," be placed on the next Council meeting agenda.

Sincerely,

SHANE M. SINENCI
Councilmember

paf:ans:22-360a

Enclosure

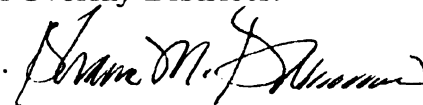
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COUNTY COMMUNICATION NO. 22-266

MAUI COUNTY COUNCIL
Amendment Summary Form

Legislation: Bill 154 (2022) relating to Cultural Overlay Districts.

Proposer: Councilmember Shane M. Sinenci.



Description: Amend Bill 154 (2022) as follows:

1. Amend the title by replacing "DISTRICTS" with "MAP AND SENSITIVITY DESIGNATIONS";
2. Amend proposed Maui County Code Section 19.46.010 by replacing "District" with "Map" in the first sentence;
3. Amend proposed Maui County Code Section 19.46.010 by replacing "districts or cultural overlays" with "map" in the last sentence;
4. Change proposed Maui County Code Section 19.46.020's heading from "Establishment" to "Establishment of cultural overlay map and cultural sensitivity designations";
5. Amend proposed Maui County Code Section 19.46.020(B) to add minimum map data display requirements;
6. Amend proposed Maui County Code Section 19.46.020(C) to specify the process for adopting and updating the cultural overlay map and to reflect that the Administration added two positions dedicated to creating a countywide cultural overlay map, eliminating the need for individual overlay districts;
7. Amend proposed Maui County Code Section 19.46.030(B) to add the following designation criteria:
 - "10. The area contains the presence of soil types, vegetation, and topography associated with cultural resources, or archaeological eco-indicators warranting additional review.
 11. The area contains the presence of historic and existing waterways, wetlands, and back-filled areas.";

8. Change proposed Maui County Code Section 19.46.040's heading from "Designation updates" to "Amendments to the cultural overlay map" and incorporate new content to the section's text;
9. Change proposed Maui County Code Section 19.46.050's heading from "Appeals" to "Permit review for land use a cultural sensitivity designation;"
10. Amend proposed Maui County Code Section 19.46.050 to delete provisions relating to appeals and add subsections (7) and (8) for review of building permits involving ground-altering activities and permits for explosive materials.
11. Delete proposed Maui County Code Section 19.46.060.
12. Incorporate various other amendments for clarity and consistency.

Motion: Move to substitute Bill 154 (2022) with the attached proposed FD1 version.

Attachment: Proposed FD1 version of Bill 154 (2022).

paf:ans:22-360b

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY MAP AND SENSITIVITY DESIGNATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1: Article II, Title 19, Maui County code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 19.46

CULTURAL OVERLAY MAP AND SENSITIVITY DESIGNATIONS

Sections:

- 19.46.010 Title and purpose.**
- 19.46.020 Establishment of cultural overlay map and cultural sensitivity designations.**
- 19.46.030 Requirements for cultural sensitivity designations.**
- 19.46.040 Amendments to the cultural overlay map.**
- 19.46.050 Permit review for land with a cultural sensitivity designation.**

19.46.010. Title and purpose. The ordinance codified in this article is known and may be cited as the "Maui County Cultural Overlay Map Ordinance." As stated in the Countywide Policy Plan, Maui County government has a responsibility to protect cultural resources. Certain geographically definable areas contain a great density of cultural and archaeological resources to the extent that development in these areas is highly likely to disturb archaeological resources or burial sites. Many of these sites are likely significant and require consideration and careful planning to ensure that the

past is not erased but preserved for the benefit of generations to come.

The establishment of a cultural overlay map will alert developers, property owners, and nearby residents that special consideration may be needed to protect cultural assets and lay out an efficient review process.

19.46.020 Establishment of cultural overlay map and cultural sensitivity designations. A. A countywide cultural overlay is hereby established.

B. A cultural overlay map must at a minimum display the following information:

1. Cultural sensitivity designations where appropriate pursuant to subsection 19.46.030B.

2. Existing data sets including geology, hydrology, soil types, flood zones, wetlands, tsunami zones, bathymetry, topography, environmental zones, land commission awards and land grants, Department of Land and Natural Resources State Historic Preservation Division data on known cultural sites and burials and burial preserves provided that sensitive data be publicly shown in approximation, and Maui County Department of Planning data on current and proposed construction.

3. Data sets including the locations pre-and post-contact events such as battles, the signing of the Mahele, the drafting of the Hawaiian Constitution and other important historical events, mana'o gleaned from Hawaiian language sources including place names and their meaning and traditional knowledge of the environment, mythological events recorded in chants and mele, historic maps, documents, photographs, and audio and video clips relating to specific parcels or areas.

C. Cultural overlay map ordinance. The cultural overlay map must be adopted and updated using the following process:

1. Within one year of the effective date of this ordinance, the principal archaeologist must prepare a cultural overlay map ordinance and transmit the ordinance to the council. The principal archaeologist must also transmit overlay map update ordinances reflecting newly discovered information on an annual or sooner basis as appropriate.

2. The council must review and may transmit the ordinance to the appropriate planning commission by resolution pursuant to section 19.510.060.A.1.

3. The planning commission must review the ordinance pursuant to section 19.510.060, including a public hearing, and transmit its findings and recommendations to council in accordance with the deadline specified by the charter.

4. The council must also transmit the ordinance to the cultural resources commission, the applicable Island burial councils, Office of Hawaiian Affairs, and the Department of Land and Natural Resources, State Historic Preservation Division, which will have one hundred twenty days to provide a recommendation to the council. If no recommendation or comments are provided, council may still act on the ordinance.

5. The council may proceed to adopt the ordinance after receipt of the recommendations specified in this section or the expiration of the applicable deadlines.

19.46.030. Requirements for cultural sensitivity designations. A. Cultural sensitivity designations must be included on the cultural overlay map. The designations must be based on the criteria listed in 19.46.030B as follows:

1. Areas that contain four or more of the criteria, or areas with any known Hawaiian burials are designated as having a high cultural sensitivity designation and will be displayed in red on the cultural overlay map.

2. Areas that contain three of the criteria are designated as having a medium cultural sensitivity designation and will be displayed in yellow on the cultural overlay map.

3. Areas that contain two or fewer of the criteria are designated as having low sensitivity designation and will be displayed in green on the cultural overlay map, provided that areas that lack cultural resource information will be hatched.

B. The following sensitivity designation criteria must be used to establish sensitivity designations pursuant to 19.46.030(A):

1. The area is in close proximity to, or contains a known Hawaiian burial site or burial grounds.

2. The area is in close proximity to, or contains known cultural resources or archaeological sites.

3. The area is associated with historic events that made contributions to broad patterns of Maui the County's history.

4. The area is associated with an important person from Maui the County's past.

5. The area contains structures that are examples of a particular type, period, or method of construction, or that have high artistic value.

6. The area has potential to reveal further information about Maui County's history (pre- or post-contact).

7. The area has important value to Native Hawaiians people or to another ethnic group because of associations with cultural practices or because of associations with traditional beliefs, events, or oral or pictorial accounts that are important to the group's history and cultural identity.

8. The area has religious value in the established traditions of the Hawaiian culture.

9. The area retains components of a traditional lifestyle that are widely recognized as important in maintaining the cultural identity of the community.

10. The area contains the presence of soil types, vegetation, and topography associated with cultural resources, or archaeological eco-indicators warranting additional review.

11. The area contains the presence of historic and existing waterways, wetlands, and back-filled areas.

19.46.040 Amendments to the cultural overlay map. The cultural overlay map may be amended pursuant to section 19.510.060, in addition to the following processes:

1. As new information is received by the principal archaeologist from the State Historic Preservation Division, private or public archaeologists, or lineal descendants recognized by the applicable island burial council, the information may be used by the principal archaeologist to propose an amended cultural overlay district map pursuant to section 19.46.020.C.

2. Any person who owns or agency that manages property, or a lineal descendants recognized by the applicable island burial council may request a draft property sensitivity designation update from the principal archaeologist, provided new information has been submitted about the subject property or properties located within a designated radius based upon the archaeological, ethnographic, and scientific including soil and drainage as provided in administrative rules. If the principal archaeologist agrees that an amendment is warranted, the principal archaeologist must propose an amendment to the cultural overlay map pursuant to section 19.46.020.C.

19.46.050 Permit review for land with a cultural sensitivity designation. A. For land with a cultural sensitivity designation on the cultural overlay map, the following permits approvals are subject to the requirements of this section:

1. Changes in zoning under section 19.510.040.
2. Community plan amendments under section 2.80B.110.

3. District boundary amendments under chapter 19.68.
4. Grading or grubbing permits under chapter 20.08.
5. Special use permits under section 19.510.070.
6. Subdivision approvals under section 18.08.100.
7. A building permit under chapter 16.26.B that involves ground-altering activities.
8. Permits for explosive materials under chapter 16.04C.

B. For land with a cultural sensitivity designation, the principal archaeologist may impose conditions on the permit triggering the review to mitigate potential impacts, including site avoidance.

C. For land with a cultural sensitivity designation, the principal archaeologist may transmit the permit and project information to the Department of Land and Natural Resources State Historic Preservation Division, cultural resources commission, applicable Island Burial Council, Office of Hawaiian Affairs, and Department of Hawaiian Home Lands as applicable for review and comment to assist the principal archaeologist in establishing permit conditions.

D. For land with a high sensitivity designation or that includes criteria listed under sections 19.46.030(B)(5) and 19.46.030(B)(7), development may not be initiated until a cultural site avoidance plan and, if required, an appropriate mitigation plan is reviewed by the principal archaeologist and approved by the applicable Island Burial Council or cultural resources commission as applicable.”

E. If historic property is identified after work has commenced pursuant to one of the permits or approvals listed in this section are issued, activities granted by any permit must stop until approval to proceed is granted by the State historic preservation division and the principal archaeologist.

B. Onsite monitoring during ground-altering activities by a professional approved by the State historic preservation division and the principal archaeologist may be required as a condition of any permit listed in this section.”

SECTION 2. Section 16.04C.160.1.12.8.2, Maui County Code, is amended

to read as follows:

“160.1.12.8.2 Explosives materials. To manufacture, sell, dispose, purchase, store, use, possess, or transport explosives within the jurisdiction. For land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval. See chapter 65 of this code.”

SECTION 3. Section 16.26B.105.2, Maui County Code, is amended to

read as follows:

“105.2 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, must first make application to the building official and obtain the required permit. For permits with ground altering activities on land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 4. Section 18.08.100, Maui County Code, is amended to read

as follows:

“18.08.100 Approval. A. Director's review period.

1. Within thirty days after submission of the preliminary plat of a subdivision to be processed as an affordable housing project, the director shall review the plan and may give approval of the preliminary plat as submitted, or as it may be modified, or may disapprove the same and shall express the disapproval and the reasons therefor in writing.

2. Within forty-five days after submission of the preliminary plat of a subdivision for a long-term residential development which is not to be processed as an affordable housing project or after submission of the preliminary plat of a subdivision which is outside of the scope of subsection 18.08.100.A.1, the director shall review the plan and may give approval of the preliminary plat as submitted, or as it may be modified, or may disapprove the same and shall express the disapproval and the reasons therefor in writing.

B. The director may also defer consideration of the preliminary plat pending receipt of additional information, in which case the running of time is suspended.

C. Approval of the preliminary plat shall indicate the director's directive to prepare detailed drawings on the plat submitted, provided there is no change in the plan of subdivision as shown on the preliminary plat and there is full compliance with all requirements of this chapter. The action of the director with reference to any attached documents

describing any conditions shall be noted on two copies of the preliminary plat. One copy shall be returned to the subdivider and the other retained by the director. At such time the director shall stamp the two preliminary plats; as follows:

1. "Subdivider authorized to prepare detailed drawings on plat as submitted including corrections noted;"

2. "Recordation with the Bureau of Conveyances, State of Hawaii, or State Department of Taxation, not authorized until approved for recordation at a later date."

D. If no action (approval, disapproval, modification or deferral) is taken by the director within the review period identified in subsection 18.08.100.A, or such longer period as may have been agreed upon in writing, the preliminary plat shall be deemed approved, and it shall be the duty of the director to endorse his approval of the preliminary plat upon the face thereof. Such approval by the director shall not exempt the subdivider from compliance with the mandatory requirements of this ordinance.

E. For land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval."

SECTION 5. Section 19.04.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Archaeological eco-indicator" means any organism or physical land feature indicative of an environment or set of environmental conditions relating to cultural resources."

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, that is over fifty years old."

SECTION 6. Chapter 19.06, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

"19.06.011 Overlay districts designated. The County has the following countywide overlays and overlay districts in addition to the base zone districts provided in section 19.06.010:

- A. Countywide cultural overlay.
- B. Wetlands overlay districts."

SECTION 7. Section 19.68.040, Maui County Code, is amended to read

as follows:

“19.68.040 Action by the county council. A. Upon receipt of the appropriate planning commission's report and recommendations, the county council shall consider the application and may adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the council's discretion, hold further hearings and take further evidence and testimony in connection therewith, before taking final action.

Final action approving an application shall be by the adoption of an ordinance; provided, however, that lands identified by the state as important agricultural lands needed to fulfill the purposes of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency and assuring the availability of agriculturally suitable lands, shall not be reclassified without meeting the standards and criteria established by the legislature and enactment of an ordinance approving the reclassification of such lands by an affirmative vote of at least two-thirds of the council's membership rather than the usual majority.

B. Prior to the enactment of an ordinance effecting any reclassification/boundary change, the council may impose conditions upon the applicant's use of the property, fulfillment of such conditions to be prerequisite to the adoption of such ordinance or applicable part thereof. Such conditions shall have already been performed prior to council action on the reclassification/change of boundary or be enforceable by the county after council action. Conditions shall be fulfilled within the time limitation established by the council, or, if no time limitation is established, within a reasonable time. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances or filed with the assistant registrar of the land court. Conditions shall be imposed only if the council finds such to be necessary to prevent adverse effects upon public health, safety and welfare, and shall be reasonably conceived to fulfill needs arising directly out of proposed land use in the following respects: 1. Protection of the public from the potentially deleterious effects of the proposed use; or 2. Fulfillment of the need for public service demands created by the proposed use.

Such conditions shall be enforceable by the county, by appropriate action at law or equity, against the parties and their heirs, personal representatives, successors and assigns, and shall run with the land.

C. Within sixty days of the effective date of enactment of an ordinance amending the state land use district boundaries a certified copy of the ordinance and a description and map of the affected property shall be transmitted to the state land use commission and the state department of planning and economic development by the county planning director.

D. For land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 8. Section 19.510.010, Maui County Code, is amended by amending Subsection (D)(9) to read as follows:

“9. Preliminary archaeological and historical data and comments from the department of land and natural resources and office of Hawaiian affairs of the State, and if applicable, a preservation/mitigation plan which has been reviewed and approved by the department of land and natural resources and office of Hawaiian affairs of the State, the cultural sensitivity designation pursuant to chapter 19.46;”

SECTION 9. Section 19.510.040, Maui County Code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“D. For land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 10. Section 19.510.070, Maui County Code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“F. For land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval..”

SECTION 11. Subsection 20.08.031, Maui County Code, is amended to read as follows:

“B. Excavation, fill, or stockpiling that does not alter the general drainage pattern with respect to abutting properties that does not exceed one hundred cubic yards of material on any one site and does not

exceed four feet in vertical height at its highest point; except that the slope face may not be steeper in slope and be located a minimum distance from neighboring properties, as enumerated in sections 20.08.170 through 20.08.210, provided that for land with a high cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

“C. Grubbing that does not alter the general drainage pattern with respect to abutting properties and does not exceed one acre, except that for land with a high cultural sensitivity designation under chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 12. Subsection 20.08.040, Maui County Code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“E. No person may commence or perform any cut or fill on land located in a cultural overlay district with a cultural sensitivity designation as defined in chapter 19.46, Maui County code without a grading permit.”

SECTION 13. Subsection 20.08.080, Maui County Code, is amended to read as follows:

“Drainage, engineering slope hazard report, and erosion control plans [shall] must be submitted to the applicable soil and water conservation [district(s)] district and to the department of land and natural resources' state historic preservation division for review and comment. Applicants [shall] must provide information sufficient to enable the reviewing agencies to determine that the proposed work will be in conformance with the most current standards on file at the department of public works of the soil and water conservation [district(s)] district and will meet the requirements of chapter 6E, Hawaii Revised Statutes, and related administrative rules. Final approval or disapproval [shall] must be made by the County within ten days after receiving the reviewing agencies' comments, provided that for land with a cultural sensitivity designation pursuant to chapter 19.46, the principal archaeologist may establish permit conditions to mitigate any potential impacts before approval.”

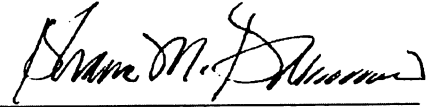
SECTION 14. The principal archaeologist may adopt administrative rules to implement this ordinance.

SECTION 15. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 16. This Ordinance takes effect upon approval.

paf:ans:22-360c

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Shane M. Sinenci", written in a cursive style. The signature is positioned above a horizontal line.

SHANE M. SINENCI