

WATER AND INFRASTRUCTURE COMMITTEE
Council of the County of Maui

MINUTES

November 27, 2023

Online Via BlueJeans

CONVENE: 1:30 p.m.

PRESENT: Councilmember Tom Cook, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Gabe Johnson, Member
Councilmember Tasha Kama, Member
Councilmember Alice L. Lee, Member (arrived at 1:36 p.m.)
Councilmember Tamara Paltin, Member (arrived at 1:32 p.m./left at 4:05 p.m.)
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Nohelani U‘u-Hodgins, Member

STAFF: Jarret Pascual, Legislative Analyst
Ana Lillis, Legislative Analyst
Richard Mitchell, Legislative Attorney
Pauline Martins, Senior Committee Secretary
Jean Pokipala, Council Services Assistant Clerk
Shelly Espeleta, Supervising Legislative Analyst
Megan Moniz, Legislative Attorney
Kasie Apo Takayama, Senior Legislative Analyst
Ellen McKinley, Legislative Analyst

Mavis Oliveira-Medeiros, Council Aide, East Maui Residency Area Office
Roxanne Morita, Council Aide, Lāna‘i Residency Area Office
Jade Rojas-Letisi, Council Aide, Makawao-Ha‘ikū-Pā‘ia Residency Area Office
Zhanell Lindo, Council Aide, Moloka‘i Residency Area Office

Jared Agtunong, Executive Assistant to Councilmember Cook
Kate Griffiths, Executive Assistant to Councilmember Johnson
Axel Beers, Executive Assistant to Councilmember Johnson
Evan Dust, Executive Assistant to Councilmember Kama
Angela Lucero, Executive Assistant to Councilmember Paltin
Sarah Sexton, Executive Assistant to Councilmember Rawlins-Fernandez
Don Atay, Executive Assistant to Councilmember Sinenci
Dawn Lono, Executive Assistant to Councilmember Sinenci
Gina Young, Executive Assistant to Councilmember Sinenci
Laura McDowell, Executive Assistant to Councilmember U‘u-Hodgins
Susan Clements, Executive Assistant to Councilmember U‘u-Hodgins

ADMIN.: Mariana Lowy-Gerstmar, Deputy Corporation Counsel, Department of the
Corporation Counsel

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Gregory Pfost, Administrative Planning Officer, Department of Planning
Jordan Molina, Director, Department of Public Works
Shayne Agawa, Director, Department of Environmental Management
Erin Wade, Chief of Planning and Development, Department of Management

OTHERS: Darren Okimoto, Senior Project Manager, Dowling Company, Inc.
Cory Koger, Water Quality Program Manager and Chemist, US Army Corps of Engineers
Tanya Lee-Greig, Principal Lead Investigator, 'Āina Archaeology LLC
Colonel Jesse Curry, Recovery Field Office Commander
Janet Six
Deborah Eudene
Jeffrey Ueoka, Mancini, Welch & Geiger LLP
Jasee Law
(4) additional attendees

PRESS: Akakū: Maui Community Television, Inc.

CHAIR COOK: . . .*(gavel)*. . . Will the Water and Infrastructure Committee of November 27th, 2023, please come to order. The time is now 1:30 p.m. May I ask partici--may I ask that all participants please silence cell phones and other noisemaking devices. For those testifying on BlueJeans, please mute your mic until you are called on. I'm your Council Chair Tom Cook. Members, in accordance with the Sunshine Law, please identify by name who, if anyone, is in the room, vehicle, or workplace with you today. Minors need not to be identified. Before we begin, I would like...also like to ask the Department representatives who have joined online to please also turn on your cameras when it is your time to speak, we would greatly appreciate it. Now I'd like to introduce the Committee Members. Yuki Lei...Vice-Chair Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Good afternoon, Chair. Looking forward to a productive meeting.

CHAIR COOK: Councilmember Tamara Paltin is currently excused. Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Aloha, Chair. I'm alone in my workspace with a snoring dog. Pardon me, it's not me, but it's my dog. There's no testifiers at the Lānaʻi District Office, and I'm here and ready to work. Mahalo, Chair.

CHAIR COOK: Councilmember Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha 'auinalā, Committee Chair. I am at the Molokaʻi District Office, alone at...on my side of the office. We currently have no testifiers here. Mahalo.

CHAIR COOK: Okay. Councilmember Tasha Kama.

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COUNCILMEMBER KAMA: Aloha ‘auinalā, Chair. Looking forward to an expeditious meeting.

CHAIR COOK: Council Chair Alice Lee is excused. Councilmember Nohelani U‘u-Hodgins.

COUNCILMEMBER U‘U-HODGINS: Good afternoon, Chair.

CHAIR COOK: Councilmember Shane Sinenci.

COUNCILMEMBER SINENCI: Aloha ‘auinalā, Chair. I’m happy to be here. Staff has indicated in the chat that there are no testifiers in Hāna.

CHAIR COOK: Okay. I’d like to welcome Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: Aloha ‘auinalā kākou. I’m here alone in Nāpili with one pocket pitbull. His name is King.

CHAIR COOK: Okay. Today from the Department of Public Works, we have Director Jordan...Jordan Molina. Staff?

MR. MOLINA: Hi. Good afternoon, Chair.

CHAIR COOK: Good afternoon, Director. From the Department of Environmental Management, Director Shayne Agawa.

MR. AGAWA: Good afternoon, Chair. Good afternoon, Members.

CHAIR COOK: Representing the Department of Management, I’d like to welcome Erin Wade, Chief Planning and Developer...Development, as well as Principal Archaeologist Dr. Janet Six.

MS. WADE: Good afternoon, Chair. Thank you. I’ll come down when our item comes up.

CHAIR COOK: Thank you.

MS. WADE: Thank you.

MS. SIX: I’m here all by myself with my fake skeleton.

CHAIR COOK: Well, welcome. Representing Department of Planning, Administrative Planning Officer Gregory Pfof is in the Chamber. From Corporation Counsel, Deputy Corporation Counsel Mariana Lowy-Gerstmar. From the United States Army Corps of Engineers, Dr. Cory Koger, Water Quality Program Manager and Chemist. I don’t see them in the Chambers yet. Staff?

MR. PASCUAL: Chair, I believe they will come down with Erin Wade when the item is called up.

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CHAIR COOK: Okay. From 'Āina Archaeology LLC, Ms. Tanya Lee-Greig, Principal Lead Investigator.

MR. PASCUAL: Chair, I believe she will also be coming down to discuss WAI-1(12) as well.

CHAIR COOK: Okay. Members, if there are no objections, I will designate these individuals as resource personnel under Rule 18(A) --

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: -- of the Rules of the Council, due to their knowledge and expertise on wildfire debris removal and disaster recovery for the County of Maui. From OCS, our Committee Staff, Jarret Pascual, Ana Lillis, Pauline Martins, Remi Mitchell, Jean Pokipala. Please see the last page of the agenda for information on meeting connectivity. Members, we have three items on today's agenda, WAI-8, WAI-15, WAI-1(12). WAI-8 relates to Amending the General Provisions to Subdivisions and Historic Properties. WAI-15 relates to the Issuance of a Management Right-of-Way [sic] for the Lāhainā Wildfire Final Disposition Project. WAI-1(12) relates to a discussion on Debris Removal for the County-Owned Properties, and Bill 118. Now, moving on to testimony at the beginning of the meeting.

MS. LILLIS: Chair, we currently have one person signed up to testify in the Council Chamber. Their name is Darren Okimoto.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. OKIMOTO: Hi, Chair, Councilmembers. Darren Okimoto from Dowling Company. I'm here to testify on Bill 42. No comments on the bill. I support the bill as written, which...a version CD1. I'm just more here...I think Everett Dowling was here for the last meeting. He's...he's in jury duty right now, so I'm just here in case there are any questions that we can answer for our particular project. Thank you.

CHAIR COOK: Do I have to read that?

VICE-CHAIR SUGIMURA: Chair?

CHAIR COOK: Thank you.

VICE-CHAIR SUGIMURA: Could we ask if he can be a resource when the item comes up?

CHAIR COOK: Are you available to be a resource? Is there any objections to --

COUNCILMEMBERS VOICED NO OBJECTIONS.

MR. OKIMOTO: Yes, Chair.

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VICE-CHAIR SUGIMURA: Thank you.

CHAIR COOK: Okay. Thank you.

VICE-CHAIR SUGIMURA: Thank you.

MR. OKIMOTO: Thank you.

CHAIR COOK: Also, my colleagues, I'm going to read the entire testimony portion that I skipped. Testifiers wanting to provide video and audio testimony should have joined the online meeting via BlueJeans link or phone number noted on today's agenda. If you are logged in to the meeting, please indicate in the chat to the Staff that you...that you wish to testify. We also ask that you please state your full name, organization, and items that you would like to testify on. Please state if you wish to testify anonymously. Chat should not be used to provide comments or discussion. Written testimony is encouraged, and can be submitted via eComment link at mauicounty.us/agendas. Oral testimony is limited to three minutes per item. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. Please be courteous to the others by turning off your video and muting your microphone while waiting for your turn to testify. Once you are done testifying, or if you do not wish to testify, you can view the meeting on *Akakū* Channel 53, Facebook Live, or mauicounty.us/agendas. Decorum must be maintained at all times. Any person who behaves in a manner that disrupts, disturbs, or impedes the orderly conduct of any Committee meeting can, at the discretion of the presiding officer or the majority of the present Committee Members, be ejected or banned from the Committee meeting or, if participating remotely, muted or dropped from the meeting. Examples of disruptive behavior include heckling, shouting, use of profanity, threatening or slanderous remarks made to any member of the Committee, Staff, or general public. Again, the chat should be used only to sign up for testimony, and not for public commentary on the meeting. We will do our best to take each person up in an orderly fashion.

MS. LILLIS: Chair, there is currently no one else signed up to testify at the beginning of the meeting. If anyone would like to testify, please unmute and let Staff know now. We will give a brief countdown...three, two, one. Chair, it appears no one else wishes to testify.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR COOK: Okay, Members any objection to closing testimony?

COUNCILMEMBERS VOICED NO OBJECTIONS.

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**ITEM 8: BILL 42 (2023), RELATING TO GENERAL PROVISIONS FOR
SUBDIVISIONS AND HISTORIC PROPERTIES**

CHAIR COOK: Members, the first item on Bill 40...is Bill 42, entitled "A BILL FOR AN ORDINANCE AMENDING THE SUBDIVISION ORDINANCE RELATING TO HISTORIC PROPERTY." Bill 42's purpose is to amend Chapter 18.04, Maui County Code, by adding a new section to exempt subdivisions that create separate lots for the preservation of historic properties from the requirements of Title 18. Members, during our last meeting, there were concerns from the Department of Public Works on the proposed ASF that was initially posted on November 13th. We deferred Bill 42 in order to reach out to the Departments of Environmental Management, Fire and Public Safety, and Water Supply for their input on the proposed CD1 version. Each department responded with no comments, and supported Bill 42, CD1. You may find their correspondence in Granicus. To address Public Works' concern with Bill 42, we drafted a new ASF with a proposed CD1 version that incorporates some of the requested amendments. Members, in your Granicus files, you will find copies of Bill 42, along with a new ASF with the proposed CD1 version. At this time, I would like to ask Department of Public Works to provide any opening comments on this item, and to please state your name for the record.

MR. MOLINA: Good afternoon, Chair. Jordan Molina, Director with Public Works. Just to note that the Department had transmitted its comments to the Committee, and that the revised bill appears to incorporate all the recommendations made by the Department. So, mahalo to you folks for that consideration. At this time, we don't have any further comments on the proposed bill. Thank you.

CHAIR COOK: Thank you, Director Molina. Mr. Pfof, would the Department of Planning like to provide any opening remarks?

MR. PFOF: Thank you, Chair. The Department of Planning, we submitted comments to you back in September, and those comments indicated a potential change to the definition of restricted use lots. While that may be one way we can go, after looking into this further, we believe that the bill as currently written will suffice as is because we can interpret the definition, restricted use lots, to apply to this bill. And so, we think that the bill is fine as is.

CHAIR COOK: Thank you, Mr. Pfof. Dr. Six, would the Department of Management like to provide any opening remarks?

MS. SIX: I just would say that I've sent my comments as well, and I...I'm taking a look at the bill, and so I...I see that you've incorporated those. So, I think we're good right now. Let's see what everybody has to say. Thank you.

CHAIR COOK: Thank you, Doctor. Now, on to testimony for WAI-8. At this time, I would like to open public testimony for WAI-8. Staff, please call the first testifier.

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MS. LILLIS: Chair, it appears no one is signed up to testify on this item. If anyone would like to testify, this is the last call, please let Staff know now...three, two, one. Chair, it appears no one wishes to testify.

CHAIR COOK: Members, seeing there are no more individuals wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: As a reminder, written testimony will be...continue to be accepted into the record. Members, I'm proposing two rounds of three minutes per questions per Member. Are there any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Thank you, Members. I would now like to open the floor for questions and discussion. Councilmember Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Chair, I have no questions, and I believe the questions I did have, the Departments have answered it, so I'm really ready to take a vote. Thank you.

CHAIR COOK: Thank you. Councilmember Tasha Kama.

COUNCILMEMBER KAMA: Ditto.

VICE-CHAIR SUGIMURA: . . .*(laughing)*. . . Ditto.

CHAIR COOK: Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. You know, who am I to question if the Directors don't have any issues, and it looks okay with me. So, just good job.

CHAIR COOK: Thank you. Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Thank you, Chair. So, I have a question in regards to...hmm, I think this would go for Director Molina. But, in the first section of the bill, it's something that I...I just...I'm not aware of, but it says that the...the...they have to go before a Land Trust Accreditation Commission. I have no clue what that is. Director Molina, can you explain what that is? Do you know what that is?

CHAIR COOK: Director Molina?

MR. MOLINA: Chair. Can you clarify which portion of the bill you're --

COUNCILMEMBER JOHNSON: Sure.

MR. MOLINA: -- referring to?

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COUNCILMEMBER JOHNSON: Sorry about that. Yeah, I...okay. So, it's on...I guess on page 4 in pdf file. But it's in Section H, it says: "These requirements do not apply to a subdivision initiated by a landowner solely for the purpose of creating and conveying a historic preservation lot to a land trust organization accredited by the Land Trust Accreditation Commission or a government agency, subject to the following conditions;" and then it gets into all these Chapter 18 and 19 Codes. So, that's the part I'm kind of curious on, is that they have to go before a Land Trust Accreditation Commission. I don't know, is that a County, or a State, or a nonprofit? What is that?

MR. MOLINA: Thank you, Member Johnson, and Chair. So, that appears to be a change that's...is made from a previous version of the bill. I was not aware of that change, and I am unable to speak to it as far as the --

COUNCILMEMBER JOHNSON: Okay.

MR. MOLINA: -- where that came from. So, I'd defer to the Committee Staff for any background on that.

COUNCILMEMBER JOHNSON: I am on the right one, am I not, Committee Chair Cook? Is it...that's the right one?

CHAIR COOK: You are. And I --

COUNCILMEMBER JOHNSON: Maybe you could help, or I don't know. I'll punt the ball who can answer that.

CHAIR COOK: I think the developer representative could answer that.

MR. OKIMOTO: Hi, Darren Okimoto. As far as we know, Land Trust Accreditation Commission is a national organization that accredits land trusts. So, they have to be established with a history, and that's how you get accredited.

COUNCILMEMBER JOHNSON: Okay. So, it's not a local one...it's not like HILT. Because I...I was looking...I was Googling this before the meeting, and it turned...I kept coming around...running...running against HILT having an accreditation commission. But this is a...this is different than that. So, okay.

MR. OKIMOTO: And Chair, could I answer that?

CHAIR COOK: Yes.

MR. OKIMOTO: So, HILT is accredited through the Land Trust Accreditation Commission.

COUNCILMEMBER JOHNSON: Right.

MR. OKIMOTO: Yeah.

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COUNCILMEMBER JOHNSON: Okay. I just was wondering if...and I...I don't know if I'll get this question answered, you know, if this...we often find where commissions have meetings, and it's up to the commission to make a decision, and they only meet maybe X amount of times out of a year or a month, and sometimes that slows down the process. So, I was just trying to get to the root of like how often this commission meets. Will it in...you know, help with the process? Will it impede with the process? That's kind of the overall arching question I was trying to get to is, if these folks have to go before a Land Trust Accreditation Commission, does it take a year to do that? Does it take six months? Those...that's really where I was going with it. So, okay. Just want to put that out for the record. Thank...thank you so much, Chair.

CHAIR COOK: Thank you. Councilmember Keani Rawlins-Fernandez, first round.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Committee Chair. Okay, so dovetailing off of Member Johnson's question. It says a Land Trust Accreditation Commission or government agency. What...what government agency would this be referring to? Whoever can answer that question. I don't know who can answer that question. And if there is no current government agency that would do this, what were the thoughts behind that, that the County would start one, or...I don't know. Okay. I'll stop there, and then whoever wants to answer the question so far.

MR. MOLINA: Chair, if I may?

CHAIR COOK: So --

MR. MOLINA: Director Molina, Public Works.

CHAIR COOK: -- Mr. Molina...Director?

MR. MOLINA: Yeah, just to clarify. I think though the intent of that provision is to allow these subdivisions when the land is being conveyed to either a land trust or a government agency, not that there would be another government agency who certifies the land trust. Thank you.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification, Director Molina...nice haircut. So, I have a question about like, when the historic property or the historic site...like what if it's like landlocked in the middle, and like how would access be provided? Would that be decided when that...you know, the whole, I don't know...section is being negotiated?

CHAIR COOK: Director Molina?

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MR. MOLINA: Yeah, so...sorry, give me a sec. So, one of the requirements when we were being consulted on the bill was to ensure that access was provided. So, one of the requirements...let me...that might be --

MS. SIX: I think it's 7.b., Jordan. That's what it says here.

MR. MOLINA: Yeah, so 7.b., we did...we did talk about that the lot is able to contain areas for access.

CHAIR COOK: Thank you, Director.

MR. MOLINA: I thought there was...yeah, thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Director, and mahalo, Dr. Six. Okay, so 7.b., I read it, "Areas necessary to provide pedestrian and vehicular access to preservation areas from a public or private street, an access easement from an adjacent parcel, or parking that may be limited or controlled for cultural and environmental resource protection and public safety to the historic site." Who enforces that? . . .*(timer sounds)*. . .

CHAIR COOK: I believe it's the accredited land trust will be the title holder. Director Molina, sorry for...

MR. MOLINA: Yeah, so the subdivision will stem from the preservation plan governing the historic site. And so, between the...in most cases, it will be a developer who is seeking to create such a subdivision. Between them and the land trust, they'll have to figure out how to accommodate access to the property when they propose the subdivision to the Department.

CHAIR COOK: Thank you, Director. Member?

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Chair. I've got a follow up, but I heard the timer.

CHAIR COOK: Okay. Chair Lee is not present.

COUNCILMEMBER U'U-HODGINS: She's here.

CHAIR COOK: Oh. Chair Lee.

MR. MOLINA: Chair, if I may. This is Jordan with Public Works.

CHAIR COOK: Director?

MR. MOLINA: Yeah, just to follow up on Member Rawlins-Fernandez's question. There is another provision we added in here. So, under Subsection H.4., it makes reference to this . . .*(inaudible)*. . . section, but compliance with Chapter 18.16.250, which is the

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requirement for lot access for a subdivision. So, that was intentionally put there to ensure that these landlocked...yeah, that they...these historic parcels can be accessed by the ownership groups that take over. Thank you.

CHAIR COOK: Thank you, Director. Okay. Chair Lee, any questions?

COUNCILMEMBER LEE: No questions. Thank you.

CHAIR COOK: Member Nohelani U'u-Hodgins?

COUNCILMEMBER U'U-HODGINS: Thank you, Chair. I have no questions, and I'm happy to support this.

CHAIR COOK: Thank you. Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I had a question for Dr. Six. It sounds like some of these preservation plans that Director Molina had questioned, are these cultural parcels? Are they going to require some kind of maintenance or a funding source to kind of implement this preservation plan?

CHAIR COOK: Dr. Six?

MS. SIX: The one I'm most familiar with is the Palauea Cultural Preserve. And my concern...when I expressed in the last meeting, and I also concerned in my comment...put in my comments to Councilmember Cook's office, is that we needed a strong group to be running it, and that's why I think the accreditation...having someone that's accredited and...and running it, and then you have to have funding. And so, I know Mr. Dowling provided funding at Palauea, and I also...in his testimony of the last meeting, he has built-in funding for this, and I think it's really important to understand the need for security management. They want to put up a deer fence--and I'm just using this one as an example. So, I think that it's really important that there's some kind of either built-in funding, or that the land trust agrees to the maintenance. Because, you know this, Councilmember Sinenci, just all the land that the Hāna Coast, the Save the Hāna Coast, the HILT, it's...it all requires management. So, I think that was one of my concerns, is that they are...in this case, the...the lots at Makena and the seven-acre preserve, that's already built in. But I think it's important going forward that a developer understand that there may be a mechanism required so that these land trusts can go ahead and do what's required to either...you know, if it's going to be interpreted, or if it's going to be reforested, or...or how...whatever they choose...how the lineal cultural descendants want it to be done that a preservation plan is done...a formal preservation plan, like a cultural preserve, similar to one that was done at Palauea, and that there is some kind of built-in mechanism for funding. That's...that would be my concerns.

CHAIR COOK: Thank you, Dr. Six.

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COUNCILMEMBER SINENCI: Also, I...Chair, I also wanted to add, you know, this Council is also proposing brush abatement for some of these properties that are, you know, not maintained. So, I do have an amendment to the CD1 when...when you feel that it's appropriate, Chair. Thank you.

CHAIR COOK: Okay. Thank you.

MR. MOLINA: Chair, Public Works. If I can comment?

CHAIR COOK: Yeah. Director?

MR. MOLINA: Yeah, so we...we also share the same concern about ability to maintain these perpetual obligations. And I think the added language regarding the Land Trust Accreditation Commission is an attempt to address that because one of the requirements of being accredited is having sound financials to ensure you can support the functions of the land trust to achieve that accreditation. Thank you. . . .*(timer sounds)*. . .

CHAIR COOK: Thank you, Director. So, for...yeah. Second round of questions? Members? So...

MR. PASCUAL: Chair, I'm sorry. I believe Member Rawlins-Fernandez had a follow-up question.

CHAIR COOK: Okay. Member Rawlins-Fernandez, follow-up question?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Thank you. So, Director Molina, under 18.16.250, is...is that the Public Works Director that would enforce the access? I know initially it talks about it, but let's say like 20 years from now, and there's like a dispute. Would it still be the Public Works Director?

MR. MOLINA: Yeah, so that requirement would trigger during subdivision. So, when we create this lot that contains the historic site, it would have that defined access as part of the approved subdivision. So, that'll persist in perpetuity. And should there be a dispute that arises, we would have that subdivision record to show that access was granted either by easement or by direct connection to a public road or private road. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Director.

CHAIR COOK: Thank you, Member. Thank you, Director. Further questions, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. Okay. So, in line with the questions about the management, let's say the land trust dissolves. What...what happens to the ownership? Is that something that is then...I guess the land trust would have to

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figure out what it would do with all its assets before it's able to dissolve under Section 501(c)?

CHAIR COOK: Director, would you address that?

COUNCILMEMBER RAWLINS-FERNANDEZ: Whoever.

MR. MOLINA: I believe it's more of a legal question, but I'll take a stab at it. As I understand it is, that the trust structure itself would dictate how those assets would be deposited [sic] of should that situation arise for that trust. Thank you.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR COOK: Is that it?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR COOK: Okay, thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director.

MR. MITCHELL: Chair, if I could...here...it's Remi Mitchell, on your left.

CHAIR COOK: Oh.

MR. MITCHELL: In response to Member Rawlins-Fernandez's question, under the Federal Code 501(c)(3), organizations when they dissolve require to transfer their assets to another 501(c)(3) organization with a similar purpose.

CHAIR COOK: Member Rawlins-Fernandez, did you hear that? You froze.

MR. PASCUAL: Chair, it looks like she...oh, I'm sorry. It looks like she kind of disconnected.

CHAIR COOK: Okay, thank you. Thank you, Mr. Martin [sic]. Okay. Once we have a main motion, I'll ask to take up my latest amendment summary form, as discussed in my opening comments. Now the Chair would like to entertain a motion on recommending passage of Bill 42 on first reading.

VICE-CHAIR SUGIMURA: So moved.

COUNCILMEMBER U'U-HODGINS: Second.

CHAIR COOK: Moved by Member Sugimura, seconded by Councilmember U'u-Hodgins. Discussion?

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VICE-CHAIR SUGIMURA: Is there an amendment that Member Sinenci wanted to --

CHAIR COOK: Yeah, I have one too. I thought that we'd basically --

VICE-CHAIR SUGIMURA: Oh, you do? Okay.

CHAIR COOK: We're going to...okay. Member Sinenci has an amendment, and the Chair has one. I'd like to address my amendment, and then your amendment.

VICE-CHAIR SUGIMURA: Oh, okay.

CHAIR COOK: Okay, thank you. Members, the Chair would like to entertain a motion to amend Bill 42 (2023) with the attached proposed CD1 version, incorporating the amendments referred to in the description of the ASF.

VICE-CHAIR SUGIMURA: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR COOK: Moved by Member Sugimura, seconded by Member Kama.

VICE-CHAIR SUGIMURA: Okay. So, Chair?

CHAIR COOK: Members, amending Bill 42 will put proposed CD1 version, amends the bill's title, amends the general provisions of Title 18 for the preservation of historic properties by adding a new subsection H, and includes nonsubstantive revisions for the purpose of clarity and consistency. As I said earlier, this new ASF incorporates some of the revisions requested by the Department of Public Works at our November 13th meeting, and then their correspondence dated November 14th, 2023. The CD1 version would allow for certain chapters of the subdivision ordinance to remain applicable, rather than exempted in its entirety. Further, the CD1 version clarifies the language and intent of the bill's purpose for creating and conveying a historic preservation lot. Members, are there any discussion?

VICE-CHAIR SUGIMURA: No discussion.

CHAIR COOK: Seeing there's no further discussion, all in favor, raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

COUNCILMEMBER SINENCI: Chair, do I...

VICE-CHAIR SUGIMURA: I think he's next.

COUNCILMEMBER SINENCI: We vote on that one first?

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VICE-CHAIR SUGIMURA: Yeah.

COUNCILMEMBER SINENCI: Okay.

VICE-CHAIR SUGIMURA: You're next.

CHAIR COOK: Yeah.

COUNCILMEMBER SINENCI: Aye.

MR. PASCUAL: Chair, I see nine "ayes," zero "noes," motion passes.

VICE-CHAIR SUGIMURA: Yay.

**VOTE: AYES: Chair Cook, Vice-Chair Sugimura, and
 Councilmembers Johnson, Kama, Lee, Paltin,
 Rawlins-Fernandez, Sinenci, and U'u-Hodgins.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: AMEND BILL 42 (2023).

CHAIR COOK: Okay. Thank you, Members. Now we would like to address Member Sinenci's.

COUNCILMEMBER SINENCI: Thank you, Chair. I move to amend your CD1 version, and I'll...and this is just to...I'll put it in the chat, so people can read it. And this is just to address the...the financial...the funding for a preservation plan. I move to add 11, under...sorry, your last section, under H, to read: "To address the cost associated with the implementation of the preservation plan, a transfer fee of .5 percent of the gross selling price of lots and/or homes each time one is sold or resold. The transfer fee precedes...proceeds must be donated to either the accredited land trust or the homeowners' association,"--or we could add government agency as well--"must only be used to implement the preservation plan and provide property maintenance." And if I get a second, I can explain, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

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CHAIR COOK: Second from Member Rawlins-Fernandez. Discussion?

COUNCILMEMBER SINENCI: Thank you, Chair. My amendment addresses concerns about the need for ongoing implementation of a preservation plan and property management of the cultural parcel. It also provides an incentive for a land trust to take over management of the parcel. Land trusts are strapped for cash, and reluctant to take on parcels without funding...funded management plans. It also addresses the concerns of Mr. Molina, the Director...the Public Works. DPW is the default agency for properties abandoned due to maintenance costs, such as cemeteries and cultural lots. Public Works did cite the inability of these types of parcels to generate income and the difficulties this can lead to. This amendment takes care of that problem, Chair. This is also based upon past precedence, and...and uses the same language as in the Palauea Cultural Preserve agreement. And given the land trust are...you know, they still need cash to...to take on some of these responsibilities, Chair. Thank you.

CHAIR COOK: Okay. Member Sugimura.

VICE-CHAIR SUGIMURA: Yeah, thank you. I'm going to vote against the motion. I understand what Member Sinenci is saying, but I do believe that the developer and the accredited land...land trust, in this case, is HILT, can take care of the negotiation. And I believe that based upon what I've seen in the past, the...the responsibility of the developers will...this will happen. So, I understand what the amendment is saying, but I'm going to vote against it. So, I'm voting no.

CHAIR COOK: Okay. Members, other discussion before comment...Chair's comment? Member Sinenci.

COUNCILMEMBER SINENCI: Yeah, thank you. I did want to respond, and...and we're happy that this developer is taking on the cost to do a preservation plan, but I think moving forward, you know, we're...we're hoping that all the developers that step forward will...will take on this respons--you know, we can't force them to do that. So, with this language, Chair, this will help to fund those preservation plans. Thank you.

CHAIR COOK: Okay. Thank you, Member. Any other comments before Chair's? Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR COOK: Member Rawlins-Fernandez, I apologize for not seeing you right in front of me.

COUNCILMEMBER RAWLINS-FERNANDEZ: That's okay. Mahalo, Chair. Mahalo, Member Sinenci, for this proposal. I think it's a good proposal because both the developer and those that would live around the historic site would benefit from the maintenance of the area, and having like a...basically a...like a start-up fund for the initial management of the area, it's going to be important to the maintenance of it. I don't think that...you know, I think for those that immediately benefit from, you know,

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the...the conveyance and maintenance of the area, you know, I...I think that's a fair amount to pay into. And then, you know, for a land trust, a lot of funding comes from grants thereafter. So, I think that's a fair proposal. Good idea, Member Sinenci.

CHAIR COOK: Okay. Thank you, Member. Any other discussion? Chair's comment, I do support the fact that this...that there should be a funding mechanism. A long-term funding agreement will be made between the developer and the accredited land trust. If there is no agreement, then the developer will not be able to move forward. The land trust has the negotiation leverage to obtain funding from the developer before taking the lot. If we make it too restrictive, the develop...the developer will not want to use this process, and will use conservation easements, which result in the property being owned by the HOA and not by an accredited land trust. I think that this mechan--this...this bill that we're reviewing is an opportunity to streamline the process for historic preservation lots. And the fact that an accredited land trust needs to accept them, and the accredited land trust is a...a viable entity, should give the assurances that it'll be taken care of. So, I completely agree with you insofar...and the necessity because as the Director has pointed out, and Dr. Six has pointed out, we don't want properties to be abandoned or not properly funded. So, I won't support the amendment, but I will...I'm an advocate that we, as a body, ensure that when this legislation is passed, that we're confident that the accredited land trust is going to be able to satisfy this criteria. So, roll call...oh, I'm sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR COOK: Member Paltin, discussion?

COUNCILMEMBER PALTIN: Oh, shoot. Are we on discussion? I wanted to hear from Mr. Okimoto, his thoughts on the amendment.

CHAIR COOK: Okay. He's coming down to the floor.

COUNCILMEMBER PALTIN: Thank you.

MR. OKIMOTO: Darren Okimoto. I guess our thoughts are basically the reason for the accredited land trust is they have the experience, and the background, and the history of having adequate funding, or securing adequate funding, to make sure that it is maintained through the preservation plan in perpetuity. That's the intent of having a accredited land trust.

COUNCILMEMBER PALTIN: And if I could follow up, one more question. So, the idea is that the developer would donate the land to the land trust, and then the land trust would solicit donations from the community to take care of the land? Or how...how would it...an accredited land trust take care of the land in perpetuity...in...in general, I guess, not just in this piece...I mean if you know, if you have an idea.

MR. OKIMOTO: Chair?

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CHAIR COOK: Yes.

MR. OKIMOTO: I...I think it depends on the situation. Every situation would be different. So, working...whether it's the owner-developer working with the accredited land trust to figure out in this typic--type of situation what would be the best, when it comes to funding, how much, and everything worked out directly with the land trust for the specific area or property.

COUNCILMEMBER PALTIN: Okay. So, it would be an individual call with each acquisition, is what you're saying?

MR. OKIMOTO: That's the way I would see it versus restricting it to just one thing that's in the Code that's a requirement for everybody.

COUNCILMEMBER PALTIN: Like before any land trust accepts it, they would negotiate what they need to take care of it in perpetuity?

MR. OKIMOTO: Yes, that would be my understanding.

COUNCILMEMBER PALTIN: Okay. Thank you. Thank you, Chair.

CHAIR COOK: Thank you. Member Johnson, you had a question?

COUNCILMEMBER JOHNSON: Yes. Thank you, Chair. I wanted to see if the...Director Molina would have any comments on this proposed amendment here that was written in chat.

CHAIR COOK: Director Molina?

MR. MOLINA: Thank you, Chair. And thank you, Member Johnson, for letting me know it's in the chat. I do have a little bit of concern about not having the opportunity to review this, given that it's being proposed in the Subdivision Code, and ensuring our...one, understanding of the requirement, and ability to administrate it. First off being, which lots are we talking about being sold? They'd have to collect this fee in the mechanism in which the Department--in this case, Public Works, which I don't think is the best Department for doing these types of collections--how would they actually get their cut of the transfer fees? There may be additional laws that have to be put into place to effectuate that. So, yeah. If possible, if we could take this up as a separate matter so we can work through the details of how to implement such a proposal. Thank you.

CHAIR COOK: Thank you, Director. Member Johnson?

COUNCILMEMBER JOHNSON: Thank you. Thank you so much, Chair.

CHAIR COOK: Okay. Member Sugimura, did you have a question?

VICE-CHAIR SUGIMURA: I think I saw Member Rawlins-Fernandez's hand up first.

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CHAIR COOK: Okay. Member Rawlins-Fernandez, you have a question, discussion?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Yeah. So, it sounds like there...there won't be the votes for the amendment, Member Sinenci, but I...I think the intent is good. And I...I hear what you're saying, Committee Chair, about land trusts having more leverage. I don't know if I agree with that. I mean, yes, conceptually they could, and they would. But at the same time, if...if you look at some of the land trusts...like HILT is like a really big one, and then you have like smaller ones that, you know, folks may not necessarily know to use negotiation power to try to get funding for the initial management. And then like Member Paltin said, like, you know, managing it in perpetuity, you know, we've...we've discussed HILT. HILT is like kind of more of the exception. It's...it's such a larger land trust, and they have a lot more access to private funding than...than I would say, a lot of them. I mean TPL, Trust for Public Land, is part of a national trust, and so, they have a little bit more access to, you know, funding too. But like those are more the exceptions and not like community land trusts. So, if we're talking about like community land trusts, I...I don't know if they would know to have that kind of, you know, negotiating drive to, you know, expect that. A lot of our community members don't come with that kind of like entitlement. So, I...I think like perhaps putting something in writing that, you know, gives...gives the land trust...like encourages them to negotiate for some kind of management funding. I...I don't know how that would look right now. I don't...I...I could call on maybe...perhaps Dr. Six might have some ideas, or any of our other resource people. Do...do you kind of hear what I'm --

CHAIR COOK: Dr. Six?

MS. SIX: Yeah. The only real example I have is Palauea Cultural Preserve because I was at the University when it was going to be gifted to us, and it didn't work out, and it ended up going to OHA. But it was a mechanism where it was sort of like a homeowners' association, and...and Mr. Dowling can correct me, and...and they held the money, and it was an incentive for the college because, you know, we were trying to do restoration. Of course, the Board of Regents eventually didn't take it. But it would be nice if there was at least a minimum buy-in from the community because the idea would be that these lots will benefit from having a preserve. So, the neighbors will benefit from the work being done, and in this way--this is my personal thinking--they...they buy into it. They're like, okay, these houses are probably going to be multi-million dollar houses, .5 percent doesn't sound like a lot, but it added up real quick at Palauea...because people do buy and sell homes. So, for me, it's just always the concern when I see lands that aren't...you know, we don't have the funding, we just had Mayor Victorino previously do the 520 acre. We don't have...we...we have to fund these things. That's where I come from. And we're just using one that's on the books, which is one that Mr. Dowling's company did at Palauea. So, if there is a better way to do it...but I think having the community that is going to benefit from having this preserve have a buy-in, is kind of...kind of makes a partnership, as opposed to us and them, right. You know, so that's how...that's how I

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would see it as kind of a buy-in, agreeing that you're going to have this preserve in your background next to your house, and you're going to benefit from that.

CHAIR COOK: Thank you, Dr. Six.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Dr. Six. So, I agree with the mana'o, but I also, you know, agree with you, Chair, that, you know, perhaps we not put a fixed amount into the Code, that we, you know, leave it a little more open. And I...I would...I would hope that the land trust wouldn't be at too much of a disadvantage position, you know, considering the power dynamic between the two. So, that's my concern. My concern is the...that while the thought is that they have...land trusts would have leverage in negotiating, I...I...in...in practice, I...I don't know...I don't...I don't necessarily see that. So, at minimum like...I would like to see some kind of like notice requirement or something that lets them know that they have this kind of leverage, and that it should be negotiated. Mahalo, Chair.

CHAIR COOK: Thank you, Member Rawlins-Fernandez. My...Chair...Chair's comments for the discussion. The reason that the bill was changed and adopt...and adopt--modified was in response to the Director of Public Works' concern, and Dr. Six's concern, and your concern that you're stating now, that the appropriate...that the...whoever is deeded the property from the developer would have the resources, the experience, to manage the property, and meet the requirements in perpetuity. The...that's why an accredited land trust is very important. It's not simply a nonprofit. And an accredited land trust that has roots, and Hawai'i as well, like HILT, is...their...the concern that they're not going to accept it unless...they're not going to be sophisticated to accept it. There's going to be guidelines and criteria for what's expected. I think the fact that, as you stated, the neighbors are going to be adjacent to it. So, I'm supportive of the concept. I'm hoping that we can pass it as is, and if there's further modifications, we'll have the opportunity to do that. Member Sinenci.

COUNCILMEMBER SINENCI: Mahalo, Chair for my opportunity. Yeah, I just put it out there. I think, you know, after these August fires, and Director Molina's comments, we're just trying to be fiscally conservative, Chair, and make sure that moving forward that, you know, we have all of these protections in place. So, I leave it up to you, Chair. Thank you.

CHAIR COOK: I'm in agreement with the concern and the intent. I believe that this bill will handle that. So --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR COOK: -- thank you, Member. Okay, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Before you call for the vote. So, you said that there's resourcing put...like can you point to where in the bill that it ensures resourcing? Or is it just what Mr. Oki--our resource person...sorry, I think it's Okumura [sic]? Oh, no? Aw, shucks. Okay, I got it wrong. And I can't read your

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lips, Member Paltin. But, what he...what he said to Member Paltin was that...that basically, the onus would be on the land trust to like...to resource development on their own. Like are they going to fundraise and do the...all that kuleana will go to land trust, and I don't agree with that.

CHAIR COOK: Okay. That's your comment. I think --

COUNCILMEMBER RAWLINS-FERNANDEZ: No, it was also a question. The question was, where in the bill does it point to the resourcing of the management of the...the parcel?

CHAIR COOK: The previous testimony from the developer, they outlined their...their plans to do the...all of the improvements, and then recognizing that the...there would be future funding for it. The accredited land trust is the...the mechanism for the developer to transfer the property. The developer will have to fund and address the maintenance and the cost with the accredited land trust. So, that's a transaction between the developer and the accredited land trust and the criteria of this subdivision ordinance, which has been reviewed and approved by the Department of Public Works. In fact, maybe we could ask Director Molina for comment. Director?

MR. MOLINA: Thank you, Chair. I just want to kind of remind the Committee of the premise behind this subdivision--so, one of the requirements being this conveyance to the land trust. And so, in order for that conveyance to be effectuated, first off, the land trust has to be in agreement. So, it's not as if we're forcing land trusts to take these properties. They have to be in agreement, and obviously have the capacity, which I would hope that that board of that land trust is aware of when they're agreeing to take such properties, that they have the capacity to manage what is being deeded over to them. Thank you.

CHAIR COOK: Thank you, Director. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Director Molina, so my question was about the resourcing. I understand capacity, but also, any time that more 'āina is being stewarded, it comes with operational costs, as we all know. And so, your expectation is that a land trust is going to know to ask developer for funding? Because I haven't really seen too much of that on my time on the Council.

CHAIR COOK: Director?

MR. MOLINA: So, again, if we're talking about accredited land trusts, which is what the bill contemplates, have this track record that substantiates their capacity and capabilities to fund raise, to support, you know, additional assets coming out of their management in order to be able to achieve that accreditation. So, we're not talking about the nonprofit that was formed yesterday, we're talking about guys that have a track record that can show capacity, and that are agreeing to have the capacity to take on these historic parcels. Thank you.

CHAIR COOK: Thank you, Director.

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COUNCILMEMBER RAWLINS-FERNANDEZ: So, Director, what Member Sinenci proposed is like to ensure that there is accountability from whatever developer it is that will be conveying a historic site for a land trust to manage. And I don't know, I'm...I'm not comfortable just saying that, you know, accredited land trust, you know, will negotiate for funding, for instance, at least for the, you know, initial maintenance of that parcel. But it sounds like everyone else is like super confident in...in the land trust doing that, and feeling welcome to do that. So, my question was, where in the bill does it say that? And I...I guess everyone is just saying in the accreditation of the land trust, and we're just going to...

CHAIR COOK: That's basically it, Member Rawlins, is the --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I don't support that. I'm going to vote against the bill.

CHAIR COOK: Okay. So, we call for the vote, Members. Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. I think...I think what Member Rawlins-Fernandez is saying is that we're not sure if...if the land trust will...will take this kuleana on if they don't have a...a steady stream of funding to manage the place. So, that was...that was what...this amendment helps that. Because if they're just taking it and they...they don't have the funds, where...where are they going to --

CHAIR COOK: So...

COUNCILMEMBER SINENCI: -- get the funds? Just because they're accredited doesn't mean that they've got a steady flow of funding for them to take care of this piece of property, right? So...

CHAIR COOK: So, I think...I think that's where--if I can help clarify. This transaction is being conducted between the developer, who is proposing...who is working with the County of Maui in subdividing the property. This particular part of the property is going to be a historic preservation lot. The transaction is going to be with an accredited land trust that has the experience. It'll meet all of the County criteria for access. It'll meet the State criteria for preservation.

COUNCILMEMBER SINENCI: And if they don't take it, does the Department of Public Works take it?

CHAIR COOK: No. Nobody takes it.

COUNCILMEMBER SINENCI: Oh, nobody takes it.

CHAIR COOK: Nobody takes it.

COUNCILMEMBER SINENCI: Does it --

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CHAIR COOK: It's...no. This is not like in order for it to be subdivided and transferred, it has to be accepted, and you have to have a new owner. It isn't simply...that's my understanding. It can't simply just be spun off. It's going to be a transaction between the existing developer, an accredited land trust who will accept that parcel, will meet all of the criteria from the County and the State, and will be responsible for it, and then that's the structure of the deal. So, it isn't...maybe ask Director Molina. Are you available?

MR. MOLINA: Thank you, Chair. Yes. I mean the premise of the bill is that if there is no land trust prepared to take the land, then it is status quo as it is currently, where that development and the future HOA, or however the management structure is, will still retain ownership of the property that contains the historical parcels, and will still be responsible for implementation of the preservation plan. Thank you.

CHAIR COOK: Thank you. Okay. Chair, would like to call for the vote. Roll call.

MR. PASCUAL: Chair, proceeding with roll call vote. And then to clarify, this is Member Sinenci's motion to amend?

CHAIR COOK: Oh, okay. Yeah.

COUNCILMEMBER JOHNSON: Council...Chair, can I...can I jump in for a quick question?

CHAIR COOK: Yes.

COUNCILMEMBER JOHNSON: I'm sorry, I was trying to raise my hand, but I didn't...but that's okay. Director Molina, it...it's your Department that's in charge of beautification and those sorts of items. So, if the land trust has a complaint against how...you know, their grass is too high, or the trees aren't trimmed to that, what happens then? Do you guys go out and cut...cut their grass and trim their trees, or what happens at that point?

MR. MOLINA: We would issue them a notice of violation, same as any property owner.

COUNCILMEMBER JOHNSON: Okay.

MR. MOLINA: And depending upon the course of action, there would either be fines to encourage them to comply, and potentially the County taking action with its own forces in trying to recover that cost. Thank you.

COUNCILMEMBER JOHNSON: So, if you were to...you know, let's say worst-case scenario, nothing happens. And are you guys in your...in your capabilities to go and, you know, do it yourself and then bill the owner, which would in this case be a land trust?

CHAIR COOK: Director Molina?

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MR. MOLINA: Yes. So, under the Beautification Code, I believe currently it talks about the County taking action, and then recovering its costs from the property owner.

COUNCILMEMBER JOHNSON: How often does that happen? Does it happen often?

MR. MOLINA: Rarely. Usually we get compliance before we have to get to that extreme measures.

COUNCILMEMBER JOHNSON: So, I guess there is a way to cut...you know, cut the grass, and then...but we would charge them, but that hardly ever happens, is what I'm hearing. So, I...I mean I think the amendment has a...a good solution to a problem that we do encounter on at times, and you can do it this way, or you can try to have Jordan Molina's...Director Jordan Molina's Department keep it clean. But if, at the end of the day, someone has got to pay, and going through this big long process to have Public Works issue notifications, finally go and cut it, and then finally go and bill them, that sounds like such a longer process then what Councilmember Sinenci's amendment is saying, which is, let's put a little money to the side and use that to...for the, you know, keeping the grounds nice. I...I don't know. I think it...status quo sounds a bit more complicated than this amendment, but that's just kind of my...my two cents on it. I figured I'd speak to the amendment before we voted. Thank you, Chair.

CHAIR COOK: Okay. Thank you. So, roll call vote on Member Sinenci's amendment.

MR. PASCUAL: Chair, proceeding with roll call vote. Councilmember U'u-Hodgins.

COUNCILMEMBER U'U-HODGINS: No.

MR. PASCUAL: Councilmember Sinenci.

COUNCILMEMBER SINENCI: Aye.

MR. PASCUAL: Councilmember Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aye.

MR. PASCUAL: Councilmember Paltin.

COUNCILMEMBER PALTIN: Aye.

MR. PASCUAL: Council Chair Lee.

COUNCILMEMBER LEE: No.

MR. PASCUAL: Councilmember Kama.

COUNCILMEMBER KAMA: No.

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MR. PASCUAL: Councilmember Johnson.

COUNCILMEMBER JOHNSON: Aye.

MR. PASCUAL: Committee Vice-Chair Sugimura.

VICE-CHAIR SUGIMURA: No.

MR. PASCUAL: Committee Chair Cook.

CHAIR COOK: No.

MR. PASCUAL: Chair, you have four “ayes,” five “noes,” motion fails. And you are back to the main motion as amended.

VOTE: AYES: Councilmembers Johnson, Paltin,
Rawlins-Fernandez, and Sinenci.

NOES: Chair Cook, Vice-Chair Sugimura, and
Councilmembers Kama, Lee, and U‘u-Hodgins.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION FAILS.

CHAIR COOK: Okay. Thank you, Members. Now we are back to the main motion as amended. Any further discussion? Member Rawlins-Fernandez.

VICE-CHAIR SUGIMURA: Roll call.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, I...I appreciate the...you working with the Department and resource people to improve your original bill. I think that it is a major improvement. I think that like, you know, a...a lot of the reluctance is developers from elsewhere, wherever, whatever, come in, and there is a history of abuse of our...our, you know, historic sites, of our culture, and I mean I like Mr. Dowling, so I...I appreciate him helping you with this. But for...you know, for those that there's...of developers coming in, making money and then, you know, not taking on any kuleana to malama this place. And I like that Member Sinenci tried to ensure that there is a little more teeth to it, that any developer...I...I know that no one is forcing a land trust to do this, but, you know, holding those that make money off of

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building on...you know, in our home, that there's a little more accountability and, you know, giving our land trusts a little more leverage so that there is that funding, and they're not, you know, constantly, you know, looking like they're...they're coming to beg for something that we all benefit from, and that, you know, there just isn't enough mechanisms to support the good work that they do that we all benefit from. Mahalo, Chair. Oh, yeah. So, I don't know. With that, I'm going to be voting against the bill. Yeah, when you do call for it, I'll request the roll call then. Mahalo.

CHAIR COOK: Okay. Thank you, Member. Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I, too, wanted to mahalo Mr. Dowling for putting up the...the funding to...to help with the preservation plan. And, I mean, at this point, we can only hope that future developers do the same like Mr. Dowling. Thank you.

CHAIR COOK: Thank you. Members, any other discussion before we call for the vote?

COUNCILMEMBER PALTIN: Oh, me. Me.

CHAIR COOK: Oh, Member Paltin.

COUNCILMEMBER PALTIN: Thank you. I just wanted to report that I have two unnamed minors that returned from school, and one adult male named George Vierra. And for my discussion, I'll be supporting the bill. I don't think it's something that we can't overcome, possibly in the future, with more legislation or discussion. So, I didn't want to throw the baby out with the bath water. You know, in my experience, having had reached out to various land trusts to try and acquire lands above Honolua, most of the ones that we reached out to were pretty savvy on whether or not they would accept that type of responsibility. It was us, the people, asking them to accept it that were more like, we'll figure that part out later, you know. But not saying that that's how it should be, just that...I don't know if I've got the time right now, but if we continue to brainstorm, that possibly we can come up with a way to ensure that these areas are taken care of. I think, as Dr. Six mentioned, it is in the best interest of the development to support the taking care of these sites in perpetuity. So, while I'm not committing myself to working on that, I'm just putting it out there to the universe that somebody will come up with a solution. Thank you.

CHAIR COOK: Thank you, Member. Okay, Staff, call for the vote...roll call.

MR. PASCUAL: Thank you, Chair. So, this is the main motion as amended for Bill 42. Councilmember U'u-Hodgins.

COUNCILMEMBER U'U-HODGINS: Yes.

MR. PASCUAL: Councilmember Sinenci.

COUNCILMEMBER SINENCI: Aye with reservations.

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MR. PASCUAL: Councilmember Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: No.

MR. PASCUAL: Councilmember Paltin.

COUNCILMEMBER PALTIN: Aye.

MR. PASCUAL: Council Chair Lee.

COUNCILMEMBER LEE: Aye.

MR. PASCUAL: Councilmember Kama.

COUNCILMEMBER KAMA: Yes.

MR. PASCUAL: Councilmember Johnson.

COUNCILMEMBER JOHNSON: Aye.

MR. PASCUAL: Committee Vice-Chair Sugimura.

VICE-CHAIR SUGIMURA: Aye.

MR. PASCUAL: Committee Chair Cook.

CHAIR COOK: Aye.

MR. PASCUAL: Chair, you have eight “ayes,” zero “noes”...oh, eight “ayes,” one “no,” motion passes.

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VOTE: **AYES:** **Chair Cook, Vice-Chair Sugimura, and Councilmembers Johnson, Kama, Lee, Paltin, Sinenci, and U‘u-Hodgins.**

NOES: **Councilmember Rawlins-Fernandez.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **None.**

MOTION CARRIED.

ACTION: **FIRST READING OF BILL 42, CD1 (2023).**

CHAIR COOK: Thank you, Members. Members, I’m going to call for a five-minute recess. The time is 2:41. We’re going to come back at 2:46. . . .*(gavel)*. . .

RECESS: **2:41 p.m.**

RECONVENE: **2:49 p.m.**

ITEM 1(12): MAUI WILDFIRE DEBRIS REMOVAL FOR COUNTY-OWNED PROPERTIES (RULE 7(B))

CHAIR COOK: . . .*(gavel)*. . . Welcome, Members. With no objections, I’d like to take WAI-1(12) next --

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: -- to accommodate our resource personnel. Okay. Seeing there is no objections. We are also going to add Jesse Curry as a special expertise as a U.S. Army Corps RFO Commander. With no objections, may we designate him as a resource person under Rule 18(A)?

VICE-CHAIR SUGIMURA: No objections.

CHAIR COOK: I take it you speak for all?

VICE-CHAIR SUGIMURA: Yes.

CHAIR COOK: Members...okay. Members, the last item is a discussion on the Debris Removal for County-Owned Properties, including Bill 118 (2023), entitled “A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER

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INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES GOVERNMENT AND THE STATE OF HAWAII REGARDING THE AUTHORIZATION FOR MAUI WILDFIRE DEBRIS REMOVAL FOR COUNTY-OWNED PROPERTIES.” This item is posted for discussion only, no legislative action can be taken today. Members, in your Granicus files, you will find a copy of Bill 118. Members, if you recall, we passed Bill 118 on first reading at the Council’s meeting on November 20th, 2023. It remains with the Council for consideration of passage on the second and final reading on December 1st, but we thought it best to further discuss the subject matter in Committee before final reading. Ms. Wade, Dr. Koger, and Ms. Lee-Greig, along with U.S. Army Corps Commander Jesse Curry, would you like to provide any opening remarks?

MS. WADE: Thank you, Chair. Erin Wade, Department of Management. As Chair stated, our intent is to request the Council to authorize the right-of-entry for County-owned parcels in Lāhainā that were affected by the fire. During the Council meeting, I requested action on the floor--and thank you for allowing for that last week--but then you asked for some additional information, and I promised you a matrix of the properties, so I brought that today. I’ve provided a copy, and an electronic version as well. The properties in the matrix are organized by Department, so whichever Department’s asset those properties are assigned to is how it’s organized. There was some additional requests for more clarity regarding which parcels had vertical construction that was impacted, so there is a packet I provided for you that has each individual TMK that did have vertical...or still has vertical construction on it. And then there’s a map at the back of that packet as well that illustrates Government-owned parcels in Lāhainā. So, that has County, State, State Housing Authority, and any combination thereof. There’s a lot of that are either State-owned and EO’d to the County or vice-versa. All of those are illustrated there. The red parcels are showing the County-owned exclusive. The intent in the letter that was sent to you with the bill states requesting authorization to provide for clean-up of those parcels...of all of the parcels, and that’s 68 parcels that have County ownership as part of the ownership mechanism. In case there is questions related to how the debris removal would happen, Dr. Cory Koger and Colonel Jesse Curry are here to respond. I understand that there might have been some questions as well about historic preservation, cultural protection, so Tanya Lee-Greig is here to assist with any questions you have for that. Thank you very much.

CHAIR COOK: Ms. Greig, would you like to do any opening remarks?

MS. LEE-GREIG: So, for Lāhainā, I would...I would just like to say, you know, we’ve...the cultural resources team has...has been standing by for quite some time waiting on ROEs to come in from Lāhainā. What this would help to do is, it would help us to get started in the area, right. So, the archaeological surveys cannot get underway until we have verified, signed ROEs. So, this would be a really big step in helping us to move forward with that. In anticipation of, I’m trying to get ahead of...of the big debris removal process. So, again, if you have any...and...and in these County parcels, they are very, very important to start properties and sites in these locations, both on the surface, as well as very, very big concerns for subsurface...subsurface sites and

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sensitive...sensitive issues. So...so, knowing that, you know, we're aware of that, and we have a...a really good team put together to be able to address those...those issues. So, if you have any questions, please don't hesitate to ask. Thank you so much.

CHAIR COOK: Thank you. Dr. Koger, would you like to make some opening remarks?

MR. KOGER: Yes. So, in addition to what Tanya has said, we don't plan on doing debris removal until after the full archaeological assessments are conducted. If there's any special methods or requirements based upon the outcome of those archaeological assessments, we're planning on letting a separate contract to do that work. That work might require shoring. It might require different methods, such as hand tools as opposed to heavy equipment, to remove debris. So, we're standing by what the outcome of those archaeological assessments to understand what that scope is. That will not hold up debris removal in Lāhainā to the extent that we will have a separate contract to do residences, as well as commercial structures. And I stand by to ask [sic] any questions.

CHAIR COOK: Thank you. Commander Curry, do you have any comment...opening comments?

MR. CURRY: Chair and Councilmembers, really, no...no other opening comments, other than to say thank you for having us here for this discussion today.

CHAIR COOK: Thank you, sir. Thank you all. We will now move on to testimony...opening public testimony. At this time, I would like to open public testimony for WAI-1(12).

MS. LILLIS: Chair, we currently don't have anyone signed up to testify for this item, but I do see someone in the Council Chamber.

CHAIR COOK: Okay.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. LAW: Aloha awake'a, Mr. Cook...Chair Cook. Jasee Law from Kula Uka. Just wanted to take every opportunity. The Hawaiian word for the day is aha--I mean for the afternoon--aha ho'omalū, which means assembling. So, I would just take the opportunity to address this assembly, and Director Agawa and Director Molina...I just want to take every opportunity to ask for the...the burner factory that we need to dispose of our waste products. Yeah, you know what I'm talking about, yeah, with a waste-to-energy proposal. Oh, and so, since we have Hawaiian Electric over a...over a barrel right now, we need their help with the generators to...to get the project moving along. Thank you, Mr. Cook.

CHAIR COOK: Members, any clarifying questions? Seeing none.

MR. LAW: I give the rest of my time to the Hawaiians.

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CHAIR COOK: Okay. Thank you.

MS. LILLIS: Chair, we currently do not have anyone else wishing to testify. If anyone would like to testify, this is the last call, please unmute and let Staff know. I will give a brief countdown...three, two, one. Chair, it appears no one wishes to testify.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR COOK: Members, seeing there are no more individuals wishing to testify, without objection, I will now close oral testimony for WAI-1(12).

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: As a reminder, written testimony will continue to be accepted into the record. Members, I'm proposing two rounds of three-minute questions per member. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Thank you, Members. I would now like to open the floor for questions and discussions. Councilmember Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: You know, I really don't have questions. But I...every time I hear the team present, I learn more. So, I didn't realize that the archaeological studies will have to go first, even before the ROE. I...I didn't realize that. Because in...in Kula, we're seeing the ROE and then your group comes in with the Army Corps of Engineers. So, in West Maui, they're doing it a little bit different?

CHAIR COOK: Please.

MS. LEE-GREIG: No, in...in West Maui, we require an ROE before going in to even begin the archaeological survey.

VICE-CHAIR SUGIMURA: Oh, so same.

MS. LEE-GREIG: Same.

VICE-CHAIR SUGIMURA: Okay. I...I didn't...I...I misunderstood, then. Okay, very good. So, you're...today you're asking us to approve all of these properties so that the ROE can happen, and then the next steps can then proceed. I support this. Thank you.

CHAIR COOK: Thank you. Councilmember Tasha Kama.

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COUNCILMEMBER KAMA: Thank you, Chair. I don't have any questions, but I do support this bill, so they can go ahead and get started right away, and the people can get back onto their property. Thank you, Chair.

CHAIR COOK: Thank you. Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Wade, for providing this documentation. It's along the lines of what I was looking for. What I don't understand is why would we need a right-of-entry for, say, a vacant lot or a parking lot? Is...what is going to be removed? Because I thought that what the purpose of the right-of-entry was to remove the ash footprint and the building foundation. So, if there was nothing there, why would you need a right-of-entry? And then my understanding was that you weren't going to remove like our streets, and our parking lots, and our, you know, sidewalks and stuff like that. So, why would you need a right-of-entry for like a drainageway, utility access, or vehicle access, unless there was a structure on top. Was I mistaken on that information?

CHAIR COOK: Ms. Wade?

MR. KOGER: Thanks for the question. Yes. No, there won't be any debris removal on unimproved property that does not have a...a structure that was either damaged or burned.

COUNCILMEMBER PALTIN: Okay. So, then why would you need a right-of-entry for all these vacant lots, or parking lots, and things like that?

MR. KOGER: So, it's access to actually use those properties, we might stage vehicles on them, we might do other activities on those parcels. And...and currently, we're going through a license agreement process with the County, so I'm...I'm...we're looking to expedite that process. It took about a month and a half to get the license agreement for the TDS, and we'll have to go through that process to be able to use these properties for staging areas.

COUNCILMEMBER PALTIN: Okay. If you could speak in layman's terms. License agreement has zero meaning to me, and TDS also.

MR. KOGER: So, to get a right-of-entry for the temporary debris site for the...the burn material in West Maui, we went through what was called a license agreement, and that was drafted and agreed to by Michael Hopper, the Corporation Counsel. So, we had to go through that process to be able to use that area. What we're...what we're seeking through this right-of-act...right-of-entry agreement is to just be able to stage vehicles on parking lots if possible.

COUNCILMEMBER PALTIN: So, then I don't understand because our parking lots are not private property, it's public property. So, anybody can park in the parking lot, unless...I mean the Malu'ulu O Lele parking lot, and then you got to pay a parking fee. But if you could clarify that for me?

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MR. KOGER: So, yes. We could enter, but we would not be able to store a damaged vehicle for adjudication on that public parking lot.

COUNCILMEMBER PALTIN: Okay. And then like the 266 Dickenson, we had been told at one time that there were iwi kupuna on that lot, and it's just a vacant lot on the corner . . . *(timer sounds)* . . . of Dickenson by Sacred Hearts. I don't know if that would be an appropriate place to store anything. Would it be possible to remove that from this list? It's a vacant lot. As well as like Malu'ulu O Lele. I don't know if those are appropriate areas. Like, you know, certain areas are more special or something. And...and so, like...I don't know if I would feel comfortable storing broken vehicles on Malu'ulu O Lele or those areas. Is it...is it possible to do a deeper dive into like where you expect to stage things and like that? Where you expect to remove debris? Where you expect to just drive on as an easement, because...and...and then also, once you're able to do your archaeological assessment, are you going to inform us of the results of all that?

CHAIR COOK: Ms. Greig?

MS. LEE-GREIG: So, all of our results go first to FEMA, and FEMA...the historic...the historic preservation specialist from FEMA then disseminates that information. Of course, when we find through either the archaeological assessment on the ground...boots on the ground, or the...the review of the previous archaeological studies, you know, we'll make those recommendations either for monitoring, or in this case, we can make a recommendation to not use certain areas that are highly sensitive, like areas where there may be iwi kupuna interned below the asphalt, or especially places like Malu'ulu O Lele Park.

COUNCILMEMBER PALTIN: Okay, I think I went a little bit over time. I'll wait until my next go around. Thank you. Sorry.

CHAIR COOK: Councilmember Johnson?

COUNCILMEMBER JOHNSON: Thank you, Chair. You know, I know this is a...a very tough work ahead of us. So, I want to thank everybody who's actually out there if I can use your terms, boots on the ground, doing the debris removal and everything. Thank you so much. I've got...I have a question, but it comes back to the idea of the Ikaika 'ohana and Doug Bigley's punish...project just off of the bypass, the one that did burn down, the affordable housing project. They need their debris removed soon so that they can actually rebuild that project that was just brand new. And they were telling us that--when I had a meeting with them--that if we can remove that...the debris off their parcel, they can get working on it to rebuild it. But if it takes a long time, then the project might just not be feasible, and they might not ever be able to rebuild. So, would you...I know you have to take into consideration everybody's home, everyone's project, and that story can be compiled into almost everybody. If we don't act quick, then a lot of people will lose their opportunities to rebuild. So, when it comes to this...these rights-of-entries...entry, and these...I guess the term is temporary debris

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site, are you prioritizing areas that if we...you know, a little after hearing some of those landowners and those people whose houses and buildings were...were affected by the fire, are you prioritizing? We need to take this lot and take the debris and put it in...inside whatever designated zone, your temporary debris site, so that way you can speed it up, or is it just going along those maps that we've all been watching, you know, the process that you're following the maps. Can you speak on that?

MS. LOWY-GERSTMAR: Chair, if I may? Mariana Lowy-Gerstmar, Deputy Corporation Counsel. I...it was my understanding that we were...this was going to be discussed WAI-1(12) now? I feel like these line of questions are more towards the other item. No? Yes. Yeah, I feel like Member Paltin and Councilmember Johnson, maybe they're asking for things can be asked in...when WAI-15 is taken up? Yes. I don't know.

CHAIR COOK: You're correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR COOK: So, this is WAI-1(12).

MS. LOWY-GERSTMAR: Yes.

CHAIR COOK: And it is the Wildfire Debris Removal for County-Owned Properties --

MS. LOWY-GERSTMAR: County-owned property. Yeah.

CHAIR COOK: So...

MS. LOWY-GERSTMAR: I feel like the line of questioning is going more towards private property owned and right-of-entry to private property.

COUNCILMEMBER JOHNSON: Okay.

CHAIR COOK: Thank you.

COUNCILMEMBER JOHNSON: I can clarify my question, if...if you want.

MS. LOWY-GERSTMAR: Just to keep it on what --

CHAIR COOK: Okay. Thank you for the clarification.

MS. LOWY-GERSTMAR: Sorry.

CHAIR COOK: So, Member Johnson --

COUNCILMEMBER PALTIN: Mine was on the County list.

MS. LOWY-GERSTMAR: Yes.

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CHAIR COOK: Keeping it on the...the County list.

COUNCILMEMBER JOHNSON: Okay. So, the...where...which of these lists is it where we call it the temporary disease...the debris site, okay? Do we have them labeled?

CHAIR COOK: No. These are temporary debris sites, that's going to be on a future bill. This is purely --

COUNCILMEMBER JOHNSON: Okay.

CHAIR COOK: -- the right-of-access...right-of-entry for the County properties.

COUNCILMEMBER JOHNSON: Okay. All right. Thanks so much, Chair.

CHAIR COOK: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, my first question is for you. You know, these two items are like kind of related...like you need an ROE too, in order to remove the debris. Is there a reason that we couldn't take them up like together?

CHAIR COOK: Yes. One of them --

COUNCILMEMBER RAWLINS-FERNANDEZ: So, that way there isn't that limitation on the discussion?

CHAIR COOK: This...this one is the right-of-entry between the County of Maui and the...and the...the Federal Government --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, yeah...I know.

CHAIR COOK: -- and the State Government.

COUNCILMEMBER RAWLINS-FERNANDEZ: But is there a reason that we didn't take them up together?

CHAIR COOK: Actually, the Chair would choose to keep them separate. And basically, the importance of this, as communicated by the Administration, is until we grant...the Council grants the right-of-entry for these County-owned parcels in the Lāhainā area, then the archaeological inventory aspect won't be able to begin. Nothing can move forward until we do this.

COUNCILMEMBER RAWLINS-FERNANDEZ: I know. I know the importance of the ROE. But if discussions start to overlap, which it--you know, Corporation Counsel feels like it has--then there's no reason we can't take up both items simultaneously, and then that way we don't have to police discussions. We can take them up together.

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CHAIR COOK: I think you're misinterpreting --

COUNCILMEMBER RAWLINS-FERNANDEZ: We've done that . . . *(inaudible)*. . .

CHAIR COOK: -- Member Rawlins-Fernandez, I...I've been interpreting what Corp. Counsel indicated, which is--and she can reclarify it again. Is this...am I misinterpreting your intent...your interpretation? No. Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, I understand what she said. She said that...that the discussion is more regarding debris removal, which is the next agenda item. And my question is, the reason we couldn't take up both the ROE and debris removal simultaneously.

CHAIR COOK: Yeah. No, we cannot. Chair is going to keep them separate. We're going to follow what the Administration asked and requested, and the Corp. Counsel...my understanding is--and she can correct me if I'm mistaken--Corp. Counsel is asking that we can focus the conversation on the County-owned properties that we are seeking to approve right-of-entry for, and not private properties that are very important and need to be discussed and addressed. That was the issue. Okay. So, with...I...I'm asking the Members if we can focus on WAI-1(12) and let's...listen to, ask our questions, and listen to our resource personnel. And my goal and objective is to pass this today so that it can move on, and that we can enable people to do the clean-up for the County properties and everywhere else in Lāhainā. We are also going to address the landfill issue, which is separate. So, any other questions regarding this? Member Rawlins-Fernandez, a right-of-entry for Lāhainā for the...between the U.S. Government, the State Government, the County Government?

COUNCILMEMBER RAWLINS-FERNANDEZ: Just that I...I disagree that we cannot discuss the two items simultaneously. We can. But if it's your preference to, then that's...that's your discretion as the Committee Chair, and I'll respect that. But I...I don't want that stated for the record without it being corrected that we cannot...because we can.

CHAIR COOK: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: My question is for Ms. Wade. Ms. Wade, aloha, and mahalo for being with us. My question, the last time we talked about ROE, you talked about putting on the previous, you know, like urns. So, iwi that were...that was already cremated and, you know, set aside. Was that...was that something that you were able to put on the form?

MS. WADE: Thank you for the question. Yes. So, the right-of-entry intake form was amended now and it asks now, are there any known cultural resources, and it does refer to...and it provides a list, and human remains generally is one of the options that you can select on the list.

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COUNCILMEMBER RAWLINS-FERNANDEZ: That's great. Mahalo, Ms. Wade. Mahalo, Chair.

CHAIR COOK: Member...Chair Lee, questions?

COUNCILMEMBER LEE: No questions. Thank you.

CHAIR COOK: Member Nohelani U'u-Hodgins?

COUNCILMEMBER U'U-HODGINS: I have no questions, Chair. Thank you.

CHAIR COOK: Thank you. Member Sinenci, any questions for our person?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a question for Ms. Greig concerning the cultural monitors. How long do you anticipate them to go through these properties, and what would they be kind of looking for?

MS. LEE-GREIG: So...so, there's two aspects to the cultural resources kuleana. There's cultural observing, cultural monitoring, which is completed by...in...in this case, Nā 'Āikane O Maui is...is the framework that the cultural observers come under. And so, their kuleana is they go out with all teams regardless. Even...even our archaeological crews, we have a cultural observer with us to...to monitor our activities in...in Kula, and...and the same will be for Lāhainā. And so, they're just out...out there daily for as long as it takes for...for the debris assessment to occur, and...and likely for the debris removal, so however long that task is. For archaeological crews, it depends on whether we identify anything on the surface. It may take one day, it may take two days if it's intensive. We've had a couple of days in...in Kula where our...our area of potential effect where we want to look at to...to make sure that the debris removal is not going to affect historic property extended into the gulch. So, we had to take care of some really--in Kula, Pulehu Gulch--so we had to take care of some really important safety things that took a couple of days. In Lāhainā, you know, each parcel has to go...nearly each parcel has to go through an archaeological assessment, and again, that can take anywhere between one...one to two days to complete that surface part. And then for the archaeological monitoring portion for Lāhainā, because...and...and we say this a lot, you know, the...the history of Lāhainā is very...is on the surface, and it's very close to the surface, yeah. So, archaeological monitoring, in addition to cultural observing, having a cultural monitor present, will be carried out in...in Lāhainā, and...and that will be for the duration of the debris removal process, and however long that takes.

CHAIR COOK: Thank you. And then Dr. Six, would...like to make a comment?

MS. SIX: I just wanted to provide an example of what Tanya is speaking about. A couple weeks ago up Lāhaināluna Road, they came across a known burial platform. It was actually previously identified by SHPD, and I just want to reinforce and restate that from the beginning of this disaster, Tanya and the State Historic Preservation Division have been providing FEMA with sensitive burial locations of known burials. So, I

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think that it's a given that they will not be using temporary disposal sites on places that are already known to be very culturally sensitive. . . .*(timer sounds)*. . . So, I just want to put that out there. Thank you.

CHAIR COOK: Thank you, Dr. Six.

COUNCILMEMBER SINENCI: Thank you.

CHAIR COOK: Members, second...any further questions? Member...Chair Lee, and then Member Paltin.

COUNCILMEMBER LEE: Ms. Greig, are you not a monitor...archaeological monitor, or observer?

MS. LEE-GREIG: We do archaeological monitoring --

COUNCILMEMBER LEE: No. So, my question was, so why do you need an observer on you?

MS. LEE-GREIG: Well, I...I think...I think it's important. Like I...we...for archaeology, we have a very specific time frame that we look at, yeah, which is 50 years old or older. And it's always helpful for us to have the...those who are pili to that place, or...or genealogically tied to that place to also ensure that, you know, while...while I like to think that we're always sensitive to cultural issues, we're very open to having cultural observers also there, not only for...for mana'o or...or sharing thoughts, or mo'olelo of a space in real time with us, but also to ensure that those contem--like our contemporary cultural spaces are also recognized by...by those of us who...who have a lens for 50 years or older. Yeah.

COUNCILMEMBER LEE: Okay. That makes sense. And so, all of you are...all the monitors were hired by FEMA?

MS. LEE-GREIG: So, our...our...we are subcontracted to overall project management team, which is AEPAC. AEPAC, their...their wheelhouse, is historic architecture. Their...their main owner is...is an architectural historian and a historic architect.

COUNCILMEMBER LEE: From Maui?

MS. LEE-GREIG: From O'ahu. She's done a lot of work on Maui. Her familiarity with multi-ethnic structures...standing architectural structures, is...is very well noted by the County's own Stanley Solamillo, right. So...so, Loraine is...is the lead for AEPAC. They're providing the overall project management and we are contracted to the Army Corps of Engineers.

COUNCILMEMBER LEE: Okay. Thank you very much. Thank you, Chair.

CHAIR COOK: Thank you, Chair Lee. I believe Member Paltin had a question.

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COUNCILMEMBER PALTIN: Thank you, Chair. I don't know if this would be a question for Staff to do as a follow up or what. But I was wondering, can we request to be informed of all the progress after it goes to the FEMA person that Ms. Lee-Greig mentioned? Like whatever is found, how it's going to be used, if the structures are going to be kept or not, and those types of things? And I would...I would just like to say, I don't know, it says 266 Dickenson that there isn't expecting to see anything...cultural sites, none identified. Would iwi kupuna be considered a cultural site, or how...how would you indicate that on this...I think it's an Excel sheet that was just sent to us.

MS. LEE-GREIG: Iwi kupuna is...is certainly considered a highly sensitive cultural site, and it...we would work with the County on how best to represent that in documents. Sometimes the...the information is sensitive. I know that the Historic Preservation Division doesn't necessarily push that out to the public, so...and it's not a matter of...of public access...immediate public access, yeah. So, maybe...maybe it's working with Janet Six to determine how best to represent that or, you know, highlight red, or something like that to be able to let you know which sites are highly sensitive.

COUNCILMEMBER PALTIN: And then how much do cultural monitors get paid an hour?

CHAIR COOK: Ms. Greig, if you could choose. . . .*(laughing)*. . . Is that...

MS. LEE-GREIG: I...I don't know how much the cultural monitors get paid an hour for the Nā 'Āikāne portion.

COUNCILMEMBER PALTIN: But they are subcontracting underneath you guys...you...your entity?

MS. LEE-GREIG: They are subcontracted to AEPAC. So, we work in parallel with Nā 'Āikāne and the cultural monitors.

COUNCILMEMBER PALTIN: Okay. And then, yeah...is...is that a possibility, Chair, if...I don't know if it needs to be in writing for Ms. Wade or what, if you could find out if they're going to be used as a temporary site for any reason. I see...I think there's 115 acres at Launiupoko, and I...I believe that's zoned Agriculture. So, you know, if they temporarily store debris or junked cars there . . .*(timer sounds)*. . . like will there be proper environmental concerns in case, you know, in the future it was going to be a community garden or something like that or, you know, will...what will be the precautions taken if you store a bunch of junked cars at the parking lot? Would it be like cleaned up after, or how does that work? Because my understanding is, you're not going to remove the asphalt.

CHAIR COOK: Ms. Wade.

MS. WADE: I'm going take the cultural part, and then I'm going to punt to Dr. Koger for the clean-up after. So, could I...if I could propose that we move forward with the rights-of-entry so that the historic and cultural assessment can happen. And then, as the archaeological and cultural team does their assessment, if there are properties

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that are identified to be excluded from use, or portions of properties to be excluded from use, we can report back to the Council on what those are. And then from there, utilize the debris removal process as was expected. But as, you know, it was stated, there are some properties where there might not be any debris removal. It might be that it assists with access to an adjoining property. I mean it is big equipment that's going in on small streets. So, there is...it's helpful to have right-of-entry where it might not be needed for debris clean-up, but certainly we have the best teams in the State assembled to ensure that historic preservation and cultural protection is at the front of mind throughout the process. So, if we could do that initial assessment and report back, I'd be happy to continue that line of communication with you folks.

CHAIR COOK: Thank you, Ms. Wade.

COUNCILMEMBER PALTIN: That would be great. I just wanted to clarify also the information I was interested in...in knowing was like are we removing the Crossroads building, or are we keeping it and rehabilitating it? Same for the Pioneer Mill building on top of the Kaunoa...or next to Kaunoa Senior Center. Like that was what...some of the things I was also interested in...in knowing. Was...was that clear, or not super clear?

MS. WADE: It was clear to me. The Crossroads apartments did have its structural assessment, and it came back yellow, so it's not red, it's not...it means it's not a guaranteed remove. It's not green, so we don't actually know the condition. So, additional assessment is going to have to happen for Crossroads. I haven't seen the smokestack conditions, but Dr. Koger can explain perhaps how...how that evaluation process works.

CHAIR COOK: Dr. Koger?

COUNCILMEMBER PALTIN: Oh, not the smokestack, the...the office building right next to the Kaunoa Senior Center that the County purchased. And then one other follow up was rented space. I don't see...was...was my office not included, because we finished the thing because it burned down. It was 845 Waine'e Street...Old Lāhainā Shopping Center.

CHAIR COOK: Ms. Wade?

MS. WADE: According to the County's property management 878 Front, Old Lāhainā...is the Old Lāhainā Shopping Center. Even if that wasn't the address for the Council Office, that is the TMK address. So, that's the...that would be --

COUNCILMEMBER PALTIN: Oh, okay.

MS. WADE: -- the rented space for that Council office.

COUNCILMEMBER PALTIN: Got it.

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CHAIR COOK: Thank you, Member Paltin.

COUNCILMEMBER PALTIN: I did have some confidential documents in there, I'm not sure if they burned up or not.

CHAIR COOK: Okay. Thank you, Member Paltin. Dr. Six, you have a comment?

MS. SIX: I just wanted to say, after talking...talking to Stanley Solamillo, I believe that the Pioneer Mill office did have quite a bit of damage. So, it wasn't looking as good as some of the other buildings. So, that one may...I don't know if it's a red or a yellow, but Stanley said it had sustained quite a bit of damage.

MR. KOGER: And...and for everybody's awareness, Member Paltin, the Army Corps does not make the determination whether a building with more than one wall standing comes down, that is a County decision, and we'll just follow that direction. I also wanted to clarify, we're not really seeking access to any other parcels or properties for our use. What we really need is access to the Prison Street lot, because that's where all of the vessels that the U.S. Coast Guard removed currently reside. And so, we were...we need to remove those, and we don't have access to that parcel. And we then propose if we need to use anything else, we would just continue to use that lot for vehicles over.

CHAIR COOK: Thank you. Members, the Chair...the Chair would like to remind us that the...basically, this bill is to provide a right-of-entry to start the process. So, all of the questions regarding individual lots, buildings, and...and processes can be...should be, and can be, and will be addressed, but I'm asking that for this particular meeting right now, that it be more the right-of-entry process. We were just given this information. Everybody needs to digest it. It isn't something that we're going to be able to thoroughly vet right now. So, yeah. So, my...my hope is that we can wrap up the questions focusing on the right-of-entry aspect for the County properties, vote on it, and move it forward.

MR. PASCUAL: Chair?

CHAIR COOK: Member Sinenci.

COUNCILMEMBER SINENCI: Are we voting on this, on...on WAI-1(12)?

CHAIR COOK: My apology. Not voting on it. We are going to hopefully have a consensus that we all feel . . . *(inaudible)*. . .

COUNCILMEMBER SINENCI: Oh, consensus. Okay.

CHAIR COOK: Thank you for the correction.

COUNCILMEMBER SINENCI: Yeah.

CHAIR COOK: We will not. Any other substantive questions? Chair Lee?

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COUNCILMEMBER LEE: So, this will go back to Council, yeah? Yeah, that's the reason why we wouldn't have to vote on it.

CHAIR COOK: Yeah.

COUNCILMEMBER LEE: Okay. Thank you.

CHAIR COOK: Correct. So, I have a couple of questions for Ms. Wade. Who will be the point of contact for the County during this process?

MS. WADE: Thank you for that. So, just as with the private property, that's why I mapped out whose property is...is which Department's responsibility. So, each Department will continue to be responsible for acc--for their property. So, if there are questions, let's say it's about Crossroads, Housing would be the point of contact for that property. It will continue to be that way as it's assigned in our real property system.

CHAIR COOK: Thank you. Could you please, Erin--Ms. Wade--could you please clarify the Mayor's letter that the second to last paragraph is meant to say, "FEMA will consult on those properties individually to identify the appropriate compliance strategy for Section 106 of the NHPA, and communicate that strategy to the USACE point of contact upon receipt of this authorization."

MS. LEE-GREIG: So, because Lāhainā is a part of the National Landmark, there are certain contributing structures, or certain contributing properties, that add to the integrity and importance of the Landmark. Those...those particular properties and sites are considered...in...in the wording of the archaeological treatment plan, is...is exempt from the overall because there has...there is going to be a separate process on how to work around...how...how the debris removal will work around these sites so as to avoid or minimize any potential harm to these sites. So, each site will be looked at on an individual basis, and that would be sites like the courthouse, like the Seamen's Hospital, like the Kamehameha III residential complex, which includes Moku'ula, Mokuhinia, and the Hale Piula, right. All of those similar types of property, the...the public library, the...the King's loi, the brick palace, all of that will undergo a very specific process to determine how best to go about the debris removal, and...and what needs to occur on those...on those sites. And that will be between FEMA and the stakeholders to do that, is my understanding.

CHAIR COOK: Thank you for that answer. So, Members, if there's no objection, the Chair would like to defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER.

CHAIR COOK: Okay. Thank you, Ms. Wade, Dr. Koger, Ms. Lee-Greig, Commander Curry, for being here this afternoon, and for all your hard work and attention to this matter.

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Members, this concludes...no, not there. I got to go back there. Thank you, Members. Chair would like to call a five-minute recess. The time is now 3:35. We will be back at 3:40. . . .*(gavel)*. . .

RECESS: 3:35 p.m.

RECONVENE: 3:43 p.m.

**ITEM 15: BILL 120 (2023), RELATING TO THE ISSUANCE OF A
MANAGEMENT RIGHT-OF-ENTRY FOR THE LAHAINA
WILDFIRE FINAL DISPOSITION PROJECT**

CHAIR COOK: . . .*(gavel)*. . . Members, the next item is Bill 120 (2023), entitled “A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, REGARDING THE ISSUANCE OF A MANAGEMENT RIGHT-OF-ENTRY FOR THE LĀHAINĀ WILDFIRE FINAL DISPOSITION PROJECT.” Bill 120’s purpose is to authorize the Mayor to enter into an intergovernmental agreement with the State DLNR for a management right-of-way permit to parcels located in Olowalu to allow for wildfire debris landfill and ancillary purposes. Members, if you recall, we passed Bill 119 (2023) on final reading during the last Council meeting on November 20th, 2023, and referred Bill 120 to the Committee for further discussion. Although Bill 119 contains the same matter as Bill 120, Bill 119 expires on the 91st day after its approval. Bill 120 expires in one year, or until the execution of an executive order by the Governor to set aside lands for the Lāhainā Wildfire Final Disposition Project. At this time, I would like to ask the Department of Environmental Management to provide any opening comments on this item, and to please state your name for the record.

MR. AGAWA: Thank you, Chair. Hi, everybody. Shayne Agawa, Director of Environmental Management. I don’t have any opening statement or comments at this time. Chair summed it up pretty well. Thank you.

CHAIR COOK: Thank you, Director Agawa. Now, on to testimony for WAI-15. Staff?

MS. LILLIS: Chair, there is no one signed up to testify, although I do see someone coming down in the Council Chamber.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. LAW: Chair, no long time no see. Jasee Law. I might have got confused on the two bills. But I’m pretty sure you guys got it straightened, and knew what I was talking about with that waste-to-energy project. On this one, they...I looked at the computer last night, and it had that long list...all of the properties on it, and I noticed on one of them it said, Roman Catholic Church. And I would like to propose that the...the

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Roman Catholic Church guys go ahead and sign that property over to the County for what they owe us.

CHAIR COOK: So, Mr. Law, just to clarify. That was the last item. That was the previous one. This is the one...the Olowalu landfill. But thank you for your testimony.

MR. LAW: Okay, I switched my testimonies.

CHAIR COOK: Okay.

MR. LAW: Okay. I just want to make sure we got it on the record.

CHAIR COOK: Thank you.

MR. LAW: Thank you, sir.

CHAIR COOK: Staff, are there any more testifiers?

MS. LILLIS: Chair, that was our last testifier. If anyone would like to testify, please unmute or let Staff know as soon as possible. We will give a brief countdown...three, two, one. Chair, it appears no one else wishes to testify.

CHAIR COOK: Seeing there are no more individuals wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

MS. LILLIS: Chair. I beg your pardon, we do have one individual --

MS. EUDENE: Hi.

MS. LILLIS: -- signed up.

MS. EUDENE: Hi, there. Thank you. I...I just wanted to check in because Olowalu seems like such a protected space with the reef and the whale breeding grounds. And I'm just curious why the decision is being made to put toxic ash mauka in a way that we don't know what will happen to the leeching, and how that will affect our reefs and the whales.

CHAIR COOK: Could you please state your name for the record?

MS. EUDENE: My name is Deborah.

MS. LILLIS: Thank you. Chair, that was our last testifier. If anyone else would like to testify, please let Staff know now. I will give a brief countdown...three, two, one. Chair, it appears no one else wishes to testify.

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CHAIR COOK: Members, seeing that there are no individuals willing to...wishing to testify, without objections, I now will close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: As a reminder, written testimony will continue to be accepted into the record. Members, I'm proposing two rounds of three-minute questions per member. Are there any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Thank you, Members. I would now like to open the floor for questions and discussion. Councilmember Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Thank you very much. So, this intergovernmental agreement with DNLR for the right-of-entry into this--Olowalu Lāhainā Wildfire Final Disposition Project is what it's called--is very important for the process in West Maui to move forward. And just in case...I guess because of maybe the testimony we received, a concern for this being in Olowalu and what was expressed, I wonder if the Director could explain to the community what precautions we're taking to have the site there.

CHAIR COOK: Director?

MR. AGAWA: Thank you, Chair. Thank you, Member Sugimura. Yeah, so, as was stated before, and as we plan to keep stating and letting the public know, we did vet several locations throughout Maui, thinking--especially looking at the West Side--to keep the debris on the West Side. The design is basically, as I stated at the DNLR meeting, the Cadillac of containment systems. It's designed up to a Subtitle C, which doesn't occur in Hawai'i. It's a double-lined disposal site. It has mitigation measures in case there are leeching created. We do not anticipate any leeching being created because the debris is so dry. The location is in an arid region. The design also sheds water from surface stormwater runoff from entering the debris and through the debris. There is monitoring...existing monitoring established because the location is adjacent to an existing landfill site. So, there's monitors already there. We are intending to add monitors as well...groundwater, air quality. Yeah, it...it's basically a very overly-designed containment system to meet Federal, State DOH requirements. We've also worked with DOH from day one, every single day, meeting with them under their guidance in making this site happen. Thank you.

CHAIR COOK: Thank you, Director.

VICE-CHAIR SUGIMURA: And connected to that then, because of the extra care it sounds like the Department, Federal Government, and the State are working towards, then I'm sure that would have...or it does add to the cost. So, what is the estimated budget amount for this Olowalu site?

CHAIR COOK: Director?

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MR. AGAWA: Thank you, Chair. Thank you, Member Sugimura. So, originally, when we went with our initial design, the estimate was roughly about 30 million. However, because we went to this upgraded design, it's a double liner rather than a single liner, and additional monitoring and mitigation measures, we're looking at roughly about \$65 million total. That includes design, permitting, construction, monitoring, and management of the site...oh, as well as the operational costs. Our resources from our Solid Waste Division isn't enough to...to man this site. So, we need funding to help operate it as well. Thank you.

VICE-CHAIR SUGIMURA: Thank you very much.

CHAIR COOK: Member Tasha Kama, questions?

COUNCILMEMBER KAMA: No questions, Chair.

CHAIR COOK: Thank you. Councilmember Gabe Johnson, you have questions?

COUNCILMEMBER JOHNSON: Yes. Thank you, Chair. Good to see...good to see you this afternoon, Director Agawa. This is the question I tried to ask a little bit before, but maybe I jumped the gun. So, basically, in regards to the...the cleaning up and the temporary debris site, you know, there's some properties that might be a priority. And can you guys speak on how...I know you're doing within the zones and in...in the color areas, but are you taking into consideration--some of these properties, if we don't help them sooner, then...then the...the opportunity misses, so...and they might not ever rebuild. So, when it comes to this temporary debris site, how do you go about prioritizing which...which debris...which areas get...which properties get cleared first? Do you have a process involved in that, Director?

CHAIR COOK: Director?

MR. AGAWA: Thank you, Chair. Thank you, Member Johnson. I would...probably would rather stay in our lane. That would be more of a question for Army Corps on the debris removal process. But...however, the expeditious designing construction of the tedious site will allow the expeditious removal of all projects on the West Side. As far as the prioritization, I cannot speak for Army Corps on...on their strategy on how and which properties will be worked on first.

COUNCILMEMBER JOHNSON: Okay.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER JOHNSON: So, have you chosen where the temporary debris site will be in...in Lāhainā?

CHAIR COOK: Director?

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MR. AGAWA: Thank you, Chair. Yes. So, I apologize, I don't have that figure up, but when this came before Council, if you recall, there was an area that was shaded purple and one that was shaded yellow. It's...to answer your question directly, the temporary site is right adjacent to the final disposition site, right next door. So, it's going to be on the mauka side, and the final disposition site would just be adjacent makai of that, and it encompasses...on the southern side of the existing landfill, there's an existing cinder mine location. So, yeah, right next.

COUNCILMEMBER JOHNSON: Okay. So, that's...oh, thanks for clarifying that, Director. The temporary debris site is actually right next to the Olowalu proposed site. Is that what I'm hearing?

MR. AGAWA: That is correct.

COUNCILMEMBER JOHNSON: Okay. Thank you for that clarification. Thank you, Chair.

CHAIR COOK: Councilmember Keani Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Director Agawa. You...you know...so, it's going to be 65 million. How is that going to be funded? Is it going to be a mix, or a combination --

CHAIR COOK: Director?

COUNCILMEMBER RAWLINS-FERNANDEZ: -- of sources?

MR. AGAWA: Thank you, Chair. Thank you, Member Rawlins-Fernandez, for that question. So, right now, the initial start-up funding is coming under the budget amendment for the Office of Recovery. I believe our portion is 5.2 million, to be split 4 million for operations and 1.2 for the design portion. So, that's the start-up funding. And additional funding regarding construction, and mitigation and monitoring, that has still yet to be determined; however, we are looking at bonding the construction portion, and then utilizing other types of funding for the remainder. And I do want to clarify that we are going to have a tipping fee that's assessed to the Army Corps who is doing the actual debris removal. So, they will be paying us back a cost per ton for the cost of the final disposition site. How long that will take to recover, nobody really knows. And then the final cost is based on estimates, right, we don't know the exact amount of volume...tonnage. So, we're going with roughly 400,000 tons at this point. Thank you.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director. So, the direct...so that site, how long would it last for? Like is it just going to like...the intention is for it to be there forever?

CHAIR COOK: Director?

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MR. AGAWA: Thank you, Chair. Yes. So, under State DOH regulations, the Solid Waste Division, DEM, is responsible to monitor and manage a site for 30 years. However, on the 31st year, just to clarify, the County doesn't just walk away. So, we intend to manage and monitor the site in perpetuity. There was a little bit of misconception in the past on this 30-year, but that's only what DOH regulates the County to monitor and manage a site like this. But we will be managing and monitoring in perpetuity. Thank you.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director, for that. So, my question...the purpose of that question was more like, you know, technologies have been improving pretty rapidly and, you know, if...if gasification isn't, you know, at it's like ideal right now, like it could be maybe in ten years, I don't...I don't know, like is it...is it going to be sealed, or is it open air?

CHAIR COOK: Director?

MR. AGAWA: Thank you, Chair. Thank you, Member. So, it will be capped. There are mitigation measures in the...the liner of the cap to shed the water off of the site. However, it's not sealed in perpetuity, or it...it doesn't have to be. . . .*(timer sounds)*. . . To answer your question if there is technology that is reasonable, cost-effective, makes sense, that we could apply to this, there is a possibility of re-mining the debris down the road.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that, Director. Mahalo, Chair.

CHAIR COOK: Thank you. Chair Lee, questions?

COUNCILMEMBER LEE: Yeah. Thank you. Hello, Director. So, the tipping fee on the estimated tonnage is approximately what?

CHAIR COOK: Director?

MR. AGAWA: Thank you, Chair. Let me look at my notes here. So, I believe we came up with a very approximate tipping fee of \$174 per ton. And again, I want to stress, this is very approximate, but that's right around the ballpark. And then the opt-out debris, this is for people who opt out of the government program, they will also be assessed a tipping fee for their debris, if they decide to hire their own contractor, and then handle debris, and...and dispose of it themselves. Yeah.

COUNCILMEMBER LEE: Okay, good. Just coming...just want to get to the estimate total. How many millions of dollars is that?

MR. AGAWA: So, total estimate would be about 65 million, and it breaks down to about \$174 per ton tipping fee.

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COUNCILMEMBER LEE: Okay. So, we sort of break even on that one, right?

MR. AGAWA: Yeah, the intent...yeah. We cannot make money really. I think it's just to cover costs.

COUNCILMEMBER LEE: Well, that's good. Very good. Thank you.

CHAIR COOK: Thank you. Is that it? Okay, thank you, Chair. Member Nohelani U'u-Hodgins, questions for the Director?

COUNCILMEMBER U'U-HODGINS: Thank you, Chair. All my questions have been asked and answered. Thanks.

CHAIR COOK: Okay, thank you. Member Sinenci, questions?

COUNCILMEMBER SINENCI: Thank you, Chair. Mahalo, Director Agawa. So, it looks like we approved, as you mentioned earlier, the E...the EP access to Olowalu, that's for the 90 days. And then this one is--did you say it starts...that's just for the following year?

MR. AGAWA: Chair? Yeah, thank you, Chair. Thank you, Member Sinenci. So, this Bill 120, upon effect, would last for one year, or until the executive order from the Governor's Office is executed, then this right-of-entry becomes null and void. There is a provision to extend it another year if deemed so. But we are currently working to get that executive order as well from the Governor's office, would...which give us the management, and no need for the right-of-entry. Thank you.

COUNCILMEMBER SINENCI: And that would...that was for the...the executive order would last for a year as well?

CHAIR COOK: Director?

MR. AGAWA: No. I believe...I don't know if there is a time duration, and maybe Corp. Counsel, if they're on this, can clarify.

COUNCILMEMBER SINENCI: Actually, that one's the long...long-term one.

MR. AGAWA: Yeah, but without looking at the actual word...wording in the executive order, I cannot state in perpetuity, but it will be for a longer duration than one year, definitely. Thank you.

COUNCILMEMBER SINENCI: Okay. Thank you for that clarification. Thank you, Chair.

CHAIR COOK: Member Sinenci, would you like to ask Corp. Counsel for that?

COUNCILMEMBER SINENCI: Or if we could send an inquiry --

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CHAIR COOK: Okay.

COUNCILMEMBER SINENCI: -- to someone.

CHAIR COOK: Yeah. Thank you. Staff?

MS. LILLIS: Yes, Chair. We've got it.

CHAIR COOK: Okay. Excellent. Is there needed for a second round of questions?

COUNCILMEMBER PALTIN: Oh, I never got first round.

CHAIR COOK: I so apologize for missing you. Member Paltin, you have a question?

COUNCILMEMBER PALTIN: No worries. Thank you. With your permission, Chair, I would love to get the answers in writing, just because I've been kind of bombarded with questions, and if I could just hand off a piece of paper, that would help me. First question would be, if you could provide us with the parameters needed to meet a Subtitle C landfill, what those are, as well as the other options that you've looked into, and why they wouldn't meet those parameters. The...the...I guess, if you will, the pros and cons of shipping the ash debris to the continent, as well as, what if the monitoring detects some leakage into the first liner, and then if it detects it outside of the first liner, what are the steps that would be taken to mitigate? And in relation to Member Johnson's question about the temporary disposal site and the expeditious removal, I just wanted to clarify, you will be taking debris from...if...from folks that do not sign off on the right-of-entry, and go with a separate contractor, and just charge them, will the tipping fee be the same or different? And then the in-perpetuity monitoring, I believe at one point we were talking about a 80-millimeter plastic liner or whatever, and I'm not very ma'a to the idea of a plastic liner. Like I know I can poke through a plastic liner with a knife. Is this some sort of special knife-resistant plastic liner, or like a hatchet, or a machete? And then like, you know, we know everything breaks down eventually. So, say, like 200, 300 years in the future it breaks down, what would be the plan at the point that it breaks down, or are we assuming 200, 300, whatever, how many years in the future, that...that we'd have some sort of other technological advance at that time? And then I guess the last question is, I have been hearing from cultural lineal descendants of the area, their opposition to this plan, and how does that factor ultimately into the Department's decision-making? Oh, and also, if you could list the...the dangers of delaying. . . .(timer sounds). . .

CHAIR COOK: Okay. Thank you, Member Paltin. So, Staff has recorded all the questions, and we'll forward them to you Director for written response. Is that in agreement? Okay.

MR. AGAWA: Yeah. Thank you, Chair. Thank you for sparing me in trying to attempt to answer that just now. But we will answer it in writing eventually. Thank you.

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CHAIR COOK: No, that was per the...Member Paltin's request. That's the way. So...and Member Paltin, you'll get a copy of those. You'll be able to review Staff's questions to clarify if they are correctly dictated. Okay.

COUNCILMEMBER PALTIN: Thank you so much.

CHAIR COOK: Okay. I believe...has everybody had the opportunity to ask questions first round? Okay. Chair doesn't have any questions. Chair would like to entertain a motion on recommending passage of Bill 120 (2023) on first reading.

COUNCILMEMBER PALTIN: Oh.

CHAIR COOK: Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

COUNCILMEMBER PALTIN: Could I get a quick second round?

CHAIR COOK: No. Yeah. If you want a second round. I...yeah, I thought I asked if anybody had any more questions. Second round.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I raised my hand.

CHAIR COOK: Okay. Member Rawlins-Fernandez --

COUNCILMEMBER RAWLINS-FERNANDEZ: But, Member Paltin can go, and then I can go after.

CHAIR COOK: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: But I did raise my hand earlier when you asked that question.

CHAIR COOK: Okay. Member Paltin --

COUNCILMEMBER PALTIN: Thank you.

CHAIR COOK: -- Member Rawlins-Fernandez has yielded to you. So, questions?

COUNCILMEMBER PALTIN: Thank you. This one doesn't need to be answered in writing. Just a question about if it is the site that's selected, at...at what point do we discuss about if it's the selected site, how a memorial would be, and is that included in the \$65 million cost?

CHAIR COOK: Director?

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COUNCILMEMBER PALTIN: Oh, and for the writing down part, can you lay out the permitting process? Because we're under the emergency proclamation, how that goes about? What is like...how that works with the...some of it that doesn't have to be approved, but then they're still grading and grubbing, but then some of it is like exempted because of the emergency proclamation, if that could be in the writing answer.

CHAIR COOK: Director?

MR. AGAWA: Thank you, Chair. Thank you, Member Paltin. Can you please clarify what I'm expected to answer and what will be sent in writing? I think there were two questions.

COUNCILMEMBER PALTIN: Oh, yeah. The answer now part would be about the memorial, if it's included in the 65 million, and at what point do we discuss that part of it, if this is the ultimate site?

MR. AGAWA: Yeah, thank you, Chair. Thank you, Member Paltin. So, there has been some discussion about a memorial site; however, we're concentrating on the recovery portion now. And then to answer your question, the...the memorial site is not part of the 65 million, so that would need to be funded, and of course, get public input, community input, on how they would like to see the memorial site, and...and what kind of facilities, that type of thing. That hasn't been vetted yet, but there has been preliminary talks about a memorial site at that location. Thank you.

COUNCILMEMBER PALTIN: Okay. And if the writing answers could come before we are expected to make a final, final decision, that would be helpful to me.

CHAIR COOK: Thank you, Director. Now, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. Director, in response to Chair Lee's question, I think I...I missed the part of the formula that you estimated the amount of tons. So, you said 65 million divided by something would equal 170 per ton. Is it 382,000? Oh, I just did that math. I don't know. Because you said 65 million divided...would equal \$170 per ton. So, I just divided 170 by 65 million and got 382,000.

CHAIR COOK: Director?

MR. AGAWA: Yeah, it's not totally exact, just an estimate. But, yeah, it just roughly comes out to 174. I just did the math too, and it came out to about 69 million, but there's some additional costs associated...unforeseen costs really . . .(timer sounds). . . until we actually get into the actual tonnage and numbers, that's...yeah, just an estimate at this point.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Director. Was that the timer?

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UNIDENTIFIED SPEAKER: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

CHAIR COOK: Member Johnson.

COUNCILMEMBER JOHNSON: Thank you, Chair. Just a...a quick question for Director Agawa. Moving forward, are there any bioremediation efforts for the proposed site going on, or will...are there plans to be biochar, or those special mushrooms that we learned about at the recent conference?

MR. AGAWA: Chair? Yeah. So, thank you, Member Johnson. The question is, there has been talk about it. I attended a meeting last week online. I...I attended online, but I believe it was...it was at the Sheraton. A great presentation about bioremediation. They did ask if that was something that could be included in the design at the disposal site. I told them, yeah, we were open to discussion. I did have some questions on the application of it...what layer it would be applied. So, to answer your question, it has been talked about. There needs to be further collaboration with the developer on this technology. And then to the other questions that you had about applying this on the site or during the transport, that would be discussions between Army Corps and then the developer of the technology.

CHAIR COOK: Thank you, Director.

COUNCILMEMBER JOHNSON: Thank you for that. Thank you so much, Chair. And I...I look forward to hearing more as...as you learn more, Director Agawa. Mahalo.

CHAIR COOK: Thank you. Members, any second...other second round questions? No. Okay. Without objection, the Chair would like to entertain a motion to recommend passage of Bill 120 (2023), on first reading, and we will also include any nonsubstantive revisions for the purposes of clarity and consistency.

VICE-CHAIR SUGIMURA: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR COOK: Moved by Member Sugimura, and seconded by Member Kama to recommend passage of Bill 120 (2023) on first reading. Members, any discussion? Seeing no further discussion, all those in favor, raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

MR. PASCUAL: Chair, I'm seeing eight "ayes," zero "noes," one excused, Councilmember Paltin. Motion passes.

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VOTE: **AYES:** **Chair Cook, Vice-Chair Sugimura, and**
 Councilmembers Johnson, Kama, Lee,
 Rawlins-Fernandez, Sinenci, and U‘u-Hodgins.

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Paltin.**

MOTION CARRIED.

ACTION: **FIRST READING OF BILL 120 (2023).**

CHAIR COOK: Thank you, Members. And thank you, Director Agawa, for being with us this afternoon. This will move on to the full Council for consideration.

MR. AGAWA: Thank you, Chair. Thank you, Members.

CHAIR COOK: Members, this concludes today’s Water and Infrastructure Committee meeting. Thank you, everyone, for being here and for a great meeting today. The time is now 4:13 p.m., this meeting is now adjourned. . . .*(gavel)*. . .

ADJOURN: 4:13 p.m.

APPROVED:



TOM COOK, Chair
Water and Infrastructure Committee

wai:min:231127:ta

Transcribed by: Terianne Arreola

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 54 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 2nd day of January 2024, in Makawao, Hawai'i.

A handwritten signature in black ink, appearing to read 'Terianne Arreola', is written over a horizontal line.

Terianne Arreola