

REQUEST FOR LEGAL SERVICES

Date: March 3, 2022
From: Shane M. Sinenci, Chair
Agriculture and Public Trust Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

Subject: CULTURAL OVERLAY DISTRICTS (APT-39)

Background Data: Please see the attached resolution and two bills.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Shane M. Sinenci	Contact Person <u>Alison Stewart</u> (Telephone Extension: <u>7661</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): March 9, 2022

REASON: For posting on March 18, 2022, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

apt:ltr:039acc01:ans

Attachments

Resolution

No. _____

REFERRING TO THE LĀNA‘I, MAUI, AND
MOLOKA‘I PLANNING COMMISSIONS AND THE
MAUI COUNTY CULTURAL RESOURCES
COMMISSION PROPOSED BILLS RELATING TO
CULTURAL OVERLAY DISTRICTS

WHEREAS, the Council is considering proposed bills to create Cultural Overlay District zoning and to establish the Hāna Cultural Overlay District; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and provide findings and recommendations to the Council; and

WHEREAS, the Maui County Cultural Resources Commission maintains a system for the survey and inventory of archaeological sites within the County and implements a countywide historic preservation planning process; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTERS 2.28, 2.88, 19.48, 19.52, AND 20.08, MAUI COUNTY CODE, RELATING TO THE MAUI COUNTY CULTURAL RESOURCES COMMISSION AND MAUI COUNTY CULTURAL OVERLAY DISTRICTS,” attached as Exhibit “1,” to the Lāna‘i Planning Commission, Maui Planning Commission, and Moloka‘i Planning Commission for appropriate action under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, and to the Maui County Cultural Resources Commission for review and comment;
2. That it refers the proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING THE HĀNA CULTURAL OVERLAY DISTRICT,” attached as Exhibit “2,” to the Lāna‘i Planning

Commission, Maui Planning Commission, and Moloka'i Planning Commission for appropriate action under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, and to the Maui County Cultural Resources Commission for review and comment;

3. That it respectfully requests that the Lāna'i, Maui, and Moloka'i Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible;
4. That it respectfully does not seek to receive revised or new legislation in response to this Resolution; and
5. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, the Lāna'i Planning Commission, Maui Planning Commission, Moloka'i Planning Commission, and the Maui County Cultural Resources Commission.

INTRODUCED BY:

David M. J. Stewart

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 2.28,
2.88, 19.48, 19.52, AND 20.08, MAUI COUNTY CODE,
RELATING TO THE MAUI COUNTY CULTURAL RESOURCES COMMISSION
AND MAUI COUNTY CULTURAL OVERLAY DISTRICTS

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

SECTION 1. The purpose of this Ordinance is to provide for the establishment of cultural overlay districts. As stated in the Countywide Policy Plan, the County has a responsibility to protect its cultural resources. Certain geographically definable areas contain a great density of cultural and archaeological remains and development in these areas may disturb archaeological and burial sites. Such sites require consideration and careful planning to ensure preservation for the benefit of future generations. The establishment of cultural overlay districts is a useful mechanism to alert residents and potential developers that special considerations may be needed to accommodate important cultural resources.

SECTION 2. Section 2.28.050, Maui County Code, is amended to read as follows:

“Section 2.28.050 Advisory committees to the Maui planning commission[.] and Maui County cultural resources commission. A. The following advisory committees are established:

1. The Hāna advisory committee to the Maui planning commission[.] and Maui County cultural resources commission.

2. The South Maui advisory committee to the Maui planning commission[,] and Maui County cultural resources commission.

3. The Pā'ia-Ha'ikū advisory committee to the Maui planning commission[,] and Maui County cultural resources commission.

B. To be eligible for appointment as a member or alternate of an advisory committee, a person must be a resident of the relevant community plan area for a period of at least twelve consecutive months immediately preceding the person's appointment.

C. The advisory committees must consist of seven members and up to two alternates; five members and up to two alternates of each advisory committee will be appointed by the council by resolution and two members appointed by the mayor.

D. If an advisory committee member or alternate ceases to be a resident of the relevant community plan area, the committee member or alternate immediately forfeits the office, and the office becomes vacant.

E. A mid-term vacancy exists when one of the following occurs:

1. The member or alternate has moved out of the community plan area.

2. The member or alternate has provided the mayor, council, or advisory committee chair a resignation letter.

3. The member or alternate is deceased.

4. The member is removed for failure to attend [fifty] 50 percent or more of meetings[,] or is absent from at least [twenty-five] 25 percent of meetings within thirty days of the member's last excused or unexcused absence, in accordance with section 2.41.090.

F. Mid-term vacancies in council-appointed seats will be filled by the council, and mid-term vacancies in mayor-appointed seats will be filled by the mayor; except that if an advisory committee has an alternate, the alternate will fill the remainder of the departing member's term; and if an advisory committee has two alternates, the advisory committee's chair will designate an alternate to fill the remainder of the departing member's term.

G. [The following subsections of section 13-2 of the] The revised charter of the County of Maui (1983), as amended, sections 13-2.2 and 13-2.6 through 13-2.15, apply to each advisory committee.[: subsections 2, 4, and 6-15.]

H. The terms of committee members are five years, except initial terms must be staggered, with four members receiving five-year terms and three members receiving three-year terms, as selected by lot. A member receiving an initial three-year term may

seek reappointment to a five-year term. The terms of alternates are three years.

I. Each advisory committee is authorized to:

1. Provide recommendations to the Maui planning commission and Maui County cultural resources commission on matters within its community plan area.

2. Upon request by the Maui planning commission or Maui County cultural resources commission, hold public hearings, on behalf of the commission, on matters that pertain to its community plan area.

3. Carry out such duties as provided by law or as may be delegated to it by the Maui planning commission or Maui County cultural resources commission.

4. Adopt administrative rules.

J. When requested to review a matter by the Maui planning commission or Maui County cultural resource commission, an advisory committee must provide recommendations to the Maui planning commission and Maui County cultural resources commission within ninety days from the first meeting held to review the matter. If additional time is required because of extenuating circumstances, the advisory committee must notify the Maui planning commission [and] or Maui County cultural resources commission. Each recommendation must be read aloud during the Maui planning commission's or the Maui County cultural resource commission's review of the matter.

K. Each advisory committee must meet as needed, with meetings scheduled when appropriate to maximize community participation.

L. Each advisory committee must elect a chair and a vice-chair from its members. The vice-chair will act as the presiding officer in the event of the chair's absence or disability. Until the chair is elected, the planning director will preside at the meeting, except that the planning director will not have a vote.

M. The council must review the operations of each advisory committee within thirty-six months of its first meeting, but no sooner than twelve months after that first meeting."

SECTION 3. Section 2.88.030, Maui County Code, is amended to read as

follows:

"Section 2.88.030 Commission—established. A. There is established a commission to be known as the ["Maui County cultural resources commission," hereinafter referred to as the "commission."] "Maui County cultural resources commission," also referred to as the "CRC."

B. The [commission shall] CRC must consist of nine members [appointed by the mayor with the approval of the council] and [shall] must be chosen from professionals and persons with demonstrated experience in the following disciplines: architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of the County. Six members must be appointed by the council by resolution and three members must be appointed by the mayor. The council and the mayor [shall] must solicit lists of two or more persons, recommended by community and professional organizations, such as [the] Maui Historical Society, [and the] American Institute of Architects, Maui chapter, [as well as] and the State office of Hawaiian affairs, for consideration in making [commission] CRC appointments. [Commission] CRC members should have a demonstrated interest, competence, and knowledge in historic and cultural resources preservation.

C. The majority of [the commission] CRC members [shall] must be professionals, or persons with demonstrated experience, in the disciplines of archaeology, planning, architecture or architectural history, or Hawaiian culture or history, each having professional representation on the [commission] CRC to the extent such professionals are available in the community. The [commission shall] CRC must also include members from different areas of the County, with at least one representative from [each island] Maui, Moloka'i, and Lāna'i, who possess a knowledge and interest in local area history. When one of the disciplines is not professionally represented, the [commission shall] CRC must seek, through appropriate means, the expertise of professionals in the disciplines when considering national register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline.

D. [Section 13-2 of the Revised Charter] The revised charter of the County of Maui (1983), as amended, [shall] sections 13-2.2 and 13-2.6 through 13-2.15 apply to the [commission.] CRC.

E. All future appointments to the [commission shall] CRC must be made in such a manner [as will] to ensure that the terms of the members [of the commission shall] conform to [subsections] subsection C [and D]. No provision of this section [shall be deemed to extend] extends or [shorten] shortens the term of any current member of the [commission.] CRC.

F. A mid-term vacancy exists when one of the following occurs:

1. The member has provided the mayor, the council, or the CRC chair a resignation letter.
2. The member is deceased.

3. The member is removed for failure to attend 50 percent or more of meetings or is absent from at least 25 percent of meetings within thirty days of the member's last excused or unexcused absence, in accordance with section 2.41.090.

G. Mid-term vacancies in council-appointed seats will be filled by the council, and mid-term vacancies in mayor-appointed seats will be filled by the mayor."

SECTION 4. Section 2.88.090, Maui County Code, is amended to read as follows:

"Section 2.88.090 Administration. [A.] The director [shall] must appoint the principal archaeologist and a professional from the disciplines of archaeology, architecture, architectural history, Hawaiian culture, history, or historic preservation, who may be an employee of the County, to serve as resources to the CRC. The principal archaeologist must act as the liaison [with] to the [state] State historic preservation [office] division pertaining to matters which deal with the purpose and intent of this chapter. [The liaison may be an employee of the planning department or a member of the commission.] The director [shall] must provide technical, clerical, administrative functions, and any other duties delegated by the [commission.] CRC."

SECTION 5. Chapter 19.48, Maui County Code, is amended to read as follows:

"Chapter 19.48

**[GENERAL PROVISIONS]
MAUI COUNTY HISTORIC DISTRICTS AND
CULTURAL OVERLAY DISTRICTS**

Sections:

- | | |
|------------------|----------------------------------------------------------------------------|
| 19.48.010 | Title and purpose. |
| 19.48.015 | <u>Definitions.</u> |
| 19.48.020 | Establishment or modification of districts—
Report and hearing. |
| 19.48.030 | Applicability. |
| 19.48.040 | Administration. |
| 19.48.050 | Enforcement. |

19.48.060 Reserved.

19.48.010 Title and purpose. The ordinance codified in this article [shall be known and] may be cited as the “Maui County Historic Districts and Cultural Overlay Districts Ordinance[.]”. In order to promote the economic, cultural, and general welfare of the people of the [county] County and to [insure] ensure the harmonious, orderly, and efficient growth and development of the [county] County, it is deemed essential by the [county] council that the qualities relating to the history and culture of the [county] County be preserved, thereby creating attractions for residents and visitors [and residents alike]. Certain geographically definable areas contain a great density of cultural and archaeological resources and development in these areas may disturb cultural, archaeological, and burial sites. Many of these sites are significant and require consideration and careful planning to ensure preservation. This chapter ensures that actions taken within the designated areas are conducted in a manner that will preserve, maintain, and enhance those characteristics that are recognized as culturally, historically, archaeologically significant, and valuable to the public. Establishment of historic districts and cultural overlay districts also serve to alert developers to the potential for discovery of cultural deposits when there is ground disturbance related to construction and provides for additional review to ascertain and mitigate impacts.

19.48.015 Definitions. The following definitions apply to this article:

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

“CRC” means the Maui County cultural resources commission.

“Cultural overlay district” means an area with features that are culturally, historically, or archaeologically significant and where certain additional requirements are superimposed upon a base zoning district or underlying district and where the requirements of the base or underlying district may or may not be altered.

**19.48.020 Establishment or modification of districts—
Report and hearing.** A. [Historic districts may be modified or extended and new historic districts established, provided in all such cases there shall be a report from the cultural resources commission to the State department of land and natural resources, State historic preservation division. At least one public hearing shall be held by the cultural resources commission.] Any agency, organization, or individual may nominate a historic district or cultural overlay

district by completing an inventory of sites within the district, describing the relationships and significance of sites in accordance with subsection 19.48.020(B), and defining the historic or cultural overlay district boundaries. Upon a determination by the CRC that the nomination is complete, the nomination must be forwarded by the CRC to the State historic preservation division, appropriate burial council, and the office of Hawaiian affairs for review and comment. The CRC must hold a public hearing on the nomination and make findings regarding the significance of the district. Upon a determination by the CRC that a geographically defined area is historically or culturally significant, the CRC must forward the nomination and findings to the appropriate planning commission for review and comment. Within ninety days of transmittal, the planning commission must transmit the nomination, the CRC's findings, and the planning commission's comments to the council. The council may establish a historic district or cultural overlay district by ordinance. A cultural overlay district does not alter the underlying zoning of a property.

B. A historic district or cultural overlay district must be a geographically definable area that possesses cultural significance and exhibits one or more of the following:

1. A pattern or complex of sites.
2. An association with a historic event.
3. An association with an important historic person.
4. A particular type, period, or method of construction or high artistic value.
5. Importance to native Hawaiian people or to another ethnic group because of associations with cultural practices, traditional beliefs, events, or oral accounts that are important to the group's history and cultural identity.
6. Religious or spiritual value.
7. Consist of or in close proximity to a known burial site or burial grounds.

C. The principal archaeologist must prioritize areas for recommendation to the CRC for establishment of cultural overlay districts.

19.48.030 Applicability. In the event any provision of this article conflicts with the provisions of article II [of this title], the provisions of this article [shall] prevail.

19.48.040 Administration. The director [shall] must provide planning, architectural, engineering, secretarial, and other services as [may be] required by the [cultural resources] CRC.

19.48.050 Enforcement. Enforcement of this chapter [shall] must be [pursuant to] in accordance with section 19.530.030[of this title].

19.48.060 Reserved.”

SECTION 6. Section 19.52.020, Maui County Code, is amended to read as follows:

“19.52.020 Review of plans. A. For any building or structure within [any] the historic [district] districts established [in this article], and for any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), the [cultural resources] “CRC,” [shall have] has the authority to approve all plans.

B. Application for an appropriate permit to construct, alter, repair, modify, move, or demolish any building or structure [in] within the historic districts established [in this article], or any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), [shall] must be made to the director of public works. The director of public works [shall] must immediately notify the [chair of the cultural resources commission] planning director of the receipt of the application. The planning director [and shall] must transmit [it together] the application with accompanying plans and other relevant information to the [cultural resources commission.] CRC. The [cultural resources commission] CRC may delegate the approval of certain minor applications to the planning director [pursuant to] in accordance with the [cultural resources commission’s] CRC’s rules of practice and procedure.

C. The [cultural resources commission shall] CRC must meet within ninety days after [notification] transmittal by the [director of public works] planning director of [the filing of] the complete application, unless otherwise mutually agreed upon by the applicant and [cultural resources commission], and [shall] must review the plans according to the established procedures [as set forth in this article].

D. The [cultural resources commission shall] CRC must approve or disapprove [such] the plans and may recommend conditions to mitigate project impacts or informational requirements such as signage. [and, if] If approved, [shall] the CRC must issue a letter of approval signed by the chair [of the cultural resources commission,] or the chair’s designee, [and] must [attached] attach it to the application for a building permit, and immediately transmit it to the planning director for transmittal to the director of public works.

E. If the [cultural resources commission] CRC disapproves [such] the plans, it [shall] must state its reasons for doing so and [shall] transmit a record of such action and reasons in writing to the planning director for transmittal to the director of public works, and the applicant. The [cultural resources commission] CRC may advise the applicant what it thinks is proper if it disapproves the plans submitted. The applicant may make modifications to the plans and [shall have the right to] may resubmit the application [at any time] after so doing. The decision of the [cultural resources commission] CRC to disapprove [such] the plans [shall be considered] is a final decision of the [cultural resources commission] CRC that is appealable under section 91-14, Hawaii Revised Statutes.

F. The failure of the [cultural resources commission] to approve or disapprove [such] the plans within ninety days from the date of [submittal] transmittal of [a] the complete application [for the building permit], unless otherwise mutually agreed upon by the applicant and the [cultural resources commission], shall be deemed to constitute] CRC constitutes approval, and the director of public works [shall] must proceed to process the application [without regard to a letter of approval].

G. Within [any] the historic [district] districts established [in this article], and for any building or structure of historic significance in the Lahaina Historic District (National Historic Landmark), the director of public works [shall] must not approve a building or demolition permit application unless a letter of approval has been issued by the [cultural resources commission] or the plans have been deemed approved [pursuant to] under subsection 19.52.020(F).

H. For the purposes of this article, buildings or structures of historic significance [shall be] are those that are more than fifty years old and that are deemed by the State historic preservation division officer to be eligible for listing in the National Register of Historic Places, based on federal criteria.”

SECTION 7. Chapter 19.52, Maui County Code, is amended by adding new section to be appropriately designated and to read as follows:

“19.52.025 Application for a grading or grubbing permit.

A. Application for a grading or grubbing permit in a cultural overlay district must be made to the director of public works. In accordance with section 20.08.160, the director of public works must immediately notify the principal archaeologist of the receipt of the application. If the principal archaeologist determines within thirty days of receipt of the application that the proposed action has the potential to affect cultural resources or historic

properties, the principal archaeologist must transmit the application to the planning director for transmittal to the CRC. The CRC must process the application in accordance with subsections 19.52.020(C-F). If the principal archaeologist does not transmit the application to the planning director within thirty days of receipt, the principal archaeologist is deemed to have no comment and the director of public works must process the application.

The principal archaeologist must use the following criteria to determine whether the proposed action has the potential to affect cultural resources or historic properties:

1. Proximity to known cultural resources or archaeological sites.
2. The presence of soil types, vegetation, and topography associated with cultural resources or archaeological eco-indicators warranting additional review.
3. The presence of historic and existing waterways, wetlands, and back-filled areas.
4. The location of important pre-contact and post-contact events.
5. Proximity to a known burial, burial ground, complex, or burial preserve.
6. The effect on post-contact historic resources.”

SECTION 8. Section 19.52.050, Maui County Code, is amended to read as follows:

“19.52.050 Demolition or movement of buildings or structures. A. The [cultural resources commission shall] CRC must not issue a letter of approval for the demolition or moving of a building or structure of historic significance, except in one or more of the following instances:

1. The director of public works or the State department of health deems the building or structure to be a hazard to public safety or health and repairs are impossible[;].
2. The building or structure is a deterrent to a major historic restoration or preservation program[; or].
3. The building or structure is of low priority and its retention would not materially contribute to the integrity of the historic district or the Lahaina Historic District (National Historic Landmark). In each instance, a letter of explanation [shall] must accompany the letter of approval.

B. Unless waived by the [cultural resources commission,] CRC, any building or structure that is eligible for or is listed individually or as part of a historic district in the Hawaii or national register of historic places, or the Lahaina Historic District (National

Historic Landmark), that has been approved for demolition [pursuant to] under this section [shall] must be recorded according to the Secretary of the United States Department of the Interior's standards for mitigation, which [shall include] includes the historic American building survey or historic American engineering record, as applicable.”

SECTION 9. Section 20.08.160, Maui County Code, is amended to read as follows:

“20.08.160 Permit—Requirements. The permittee [shall] must notify the director at least two days prior to beginning any grading or grubbing. The director may require a pre-construction meeting prior to commencement of the work. The director must transmit any application for a grading or grubbing permit in a cultural overlay district established in accordance with title 19, article III to the principal archaeologist for review. If the principal archaeologist determines that the proposed action has the potential to affect cultural resources or historic properties, the principal archaeologist must transmit the application to the director of planning for transmittal to the Maui County cultural resources commission within thirty days or it will be deemed to have made no determination. Plans and specifications for grading or grubbing bearing the approval of the director [shall] must be maintained at the site during the progress of any work. Where it is found by inspection that the soil or other conditions are not the same as stated or shown in the application for a grading or grubbing permit, the director may stop the grading or grubbing until revised grading or grubbing plans, based upon the existing conditions, are submitted by the permittee and approved by the director. Permittees [shall] must comply with [state] State and [county] County laws and regulations; the recommendations of the soil and water conservation [district(s)] districts as approved by the County; and the requirements of the [department of land and natural resources' state] State historic preservation division. The director or any [state] State or [county] County agency with authority relevant to the work, including soil and water conservation [district(s)] districts, the department of planning, or the [department of land and natural resources' state] State historic preservation division, [shall] must be allowed onto the property for which a grading and grubbing permit has been issued to ensure compliance [with this section].”

SECTION 10. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 11. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

apt:misc:039abill01_exhibit1 (REVISED)

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING THE HĀNA CULTURAL OVERLAY DISTRICT

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

SECTION 1. The purpose of this Ordinance is to establish the Hāna Cultural Overlay District.

SECTION 2. Chapter 19.50, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“Section 19.50.040 Hāna cultural overlay district. There is created within Hāna, Maui, Hawai‘i, the Hāna cultural overlay district. The purpose of establishing this overlay district is to protect important cultural resources and promote careful planning and preservation for the benefit of future generations. Under subsection 19.48.020(B), the council finds the Hāna cultural overlay district is a geographically definable area, described as follows:

Those lands situated within the boundaries of the Hāna Moku, Hāna, County of Maui, State of Hawai‘i, and as shown more particularly on the map, entitled “Hāna cultural overlay district map,” dated February 15, 2022, on file with the department of management, and made a part of this title.”

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui
apt:misc:039abill02_exhibit2

Exhibit “2”

