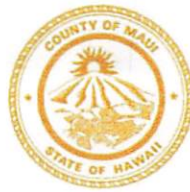


MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JACKY TAKAKURA  
Deputy Director



DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

RECEIVED

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OFFICE OF THE  
COUNTY CLERK

October 5, 2022

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 10/5/22  
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Council Chair Lee and Councilmembers:

**SUBJECT: A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19 AND 20,  
MAUI COUNTY CODE, TO ESTABLISH A CULTURAL OVERLAY**

The Department of Planning (Department) received Resolution No. 22-79, FD1, adopted on April 1, 2022, which transmitted two proposed bills for ordinance to accomplish the following:

1. Combine the provisions of the historic districts with new cultural overlay districts and change how such districts are established; expand the advisory capacities of the Hana, South Maui and Paia-Haiku Advisory Committees to the Maui Planning Commission (MPC) to make them advisory to the Maui County Cultural Resources Commission (CRC) in addition to the MPC; change how CRC members are appointed; require the planning director to appoint the principal archaeologist to serve as a resource to the CRC; and establish criteria for grading or grubbing permits in the cultural overlay district.
2. Establish a Hana Cultural Overlay District for all land situated within the Hana Moku.

Prior to the adoption of Resolution No. 22-79, FD1, the Department of Planning (Department) worked with the bills' author, Councilmember Shane Sinenci, and the County's principal archaeologist on a draft bill relating to cultural resources overlays that would be distinct from and in addition to zoning districts; however, the proposed bills in the Resolution have been revised in both process and content. The Department supports the intent of the proposed bills, but supports the earlier approach and does not support all parts of the proposed bills or their approach.

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### **Background Information**

Currently, federal and state laws provide some protection for cultural resources. In 1990, the United States government passed the Native American Graves Protection and Repatriation Act (NAGPRA), which provides procedures for the safe return of culturally significant items that are encountered on federal lands, Native American tribal lands, Hawaiian Home Lands, or housed in repositories such as museums, federal agencies, and other entities or institutions receiving federal funds. NAGPRA covers native human remains, funerary objects/moepū, sacred objects, and objects of cultural patrimony.

On the state level, Hawai'i Revised Statutes Chapter 6E covers the state historic preservation review process and Native Hawaiian burial sites, *i.e.*, a site not situated in a known, maintained, actively used cemetery, where iwi are discovered or known to be present and appear to be at least 50 years old. The State Historic Preservation Division (SHPD) reviews and comments on projects that may affect historic properties, including Native Hawaiian burial sites. For burials identified through an archaeological inventory survey or known through oral or written testimony, the Island Burial Council determines whether to preserve in place or relocate previously identified iwi kupuna.<sup>1</sup>

The County follows state and federal regulations regarding protection of cultural resources and, in some cases, is responsible for enforcing them. Because there are cases where there is no clear enforcement authority (for example, SHPD does not have inspectors), and because there appears to be some dissatisfaction with existing federal and state protection of cultural resources and sites, County-level cultural protections are being proposed.

### **Consistency with Long-Range Plans**

Passage of a cultural overlay bill would further a number of General Plan policies, goals, and objectives, including the following components of the Countywide Policy Plan (Ordinance 5264):

- Page 49, Core Theme B: Preserve local cultures and traditions
- Page 49, Policy B.1.b: Prohibit inappropriate development of cultural lands and sites that are important for traditional Hawaiian cultural practices, and establish mandates for the special protection of these lands in perpetuity.
- Page 49, Policy B.1.f: Recognize and preserve the unique natural and cultural characteristics of each ahupua`a or district.

---

<sup>1</sup> Baldauf, N. (2020) *Iwi Kupuna Native Hawaiian Burial Laws*. Native Hawaiian Law Training Course

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- Page 49, Implementing action B.1.a: Establish alternative land use and overlay zoning designations that recognize and preserve the unique natural and cultural characteristics of each ahupua`a or district.
- Page 51, Objective B.4: Preserve and restore significant historic architecture, structures, cultural sites, cultural districts, and cultural landscapes.
- Page 51, Policy B.4.a: Support the development of island-wide historic, archaeological, and cultural resources inventories.
- Page 51, Policy B.4.d: Protect and preserve lands that are culturally or historically significant.
- Page 51, Policy B.4.e: Support programs that protect, record, restore, maintain, provide education about, and interpret cultural districts, landscapes, sites, and artifacts in both natural and museum settings.
- Page 51, Policy B.4.h: Support the development of an Archaeological District Ordinance.
- Page 51, Policy B.4.k: Provide opportunities for public involvement with restoration and enhancement of all types of cultural resources.
- Page 51, Implementing action B.4.a: Identify, develop, map, and maintain an inventory of locally significant natural, cultural, and historical resources for protection.
- Page 51, Implementing action B.4.b: Prepare, continually update, and implement a cultural-management plan for cultural sites, districts, and landscapes, where appropriate.
- Page 51, Implementing action B.4.c: Enact an Archaeological District Ordinance.

The bill would also be consistent with the 2012 Maui Island Plan which establishes growth areas that indicate where development is intended and will be supported. The plan's goals, policies, programs and actions are based on an assessment of current and future needs and available resources. Chapter 2 – Heritage Resources includes:

- Page 2-10, Goal 2.1: Our community respects and protects archaeological and cultural resources while perpetuating diverse cultural identities and traditions.
- Page 2-11, Implementing action 2.1.1-Action 1: Provide staffing and funding to support cultural resource planning, strengthen enforcement, support cultural programs and educational activities, and utilize the generational knowledge of Native Hawaiian advisory bodies, when appropriate.
- Page 2-11, Implementing action 2.1.1-Action 2: Establish a program to support the reconstruction, restoration, repair, rebuilding, or preservation of historic sites.
- Page 2-11, Objective 2.2: A more effective and efficient planning and review process that incorporates the best available cultural resources inventory, protection techniques, and preservation strategies.

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- Page 2-11, Policy 2.1.2.a: Ensure that the island has a comprehensive and up-to-date inventory of historic and archaeological resources, and their cultural significance.
- Page 2-11, Policy 2.1.2.b: Require the update of existing planning and regulatory mechanisms to protect the natural, cultural, scenic, and historic resources within designated Heritage Areas (see Cultural Resources Overlay/Scenic Corridor Protection Technical Reference Map).
- Page 2-11, Policy 2.1.2.c: Ensure that cultural, historic, and archaeological resources are protected for the benefit of present and future generations.
- Page 2-11, Implementing action 2.1.2-Action 1: Commission cultural landscape studies of the entire island to assess areas as potential Heritage Areas.
- Page 2-12, Implementing action 2.1.2-Action 3: Prepare every ten years or whenever necessary an update to the Historic and Cultural Resources Plan and Inventory/Mapping Project that documents existing cultural and historic sites.
- Page 2-12, Implementing action 2.1.2-Action 4: Develop and adopt a Heritage Area Management Program to protect the natural, cultural, scenic, and historic resources to include:
  - (1) A Heritage Area Plan with protection standards for Heritage Areas identified on the Cultural/ Scenic Resources technical reference map;
  - (2) A process to require a Cultural Landscape Report for developments within Heritage Areas; and
  - (3) Consultation with Native Hawaiian advisory bodies, when appropriate.
- Page 2-12, Objective 2-3: Enhance the island's historic, archaeological, and cultural resources.
- Page 2-12, Policy 2.1.3.f: Support opportunities for public involvement with the intent to facilitate the protection and restoration of historic and archeological sites, including consultation with stakeholders.
- Page 2-13, Implementing action 2.1.3-Action 2: Amend regulations to provide additional protection of lands that are important for traditional native Hawaiian uses including subsistence food gathering, traditional access, agriculture, and religious uses.
- Page 2-13, Implementing action 2.1.3-Action 3: Establish additional Historic and Archaeological Districts and ensure that land use regulations are implemented to ensure their protection.

The 2018 Molokai Island Community Plan consists of a vision statement, goals, policies and actions to guide the desired direction of Molokai's future. There are several policies and actions in the Molokai Island Community Plan that call for the creation of a Traditional Land Use Overlay District:

- Page 166, Policy 24: Encourage cultural and traditional land use programs by encouraging development of a cultural resource management plan with strong community input for Halawa.



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- Page 166, Action 10.2.02 (East End Policy Statement): Ensure that traditional and culturally significant lands are conserved, preserved, and protected by supporting designations to protect and preserve traditional lands under the DLNR conservation regulations, through County zoning, or other appropriate methods, including the creation of a Traditional Land Use Overlay.
- Page 188, Action 11.2.3 (West End Policy Statement): Support designations to protect and preserve traditional and culturally significant lands under the DLNR conservation regulations during the County zoning process, or other appropriate methods, including the creation of a Traditional Land Use Overlay.

The 2016 Lanai Community Plan consists of a vision statement, goals, policies and actions that guide the desired direction of the island's future. It also includes a detailed implementation and monitoring plan. Chapter 5, Cultural, Historic, and Scenic Resources, includes the following goals and policies which align with the proposed bill:

- Page 5-4, Goal: Lanai's diverse cultural, archaeological, and historic resources and practices, and scenic resources will be protected for future generations.
- Page 5-4, Policy 2: Protect all of Lanai's significant archaeological sites, and historic and cultural resources.
- Page 5-4, Policy 5: Support the protection and preservation of Lanai's historic and cultural resources through controlled, informed, and guided access to historic, archaeological, and culturally important sites.
- Page 5-4, Policy 9: Require developments to mitigate their impacts on historic, cultural, natural, and scenic resources.
- Page 5-5, Policy 12: Support the development of a comprehensive archaeological survey for the Ka`a ahupua`a.
- Page 5-5, Action 5.02: Develop a comprehensive cultural resource protection plan for Lanai.
- Page 5-5, Action 5.03: Assist with developing of a comprehensive cultural resource protection plan for the eastern coast. Conduct a feasibility study for the restoration of the Federation Camp and fisherman shacks. Conduct study for Maunalei Gulch.
- Page 5-7, Action 5.11: Collaborate with State and community groups to implement an ahupua`a/moku-based natural and cultural resources management system to protect sensitive cultural sites, trails, and landscapes.

### **Planning Commission Review**

The Planning Commissions, the Hana Advisory Committee (HAC) and the CRC supported, with revisions, the attached original draft bill prepared by Councilmember Sinenci and the Department. Here is a summary of the commissions' and HAC's recommendations:

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<b><u>Planning Commission</u></b>	<b><u>Date of Vote</u></b>	<b><u>Recommendation</u></b>	<b><u>Vote Count</u></b>
CRC	July 7, 2022	Deferred due to lack of quorum	No vote
Molokai	July 13, 2022	Deferred due to lack of quorum	No vote
Lanai	July 20, 2022	Deferred due to lack of quorum	No vote
Maui	July 26, 2021	Recommended approval of orig. bill	6-0
CRC	August 4, 2022	Recommended approval of orig. bill	5-0
Hana Advisory Comm.	August 11, 2022	Recommended approval of orig. bill	6-0
Lanai	August 17, 2022	Recommended approval of orig. bill	9-0
Molokai	August 24, 2022	Recommended approval of orig. bill	8-0

The CRC did not support the Resolution's proposed changes to their role, authority or procedures. They supported including the new definition of eco-indicators, and they supported the discussion draft.

The Lanai Planning Commission proposed grammatical revisions and supported the discussion draft.

The HAC would like to be advisory to the CRC for sensitive items in Hana. They supported an island-wide map instead of the overlay for Hana Moku only, and requested Hana and East Maui to be mapped first.

The MPC expressed concerns with redundancy if the advisory committees advise both MPC and CRC. They suggested getting GIS feedback. They wanted to make it clear that the cultural overlay is mauka to makai. They supported the discussion draft.

The Molokai Planning Commission had concerns about grading and grubbing enforcement. They supported the discussion draft.

The available verbatim minutes from the commission meetings, a revised proposed bill and the Department's memorandums to the commissions are attached for your consideration. The verbatim minutes from Molokai Planning Commission will be transmitted as soon as they are available. Some of the minutes of the meetings on the proposed bill are available online:

- Maui Planning Commission, July 26, 2021:  
<https://www.mauicounty.gov/Archive.aspx?ADID=29342>
- Maui County Cultural Resources Commission, August 4, 2022:  
<https://www.mauicounty.gov/Archive.aspx?ADID=29398>
- Hana Advisory Committee, August 11, 2022:  
<https://www.mauicounty.gov/Archive.aspx?ADID=29472>

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- Lanai Planning Commission, August 17, 2022:  
<https://www.mauicounty.gov/Archive.aspx?ADID=29460>
- Molokai Planning Commission, August 24, 2022: no summary or verbatim minutes yet.

Pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, we respectfully transmit for the Council's consideration the attached proposed bill, "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19 AND 20, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY DISTRICTS."

We understand that personnel from Councilmember Sinenci's office and the Department of the Corporation Counsel have continued to revise the bill since the CRC, HAC and three planning commissions concluded their review, and that Councilmember Sinenci may present a revised bill to the Council at a later date.

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



MICHELE CHOUTEAU MCLEAN, AICP  
Planning Director

Attachments  
xc: Councilmember Shane Sinenci (w/atts.)  
MCM:JMCT  
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MAUI PLANNING COMMISSION MEETING

JULY 26, 2002

9:01 A.M.

**Certified Transcript**

Report of proceedings at the Maui Planning  
Commission Meeting, held at Wailuku, Maui, Hawaii on  
the 26th day of July, 2022, commencing at the hour of  
9:01 a.m.

1 APPEARANCES:

3 COMMISSIONERS:

4 P. DENISE LA COSTA, Chair

KELLIE PALI, Vice Chair

5 KAWIKA FREITAS (Appeared remotely)

DALE THOMPSON

6 MEL HIPOLITO, JR. (Appeared remotely)

ASHLEY LINDSEY (Appeared remotely)

8 STAFF:

9 ANN CUA, Project Planner

10 MICHAEL JASON HOPPER, ESQ.

Deputy Corporation Counsel

11 County of Maui

michael.hopper@co.maui.hi.us

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1 APPEARANCES (Continued):

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4 HO'OPONOPONO O MAKENA:

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10 (Appeared remotely)

11 For the County of Maui:

12 CORPORATION COUNSEL FOR THE COUNTY OF MAUI  
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19 (Appeared remotely)  
20  
21  
22  
23  
24  
25



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WAILUKU, MAUI, HAWAI'I

JULY 26, 2022

9:01 A.M.

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CHAIR LA COSTA: Aloha kakahiaka, everyone.

Welcome to the Maui Planning Commission meeting.

This morning we will be doing roll call first, so I have the pleasure, actually, of having Ms. Ann Cua -- is stepping in for Director this morning. So I will ask her to go ahead and do roll call for us this morning, and welcome.

MS. CUA: Thank you, Chair. Vice Chair Pali?

VICE CHAIR PALI: Good morning, everyone.

MS. CUA: Commissioner Freitas?

COMMISSIONER FREITAS: Good morning. I'm here at home in Makawao alone. Aloha to everyone.

MS. CUA: Commissioner Thompson?

COMMISSIONER THOMPSON: Aloha and good morning.

MS. CUA: Commissioner Hipolito?

COMMISSIONER HIPOLITO: Good morning, Chair, Vice Chair, fellow commissioners. I'm in Kahului in my office alone. Good morning, everyone.

1 MS. CUA: Commissioner Lindsey?

2 COMMISSIONER LINDSEY: Aloha kakahiaka  
3 kakou. I'm in Wailuku in my office at home. My son  
4 will briefly be stepping in throughout the meeting.

5 MS. CUA: And Commissioner Thayer is  
6 excused today, and then we have Chair La Costa.

7 CHAIR LA COSTA: Aloha, all. Thank you so  
8 much. So before we begin this morning, I would like  
9 to make sure that everyone who is on the call is up  
10 to date, has watched all the videos, and feels  
11 comfortable listening to both the items we have on  
12 the agenda so that we can move forward. If anyone  
13 does not, please let me know right now. Okay. Thank  
14 you so very much. So with that, Ms. Cua?

15 COMMISSIONER FREITAS: Excuse me, Chair?  
16 This is Commissioner Freitas. I didn't hear  
17 Commissioner Greig. Did you -- is he here?

18 CHAIR LA COSTA: Commissioner Greig has  
19 resigned.

20 COMMISSIONER FREITAS: Okay. Thanks.

21 CHAIR LA COSTA: Thank you.

22 MS. CUA: Chair, our first public hearing  
23 this morning is a request by the director, Michele  
24 Chouteau McLean, transmitting Resolution No. 22-79  
25 FD1, referring to the Maui Planning Commission two

1 proposed bills to amend Maui County Code.

2           The first one to combine the provisions of  
3 the historic districts with new cultural overlay  
4 districts and change how such districts are  
5 established; expand the advisory capacities of the  
6 Hana, South Maui, and Paia-Haiku Advisory Committees  
7 to include the Maui County Cultural Resources  
8 Commission, CRC; change how the CRC members are  
9 appointed; require the planning director to appoint  
10 the principal archaeologist to serve as a resource to  
11 the CRC; and establish criteria for grading and  
12 grubbing permits in the cultural overlay district.

13           The second item to establish a Hana  
14 Cultural Overlay District for all land situated  
15 within the Hana Moku.

16           Our Deputy Director, Jacky Takakura, will  
17 be presenting this item.

18           CHAIR LA COSTA: Ms. Takakura, thank you.

19           MS. TAKAKURA: Thank you, Chair. So I just  
20 need a minute to open up my PowerPoint presentation,  
21 so if you can bear with me at the moment.

22           ATTENDEE: I didn't want to bug him too  
23 much, quite frankly, Mike Summers been telling me,  
24 oh, did you contact Paul and stuff. And I contacted  
25 him a few times --

1 CHAIR LA COSTA: Excuse me. Someone is on  
2 the audio, would you please mute your video and audio  
3 until you're called on or until you testify. Mahalo.

4 MS. TAKAKURA: Thank you for waiting,  
5 everyone. Okay. So good morning. Good morning,  
6 Planning Commission.

7 Today we're going to talk about two bills  
8 for ordinances that we've received from the County  
9 Council. Things are relating to the Cultural  
10 Resources Commission and creation of Cultural Overlay  
11 Districts and process and establishing a Hana  
12 Cultural Overlay District.

13 This is a somewhat complicated packet so I  
14 think it's really helpful if you have your  
15 attachments before you, and there's three parts to  
16 the attachments. The first thing is the memo, the  
17 memorandum dated July 7th which kind of explains the  
18 department's position and the -- a summary of the  
19 bill.

20 And then attached to the memorandum is the  
21 resolution from the County Council. And then the  
22 third thing, which has the words "discussion draft"  
23 across it, is the bill that the department had  
24 originally worked on, which I'll get into some detail  
25 later.



1 Just because there's a lot going on, being  
2 able to refer to those three different things might  
3 make it a little easier as we go through this  
4 because, like I said, there is a lot going on in this  
5 bill.

6 Okay. So I'm not seeing -- my slide is not  
7 showing -- let me just see if I can get the right  
8 slide. Sorry. There we go. Okay. Okay.

9 So just for some background. Have you  
10 folks all attended the Native Hawaiian law training  
11 course? That did cover some of this in the class,  
12 and it -- I found it very helpful. I did refer to my  
13 notes from that class, if you can remember some of  
14 the topics that they covered back then.

15 But there are federal and state laws for  
16 burial and archaeological sites. The County does not  
17 have its own regulations, but as we know, here in  
18 Maui County there are some places that contain  
19 cultural and archaeological remains that could be  
20 disturbed by development.

21 So a cultural overlay would alert  
22 developers, property owners, and neighbors that  
23 special consideration may be needed to protect  
24 cultural assets. And so what the bill proposes to do  
25 is kind of fill in the gaps by including a local

1 review.

2 If you remember from the Native Hawaiian  
3 law class, the federal law is the -- it's NAGPRA, the  
4 Native American Graves Protection, and that covers  
5 the native human remains, the funerary objects,  
6 sacred objects, and so forth.

7 And then on the state level, we have HRS  
8 Chapter 6E, and that covers historic preservation.  
9 And the state also has admin rules, Hawaii  
10 Administrative Rules 13-300.

11 And so the proposed bill would supplement  
12 the efforts of SHPD and, like I said, the federal and  
13 the state. It would not replace them.

14 So the original intent and the background  
15 of this bill -- and you'll see more of this  
16 especially in the discussion draft -- is that the  
17 intent is to preserve the varied aspects of the  
18 cultural landscape inclusive of culturally  
19 significant landforms, dewsheds, and cultural and  
20 historic resources.

21 This is not just iwi. It's more than that.  
22 It's broader than that. Like I mentioned, there are  
23 state and federal rules, but we believe that the  
24 existing regulations have proven to be inadequate and  
25 so county level protections would be needed.

1           Like I mentioned, we have a lot of  
2 information in the discussion draft that's attached  
3 to the memo report, and the original intent which you  
4 would see in that discussion draft is to create an  
5 overlay that is in addition to zoning, and it does  
6 not change the zoning. And so what that means is  
7 if -- you folks are all familiar with Title 19 -- and  
8 you have residential zoning and ag zoning and so  
9 forth, that would not change. This would just be an  
10 overlay on top of the existing zoning.

11           That discussion draft bill was worked on by  
12 the planning department, councilmember Shane Sinenci  
13 and his staff, and the county archaeologist. And it  
14 includes the -- a nomination process designation by  
15 county council mapping and levels of sensitivity such  
16 as high, medium, and low; and then spells out  
17 procedures for updates and appeals; and then, of  
18 course, grading permit criteria.

19           So the resolution is a little different,  
20 and this is a summary of this, and if you compare it  
21 with the discussion draft you can see that they're  
22 pretty different. The resolution proposes to combine  
23 the provisions of the historic districts, which if  
24 you remember, we have Lahaina Historic Districts 1  
25 and 2, and then there's the Wailuku Historic

1 Districts which is already in the Zoning Code 19.52.

2 This proposes to combine that with this new  
3 cultural overlay district and change how these  
4 districts are established. It also proposes to make  
5 the new South Maui and Paia-Haiku advisory committees  
6 and the Hana advisory committee -- make them advisory  
7 to the Maui County Cultural Resources Commission  
8 because, as you know, right now they're only advisory  
9 to the Maui Planning Commission. This would expand  
10 their advisory capacity to the CRC.

11 The bill -- the resolution also changes how  
12 the CRC members would be appointed, and it would  
13 require the planning director to appoint the  
14 principal archaeologist to serve as a resource to the  
15 CRC. It establishes criteria for grading or grubbing  
16 permits. And then there's also, as you saw, a  
17 separate bill to establish a Hana Cultural Overlay  
18 District.

19 We have quite a few concerns which are  
20 spelled out in the memorandum regarding the  
21 resolution, and those are covered from Pages 3 to 5  
22 of the memorandum.

23 But just in a nutshell, first off, the CRC  
24 should be consulted before changing their makeup and  
25 the advisory capacity of these other committees. You

1 know, before making any changes, they should be  
2 consulted.

3 We have concerns about the assignment of  
4 staff. For one thing, the principal archaeologist  
5 does not work for the planning department. That  
6 position is part of the Department of Management, so  
7 it would be kind of awkward for the planning director  
8 to assign that person since they're not part of the  
9 planning department.

10 The terminology used, like I had  
11 mentioned -- what we had proposed was simply an  
12 overlay, not a new zoning district. We also have  
13 these terms that are in the bill such as  
14 eco-indicator, which is a new term and we would --  
15 we recommend using terms that are already existing  
16 instead of having new terms.

17 As I mentioned, there's this whole issue of  
18 zoning districts versus overlay. We don't want to  
19 lose the existing zoning districts that we have, and  
20 we don't want to create something confusing like,  
21 say, having two zoning districts for a parcel. We  
22 simply want an overlay and that would guide property  
23 owners in terms of the sensitivity of a parcel, and  
24 that way they know to -- you know, if they need to  
25 take extra steps or not.

1 We have concerns also with the processes  
2 and procedures. You know, one of the things that was  
3 kind of interesting is that there's no -- what was  
4 it -- I lost my point that I wanted to mention --  
5 that the criteria and the standards, they need to be  
6 clarified in the resolution.

7 Grading and grubbing, that's not part of  
8 Title 19. That's public works, and it should be in  
9 Title 20. And then finally, you know, having the  
10 bill to designate the Hana district, it's a little  
11 premature. We believe that after -- once the process  
12 and the criteria and everything is spelled out, then  
13 that would be an appropriate time to create the  
14 districts.

15 So I know that I'm -- really, really  
16 summarized it briefly but there's quite a bit of  
17 information in the memorandum which we can get into  
18 detail.

19 And there are some subject matter experts  
20 here with us. I believe Dr. Janet Six is with us,  
21 and then we also have a representative from  
22 Councilmember Shane Sinenci's office here who can  
23 also assist. They've been in this process for --  
24 since the beginning when the discussions began. So  
25 I'll ask them to assist when we have questions.



1 But like with any other bill, my planning  
2 commission would make a recommendation to the county  
3 council. You could approve the resolution. You  
4 could approve the resolution with comments or  
5 amendments -- and I have here "comments or  
6 amendments" because the resolution itself said that  
7 they don't want a revised bill, but then in talking  
8 with Councilmember Shane Sinenci's office, they're  
9 okay with having amendments after all.

10 The planning commission could also  
11 recommend denial or defer. And just FYI, we did have  
12 this scheduled before the Cultural Resources  
13 Commission, the Molokai Planning Commission, and the  
14 Lanai Planning Commission, but all of them had to  
15 defer, so I don't have any further feedback from any  
16 of the other commissions so far. That's all I have.

17 This just -- quote is -- it's about the  
18 sites that are so important to the Native Hawaiian  
19 and indigenous peoples. They're super important and  
20 they need to be taken care of. That's the  
21 presentation, and then you can open it up for  
22 testimony, and we can answer questions later.

23 CHAIR LA COSTA: Thank you, Ms. Takakura.

24 Commissioners, do you have any clarifying  
25 questions for Ms. Takakura?

1 In that case, I will open the floor to  
2 public testimony. And for those of you who can see,  
3 Carolyn is our secretary, and we could not do without  
4 her.

5 So our first testifier is Ms. Gina Young.

6 Ms. Young, would you please come forward  
7 and unmute your audio and, if you choose, your video  
8 as well. You have 3 minutes. Please identify  
9 yourself and go ahead.

10 MS. YOUNG: Thank you. Aloha and good  
11 morning, Chair La Costa and commission members. I'm  
12 Gina Young, and I'm here today representing  
13 Councilmember Shane Sinenci.

14 CHAIR LA COSTA: Excuse me. Could you  
15 speak up a little louder, please? We can't hear you  
16 very well.

17 MS. YOUNG: Oh, sure. I'm Gina Young. I'm  
18 here representing Shane Sinenci, the councilmember  
19 who introduced the bill before you today. Our office  
20 has been working with the planning department,  
21 specifically Annalise Kehler, Stanley Solamino, and  
22 Director McLean on this bill for the past year.

23 That being said, we do agree with the  
24 department's proposed version and many of the general  
25 comments. And I'll explain more in a minute.

1 I did to want make a comment on the note in  
2 the packet that said we didn't want a revised bill by  
3 the department. That was added by council staff who  
4 no longer is staffing our committee. I've never seen  
5 that before. We don't agree with it. We very much  
6 welcome the department's input, and we always want  
7 proposed changes to make it a bill. It's really  
8 their kuleana, Title 19.

9 So the purpose of the bill, as Jacky  
10 stated, is to fill in gaps with the current cultural  
11 resource protection and to provide more local review  
12 as well as information for property owners. Right  
13 now, there's really no place a property owner can go  
14 to when they're looking at a parcel and they want to  
15 develop it. Often they get caught up in the process,  
16 when they're far into it, they've bought the  
17 property, they're committed, and then they find out  
18 that there's cultural resources and then (audio  
19 difficulties).

20 We first started our discussions with  
21 HSPD [sic], and it was Dr. Lebo who suggested that we  
22 use the cultural map and the sensitivity  
23 designations. That's what the military does. They  
24 do a red, yellow, and green designation.

25 We also like the idea, as suggested by our

1 corp counsel, that Cultural Resource Commission  
2 reviews specific projects. We can envision a system  
3 where they review high density.

4 The reason we have the later bill that was  
5 given to you is that at -- in committee, our  
6 cultural -- our corp counsel stated that we didn't  
7 have any personnel to do a mapping, so she suggested  
8 that the Cultural Resource Commission -- she also  
9 staffed that at the time -- that they do the review  
10 of the projects and set the conditions. That being  
11 said, she's no longer our corp counsel, nor is she  
12 with Cultural Resource Commission.

13 Now the two bills before you today --  
14 that -- they differ on the role of the Cultural  
15 Resource Commission, and we're very interested in  
16 hearing from you whether you think they should review  
17 specific project -- maybe we could see, like I said,  
18 the height sensitivity areas.

19 I'm limited in my testimony time, but if  
20 you're interested in knowing the background on why  
21 provisions were put in to send it to local advisory  
22 committees or the makeup of the CRC, I'm happy to  
23 explain those. They're only relevant under a system  
24 where we have CRC review.

25 And then also the Hana designation was only

1 submitted as an example. The comments on that (audio  
2 difficulties) but we have to go through the entire  
3 process but we wanted you to see what a map would  
4 look like.

5 So thanks again for your service and for  
6 your discussion today and input on the bill.

7 CHAIR LA COSTA: Mahalo, Ms. Young, for  
8 your testimony. Commissioners, do you have any  
9 clarifying questions?

10 Ms. Takakura, do you have any questions for  
11 her?

12 MS. TAKAKURA: Just want to say thank you,  
13 Gina. Would you mind sticking around in case they  
14 have questions?

15 MS. YOUNG: Not at all. And Dr. Six -- I  
16 don't know if she's on -- but she's got a site visit  
17 in Hana this morning. She said she'll try to jump  
18 on. She's really the expert with the cultural  
19 mapping. But I've sat through a number of  
20 presentations. If anybody has any questions, if  
21 she's not here, I can do my best to explain what that  
22 is.

23 CHAIR LA COSTA: Mahalo. Appreciate.  
24 Okay. Seeing no questions, thank you so much.

25 Our next testifier is Carol Lee Kamekona.

1 Ms. Kamekona, please step forward, unmute yourself,  
2 and if you'd like, also show us your smiling face.

3 I don't know if you can hear us,  
4 Ms. Kamekona. If you're within hearing range, please  
5 step forward and testify.

6 Okay. We will come back to Ms. Kamekona.

7 Our next testifier is Lucienne de Naie.

8 Ms. de Naie, please step forward and introduce  
9 yourself. You have three minutes.

10 MS. DE NAIE: Aloha and good morning, Chair  
11 and members of the commission. I'm testifying today  
12 as a private citizen.

13 This cultural overlay bill is not a new  
14 idea. I testified back at the Cultural Resources  
15 Commission -- I think it was 1996 or '97 when Dorothy  
16 Pyle brought forward the concept. It's a good  
17 concept.

18 We do need some county additions. State  
19 Historic Preservation, as we all know, is overworked  
20 and understaffed, and we cannot depend upon their  
21 review alone.

22 A good example of this is Makena Resort.  
23 You folks got a presentation -- I think last year --  
24 that they changed their plans after they got new  
25 archaeological consultants and found so much more was



1 there. This took a citizen lawsuit. It really would  
2 have been nice if there was a cultural overlay  
3 district there.

4 I myself proposed this 10, 15 years ago,  
5 that the whole area in Makena is really, really just  
6 loaded with evidences of Hawaiian culture. And it's  
7 nice to see something like this coming forward.

8 As to the matter of the CRC members being  
9 appointed by the council as well as the mayor, I just  
10 have to say part of the reason that people may not  
11 apply for these boards and commissions is that  
12 there's -- no one knows what happens. You know, I've  
13 applied for the CRC. I've applied for the planning  
14 commission. You get a letter saying, thanks, we got  
15 your -- you don't know what happens.

16 But when the council appoints someone -- I  
17 applied for the CPAC and I applied for the Regional  
18 Advisory Committee for Haiku-Paia, you could see  
19 everyone who applied. You could hear their stories,  
20 the council could hear their stories. It's just a  
21 far better process in this age of transparency.

22 We need a process that allows people to  
23 feel like they're going to know if their -- if their  
24 efforts to volunteer are going to be appreciated in  
25 some way. And I think more people would volunteer.

1           Also about the CRC asking the community  
2 advisory groups to hold hearings from time to time,  
3 this seems perfectly logical, and I think the CRC  
4 could figure out what types of things they might turn  
5 to these groups for. And they might never ask, but  
6 at least the provision is there. And if it could be  
7 better worded or more clearly stated, that makes a  
8 lot of sense to me.

9           And then the eco-indicator. Yes, it's a  
10 new term. Boy, do we need a new term. The old  
11 terms, the cultural landscape, first of all, is  
12 barely used and barely understood. It's just  
13 starting to be used although it's been around since  
14 the 1990s. And we really need to make it clear that  
15 Hawaiian culture does not separate the natural world  
16 and the cultural world. So this new definition would  
17 be appreciated. Thank you.

18           CHAIR LA COSTA: Thank you so much.

19           Commissioners, have you any questions for  
20 Ms. de Naie?

21           Same thing, Ms. Takakura? Any questions  
22 for Ms. de Naie?

23           Okay. Thank you so very much for your  
24 testimony. I appreciate it.

25           Is Ms. Kamekona on the line?

1 Carol Lee, if you are there, please step  
2 forward, unmute your audio, and if you like, your  
3 video as well.

4 COMMISSIONER LINDSEY: Chair, I'm not sure  
5 if this matters, but her icon is different for the  
6 muting. I'm not sure if that applies here.

7 CHAIR LA COSTA: Ms. Kamekona, if you'd  
8 like to call in and give audio testimony on your  
9 phone.

10 COMMISSIONER FREITAS: Chair, this is  
11 Commissioner Freitas. If we're waiting for  
12 Ms. Kamekona, I did have a question for Ms. Gina  
13 Young. When you have time, if I could ask a  
14 question?

15 CHAIR LA COSTA: Ms. Young, are you still  
16 with us?

17 MS. YOUNG: Yes, I am.

18 COMMISSIONER FREITAS: Can I go ahead?

19 CHAIR LA COSTA: Before you do that, let me  
20 give Ms. Kamekona the number because it is a little  
21 irregular. It's out of order.

22 Ms. Kamekona, if you need the number, it is  
23 1-888-748-9073. That's 888-748-9073. Please try  
24 that, and the meeting ID is 931656071. So please try  
25 that so we can hear your testimony.

1 And I'm thinking that we may have to go to  
2 this after we close public testimony, Kawika. I saw  
3 Mr. Hopper on there.

4 MR. HOPPER: Chair, just a recommendation.  
5 I know there was a discussion of Ms. Young being  
6 available afterwards since she worked on the bill, so  
7 it's maybe better to just do that when you're done  
8 with testimony in case other members have questions.  
9 It's kind of awkward to go back to past testifiers  
10 after you're done with them. Just a suggestion.

11 CHAIR LA COSTA: Thank you, Mr. Hopper.

12 COMMISSIONER FREITAS: I raised my hand but  
13 I guess because I'm on the screen, I wasn't seen.

14 CHAIR LA COSTA: I'm sorry. I did not see  
15 you, Commissioner Freitas. Sometimes you have to be  
16 a little more animated because you're far away.

17 Ms. Kamekona just rejoined the call, so  
18 let's hope that she can get through this time.

19 MS. KAMEKONA: Hello?

20 CHAIR LA COSTA: Thank you. You're with  
21 us. Yay. Would you please step forward? You can --  
22 I don't know if you're on audio and video or just  
23 audio, but please, you have three minutes to testify.  
24 Introduce yourself and please go.

25 MS. KAMEKONA: My name is Carol Lee

1 Kamekona, and I am calling from Kahului. I am not a  
2 paid lobbyist. I am, however, a cultural  
3 practitioner and a recognized cultural descendant of  
4 the Maui Lanai Island Burial Council.

5 I am a strong advocate for the protection  
6 of our iwi kupuna, our aina, and our wai. I am in  
7 total support of having council choose six members  
8 and allowing mayor to choose three members as it  
9 shows more transparency, as what Ms. de Naie had  
10 mentioned.

11 Also, too, with those on commissions and on  
12 boards, I believe there is no connection to aina on  
13 any commissioner that sits on board because  
14 everything you see is one-dimensional, being told to  
15 you or shown to you on a piece of paper. There is no  
16 site visits that commissioners take, nor is there any  
17 connection to aina.

18 I do also support the Hana district as an  
19 advisory group. I also support all three districts  
20 being an advisory group to the Cultural Resource  
21 Commission.

22 With what was spoken earlier in the  
23 description -- that Dr. Six cannot or may not be able  
24 to, because of conflict of interest, maybe if there  
25 is a way that the archaeologist can be hired by the

1 planning department, being that there are numerous  
2 permits that the planning department does issue that  
3 has to do with desecration.

4 Also I do believe that appointing districts  
5 prior to designation would help because the districts  
6 would be made up of people that live in the area.  
7 And who better know the districts rather than the  
8 residents that live in the area? So mahalo for  
9 allowing me to testify. I appreciate it. You have a  
10 good day. God bless.

11 CHAIR LA COSTA: Thank you, Ms. Kamekona.  
12 Just a moment, please. We may have some questions  
13 for you.

14 Commissioners, have you questions for  
15 Ms. Kamekona? I don't see anyone here. No one on  
16 the screen. Thank you.

17 Ms. Takakura, have you any questions for  
18 her? Okay.

19 Ms. Kamekona, I thank you so much for  
20 taking the time to testify. We appreciate it.

21 MS. KAMEKONA: Mahalo. Have a good day.

22 CHAIR LA COSTA: Thanks so much. Carolyn,  
23 have we any other?

24 If anyone else is on the call and they  
25 would like to testify, please notify us in the chat

1 that you would like to do so. Okay. Going once,  
2 going twice, public testimony is now closed.

3 Okay. At this juncture, Commissioners,  
4 we'll start with Commissioner Freitas. I know you  
5 had a question for Ms. Young.

6 So Ms. Young, thank you so much for  
7 responding to Commissioner Freitas.

8 Go ahead, Commissioner Freitas.

9 COMMISSIONER FREITAS: Thank you, Chair.

10 Ms. Young, you know, the first thing you  
11 said when you testified, you said that there was a  
12 part of the bill that was inadvertently included by a  
13 staffer.

14 Can you explain where that is and what part  
15 that was?

16 MS. YOUNG: Oh, it's just a comment from --  
17 let me see if I can find it. Hold on a sec. Well,  
18 there's -- maybe Jacky knows where it is.

19 There's a comment at the end of the  
20 transmittal that states that we didn't want a revised  
21 bill from the planning department, we only wanted  
22 some comments. But I've never seen that before, and  
23 it doesn't reflect our committee's desire.

24 We do welcome the revised bill. It  
25 shouldn't have stated "for discussion purposes," it

1 should state the planning department's revised bill.  
2 I don't think you'll be -- I don't think you've seen  
3 that before in any transmittals from council nor do I  
4 think you'll ever see that again.

5 COMMISSIONER FREITAS: Okay. So when we  
6 vote, that part will not be part of what we vote on?

7 MS. YOUNG: No. It was just a comment in  
8 the transmittal there. It's not an actual part of  
9 the bill. It was just kind of instructions to you.  
10 And we didn't see that when we reviewed it before it  
11 went out to you. I think it was just added at the  
12 last minute.

13 COMMISSIONER FREITAS: Okay. Thank you.

14 MS. YOUNG: But I just wanted you to know  
15 that it does not express, you know, our feelings  
16 about today or what we've received.

17 COMMISSIONER FREITAS: Thank you.

18 CHAIR LA COSTA: Thank you, Commissioner  
19 Freitas. Thank you, Ms. Young. Commissioner Pali?

20 VICE CHAIR PALI: My question's for Jacky,  
21 staff planner.

22 Looking at this 26-page document and  
23 Resolution 22-79 and then it has FD1, and that's, I  
24 think, what we're talking about here today. I just  
25 first want to just clarify, when I see an underlined



1 text, does that mean there was a change or an update?  
2 Is that why it's underlined?

3 MS. TAKAKURA: Thank you, Commissioner  
4 Pali. Yes, normally underlined means that it's being  
5 added as compared to brackets, which are deletions.  
6 That's normally how we see it in bills for ordinance.

7 VICE CHAIR PALI: Okay, great. I mean, I  
8 did know that, but I just wanted to confirm that  
9 that's still the case.

10 And as I was reviewing this 20-page  
11 document, I did have a question about -- off topic,  
12 but still the document. Number 4 on Page 6 of 26,  
13 and it's in regards to attendance.

14 And if you could try to give me an example  
15 of how this would play out, because although I was  
16 also part of leading attendance requirements in the  
17 charter -- which I pride myself if you're going to  
18 serve that you show up to serve -- I feel like the  
19 way this wording is, the member is removed for  
20 failure to attend 50 percent or more of the meetings  
21 or is absent from at least 25 percent of the meetings  
22 within 30 days of the member's last excused or  
23 unexcused absence.

24 How do you -- how do you gauge 25 percent  
25 of meetings within 30 days, especially like for us in

1 the commission, we're only meeting twice every 30  
2 days? If I missed one, I'd be at 50 percent. Is  
3 that what you're alluding to?

4 I just need to see how this would play out  
5 in practicality and how this could be actually  
6 enforced, because I know the gravity and the weight  
7 of what happens when commissioners' lives get super  
8 busy as we all have busy lives, but they just can't  
9 show up consistently for months and months at a time.

10 So can you just help explain an example or  
11 is there a better way that we can word this in  
12 general and go like, if so many consecutive meetings  
13 are missed, even excused. Because the reality is we  
14 have excused absences but if our life no longer  
15 allows for the time and serving of the community,  
16 then in respect for the community and other members,  
17 we should just humbly resign and come back when our  
18 lives are more free. And that's how I feel about  
19 this. So can you just help me with that?

20 MS. YOUNG: Thank you, Commissioner Pali.  
21 This is an addition that we've seen in other  
22 commissions but to be consistent with -- I believe  
23 it's something that was changed in the charter, but  
24 this had been added to the Maui Planning Commission  
25 rules about attendance. So this is -- I think it's

1 basically the same language.

2 And I do want to point out that, you know,  
3 excused absences are okay. It's the unexcused that  
4 cause a problem. So -- and I think for the vast  
5 majority, if you folks are ever absent, it's -- you  
6 folks are excused because you --

7 VICE CHAIR PALI: Yeah, but when you have  
8 six in a row that are excused, are they really  
9 excused at that point or is the person just  
10 unavailable to serve? But I know that's not with  
11 you. I'll take that up with the charter.

12 Okay. So you just copied the language that  
13 we kind of created the first time around -- I think  
14 it was about a year and a half ago, two years --  
15 okay. All right. Well, I guess I'll work on the  
16 avenue where this would matter. Okay.

17 And my other question -- let me find it  
18 here. Oh, I have it on my -- yeah, I got it on my  
19 pad. I'm taking it out today.

20 Yeah. So can you explain the difference --  
21 because I want to make sure I don't misunderstand.  
22 So advisory committees, from my understanding, is  
23 that they can have a little bit more central local  
24 finger on the pulse. They get more of an immediate  
25 sort of position on the issue and how the public

1 feels about it, and then they advise us.

2 So when there is language that says that  
3 they should also advise this new Maui Cultural  
4 Resources, is any way that bypassing the authority of  
5 the Maui Planning Commission?

6 MS. TAKAKURA: Thank you, Commissioner  
7 Pali. In terms of your first question about advisory  
8 committees being kind of like the pulse of the  
9 community, I would say yes because they are required  
10 to be residents of that area, you know, Paia-Haiku or  
11 South Maui or Hana. They would have a much better  
12 grasp of what's going on in those communities.

13 In terms of authority, I'm not really clear  
14 on how the CRC relates to the Maui Planning  
15 Commission. So I don't know if the CRC -- maybe Ann  
16 might be able to answer that one -- but I think it  
17 would be similar to how the advisory committees are  
18 with the Maui Planning Commission, that the  
19 commission would refer items to them that they wanted  
20 to get their feedback on.

21 And so they may have lots of meetings or  
22 they may have none, depending on the CRC, but I'll  
23 defer to Ann. I think she has more experience with  
24 the commission.

25 CHAIR LA COSTA: Ms. Cua?

1 MS. CUA: Thank you, Chair. The Cultural  
2 Resources Commission kind of has a dual role, because  
3 they have -- they have permits that they are the  
4 authority to grant, like historic district  
5 applications.

6 But the planning department can send any  
7 application to them for review and comment. And  
8 there are times even when the department has not sent  
9 something but then when the project comes to the  
10 commission, the commission decides they want to send  
11 it because maybe someone has -- in the public has  
12 brought up an issue. So they play a dual role. They  
13 have authority on certain types of permits.

14 And then we definitely use them -- if you  
15 recall our training, when we give you our training  
16 and we have that slide that has all the different  
17 boards and commissions that is a resource to the  
18 planning commission, they're definitely one.

19 VICE CHAIR PALI: Okay. So I'm just trying  
20 to navigate so I can get a good picture on the  
21 benefit. So if the cultural -- the new county  
22 cultural resource committee -- is it called  
23 committee? -- commission, if they do have the  
24 authority on certain items, then it would benefit  
25 that the advisory committees can report directly to

1 them because we're out of that, it sounds like.

2 We're not a part of that, potentially, if they're the  
3 authority.

4 MS. CUA: Of that particular permit.  
5 However, there may be another permit, like a special  
6 management area major permit, for the same project  
7 that you're going to need to review.

8 VICE CHAIR PALI: Because we ultimately  
9 have the authority.

10 MS. CUA: On the SMA permit.

11 VICE CHAIR PALI: But ultimately, we're  
12 still -- we still have the ability to go to the  
13 advisory and/or cultural commission.

14 MS. CUA: Correct.

15 VICE CHAIR PALI: Either way. I'm just --  
16 what I want to make sure is that, yeah, that none of  
17 the new additions sort of double up what we're  
18 already doing. To me, that would be a waste of time,  
19 staff, energy, money, volunteer time.

20 And I'm just trying to make sure that we  
21 all stay in our lanes but work together cohesively  
22 instead of one sort of trumping in wrong order and  
23 overlapping where we're making too many busybodies,  
24 too much work, and spending on the same topic. So  
25 sorry to -- so that -- I think I have it clear then.

1 Okay. I think that was it. Thank you.

2 CHAIR LA COSTA: Commissioners?

3 Commissioner Lindsey.

4 COMMISSIONER LINDSEY: My question is this  
5 overlay district, is it by TMK or -- like, for  
6 example, we recently saw a couple of properties that,  
7 like, the corner of the TMK boundary was in the --  
8 was in the SMA zone but most of the property is not.

9 Would it overlay onto that? Because a lot  
10 of times, the cultural boundaries go mauka to makai  
11 and our modern-day TMKs kind of go the other way.

12 So if, like, the Kihei advisory committee  
13 was dealing with a property in, like, upper Kula,  
14 they should -- they should advise on the upper Kula  
15 property because they are part of that  
16 historical-cultural area if you go culturally  
17 correct. But I'm just trying to find where -- how it  
18 works. Can you explain that to me, please?

19 MS. TAKAKURA: Thank you, Commissioner  
20 Lindsey. So I think that was a concern also with the  
21 proposed bill. The discussion draft would have the  
22 overlay. And, of course, TMKs would be in there, but  
23 it would be -- like when you envision an overlay,  
24 it's kind of on top of all the zoning districts so it  
25 could expand, you know, beyond just a TMK depending

1 on what's there on the property.

2 So I think the discussion draft is intended  
3 to be kind of bigger than just looking at, you know,  
4 individual TMK because, like I mentioned, sometimes  
5 some of the resources could be in larger areas,  
6 broader areas. I'm not sure if Gina has more  
7 thoughts on that part.

8 MS. YOUNG: Thanks, Jacky. First of all, I  
9 just want to respond to the earlier question. The  
10 Cultural Resource Commission is not new. It's a  
11 commission that's been established for a long time.  
12 They just have a different purview than the Maui  
13 Planning Commission.

14 And then second -- it's kind of hard to  
15 wrap your brain around but once you do, it makes  
16 sense -- so an overlay district is -- that why we  
17 included Hana, so you could see the entire area of  
18 what it would be.

19 And then the individual TMKs is where a  
20 property owner or someone looking at property would  
21 probably go to that TMK, click on it, and up would  
22 come the different layers. The layers could be known  
23 burials. They could be historic events that have  
24 happened on that parcel. They could be historic  
25 structures that are on that parcel.



1 Each one of these would be a different  
2 layer so you would know, if you're looking at that  
3 TMK, what specifically, in the past, has been  
4 discovered on there and recorded on a map. It's very  
5 similar to the HICRIS system that SHPD has, if anyone  
6 has any familiarity with that.

7 But I also want to point out that now we  
8 have specific positions creating the mapping, and  
9 they were added in our last budget. It's very likely  
10 that that staff will do an entire county-wide map  
11 over time.

12 It may eliminate the need for specific  
13 districts, but what it will do is it'll map out each  
14 of those different layers, the burials, the historic  
15 events, the historic sites. And then you can go on  
16 when you're looking and you could look at a larger  
17 area than just a TMK.

18 But if you're looking -- you're the  
19 property owner, you're looking to build, do  
20 something -- you want to know where on your parcel  
21 you should build. You can click on it and any  
22 previous information will show you where the  
23 different areas were previously found.

24 And then as new projects come up and  
25 there's new archeological inventory surveys that

1 become public through SHPD or even just submitted by  
2 different consultants, those then would be added to  
3 the map. So the next person to come along could take  
4 a look at that parcel and see what's been on there.  
5 I hope that explains a little bit better.

6 COMMISSIONER LINDSEY: I'm just -- can I  
7 ask questions? Sorry.

8 CHAIR LA COSTA: Go ahead.

9 COMMISSIONER LINDSEY: I'm just trying to  
10 get an understanding of how -- because historic and  
11 cultural resources in Hawaiian system is mauka to  
12 makai -- how it would be affected.

13 Like, for example, if I cut off the water  
14 on the top, there's no water on the bottom. Now how  
15 does that have -- but they're connected, you know?  
16 So if the dam overflows, it will get flooded. But  
17 there's nothing on that TMK that says, hey, you were  
18 in a riverbed or -- you know what I mean?

19 It's -- in addition, is the advisory  
20 committees -- how can they advise, like, Kula and --  
21 well, a few months ago -- maybe a year now -- we had  
22 the windmills in Kula being built, and Kihei people  
23 were testifying for it and against it. But it was  
24 part of Kula, and nobody from Kula was testifying  
25 except for one testimony about that.

1           So how do you make sure that, you know,  
2 everyone gets it, not -- because Kula doesn't have an  
3 advisory committee.

4           MS. YOUNG: Yeah, that's a great question.  
5 I wish Dr. Six were here to explain a little bit  
6 more.

7           And that's where the whole eco-indicators  
8 come in to play. Now, that's a term that's new to  
9 land use development but not new to archaeology.

10          And what an eco-indicator would be -- it  
11 would be -- for an example, something like you're  
12 talking about. It would be groundwater. And  
13 groundwater doesn't just stay within one TMK.

14          So what would happen is you probably would  
15 have to have a review of those kind of things by  
16 someone knowledgeable of water resources. And that  
17 could be part of a review for a project for a TMK.

18          Now, if you're looking at groundwater, that  
19 could be an area where you might find certain  
20 cultural resources. And you would have a review of  
21 that where they would take a look, they would take an  
22 estimation of whether or not there might be.

23          I wish Dr. Six was here. She explains it  
24 so much better than I do. But, yeah, we recognize  
25 that not each TMK -- everything is limited. The way

1 I explained it to you is looking kind of more just at  
2 the cultural resource aspect, when you do actually  
3 have physical structures already there and  
4 identified. You can pin place them.

5 You're talking a little bit more about an  
6 environmental aspect which is, to some degree  
7 covered, in the bill. But in the bill, it does  
8 actually list out the ones that the planning  
9 department included. It does list out the different  
10 criteria that are the actual things that we're  
11 looking for. Like I mentioned, the cultural site.

12 So you might want to take a look at that  
13 and see if it's enough to solve what you're asking.  
14 I'm going to see if I can just find it quickly for  
15 you.

16 COMMISSIONER LINDSEY: But culture --  
17 Hawaiian culture is environment.

18 MS. YOUNG: Oh, I know. And it's in there.  
19 I understand a hundred percent. So what we have in  
20 there is that you would need:

21 A pattern or complex of sites.

22 An association with historic  
23 events.

24 The association with historic  
25 person.

1 Particular type, period, or  
2 method of construction.

3 Importance to Native Hawaiian  
4 people or to another ethnic  
5 group because of associations  
6 with cultural practices,  
7 traditional beliefs.

8 Religious or spiritual value.

9 It exists closer in proximity  
10 to a known burial site or burial  
11 ground.

12 So it sounds like we would probably need to  
13 add something in there that would look more  
14 environmentally. We do have eco-indicators later on  
15 when you're looking at the particular parcel.

16 But that's a great comment. I'll bring  
17 that back to the committee to tell them we need to  
18 look a little more holistically at all of that.

19 COMMISSIONER LINDSEY: One more question  
20 about that. So in a TMK, let's say there's like a  
21 tiny -- maybe half of a something on there. Would  
22 that encumber the entire thing so they would have to  
23 come back for it? Like a 40 acre property, there's a  
24 10 by 10 very important structure on the side, in  
25 those -- would those entire 40 acres be, you know,

1 affected by this site on the TMK?

2 MS. YOUNG: That's where our review comes  
3 in handy is that -- just like now, when Cultural  
4 Resource Commission is looking at site plans. Now,  
5 obviously, you wouldn't want a plan that has demoing  
6 that particular structure. It would alert the  
7 developer early on to use a site plan that wouldn't  
8 have impacts to that cultural area because it would  
9 let them know right away.

10 I did find in the bill where it does take a  
11 look at the environmental, and it says under  
12 Section 19.52.025:

13 And the principal  
14 archaeologist must use  
15 the following criteria  
16 to determine whether  
17 the proposed action has  
18 the potential to affect  
19 cultural or historic  
20 properties.

21 And it lists in there, "The presence of  
22 historic or existing waterways, wetlands, and  
23 backfilled areas." So that's what we have in there  
24 now to address that.

25 If you could come up with some suggested

1 language that could be more precise, we'd love that.  
2 Thanks.

3 COMMISSIONER LINDSEY: Okay, thank you. I  
4 think, like, for our planning and the SMA, director  
5 takes a lot of the SMA minors, you know, and the  
6 majors so they're not all presented to us.

7 And those kind of sites, I'm wondering if  
8 there's -- if that is able to happen for those sites  
9 that are, you know, major sites, but does it need to  
10 be reviewed by this huge process also of going  
11 through them because sometimes -- you know, sometimes  
12 it's not -- you know, I'm going to build my house way  
13 over here and the site is way over there. It doesn't  
14 affect in any way. I totally want to keep that site  
15 there.

16 Like those kinds of situations, which  
17 there -- I'm sure we'll have a bunch. I just want to  
18 make sure it doesn't make this huge burden on people  
19 who, you know, maybe want to update their house, you  
20 know, small kinds of things.

21 MS. YOUNG: We have the same concerns. So  
22 how it works now is it's being rated on the ability  
23 to potentially affect cultural resources. So if  
24 Dr. Six is taking a looking at a site plan and she  
25 doesn't see any kind of action that could potentially

1 impact it -- so the house is over here where the site  
2 is over here, it's very unlikely that you're going to  
3 impact it. So I don't think that site would receive  
4 a, you know, high designation or any conditions by  
5 her.

6 And that's kind of how it's done right now  
7 when SHPD takes a look at it. If you plan ahead, it  
8 works great. If you don't do your research and you  
9 accidentally put the house on top of where the site  
10 is, just assuming you're going to bulldoze the heiau,  
11 you know, that's not going to fly. But if you put it  
12 in a different area and you preserve it, then I don't  
13 think you would get flagged to go to the Cultural  
14 Resource Commission.

15 COMMISSIONER LINDSEY: Thank you.

16 MS. TAKAKURA: Excuse me, Chair La Costa.

17 CHAIR LA COSTA: Yes.

18 MS. TAKAKURA: Just want to add that we  
19 have one of our GIS analysts, Johann Lall, available  
20 to answer technical questions about mapping also.

21 CHAIR LA COSTA: Would that help you,  
22 Commissioner Lindsey, if you spoke with him?

23 COMMISSIONER LINDSEY: Yes, please.

24 MS. TAKAKURA: Johann, are you available?

25 MR. LALL: Yes. This is Johann Lall, GIS



1 at the planning department. Do I need to swear in or  
2 not for this kind of thing? Okay.

3 I think a lot of what you're asking is  
4 going to depend on how the final bill is written  
5 because a lot of it is how the GIS is actually set  
6 up, because it's not just like an overlay. It's not  
7 like zoning district or it shouldn't be like zoning.  
8 It would be more like SMA where you have these really  
9 complex polygons. But you might also have points and  
10 things like that.

11 And one thing is for burials, you wouldn't  
12 want to display burials publicly but you might have  
13 zones. So you could have a large zone that says,  
14 "This area is known to have burials."

15 And then, you know, you could have it set  
16 up -- it depends on how the law is written -- it  
17 might say that there's a buffer on top of that so  
18 just to be extra safe, if you're within, you know, a  
19 hundred feet, a thousand feet of known burial areas,  
20 there would be restrictions and things like that.

21 So it really depends on how it's written.  
22 But a part of that could be -- you could say a part  
23 of the whole evaluating impacts could be that you  
24 look upstream, and you look mauka to makai, and you  
25 look at impacts on resources that are afforded to

1 Hawaiians like marine resources and things like that.

2 It depends on how it's written. So I'm not  
3 sure if that answers your question but it's complex  
4 and a lot of it involves the GIS.

5 COMMISSIONER LINDSEY: So, like, in my  
6 head, I have something kind of like a topo map where  
7 it's kind of curvy and however it lays, but then I'm  
8 imagining it in a planning district which is very --  
9 squares everywhere, and then in addition, laying on  
10 the Hawaiian cultural, mauka to makai, pie-shaped  
11 kind of stuff.

12 And I'm just trying to make sure all of  
13 this is covered, all of it is thought about, and  
14 we're doing the best choice we can. Do you have  
15 any --

16 MR. LALL: Yeah. That is -- is kind of  
17 what Jacky was saying about the overlay versus  
18 zoning. It really has to be an overlay because it  
19 has to be more complex than just zoning because  
20 zoning -- it mostly goes along parcel lines, but  
21 we're talking about features that predate zoning and  
22 predate parcels by hundreds of years.

23 So it -- as far as the complexity and  
24 taking into account, you know, things that I think a  
25 lot of us haven't even thought of, it might need to

1 be discussed with the council and those folks that  
2 try to make it even better. I don't know. But,  
3 yeah, there's a lot of room to do stuff that is way  
4 beyond what is possible now with just the SHPD data  
5 and zoning things like that.

6 COMMISSIONER LINDSEY: Okay. Thank you.

7 CHAIR LA COSTA: Mr. Lall, did you have any  
8 input in the bill? Did anyone come to you and say,  
9 would you look at this and make your comments?

10 MR. LALL: No, I did not have any direct  
11 input. I did discuss it with Dr. Janet Six.

12 CHAIR LA COSTA: Okay. Because you made  
13 some comments about the wording in here. I just --  
14 we want to be sure that this is, you know, done  
15 right, as Commissioner Lindsey said, rather than  
16 having to come back and wordsmith it.

17 So if that process needs to be extended a  
18 little bit to be able to fine-tune some of the things  
19 then -- I don't know about the rest of the  
20 commissioners, but I'm fine with that.

21 I do have a question -- thank you so much  
22 for your testimony, Mr. Lall. I do have a question  
23 for Ms. Takakura.

24 How often is an archo -- archaeolo -- that  
25 fellow used by the planning department?

1 "Archaeologist" is the word I was trying to spit out.

2 MS. TAKAKURA: Thank you, Chair La Costa.

3 So my understanding -- well, we do consult with  
4 Janet -- Dr. Janet Six when needed but, depending on  
5 the parcel, there is SHPD review. And I think Ann  
6 might be more familiar on how that process works.

7 CHAIR LA COSTA: Thank you. Ms. Cua?

8 MS. CUA: Our involvement with Janet Six is  
9 that we do utilize her as a resource. Sometimes if  
10 we have a question whether something should be sent  
11 to SHPD or not, we inquire with her. If we just have  
12 general questions sometimes, we contact her. So I  
13 know -- I speak for the current division because I --  
14 that's where I work, but, you know, in the current  
15 division, I know the planners contact her just on  
16 their own, and she has been a great resource for us.

17 CHAIR LA COSTA: The reason I was asking  
18 that is because it did mention that you were going to  
19 hire an archaeologist; correct? And I just wondered  
20 if that made sense just looking at it from a fiscal  
21 standpoint. Thank you.

22 MS. TAKAKURA: Thank you, Chair La Costa.  
23 At this time, the archaeologist is in the Department  
24 of Management so that they can be a resource to  
25 beyond just planning department because I imagine --

1 I would imagine public works must utilize their  
2 advice a lot, too, besides us. The comment, I think,  
3 in here was that more staffing might be needed.  
4 There might be need to be an additional archaeologist  
5 to assist Dr. Six, you know, as we do more.

6 CHAIR LA COSTA: Thank you for the  
7 clarification on that. Commissioners, have we any  
8 other questions for anyone present?

9 MS. TAKAKURA: Chair La Costa, I would like  
10 to add that in the discussion draft where it makes  
11 references to the burial councils, it only has the  
12 Maui Lanai Island Burial Council. It should also  
13 have the Molokai Burial Council but that's an easy  
14 addition in whatever we end up transmitting.

15 It's in two places in the discussion draft,  
16 and that is on Page 3 of the discussion draft and 5  
17 of the discussion draft. Sorry, I don't know what  
18 page it is of the total PDFs.

19 COMMISSIONER FREITAS: Chair, I have a  
20 question.

21 CHAIR LA COSTA: Yes, sir. Go ahead,  
22 please, Commissioner Freitas.

23 COMMISSIONER FREITAS: Commissioner Freitas  
24 here for Ms. Takakura. You know when you keep saying  
25 the discussion page? I can't find that, the

1 discussion draft.

2 MS. TAKAKURA: Commissioner, it's the -- in  
3 the packet, it's the last part, like the last -- two,  
4 four, six -- last 8 pages or so of the PDF.

5 COMMISSIONER FREITAS: Okay.

6 MS. TAKAKURA: So, Commissioner Freitas,  
7 that's the one that the department had originally  
8 worked on with councilmember Shane Sinenci and  
9 Dr. Janet Six.

10 COMMISSIONER FREITAS: Okay. Because you  
11 know where it says the department's recommendation,  
12 at the bottom it says some of these recommendations  
13 are featured in the attached discussion draft. So  
14 everything that's back there when we do vote -- let's  
15 say we make a motion to approve this based on the  
16 department's recommendation, it's everything on that.

17 You call it the discussion draft but the  
18 first page doesn't say discussion draft anywhere. So  
19 that was confusing. So that covers everything  
20 including -- I saw one area where there was a  
21 recommendation to take the nine down to seven on the  
22 CRC due to lack of getting quorum.

23 MS. TAKAKURA: Thank you, Commissioner  
24 Freitas. So, yes, our wish is the bill that we had  
25 originally proposed which is the discussion draft,

1 but when we were working on it, we didn't consider  
2 changes to the CRC or any of those other things that  
3 are in the resolution from the county council.

4 So if the Maui Planning Commission does  
5 want to consider those changes that are in the  
6 resolution, yeah, we had -- those were our comments,  
7 for example, you know, consult with the CRC first or,  
8 you know, maybe reduce the numbers. Those other  
9 things.

10 COMMISSIONER FREITAS: Okay. Thank you.

11 CHAIR LA COSTA: So Ms. Takakura, with our  
12 discussions and the comments that we have had, do you  
13 feel that there are additional items that need to be  
14 added to this bill, and that we should defer it and  
15 then have it come back to us, or do you feel that the  
16 two additions with Molokai, you know, are the only --  
17 the things that we should consider? Thank you.

18 MS. TAKAKURA: Thank you, Chair. I suppose  
19 if -- I'm not sure if you would want to wait and see  
20 what the CRC, the Cultural Resources Commission, has  
21 to say. Their meeting would be -- I think it's the  
22 first week of August which is -- I mean it's next  
23 week or the week after, if you wanted to get their  
24 feedback.

25 The -- my planning commission could

1 consider the other parts of the resolution that, you  
2 know, the discussion draft did not cover which is  
3 mainly CRC -- or you could wait until -- to see what  
4 they have to say about those proposed changes. I'm  
5 not sure what you want to do.

6 CHAIR LA COSTA: Thank you. Appreciate  
7 that.

8 Commissioner Pali?

9 VICE CHAIR PALI: Jacky, can you just  
10 clarify? I think today you're just wanting our  
11 comments. Is that correct?

12 MS. TAKAKURA: That is correct, yes. Thank  
13 you.

14 VICE CHAIR PALI: Okay. Well, if the chair  
15 would like to entertain, I think it would be okay to  
16 put our comments down to gather them and then send  
17 our comments. And then if we feel like we have  
18 comments after the CRC meets, we can transmit those  
19 comments, too. I think that would be okay if you  
20 feel like that would be the direction you'd like to  
21 go.

22 CHAIR LA COSTA: Commissioner Thompson?

23 (Commissioner Thompson nods head up and  
24 down.)

25 CHAIR LA COSTA: Yeah, I concur. I think



1 that we need to have the CRC input before this is  
2 finalized because they are one of the three prongs.  
3 So we will gather our comments.

4 Commissioners, please have those to me by  
5 the end of tomorrow, and then I can forward them to  
6 Carolyn, and she can send them out to Jacky. Thank  
7 you.

8 MR. HOPPER: Chair, you got potential --

9 CHAIR LA COSTA: Mr. Hopper.

10 MR. HOPPER: Chair, you got potential  
11 sunshine law issues with that. You really need to  
12 make your comments at a public meeting on this. So  
13 if you want to defer action, if we were in the time  
14 frame I guess you could have another meeting with  
15 another set of testifiers and make recommendations.

16 I don't know what the CRC's timeline is for  
17 their comments, but if you were going to provide your  
18 comments -- you could always say, here's our comments  
19 but -- and then reference you should also strongly  
20 consider the CRC's comments, whatever they are.

21 I don't know if the time frame allows you  
22 to wait for CRC's comments. We could check with  
23 maybe Jacky on where we are on our timeline, because  
24 there's generally a deadline to get back to council  
25 or they can take action without your recommendation.

1           So that's an option if you want to wait to  
2 see if those come in or, again, they're asking you  
3 for your comments for the charter. You can provide  
4 them and then say, CRC comments you should also  
5 consider, and note that.

6           So those are some options, but you got to  
7 have the comments made at the public meeting. You  
8 can give the planner the idea for what the comments  
9 are, have the planner read it back to you so you are  
10 clear on your comments but, you know, you need to  
11 make those at the meeting.

12           CHAIR LA COSTA: Thank you, Mr. Hopper, for  
13 keeping me on the straight and narrow.

14           Ms. Takakura, what are we looking at for  
15 time frame, please?

16           MS. TAKAKURA: Thank you, Chair. The CRC  
17 meeting is August 4th.

18           CHAIR LA COSTA: And Ms. Cua?

19           MS. CUA: If I could just make a comment.  
20 I would suggest giving your comments today just  
21 because we don't know -- we're hoping that on August  
22 4th we'll get a quorum. We just don't know.

23           And I think what your attorney indicated  
24 was that, you know, you could give your comments and,  
25 you know, make a comment that you feel the CRC's

1 comments are very important. But I think to get  
2 something down from you would be a good idea today  
3 because we just don't know about what's going to  
4 happen on August 4th.

5 CHAIR LA COSTA: Okay.

6 MS. CUA: And Jacky, what is our time? Is  
7 it the 180 days? What's the drop dead where we have  
8 to get it back to council?

9 MS. TAKAKURA: It's supposed to be 120 days  
10 after the last public hearing. We have not had the  
11 last public hearing yet because the Molokai Planning  
12 Commission didn't have quorum at their meeting so  
13 theirs got rescheduled to next month, so we do have  
14 time, but.

15 MS. CUA: Okay. Thank you.

16 CHAIR LA COSTA: Thank you. So the  
17 comments that we have spoken up -- oh, I'm sorry,  
18 Mr. Hopper. Go ahead, please.

19 MR. HOPPER: Just to clarify. I think the  
20 last public hearing -- if that's the right  
21 deadline -- I want to double-check that. Because  
22 this is council initiated, there might be a stricter  
23 deadline that deals with the date that commissions  
24 received it.

25 But I think the final public hearing is

1 generally the final public hearing of the commission  
2 that holds it. We don't generally use other  
3 commissions hearings, I don't think.

4 So I think it could be 120 days from today  
5 which is still a substantial amount of time, if  
6 that's the appropriate time frame, but I want to  
7 double-check because I think for council-initiated  
8 proposals, there's potentially a stricter deadline.

9 In any case, while I was saying there  
10 was -- if you're within the time frame, there's a  
11 legal option to wait for comments, but I think I  
12 agree with Ms. Cua that you don't want to necessarily  
13 assume that the CRC is either, A, going to meet in  
14 that time, or, B, provide its comments within that  
15 time because they may defer or something like that,  
16 too. And you'll each be waiting for that.

17 So I would probably advise to the extent  
18 possible if -- unless you need additional  
19 information -- to try to get your comments in as soon  
20 as possible so that we don't deal with the potential  
21 deadlines as well as conflicting with other agenda  
22 items.

23 I don't know if you've got public hearing  
24 items or anything coming up on your agendas but,  
25 again, I didn't want to suggest I was advising you to

1 do that. I just wanted to get out that that's a  
2 potential option as long as we're within the time  
3 frame.

4 CHAIR LA COSTA: Thank you, Mr. Hopper. So  
5 the two of the things that -- two of the things that  
6 we discussed was adding Molokai to 19.46.060,  
7 Paragraph D after the aha moku council -- or after  
8 the burial council, rather. Excuse me. That's on  
9 Page 5 and then also Molokai added to 19.46.020,  
10 Number I. After Maui Lanai Island Burial Council,  
11 add Molokai Burial to that as well.

12 Commissioner Lindsey had a question about  
13 environmental. Do you happen to have any verbiage  
14 that you want to see in there or how do you want that  
15 brought forward as a comment, please.

16 COMMISSIONER LINDSEY: I think that you was  
17 going for -- or the staff for CNC was going to bring  
18 it back to someone. I don't know how to formulate it  
19 into a question. I just wanted to make sure it's  
20 covered. So any help would be greatly appreciated.

21 CHAIR LA COSTA: Thank you. Ms. Cua or  
22 Ms. Takakura, have you any verbiage that might be at  
23 least a draft? Thank you.

24 MS. TAKAKURA: Thank you, Chair La Costa.  
25 I'm thinking that based on what Gina had said, that

1 that term eco-indicator might be appropriate. As she  
2 said, for us in land use planning, that's a foreign  
3 word. But as she mentioned in archaeology, that's a  
4 common term.

5 So, you know, we might have to learn that  
6 new vocabulary because it does seem to match up with  
7 what Commissioner Lindsey was discussing. So we can  
8 work with Dr. Six and Janet to make -- and Gina to  
9 make sure that that term matches the intent of what  
10 Commissioner Lindsey is saying.

11 CHAIR LA COSTA: And Commissioner Lindsey,  
12 as far as that eco-indicator, is that just  
13 archaeological? Is that something you want to see  
14 across the board?

15 COMMISSIONER LINDSEY: It is something I  
16 want to see across the board because it is a cultural  
17 overlay. It goes mauka to makai; so I don't know if  
18 that words also need to be included because there are  
19 parts of Kula that will need to be seen by Kihei.  
20 Hana is easy because it's totally covered.

21 It's mauka to makai naturally, and our  
22 council boundaries are same with the mauka to makai  
23 for Hana, but that is not the same for, like, the  
24 Central Valley.

25 CHAIR LA COSTA: Okay. So cultural and

1 archaeological eco-indicators need to be put in the  
2 bill.

3 COMMISSIONER LINDSEY: Mauka to makai.  
4 Mauka to makai needs to be put in the bill.

5 CHAIR LA COSTA: Okay. Thank you. Okay.  
6 Jacky's given me a thumbs-up.

7 Commissioner Pali?

8 VICE CHAIR PALI: And then if you could add  
9 my comment in just that as we're formulating this  
10 bill to its final version that we're just really  
11 conscious of the advisory committee's role between  
12 the Maui cultural committee and Maui planning  
13 commission, that we're not doing double work. So,  
14 however they're wording the bill throughout the  
15 entire resolution, that we're conscious of that, that  
16 key point. Thank you.

17 CHAIR LA COSTA: So Ms. Cua?

18 MS. CUA: So I guess one thing that the  
19 commission would need to consider is if you agree  
20 with the recommendations by the department. Would  
21 that be correct, Jacky, that -- do we want -- I would  
22 think we would want to know that.

23 MS. TAKAKURA: Yes, that is correct. Thank  
24 you.

25 CHAIR LA COSTA: So Mr. Hopper, do I need a

1 motion on this or do we just do a consensus that what  
2 we have commented upon moves forward to be  
3 integrated?

4 MR. HOPPER: Generally you would want to be  
5 clear on the comments. So then if everyone agrees on  
6 the comments after they're read back to you, you  
7 could say, okay, if you there's no objections, we'll  
8 send those forward as our comments. And if there's  
9 no objections, you can do that by unanimous consent.

10 Otherwise, you can take a vote on it, if  
11 you like.

12 I think the main thing, though, is to  
13 have -- be clear on what the specific comments are  
14 that are going to be put in your transmittal to  
15 council. So hopefully Planner can get that to you.  
16 If you need any clarity, you can make that, and then  
17 either through unanimous consent or motion, you can  
18 pass that on.

19 CHAIR LA COSTA: Thank you very much.  
20 Ms. Takakura, could you please recap for us what we  
21 have put forward? Thank you.

22 MS. TAKAKURA: Yes. Thank you, Chair. I  
23 wanted to make sure I have all your notes. Okay. So  
24 the comments would be, first, to insure there's no  
25 redundancy in the referrals regarding the advisory



1 committee and its relationship to the Maui Planning  
2 Commission and the CRC.

3 The second indicator -- I mean, second  
4 comment is to get GIS staff feedback on whatever we  
5 proposed.

6 The third is to add the Molokai Island  
7 Burial council.

8 And then the last is to include the term or  
9 something related to eco-indicator so that it's clear  
10 that the cultural overlay is mauka to makai.

11 Is that everything, commissioners?

12 CHAIR LA COSTA: Commissioner Pali?

13 VICE CHAIR PALI: I'm just going to have  
14 you add to my comment. Not just that there's not  
15 redundancy, but if there is an opportunity for the  
16 redundancies, if warranted, then the Maui Planning  
17 Commission would be the higher authority. And then,  
18 just for the record, I do agree with the planning  
19 department changes and recommendations.

20 MS. TAKAKURA: Thank you. I noted that  
21 down.

22 CHAIR LA COSTA: So could I please have  
23 a -- we'll do a consensus voice. Can I have a  
24 consensus -- Commissioner Lindsey?

25 COMMISSIONER LINDSEY: Vice Chair Pali's

1 comments also -- that was something I wanted to  
2 address also. I'm not sure it's totally clear on  
3 that. Because of my mauka to makai verbiage, I think  
4 that would force Kihei Advisory Committee to go into  
5 advise onto things being done in Kula, for example,  
6 but I don't -- I was thinking more that people in  
7 Kula should be advising on what happens in Kihei.

8 VICE CHAIR PALI: I think we're in  
9 agreeance with that, Commissioner Lindsey. I think  
10 that they're still advising, and then they would  
11 report to us if it's our purview. I think my goal is  
12 that if it's our purview and both opinions are  
13 needed, that we're not dismissed and in some way the  
14 advisory committee's comments would supersede ours.

15 So I agree with you that if it should be  
16 Kula then the advisory would be at Kula. And I think  
17 with us being on the commission, we have the ability  
18 to throw that comment to where we believe it's best  
19 suited. So we still have the authority on that.  
20 Assuming it's our preview -- purview.

21 CHAIR LA COSTA: Commissioner Hipolito, you  
22 have not weighed in. Comments? No, he's good.  
23 Okay.

24 Commissioner Freitas, any further comments?

25 COMMISSIONER FREITAS: None. I agree with

1 the department's recommendations and the additional  
2 that we've added. I'm good.

3 CHAIR LA COSTA: Thank you. Commissioner  
4 Thompson?

5 COMMISSIONER THOMPSON: Likewise. I concur  
6 about that. I have one question. So are we adding  
7 our comments and deferring? Or are we -- no. Just  
8 adding our comments.

9 CHAIR LA COSTA: Yeah. It's not an actual  
10 deferral. We're just pushing it up forward.

11 COMMISSIONER THOMPSON: Okay. Thank you  
12 very much.

13 CHAIR LA COSTA: So we have -- and I also  
14 concur. So we have a consensus concurrence, then we  
15 will put the comments forward.

16 Thank you, Ms. Takakura, and Ms. Cua.  
17 Appreciate very much.

18 MS. TAKAKURA: Thank you very much.

19 CHAIR LA COSTA: Okay. We're going to take  
20 a short break before we take up -- yeah.

21 And I think what we'll do is we will jump  
22 to the director's report ahead of the contested case  
23 hearing so that we can do that and have the Long  
24 Range Division report on the South Maui Community  
25 Plan.

Ms. Kehler: Chair, we don't have anybody signed up in the chat and I don't know if there's anyone in the conference room who wants to testify on Item B., introduction of new member. I don't believe there is, Chair.

Ms. Celiz: Alright, thank you. Alright, we'll go ahead and close testimony on Agenda Item B. Thank you, everyone. Moving on to Agenda Item C., New business, no. 1:

*Vice-Chair Celiz read the following agenda item description into the record:*

**C. NEW BUSINESS**

1. **The Maui County Council requesting comments on proposed bills 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; and Chapter 19.50, Maui County Code, establishing a Hāna Cultural Overlay District (Resolution No. 22-79)**

**This item was deferred at the Cultural Resources Commission July 7, 2022 meeting.**

***The Commission may review the proposed bill pursuant to the attached correspondence from the Maui County Council and Subsection 2.88.060.M.2, Maui County Code***

Ms. Celiz: Okay, at this time, we'll go ahead and open public testimony. Is there anyone wishing to testify? Alright, I see -- is there a Miss Gina Young? Please unmute your video and microphone if you're ready to testify.

Ms. Young: Alright. Thank you, Members. Aloha. Good morning, Commission Members. My name is Gina Young and I'm here today representing Councilmember Shane Sinenci. He introduced the bill that you're about to provide comments on. As stated in the staff report, our office has been working with the Planning Department, specifically Annalise and Stanley Solamillo, as well as Director McLean, Dr. Six, and also Corp Counsel, Stephanie Chen, in the past year for this legislation. The purpose of the bill was to fill in the gaps of the current cultural resource protections and to provide more local review, as well as more information to property owners and individuals looking to buy parcels and develop. We want them to know ahead of time what they're getting into.

We first started our discussion with SHPD, and it was Dr. Lebo who suggested that we look at the military's approach using mapping and sensitivity designations. SHPD has been very supportive of our efforts and they see this as a supplement to their work. We

also want to thank the Planning Department staff who has really used their expertise and the time they spent educating us on the current process and the work that you folks do. We like the bill submitted by the Department. It reflects our earlier work. However, we do also like the idea of review by this Commission, especially if we're looking at high sensitivity areas and maybe even medium sensitivity. When we went to the Council's Agriculture and Public Trust Committee, before we referred the bill to you, we didn't have the personnel needed to create the cultural map, but we do now. During budget, the Mayor added a GIS staff person, as well as the Council also added a Hawaiian language translator and researcher. The GIS person was specifically added to create the cultural map, so we were very happy to hear the support and to be given the personnel to do that. This could also eliminate the need to establish specific districts because eventually the map will just be countywide, and you folks have heard about the map from Dr. Six and what it does, but I could talk more about that if you need.

Now, the two bills that you're looking at today, they differ on the role that you play. We're very interested in hearing what you think. Do you want to review specific projects? We can envision a system, as I said, where that happens. I also want to explain, real quickly, the provisions in the bill concerning the CRC appointments and referring items to Hana and the other advisory committee boards. Now, this is only relevant if you adopt or if you like the idea of the CR -- of your review. So first, the sections on the appointment process were added by Council staff, and it was to bring it up to the same as the newly created committees, Council -- the Haiku, Hana, and South Maui procedures for appointing those members. It gives the Council a little more of a review in there, which they felt was a little more of a public process. The ability to refer, for you folks, to refer an item to a community advisory board was added during the committee meeting by the two council members of the two new areas, and that was done as an option, it's not mandated, and we recognize that you have the expertise in cultural areas, and we've talked about that during the meeting, but what was brought up is that they know the specific geographic areas and they could add information and provide more of an opportunity for local testimony on that. But again, it would only be if you referred it; it's not mandated. And then, finally, I just wanted to add that the Hana bill was just added as an example. There's really no need to provide any kind of comments today unless you want to. It would have to go through the formal process and come back to you if we did establish districts. So, thanks again. I wanna thank you for serving on the Commission and also for today's discussion. Thank you.

Ms. Celiz: Alright, thank you so much for your testimony. Does the Commissioners have any questions at this time? Alright, seeing none, thank you again, Ms. Young, for your testimony, but if you don't mind sticking around, maybe later on we might have some more questions ...(inaudible)... specifically.

Ms. Young: ...(inaudible)... you need. Thanks.

Ms. Celiz: Alright, thank you. Alright, is there anyone else wishing to testify?

Ms. Chen: And, Chair, if there isn't anyone indicating that they'd like to testify now, I'd probably recommend just leaving public testimony open until after the Department presents just in case anyone --

Ms. Celiz: Okay. Thank you.

Mr. Kapu: Hi. Aloha.

Ms. Celiz: Aloha.

Mr. Kapu: My name is Keeaumoku Kapu. I'm from Lahaina. I would like to definitely encourage the Commission to support this cultural overlay. In Lahaina, we're actually located in Historic District 1 application, but right outside of the Historic District, there's those areas have a lot of anomalies that deals with a lot of historic properties, and it's a good effort basically for the County, finally, having this cultural overlay so we can really see the magnitude of the impacts of what's happening, especially in Lahaina. So, I'm just here in the physical body, finally, giving praise and testimony that this is a benefit and a good thing for our community. So, mahalo for allowing this opportunity to testify. Thank you.

Ms. Celiz: Alright, thank you, Mr. Keeaumoku Kapu. Do we have any questions for the testifier? Alrighty, seeing none. Thank you again. Anyone else wishing to testify?

Ms. Kehler: Chair, nobody has signed up in the chat, and I don't believe that there's anybody in -- anyone else in the conference room, however, like Stéphanie, Corporation Counsel, recommended maybe we should just leave testimony open until the Department provides its staff report.

Ms. Celiz: Alright. Sounds good. So, we'll go ahead and leave public testimony open and, Annalise, if you could go ahead with the staff report.

Ms. Kehler: Actually, instead of me today, it's going to be Jackie, Jackie Takakura, she's our Deputy Planning Director, she's prepared the staff report for this item and she'll be presenting for this item.

Ms. Celiz: Oh, okay. Thank you.

Ms. Takakura: Thank you, Chair Celiz, and good morning, Cultural Resources Commission. I just need a minute or two to open up the PowerPoint, which is real short, so just -- so can everyone see the screen in the presentation mode? Suzie, can you see

that? I guess -- okay. Now, can you see the screen? No? Okay. Sorry, I'm here at the -- at the conference room and so it's a little -- it's simpler for my desk.

Ms. Kelher: While we're waiting, I do want to add that we have a couple of resource personnel available if the Commission has questions. We have Dr. Six, the County Archaeologist, as well as Johann Lall, who's -- does GIS and I think he might have -- he might have some insight as well as far as the mapping portion of the bill goes. It looks like Jackie's got the presentation up, so go ahead, Jackie.

Ms. Takakura: Thank you for your patience, everyone. Can you see this PowerPoint? Can you -- if you can give me a thumbs up, that would help, then I can see if you can -- okay. So, this isn't too long anyway, but so in the handout that I -- that you all received, there's three parts to it. The first is a memo report, which summarizes the proposal and includes the Department's recommendations. And then, after the memo report is the County Council's resolution. And then, the last part of the handout is -- the it's the part that has the words "Discussion Draft" going across it, and that is what the Department had originally proposed in working with Dr. Six for this cultural resources overlay. So, there's a few differences between the Council Resolution and the Discussion Draft, but we can go over those and to get your recommendations on this. One of the things I wanted to point out is, in the Discussion Draft -- in the Discussion Draft, we hadn't considered some of the changes that you see in the County Council's Resolution regarding the -- the, you know, the details for the selection of the Cultural Resources members and things like that, so, you know, there might be parts of the County Council bill that we like and parts of the Discussion Draft that we like that, you know, we might end up with pieces of both that we would like to recommend forward.

So, as mentioned, this is a bill for ordinance relating to the Cultural Resources Commission and creation of the cultural overlay district, and it has the designation processes and then, as mentioned, there's also a bill establishing a Hana cultural overlay district.

So, as you probably know, there's Federal and State laws for burial and archeological sites, but the County does not have its own regulations but some places contain cultural and archaeological remains that could be disturbed by development. A County cultural overlay would alert developers and property owners and neighbors that special consideration may be needed to protect the cultural assets. This bill would fill in the gaps, as Gina had mentioned, by including this local review. If you recall, if you've taken the Native Hawaiian Law course, they have a lot of information on this subject, but there's the Federal NAGPRA law covers native human remains and other things, and then on the State level, there's HRS Chapter 6E, which covers historic preservation. So, this proposed bill would supplement the efforts of SHPD and these rules, the rules; it would not replace them, it would be a supplemental one just for the added layer of protection.

Just for some background information, you know, even with the State and the Federal laws, we believe that existing regulations have proven to be inadequate and so the County level protections are needed. If you look at what I call, you know, at the end of the packet, the Discussion Draft, and you can see that the original intent of the bill was to create an overlay that is in addition to zoning and does not change the zoning. The zoning is the part in Title 19, you know, like residential or ag or rural. This doesn't change that. And as mentioned, we worked on this with Councilmember Shane Sinenci and his staff and the County Archeologist to put this all together, and it includes components of the nomination process for the overlay, the process for the County Council to designate these overlay areas, the GIS maps and the levels of sensitivity, you know, high, medium, or low, and then procedures for updates and appeals, and then also grading permit requirements.

This is a summary of the bill that was given to us by the County Council. If you compare it with the Discussion Draft, you can see that the two are pretty different. One of the things that it does, it combines the provisions of the Historic Districts, which is 19.52, of Maui County, and that's, you know, like Lahaina Historic Districts 1 and 2, and then there's one in Wailuku also. So, it kind of combines those with this and it changes how the districts would be established. You know, we have these new advisory committees for South Maui and Paia, and then we also have the one for Hana that's been around for a while, it would expand their advisory capacities and make them advisory to the CRC in addition to the Maui Planning Commission. The proposed bill also changes how the CRC members are appointed, and it requires the Planning Director to appoint the principal archaeologist -- archaeologist to serve as a resource to the CRC. It establishes criteria for grading or grubbing permits in this district. And then, in the separate bill, it establishes a Hana cultural overlay district for all land in the Hana Moku.

So, the Department does have a few concerns about the proposed bill from the County Council, and they're listed out, if you look at the memo report that was given to you, it's kind of a long list, it's Pages 3 to 5, of the memo report, and these are just some of them in a nutshell, especially this first one, you know, before we change the makeup of the CRC and the advisory in the way things are run, we should consult with the CRC. We really want to get your feedback on this. In terms of assigning staff, the principal archaeologist works for the Managing Director so the Planning Director can't really assign her to anything. There's some terminology that is kind of new terms for planning that we have other recommendations for. One thing, you know, I have work experience in the zoning division, and so this one is really big, this third item here, zoning districts versus an overlay. We want to make it really clear that the overlay is not an additional zoning because that would be really hard for the public to understand and even for staff to apply. We want to make it really clear that this is an overlay and it doesn't change, you know, the -- the zoning. You know, if it's residential, it's still residential, or if it's ag, it's ag, and so forth. We do have a few concerns with the process and procedures. There's also guidelines and restrictions that are missing from there that we think are important. The



grading and grabbing, that's Department of Public Works' purview, so that would be better suited in Title 20, not Title 19. And then, I guess the Hana overlay is kind of a moot point because we are now considering, you know, the entire island, but before we declare an overlay, we should decide on the process and, you know, once that's all figured out, then that would be a better point to determine where the overlay would be but, hopefully, you know, we'll have an overlay for the entire island, and so that would be, you know, even better.

So, the CRC can, you know, do a couple of things, they can recommend approval of the proposed bill, recommend approval with comments or amendments. At first, I had just said with comments because, initially, they had written that they didn't want an amended bill, which is normally our procedure. We -- we kinda, you know, take the feedback from the community and from the commissions, and then make our fixes, and then present it to the County Council, but it turns out that's okay. So, if we do have amendments, we can make them, we can put them in there before we return, you know, a bill to the -- or our response to the County Council. The CRC can recommend denial, or vote to defer action. So, it's up to you. I do want to say, though, that this bill is also before the Maui, Molokai, and Lanai Planning Commissions. We've had to defer for Molokai and Lanai, so I don't have their feedback yet, but the Maui Planning Commission did share their thoughts and they do recommend the Department's proposal but they really wanted to get the CRC's input on the changes to the CRC, and the other comment they had was, regarding the advisory committees. Ideally, we don't want to make double work if, you know, the advisory committee is going to advise the CRC on the same thing that they're advising Maui Planning Commission on so, you know, 'cause that makes things take longer, so we want to make sure that we're not, you know, having redundancy there. And, you know, there is -- there are sometimes where, you know, the Maui Planning Commission is the authority on certain permits and things, and there's others where the CRC is, so we want to make sure that that's clear also.

So, that's the presentation I have for you. I can -- I'm here for questions. I can go back to any slide if I need to, but I really want to thank our subject matter experts here, you know, Annalise and Dr. Six and Gina for helping prepare this for you. So, I will stop sharing screen, but I can go back to any screen if you need, any if you need me to. Okay, let's see if I can figure this out. Thank you.

Ms. Celiz: Alright, thank you for that presentation. Does any of the Commissioners have any questions at this time? Alright, well, I kind of had questions on some of the recommendations that was listed in the staff report, and if you guys could kind of explain, you know, how these recommendations are helpful or, you know, what's the reasoning behind those recommendations.

Ms. Takakura: Okay. Thank you, Chair. So, we can -- would it be okay if we look at the memo report and look at the, on Page 5, the recommendations and options?

Ms. Celiz: Yes.

Ms. Takakura: Okay.

Ms. Celiz: Yeah, I was looking at those four bullet points and kind of trying to understand the reasoning behind those recommendations.

Ms. Takakura: Yes, so -- and then I'm going to go ahead and just, Annalise, if you have comments, please chime in. Regarding the first one, the separate chapter for the culture overlays, like I had mentioned, you know, we have the Historic Districts, which are the two Lahainas and the one in Wailuku, the cultural overlays, it's a little bit different because it's not really zoning, whereas like Lahaina Historic Districts 1 and 2, and Wailuku, that's zoning, so we'd prefer that it be something completely separate than the chapter -- 19.52, in the zoning code, because we really want to keep the two separated just because it's going to get kind of muddy when you mix zoning and overlays. Does that help explain that one, Chair Celiz?

Ms. Celiz: Yeah, I think so. I'm still trying to understand but, yeah, you can continue on with the other bullet -- bullet points, and I'll circle back if I have any other questions --

Ms. Takakura: Okay.

Ms. Celiz: On any of them. Thank you.

Ms. Kehler: If I can -- I can just add so like just to provide a little bit more understanding on zoning versus overlay. So, like in -- in Lahaina with County Historic Districts 1 and 2, not only are we talking about the way that -- that buildings look, there's also certain uses that are allowed and certain development standards, and so that's what zoning is saying you can do these uses and you can't do these uses. But, with an overlay, like whatever the existing zoning is somewhere else, so if it's ag, and then you put the cultural overlay on top of that ag, those underlying uses that are allowed in ag district would continue as long as it's not doing -- as long as it's something that wouldn't harm cultural properties. If that makes sense. Does that help?

Ms. Celiz: Yes. Thank you.

Ms. Kehler: Okay.

Ms. Takakura: Okay, back to Page 5, of the memo report, the second bullet item: Creating a clear and logical process to establish cultural overlays that uses commonly recognized terms and definitions, these are most of the criteria from the proposed bill, and involves the principal archaeologist, CRC, and planning commissions with final

approval by the County Council. So, one of the terms that was kind of foreign to us is this "eco-indicators," so it's just not a common term in land use planning, but Gina had shared previously that that's a typical term in, I guess, for archaeological purposes, so I guess, you know, as planners, we have to learn new vocabulary too sometimes. So, I don't know, if Gina -- Gina wanted to comment on that part, but it's just different, you know, from what we're used to.

Ms. Young: Janet Six actually is on the call. She'd be great to speak to it.

Dr. Six: Yeah. Thank you. Eco-indicators, for example, would be wiliwili trees. They have a taproot that's going into a subterranean water source. When you drive backside Kaupo and you take a look where there's clusters of wiliwilis and you'll see platforms. So, oftentimes, and also if you see canoe plants in a -- in a valley, you can assume there's a settlement. I think of Alelele on the backside where, all of a sudden, you see the hala, so those are things that indicate the presence of people. And in the case of wiliwili, it indicates the presence of water. So, one is a natural, that wiliwili, and the other is a cultural, depending if they're canoe plants, so those are what we mean by eco-indicators. It's not a super common term, but it's something that we definitely, you know, use so we can always define that, but it -- you know, 'cause it is a little tricky 'cause one is natural and one is cultural.

Ms. Takakura: Thank you, Dr. Six. And then, we do have the criteria in the -- the proposed bill, the Discussion Draft part, that we would like to keep whatever the outcome is, Chair. Does that help answer your questions for the second item?

Ms. Celiz: Yes, thank you.

Ms. Takakura: The third one adds restrictions and guidelines for properties that are within the cultural overlays to protect cultural resources including provisions relating to grading and grubbing permits, and so those, I think, those are the ones that were kind of missing in the -- the Resolution so we want to make sure that those are included in whatever we propose back to the County Council. And then, like I mentioned, you know, the grading and grubbing, that's really Public Works, which is Title 20, so I want to make sure that that's in the right place 'cause it's kind of hard like, you know, they -- they know to go to Title 20, they don't typically administer Title 19, so by having it in the right place, it will be administered, you know, right. Okay, and then the last one includes public and landowner notification before a cultural overlay is established and rights to appeal decisions relating to the establishment of a cultural overlay. You know, that's just a typical process in a lot of the permit processes that you see with land use, and so, you know, having it here, just it's kind of consistent with the way, you know, we administer, you know, like the special management area and so forth, or the, you know, big permits and so forth. So, just having those in there, it's consistent with how we, you know, administer land use planning.

Ms. Celiz: Alright, thank you. Does any of the Commissioners have any questions? Yes, Commissioner Wagner?

Ms. Wagner: I guess I'm curious, from a practical point of view, how this would segue into a permit application. What kind of process would an applicant go through? You know, suppose they're in a Historic District, and they have to go through SHPD, and then they're also in a cultural overlay, would those be concurrent? Would SHPD be working with the cultural -- the review for that commission? I mean, I'm not even sure what to call it. But would that -- how would that review process be implemented practically?

Ms. Takakura: This -- this is Jackie again. I can speak to the very beginning of the process, and that all starts with, and pretty much with anything you do, it's called, "the Land Use Designation Form," and that's the first thing you do before you can even apply for a permit, and that comes to the zoning division, and it will -- the -- the person who receives it, the land use permit clerk, will review the parcel for zoning, community plan, if it's in the special management area, flood zone, project district, and I can see this being another layer that they would add onto the form, you know, is it in the cultural overlay, and then that would tell the applicant, okay, these are the criteria of that that I have to follow for all these different things before they can even do anything else. So, that's how I envision the applicant finding out that they would be, you know, high, medium or low; after that, I'd have to defer to Annalise or Dr. Six, but I can see that being part of the land use designation process when it -- you know, when people initially applied for things.

Dr. Six: Jackie, this is -- this is Janet. This is Dr. Six. I'm putting my camera on and say hi to everybody. When you think about the Lahaina Historic Districts, they're kind of arbitrary boxes that just abruptly stop -- stop at Mill Street, so the idea of the cultural overlay is to show those things that spread across the land, and then just like out in the ocean, fish aren't equally distributed in the sea, there's clusters, so we suspect to see areas that'll have a lot of important sites, like Mokuula was the one we demonstrated to, I think, Council as having a lot of criterion, and we're using vetted 6E, SHPD criterion of significance already so the idea would be, again, as I mentioned, as Jackie said, someone can come in and they would be able to look at this map, they wouldn't be able to see burial data 'cause that's very sensitive, but we would have a way of showing that there is -- are potentially burials in the area, and they would see, is it red, is it yellow, or is it clear, and the map would constantly be changing as new discoveries occur, but it would stop this kind of like nothing happened on the other side of Mill Street. Well, of course, of course things happened on the other side. It's just -- was that was what the line of demarcation in 1960 or '62, whenever they drew it, because sure, you know, sugarcane was on the other side. So, that's how -- kind of how we see it, so I just wanted to just jump in there and say it's not zoning, but it's -- it's -- it's meant to show, and it's also meant to show ephemeral things, like battles. The idea would be to be able to take these things that don't have a permanent structure but still show trajectory, show areas that you might encounter remnants of battles, events such as battles, and it's actually just to give people

information to make informed decisions so they don't get caught in a vicious circle trying to get something permitted in an area that is, you know, has a lot of obvious incredibly important sites and issues, and I'm -- I'm dealing with some of that out in Hana, you know, and so if they had this to look at, it would help them understand why there's extra requirements, but it won't be equally across the landscape. There's definitely, as we know, areas of high concentration of sites and cultural significance.

Ms. Young: Hi, this is Gina. If I could add something, if that would be all right. Okay, thank you. So, just to give you an example, so what it is, it's to get another set of local eyes, which would probably be first Dr. Six, who would then take a look at the site plan and the proposed action, so she would be taking a look, are you going to put a structure on top of what's already been identified, perhaps, as a burial area or maybe a heiau, and if so, well, that would cause an impact to cultural resources. If the applicant has done their work ahead of time and maybe done the site plan in a way that wouldn't impact an existing cultural resource, then probably there would be no need to send it to you folks to take a closer look or for her to put on specific project conditions. Does that help explain a little more concretely what the process would be like? So, if there's no impact, someone's done all their work ahead of time, probably really no difference except maybe their project doesn't get stopped once they hit something. It's designed to kinda streamline the process, actually, so they know ahead of time and they don't get caught in the situation where everything comes to a screeching halt once the bulldozer hits a burial or something significant. If they haven't done their work and they've got a project that looks like it's going to be causing damage, then it would be to get it before review, put some conditions on there that would change it so that it doesn't, and either that would be you or Dr. Six or both that would be doing that.

Dr. Six: And I just want to jump in Gina and just 'cause I heard something earlier. SHPD, I'm working directly SHPD, and SHPD wants this because it's another layer because SHPD has -- they have legislative rules and if they have to change anything, it's very complicated, so, in certain areas, we're seeing the existing 6Es aren't quite adequate so this is an idea of how to like inform people what's on the landscape, make informed decisions, use best practices; it's not to stop anything, it's actually to inform and to streamline, like Gina said, so that people don't get caught in these loops where they can't get their permits because it's one thing after another, they would know what they're getting into from the get-go, that's -- that's the dream.

Ms. Wagner: Well, that sounds helpful because I know that a lot of the projects that we've reviewed, for instance, in Lahaina have been -- we felt a little bit blind because there was a lot of cultural implications that we wouldn't know just looking at our historic, you know, rules that we have, that architectural rules and stuff like that, so it sounds like it's possible that it could actually enhance the process with SHPD and give more eyes on the ground to SHPD, who seems to get really backlogged with not enough staff and, you know, things go into the SHPD stockpile and they don't -- people don't hear. And if there were actual,

you know, local knowledgeable people who could give feedback to SHPD, it seems like it would be really helpful, theoretically. But, it seems like it needs to be a very clear process so that it stays on track.

Dr. Six: And I just wanna -- this is Dr. Six again. I just wanna add, we're working with OHA and SHPD because they have existing data sets, so our idea of a cultural overlay is to bring in as many existing datasets so they're in a one-stop clearinghouse shop that you can see these 'cause I often have the soils map open while I have the Kipuka Database to look at Land Commission Awards, while I have HICRIS to look at what we know in the landscape from the SHPD perspective, so if we can bring all this data together and -- and people can quickly look across the landscape and see what -- what's known, it's not perfect, but it's something, and again, it's not meant to be pejorative, it's meant to be helpful, and again, SHPD has the same two people, and we all know development's gone crazy, and they're overwhelmed and they're doing the best they can, so our goal, for me, personally, and the County, I think when my position was created, is to help streamline the process, so very few projects would actually probably end up at the CRC. You know, the idea would be for me to help take a look, see where they are, work with the applicant, and then it would only be in certain cases, so it's not an idea that we're going to bog you down and just -- so I would just be a person that is -- takes a look and see what -- what -- what the depth, what they're doing, like Gina said, are they -- are they adjacent. I do this for the County all the time now. I say you're this many from feet from the burial, this many feet from -- so I use these maps. So, this idea is just to make it an even better tool and then make that accessible to the general public as well as private contractors so they all have -- can look at that data as well in a holistic way.

Ms. Wagner: Thank you.

Ms. Celiz: Alright, thank you. Before we go deeper into further discussion, I just wanted to see if there was anyone else from the public wishing to testify, you know, now that they've seen the staff report and presentation.

Ms. Ahia: I would like to testify.

Ms. Celize: Oh, sure. Go ahead and state your name.

Ms. Ahia: Aloha. I'm Noelani Ahia.

Ms. Celiz: Alright. Aloha. You can go ahead and present your testimony.

Ms. Ahia: Thank you so much. Mahalo, Commission, for hearing this item today. I just wanted to testify in support of this bill, I understand it's still being rewritten, but I just wanted to share a little mana'o. I went to the County and talked to them about this before this legislation was created in attempt to try to find some remedy to the work that the

community has had to do to protect cultural resources. So, for example, I'm a cultural descendant to Maui Lani Phase 6, where we're at 189 iwi that have been disturbed. So, in 2019, I had to file a lawsuit because the archeological inventory survey that was done had only found five burials and it was inadequate. And because of that, so many more iwi were disturbed and they were considered inadvertent finds as if -- as if the developer and the archaeologists didn't know that there were burials there when the sand dunes have long been known to contain iwi kupuna all the way from Waihee to Maalaea. So, I ended up having to file a lawsuit against the County, the State, and the developer, and we're still in negotiations right now. But, part of this legislation is about the County being able to take kuleana so that it no longer falls on the people and the descendants who have to fight really, really hard to protect our ancestors from inappropriate development. We're not anti-development, but there are places that we know are sacred, that we know are kapu that should not have development on them, and it's really taken a toll on the community to have to do this, this level of advocacy, takes a toll emotionally, spiritually, financially, and so this -- this piece of legislation is really powerful because it will get -- it will give the County kuleana, it will give the County Archaeologist, Dr. Six, or whoever is in that position, the ability to look at -- at our -- our wahi panas in continuity instead of just as little TMK sites that are cut into little individual boxes that don't give information because the State, the 6E laws, as Dr. Six said, are not capable of looking at the landscape like this, and they have no provisions for site avoidance, the County community plan does, but the director can override that, which is generally what's happened in the past, so there really has been no protection, no real protection. So, I just wanted to support this legislation and support the Cultural Resources Commission relationship to this legislation and to be able to have you folks review things that are maybe particularly contentious or need just another set of -- of eyes from a cultural perspective. So, mahalo nui for your time. Much appreciated. Aloha.

Ms. Celiz: Aloha. Thank you, Miss Noelani Ahia, for your testimony. Do we have any questions at this time? Alright, seeing none, thank you again. Is there anyone else wishing to testify either virtually or in person?

Ms. MacFarlane: Aloha. Can you hear me? This is Fay MacFarlane.

Ms. Celiz: Hi. Yes, I can hear you.

Ms. McFarlain: Aloha. I am the Lahaina Moku Liaison, a representative for Hui Na Manalima, which is a community partnership with State Historic Preservation Division with the kuleana for reinternment of curated iwi kupuna, which has been in curation at SHPD and at the cultural center in Lahaina, and so, in that capacity, I work with archaeologists, historians, archivists, and knowledgeable kupuna of the mokus that are interested in reintering their ancestors, and I just wanted to reaffirm what you heard from Dr. Six, as well as Deputy Takamura, from Planning, and descendant Noelani Ahia. SHPD's onboard with this, OHA's onboard with this, the cultural descendants and lineal

descendants are onboard with this, and even when we speak to folks in development and planning and architects, it's a good way for accessing existing information so we have taxpayers already paying for databases of information that is available. Why should we not utilize it? So, mahalo nui for all of your work, and I do hope the Commission recommends this for all practical purposes. It really serves so many and there is almost nothing -- I don't think I've heard any detractors at all, not even from the development community. So, mahalo nui.

Ms. Celiz: Alright, thank you for your testimony. Any questions for the testifier? Okay, seeing none, thank you again. Anyone else wishing to testify, please unmute your microphone and state your name. Okay, seeing none, I'll go ahead and close public testimony at this time. Alright, so we can go ahead and continue on with discussion if any of the Commissioners have any questions for the resources. I think, you know, definitely I support the overall intention of the bill and I do, you know, want to recommend it for approval. I think I was just kind of wanting to understand the reasons behind the recommendations that was on the staff report and, you know, whether that's helping to make things efficient, so that was just kind of one of my only concerns was just, yeah, specifically on those recommendations but, other than that, like I'd love to hear from you folks on what you think about this.

Ms. Maluo-Pearson: Chair, can I say something?

Ms. Celiz: Oh yes, go ahead.

Ms. Maluo-Pearson: I am familiar with this type of overlay because we are using it currently at Kaehu. I am very much in support of it, and I think the Department has done a great job on the things that they would like us to consider, and that's what I have to say.

Ms. Celiz: Alright, thank you, Commissioner Kahulu, for your input on that.

Ms. Chen: Chair, I'm sorry.

Ms. Celiz: Yes?

Ms. Chen: Chair, did you close public testimony? The computer just glitched for a minute and I didn't catch it.

Ms. Celiz: Oh yes, I did close public testimony.

Ms. Chen: Okay. Thank you. Sorry about that.

Ms. Celiz: Thank you. No worries. Thank you. Alright. Let's see. Did we have any further questions or discussion about this agenda item? Otherwise, if not, would anyone



like to -- so we have the following options to recommend approval of the proposed bill with or without comments or recommended revisions, recommend denial, or vote to defer actions. But, just from what I'm feeling is the overall sentiment of the Commission is that, you know, we want to see this approved. Does anybody want to make a motion whether to, you know, include the recommended revisions?

Ms. Maluo-Pearson: I would like to recommend that we approve with the recommended revisions to the Maui County Council.

Ms. Celiz: Thank you. Motion from Commissioner Kuhulu to recommend approval with recommended revisions. Does anyone want to second that motion? Alright, seconded by Commissioner Wagner. Any discussion on the motion on the floor? Alright, seeing no discussion, Annalise, could you please do a roll call vote?

Ms. Kehler: Yes, Chair. Let's start with you, Chair Celiz.

Ms. Celiz: Aye.

Ms. Kehler: Thank you. Commissioner Wagner?

Ms. Wagner: Aye.

Ms. Kehler: Thank you. Commissioner Kamaunu?

Mr. Kamaunu: Aye.

Ms. Kehler: Thank you. Commissioner Maluo-Pearson?

Ms. Maluo-Pearson: Aye

Ms. Kehler: Thank you. And, it looks like we might have lost Commissioner de la Cruz. I'm hoping that he can turn his camera on.

Ms. Celiz: Give him a few moments to see if he can connect.

Ms. Kehler: Yeah. Okay. There we go. Commissioner de la Cruz, how do you vote, please?

Mr. de la Cruz: Aye.

Ms. Kehler: Thank you.

**A motion was made by Commissioner Maluo-Pearson, seconded by Commissioner Wagner, then unanimously**

**VOTED: to recommend approval, with the recommended revisions, to the Maui County Council.**

(Assenting: Y. Celiz; A. de la Cruz; K. Kamaunu; K. Maluo-Pearson;  
M. Wagner)

(Excused: K. Poepoe; B. Sarich)

Ms. Kehler: Okay. The motion passes unanimously.

Ms. Celiz: Alright, thank you, everyone, and just thank you to everyone has worked so hard on this bill even before it came to us, and I really do think it does help to fill in the gaps especially with some of the problems we face on the CRC, so, you know, looking forward to seeing that go through. So, thank you again, everyone. Okay, what's next? Going on ahead to Agenda Item C.2., County Department of Public Works requesting review and recommendation on an application for renaming Puamana Beach Park to, I'm sorry, my brain's not functioning today, but Waiahiokole Burial Preserve, you guys can correct me on that when we -- when you do the -- the presentation, Lahaina, TMK (2) 4-6-033:001.

- 2. County Department of Public Works requesting review and recommendation on an application for renaming Puamana Beach Park to Waiahiokole Burial Preserve, Lāhainā, TMK (2) 4-6-033:001**

***The Commission may make recommendations to the County Council regarding applications to name streets, parks, and facilities under subsection 2.98.040.F, Maui County Code***

Ms. Celiz: At this time, we will open this to public testimony. Is there anyone wishing to testify on this agenda item?

Mr. Kapu: Aloha kakou.

Ms. Celiz: Aloha.

Mr. Kapu: Keeaumoku Kapu, from Lahaina again testifying on this agenda item. I think, within the past I would say five years, we've been dealing with some serious predicaments that's that's been happening on the shorelines of Puamana, and about last week Sunday, we finally put to rest iwi kupuna that had been in curation with State Historic Preservation Division from 2017 to the prior date, the newest find that we found along Puamana was this past I would say about a month ago. So, it's really important that we come in front of

**HANA ADVISORY COMMITTEE  
TO THE MAUI PLANNING COMMISSION  
REGULAR MEETING  
AUGUST 11, 2022**

**A. CALL TO ORDER**

The meeting of the Hana Advisory Committee to the Maui Planning Commission was called to order by Chair Ward Mardfin, at approximately 4:54 p.m., Thursday, August 11, 2022, in the Planning Department Conference Room, 250 South High Street, Wailuku, Maui, Hawaii 96793 and via BlueJeans Meeting ID: 636644309.

Chair Mardfin conducted a roll call of the Committee Members and a quorum was present. (See Record of Attendance).

Chair Mardfin: Becky Lind, no. Clayton Carvalho, Jr.

Mr. Carvalho: Yes, do we have to announce our location as well?

Mr. Kunkel: That's right and if anyone is in the room with you, just state who it is, it's fine.

Mr. Carvalho: Okay, I'm at home 4245 Hana Highway and I'm by myself.

Chair Mardfin: Um, Scott Crawford.

Mr. Crawford: I'm present, I'm here and Heidi Lea is in the house somewhere but not with me right now, but she might at some point wonder through during the meeting.

Chair Mardfin: Okay, Mary Ann Kahana. Not here yet. Lipoa Kahaleuahi, not here. Dean Wariner.

Mr. Wariner: I'm here at my house and my wife is here but she's doing other things.

Chair Mardfin: Okay and Ward Mardfin is in his house in Wakiu without anybody else in the house. I hereby call the meeting to order. This is a meeting on August 11<sup>th</sup>, 2022. It was supposed to be at 4:30 but it is now 4:53. And it says public testimony will be taken when each agenda item is discussed and limited to a maximum of three minutes. I do not have a clock to measure that so if somebody else does, that's great and Item A was called to order in roll call, we've done that.

**B. PUBLIC HEARING**

Chair Mardfin: Item B is Public Hearing. Would anybody like ...and we have public hearing on basically two bills. But would anybody like to give public testimony on either one of those?

Ms. Young: I'm here. I can provide my testimony now if you're ready.

Chair Mardfin: Okay, Gina, would you please.

Ms. Young: Okay, sure. Good afternoon Chair Mardfin and Committee Members.

I'm Gina Young. I'm here today representing Councilmember Shane Sinenci who introduced the bill that was referred to you folks. Our office has been working with the Planning Department and Dr. Six for the past year on the bill. The purpose of the bill was to fill in gaps of the current cultural resource protections and provide more local review as well as more information for property review in looking to develop their properties. We first started our discussions with SHPD, the State Historic Preservation Division, and it was Dr. Lebo who is the Chair of that. That suggested that we use a mapping approach with a military approach that they use with high sensitivity medium and low and have them be color coordinated. SHPD has been very supportive of our efforts, and they see that this as a supplement to their work. We also want to thank the Planning Department staff. We're really grateful for all the help and guidance they provided us and all their time they spent educating us on the current process and their ideas to make it better. We like the bill the Department submitted as a Discussion Draft. That bill is the bill that we had been working on for a year. And just to provide some background, that's the bill that went to our agriculture and ... (inaudible) ... at that time our Corp Counsel had told us that we didn't have the resources to do the map and ... (inaudible)... Commission ... (inaudible). We went ahead with her approach to the bill but then after that happened and it was sent to you, the administration put in new budget positions to create the cultural map which we were very grateful for. So right now there is a GIS position and a Hawaiian language translator and researcher who are dedicated. The researcher will be doing other work but she's dedicated also to work on our cultural map. The GIS person was put right in the archaeological program. That map will be county-wide so it should eliminate the need to designate districts and it should provide information. It could take a few years but that would be county-wide. Now the two differences between the bills are, is the first bill recommends that things go to the Cultural Resource Commission and have some provisions there because of that. The Planning Department recommends the bill that's coming through there recommends that certain conditions be put on based on the sensitivity. We're open to having both approaches, and we think that the CRC review could do maybe projects and high sensitivity areas and then we like the idea that coming down to the local advisory committees like yourself. There's also been Haiku established and South Maui. But this is all up for discussion so this is all that we want to hear from you today. Do you want more responsibility, do you want to take a look at those bills, those specific projects when they come to you. And then the last thing I just want to basically talk about is that the Hana bill that was submitted to you is really just an example. We want you to see what a district would look like. But the entire county-wide map ... (inaudible) .... Two entire separate processes for the Hana bill. So I don't want to get you more confused, but it's just a brief summary ... (inaudible)... I'm also available for questions if you'd like to talk about that. I know Dr. Six isn't available right now. She's on a trip and she's on a plane right now. So I can try to answer those questions if you have anything about the cultural map when you get into your discussions. Thank you. So I could go ahead and take some questions now for my testimony or you can just wait until you start your discussion. It's up to you. I'm concluded with my testimony.

Mr. Carvalho: Ward is muted, Chairman.

Chair Mardfin: Thank you Clayton I had muted myself so that I wouldn't be causing feedback. I was just asking, do any Committee Members have any questions of Ms. Young? Just for some of you that may or may not remember, Ms. Young has come to Hana many times when she was

working for the Planning Department, and we were looking at B&B's and that sort of thing, if she looks familiar to you. Okay.

Mr. Crawford: I may have some questions for her later, but I'd like I think to hear the Department sort of presentation and then be able to ask Gina to stay on as a resource person so we can ask her questions once we kind of get to that phase.

Chair Mardfin: Okay, okay, Scott. I'll remember to keep you in line for that. Would anybody else from the public would like to give testimony on this matter?

Ms. Medeiros: Oh Ward, I've signed up in the chat, Mavis.

Chair Mardfin: I do not check the chat during these meetings, so if you want to...

Ms. Medeiros: Well it says to sign up in the chat. Anyway.

Mr. Carvalho: Also, Chair, so Chair we have another Board Member joining.

Chair Mardfin: Who came in.

Mr. Crawford: Mary is present there with Mavis in the Council office.

Chair Mardfin: Okay, Mary, would you please identify yourself and say who is in there with you and where you are.

Ms. Kahana: I'm Mary Ann Kahana, I'm at the Hana Cultural Center with Mavis.

Chair Mardfin: Okay, thank you very much. If nobody else from the public wants to give testimony, I hereby declare testimony...

Mr. Crawford: Oh, I think Mavis was saying she does want to give testimony.

Chair Mardfin: Oh, I'm sorry, I didn't understand that. Mavis, go ahead. You have the chair.

Ms. Oliveira: Sorry about that. Okay. Aloha Chair Mardfin and members of the Hana Advisory Committee. I think you guys all know me but my name is for the record Mavis Oliveira Medeiros and I'm in support of doing this cultural overlay in Hana of course, but I just highlighted some reasons and one of them is that Hana is the home to the largest heiau in Hawaii. Hale O Pi'ilani Heiau and Kahanu Gardens in Honomalee is Hawaii's largest ancient stone structure holding deep culture and spiritual importance. Hale o Lono is another heiau in Hana. There is so many heiau in Hana I could name but those are two of the ... (inaudible)... Also Ku'ula the Hawaiian fish god from Haleama'i, and he built the first fishpond ever anywhere in the world at Leheula and um then Hokuula and Kumaka fishponds came a little bit after that. This was almost 2,000 years ago when those were built for Christ, I believe. This one is even before the more recent Alii of a couple hundred years ago of Kamehamehas. And more recently, we have Queen Ka'ahumanu

born right here, we can see the hill from the office. Kau'iki Hill who was Kaahumanu's favorite wife and there was lot of ...(inaudible)... or what you call Kau'iki was the scout where they looked out for canoes coming in from all the wars past. And almost everyone I talked to who knows their genealogy, they almost always led back to Hana. So Hana is of the oldest places where ah from a long long time ago and one more thing is the Pi'ilani of old. That was before the Kamehamehas all lived here, but more importantly those families still live in Hana. I don't know how many other places in Hawaii can say that the families from that area from hundreds of years ago still live there. Hana is one of those places. We need to protect sites ...(inaudible)... Something I noticed that's not in the paperwork which I don't know how you guys might be able to help that happen is that we all thought and Gina knows, we all thought that they were coming and they were going do our survey so that we could see places that we not only that we already know of but that we don't know of. To me, it was really important to find those areas with you know sites, sacred sites that we don't know of. If there's a way that you guys could add that in there cause it's not in there anymore that would be really awesome for us to be able to at least locate the sites for places that are for sale right now, the Ranch Lands and Site properties that would be awesome. Thank you guys very much. Aloha.

Chair Mardfin: Thank you, Mavis. Does do any Committee Members have any questions of Mavis? Seeing none and not hearing from Dean. You know I know one thing you kind of left out, the King's Road, runs right through Hana, and now I would think that would be one of the things that we'd want to make sure was acknowledged.

Ms. Oliveira: Hopefully, that is one of the things.

Chair Mardfin: Are there any other questions for Mavis? Thank you for your testimony, and I think we decided that at the end of this, we'll also give people the chance to testify. Is there anybody else from the public that would like to testify. Not hearing or seeing anybody, I will declare public testimony on this matter closed for now.

*(Deferred from the July 14, 2022 agenda)*

**B. PUBLIC HEARING**

1. **BILLS FOR 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; AND CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING A HANA CULTURAL OVERLAY DISTRICT**

**Ms. Michele Chouteau McLean, AICP, Planning Director, transmitting Resolution No. 22-79, FD1, referring to the Maui, Molokai and Lanai Planning Commissions two proposed bills to amend Maui County Code:**

- a. **To combine the provisions of the historic districts with new cultural overlay districts and change how such districts are established;**

**expand the advisory capacities of the Hana, South Maui and Paia-Haiku Advisory Committees to include the Maui County Cultural Resources Commission (CRC); change how CRC members are appointed; require the planning director to appoint the principal archaeologist to serve as a resource to the CRC; and establish criteria for grading or grubbing permits in the cultural overlay district.**

- b. To establish a Hana Cultural Overlay District for all land situated within the Hana Moku. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available: [https://hi-maui-county2.civicplus.com/DocumentCenter/View/134349/071422\\_Agenda-Item-B1\\_Council-Resolution-22-79-Proposed-Bill](https://hi-maui-county2.civicplus.com/DocumentCenter/View/134349/071422_Agenda-Item-B1_Council-Resolution-22-79-Proposed-Bill)**

*(Ms. Takakura provided the Department's Report and Recommendations to B.1.a. and b.)*

Chair Mardfin: And to do a presentation. As I understand it, there are two things. Let me make sure I understand what's going on. There's a generalized ordinance that the Planning Department would like us to weigh in on for using overlay districts in general. The second thing is to establish a Hana Cultural Overlay District and those are separate and apart from each other although somewhat related. And Jacky, are you going to be making the presentation on behalf of the Planning Department? I give you the floor.

Ms. Takakura: Yes, Chair. Thank you very much. Hello Hana Committee and let me just say for Commissioner Wariner, do you have the powerpoint, or I'm not sure if you're able to see the screen?

Mr. Wariner: No I can't see the screen.

Ms. Takakura: Because and I don't know if you got the pdf of the powerpoint presentation, but I can.

Mr. Wariner: Yes, I did get that. I have that. Oh that's right, I have the powerpoint as it was sent out.

Ms. Takakura: Okay, I can say what page I'm on and you can follow along with your pdf.

Mr. Wariner: Okay.

Ms. Takakura: As you can see it's real short. Yes that's the one. Thank you Chair. You already know everything I'm going to say.

Chair Mardfin: It was included in the material we got in the mail.

Ms. Takakura: What's that?

Chair Mardfin: It was included in the material we got in the mail.

Ms. Takakura: Perfect, okay.

Chair Mardfin: By the way using mail for anybody in Hana is a really smart thing to do because as you can tell, sometimes our technology fails us a little.

Ms. Takakura: Yep yep I understand. And you know it's still something to look forward to when the mail carrier comes. So I do want to make a quick reference to the packet because um...

Chair Mardfin: We don't have any mail carriers in Hana. They don't do home delivery of mail here; you have to go to the post office.

Ms. Takakura: Oh I see. So in the packet that you have, there's three parts: one is our memorandum dated July 7<sup>th</sup> and that kind of gives an overview of the department's overview and positions, concerns and recommendations. The second part is what Gina had talked about and that was the two proposed bills from the County Council and as you mentioned Chair, one of them is kind of this overview about creation of this cultural overlay and then the second one is creation of the overlay for specific to Hana which is Gina had mentioned is just an example and the actual plan is to have the overlay for the entire islands so creating one specifically for Hana wouldn't be necessary and then the last part of the packet is the one where across each page, it says Discussion Draft and that's the one that the Department had worked on with Council Member Sinenci and Dr. Six to create. That's the preferred one is the one that we originally had prepared. So just to give you an over...because it's kind of a thick packet. But what I'm going to do now is share a screen.

Chair Mardfin: Jacky, when you say is preferred you mean preferred by the Planning Department.

Ms. Takakura: That is correct.

Chair Mardfin: Not necessarily preferred by the Council or...

Ms. Takakura: Well, as far as I know. But you know in conversation with Gina, you know it does sound like at least for Councilmember Sinenci's office, he does support the bill that we are recommending, you know the one that says Discussion Draft. And hopefully you know with all the Commissions and Councilmember Sinenci and us, we can encourage the County Council to encourage to adopt the Discussion Draft, which is the one we want.

Chair Mardfin: Thank you.

Ms. Takakura: Okay, so can everyone see this, page 1 of the powerpoint. So Commissioner Wariner, I'm just on page 1 of the powerpoint and it's just a summary of what the bills are relating



to the Cultural Resources Commission and creation of the district designation processes and establishing the Hana cultural overlay district. So just for some background information, I'm on page 2 now about the Background is that there are already federal and state laws for burial and archeological sites but the County does not have its own regulations, and we all know in some places there are cultural and archeological remains that could be disturbed by development as the testifier said there's quite a few in Hana, so they're pretty important. We want to take care of those. Development of a cultural overlay, it would alert developers, property owners and neighbors that special consideration might be needed to protect those cultural assets. And this bill would help fill in the gaps by including the local review. Federally, there is the NAGPRA law, the native, well that's the law that protects the human remains, funeral objects and sacred objects and so forth. And then on the State level there's HRS Chapter 6E that covers historic preservation and then the State also had Admin rules relating to burial sites and human remains. So what the proposed bill here would do is supplement the efforts of SHPD and the federal laws, not replace them. Next page Mr. Wariner. So the original intent of the bill and what we have in the one we have that's labeled Discussion Draft is that the intent is to preserve the buried aspects of the cultural landscape inclusive of culturally significant land forms, few sheds and historic cultural resources, and we believe these existing regulations have proven to be inadequate so a county level protection is needed. Like I mentioned, I keep referring to the Discussion Draft, that's the one that has the original intent of the bill which was to create an overlay that is in addition to zoning but it does not change the zoning. So what that means is if a parcel is zoned say ag or residential, it's still zoned ag or residential. This would just be an overlay on top of that Title 19 zoning, not going to replace the zoning, just an overlay. So that's kind of what we have in the Discussion Draft. There's a nomination process and the designation by the County Council the GIS maps and levels of sensitivity as Gina had mentioned the low, medium and high and then procedures for updates and appeals and also some criteria for grading permits. This next slide, Proposed Bills is just a summary of the bill that was given to us by the County Council. If you compare the Discussion Draft with the bills from the County Councils, you can see that the two are very different. The one that came to us from the County Council combines the provisions of the historic districts, and historic districts are Chapter 19.52 which is Lahaina Historic Districts 1 and 2 you know along Front Street and there's also a Historic District in Wailuku. So it combines this with those that are already in existence. It expands the advisory capacities of the 3 advisory committees: this one, the South Maui and the Paia-Haiku Advisory Committee to make them advisory to the Maui County CRC, the Cultural Resources Commission, in addition to the Maui Planning Commission. It changes how they're appointed and it requires a Planning Director to appoint the Archaeologist, establishes criteria for grading or grubbing, and as mentioned it creates that overlay district just for Hana area. So that's what's proposed to us. We do have a whole list of concerns in the memorandum. It's a little long, 7 or 8 pages--6 pages but um our concerns mainly are listed on pages 3 to 5 of the memorandum. But just in a nutshell, our concerns first and foremost is that you know before we change anything about the Cultural Resources Commission, we should talk to them first and get their thoughts on that. There's some concerns about the assignment of staff, for example the archaeologist doesn't work for the Department of Planning so it's kind of awkward for the Planning Director to appoint them to anything. Some of the terminology is a little bit new for us. We do land use planning, so some of the terms like eco-indicator, that's a word we don't normally use in land use planning so it's something we have... (inaudible)... to incorporate. One of the things that I've mentioned this whole concept of zoning

districts versus overlay, we want to make sure that those are really clear because zoning is already confusing enough but to have two zonings, the idea of two zonings, that might make it more confusing for people and so we'd really like to keep one thing being a zoning district versus an overlay to keep them separate so it's a little clearer. We also had some concerns with the processes and procedures. You know I think we have a little bit more clarity in our processes and procedures in our Discussion Draft. And also for same thing for discussions and guidelines, we have those also. Grading and grubbing, that's Department of Public Works permit process and so that would make more sense to be in Title 20, and not so much in Title 19 which is the land use in zoning. And finally the Hana overlay, it might be better to review the process and procedure first and then create it before we're going to create overlays by districts. Might be a little bit premature to create one at this point. So what the Hana Advisory Committee can do now is review the bill, can recommend certain things back to the Commission, and we'll take all of the comments that we've received and convey all of that information to the County Council. So that's it for the presentation. I'm going to stop sharing but I can go back to any screen and then I'd like to just mention that Gina is also available. She's kind of a subject matter expert on this because she's been involved since the beginning of when they first started talking about creating this bill. So that's all I have for you to share. I'm here to answer questions or whatever would help for you to make a good decision.

Chair Mardfin: Thank you very much, Jacky. Do any Committee Members have any ...

Mr. Wariner: Chair?

Chair Mardfin: Yes, Dean.

Mr. Crawford: Just a quick--this is Scott. A quick clarifying point on the final slide, it says commissions options. Do you mean committees options--are you referring to us?

Ms. Takakura: Thank you Commissioner Crawford, you're right, this is the same presentation that I did for Lanai, Molokai and Maui Planning Commissions. Yes you're correct, so Advisory Committees are a little unique, so sorry about that. Correct.

Mr. Crawford: Okay.

Chair Mardfin: I'm sorry so what did you say now?

Ms. Takakura: Oh second to the last page where I have Commissions options.

Chair Mardfin: So are we making recommendations to the Maui County Council not to the Planning Department?

Ms. Takakura: Normally you actually do make recommendations to the Maui Planning Commission, but this actually was already heard by the Maui Planning Commission because I don't know if you remember we had to defer the last time but the public hearing was already scheduled for the Maui Planning Commission.

Chair Mardfin: Yes

Ms. Takakura: So what I had planned is to take your comments and include them in what we transmit to the County Council. So I still want to hear what you have to say. I don't know if Michele wants to chime in on procedure on the inclusion of the Maui Planning Commission. But for me my priority is get your comments and because we have to transmit to County Council and we want to make sure the Maui County Council gets to hear what you folks have to say.

Chair Mardfin: Thank you. Any other Committee members? Mary Ann? Mary Ann?

Mr. Carvalho: Unmute.

Ms. Kahana: Yes, Jacky, I have a couple questions you mentioned the overlay for district. I'm not sure when you said district that is meant as ahupua`a. That was one question and you also mentioned regarding the cultural overlay and you guys are--this bill would be a supplement to 15. I guess my concern is that with the already known historic site will that be a priority to do the cultural layer study in comparison to the non-known historic site. Cause like for example I'm new in ...(inaudible)...iwi kupuna, Hamoa was already known as a burial site by the locals, by history, by oral testimony and when we discovered iwi kupuna at Hamoa, the results was inadvertent. I'm not sure if I'm in line with what you're sharing regarding if we were to rack and stack and what area would we do the study.

Ms. Young: Jacky, I can answer that question if you'd like.

Ms. Takakura: Chair, is that okay Chair Mardfin for Gina to help out with that?

Chair Mardfin: Please Gina.

Ms. Young: Okay, thank you and man that's a great question. That's a question that someone else had recently asked me. So how the cultural overlay map will work, is first at least, is the county would take all known information. They will take all the SHPD information that's in the HICRIS system, that's the result of all the archeological studies submitted to them over the years. The individual archaeologist have agreed to turn over their information, and it will take new information as it comes up in the projects. Now I wasn't able to talk to Dr. Six about this before she left but we did put in money for a drone for the Department of Management, and I can envision down the road once that GIS person is done or has time using that drone to go take a look at newer areas. I can't promise it from them but I could envision that being a very useful exercise because by having the map with just known things and the map will also be updated regularly because there's a lot of things that haven't been discovered and many of the TMKs that are going to show up as green sensitivity on the map. The only reason they'll be green is because no activity has occurred on there so nothing has been discovered. So I can envision a system where we identify certain areas where we might think there is something and use the County drone to go out and do some mapping. That's that's--I can't guarantee it, but I can definitely request it and continue when they build out the map.

Chair Mardfin: Thank you. Does anybody have any questions of Gina?

Mr. Wariner: Yes, Dean here.

Chair Mardfin: Yes, Dean.

Mr. Wariner: I'd like to say that near my residence, there are platforms which I'm told were used to spot fish and direct boats to certain areas and I don't know if, yeah I think there's three along the coast here at mile post 47.

Ms. Young: That's the kind of thing that would come on the map over time. Now how the system currently would work is that in an area where there's proposed for development, they're supposed to hire an archaeology consultant who is supposed to go in and take a look and can see if there's anything is there and report it and then it would end up on the map once it's reported. Um through that way. If we have the County map and it's reported, everything works. In the current system, you don't always have the consultant notice everything that's on a property. And then it would be important for neighbors too that know about it to alert us too during the development process. Plus Dr. Six has been very proactive about as projects go through the process making sure that everything is known to the people that's making those decisions.

Chair Mardfin: Dean, did that satisfy your question?

Mr. Carvalho: Um Dean left the call. I just noticed the call dropped.

Chair Mardfin: Oh.

Ms. Young: If I can make one other comment that I didn't get to talk to in testimony. Our plan is to get back with the Planning Department and Dr. Six and rewrite the bill, do a revised bill to take all their concerns, or I wouldn't even call concerns, their comments and address them. They are the experts. We do agree that a lot of their comments were not meant to having them in Title 19 and these are discussions that we'll have with them so that the bill does turn out to be something we all agree to and that it works for everybody. So once we get through this process, we'll probably merge the two bills and take the best parts out of them. But I just want to make sure you guys are discussing all aspects of the bills but we definitely do have plans to address their comments.

Chair Mardfin: I have a question if the Committee Members don't mind. I was rather bothered by the fact they were talking about a Hana Moku overlay. This omits a large part of Hana district, it omits the Koolau moku which runs from roughly Keanae to Nahiku, it omits the Kipahulu moku that runs from roughly Ohe'o Stream out to somewhere in between Kaupo and Kipahulu, it omits Kaupo moku which goes from there out to Kahikinui and depending on who want to pick it up, that's the 4 mokus that make up the Hana district. Although for census purposes Kahikinui is often included in the census tract 301 for Hana district. And so Kahikinui might be picked up or they might be picked up by Ulupalakua. But I find it troublesome that we're not talking about those

at least three other mokus within the Hana district and I know there are things at every place. There are landing sites for canoes that occurred in Kipahulu, there's a big abandoned sugar factory, there was pineapple grown out in Kipahulu, there's all kinds of things that I don't want to see get lost and if Hana is kind of constricted to just the Hana Moku, I think we're being unfair to the whole rest of the district.

Mr. Young: I can answer that.

Chair Mardfin: Sure.

Ms. Young: When we first came up with the idea to do the cultural overlay, we were told there's no staff to do this that perhaps we could borrow somebody from the IT Division. So we kept our request very small but then we lobbied the administration for resources and lo and behold the Mayor put in, it was actually Erin Wade who used to work for Planning. Who got us these positions to do this county-wide. And they did that because they understood the importance of doing everything just like you said. Just picking out these little pockets and only focusing on them isn't really going to achieve the full protection. So the plan now is just to make it county-wide, and we have the resources to do that so it's just such a huge improvement from when we first recommended. And you just explained it exactly why it's better now that we make it county-wide.

Chair Mardfin: A second thing that I'd like to add is I'm old enough and been around enough who remember back when we were doing the Maui Island Plan and at that time I was on the Maui Planning Commission and there was a GPAC that at least four people in Hana were engaged in and at that time there was somebody, Gina you might remember his name. It was somebody in the Long Range Planning working with Jeff Hunt who at that point was the head of the Maui Planning Department and I forget his name but he came out with huge maps, like 4 feet by 8 feet. maps. And they brought them to Hana and they showed all the areas and we got along down at Helene Hall and was this here and was that there. Does that sort of stuff still exist? Cause that would be a wonderful resource to get a head start on the Planning Department the effort to get everything down and he did it by different layers. He had cultural, he had water, he had ...

Ms. Young: Michele could probably remember who that was. It was probably Mark King who created them, but um...

Chair Mardfin: No it wasn't.

Ms. Young: Oh, it wasn't Mark.

Chair Mardfin: You said another name in there.

Ms. Young: Oh it was Dave Michaels who was the person in charge at that point.

Chair Mardfin: I think it was Dave.

Ms. Young: Yeah so Dr. Six would have access to all of that to be able to incorporate it all into the cultural overlay. Thank you for bringing that up. I can remind her to check in with Long Range.

Chair Mardfin: And I knew he had circled things and marked up these maps and everything and I think it was Dave. He took them back and actually some of it is in the Maui Island Report. And so that would be a storage. You know there's a DVD disc for different layers. So we don't have to totally reinvent the wheel. We only have to repair the wheel and not totally build it from scratch.

Ms. Young: Well we'll have to take all of these other wheels and put them all in one place. But that's the plan.

Chair Mardfin: Are there any other Committee Members; are there any other statements. Mary Ann?

Ms. Kahana: Yeah, so my question is there was a piece of property on Haneoo Road and it was recently towed a little over 100 acres, so if they decide to develop, it's my understanding that you just mentioned they would have to have an archaeologist on board? And so my question would be the role of the archaeologist with the cultural overlay, take into play.

Ms. Young: Only if it's adopted. And then the map has to be created with that particular parcel and then also only if they come in for any type of permit that's listed in the bill. Now fortunately grading and grubbing is listed, that's kind of the last resort, they would be able to take a look. Now under the current system Jacky and Michele could probably speak to it better. If they're coming in and they don't need any type of discretionary permit, you're probably not going to have an AIS. I don't know I think Planning would be better to talk about the current process.

Ms. Takakura: Commissioner Kahana, are you aware, is this property near the shore like would it be in the special management area?

Ms. Kahana: I believe so. Am I correct or no, Scott.

Mr. Crawford: If it's mauka of the road then it probably is not a SMA. If the one you're referring to is mauka of the road.

Mr. Carvalho: That's the mauka property.

Ms. Kahana: Yeah.

Chair Mardfin: Mauka of Hana Highway or mauka of Haneoo Road.

Mr. Crawford: of Hana Highway.

Chair Mardfin: Yeah, mauka of Hana Highway generally is out of SMA. Generally.

Ms. Takakura: The reason I'm asking is because of um, yeah a lot of times if they're going to be applying for an SMA permit then um there is um a archaeological requirement in there but I guess it's going to depend on what kind of permit they're applying for. Sometimes even with building and grading permits, you know DSA kind of reach out to us on some of those things. Yeah I guess its will going to depend on what they're going to do.

Chair Mardfin: Dean, what did you say?

Mr. Crawford: I don't think he was speaking to all of us. Talking on the side.

Mr. Wariner: This is Dean. I was talking out of turn. Thank you.

Chair Mardfin: No please please give us your manao. Okay.

Mr. Crawford: To followup on that question, I guess I have, I'm wondering to help clarify my understanding of this process is could you explain a little bit exactly when, what would trigger, when does the cultural overlay come into the process. At what points in the Planning Department's processes permitting or whatever would it be used and secondly at what points what would trigger a referral to the Hana Advisory Committee for us to review a particular project based on it's sensitivity level within the cultural overlay.

Ms. Young: Yeah sure, I'll take that one. Um that's a great practical question. How is this going to work. Well first it has to be adopted. So probably...

Mr. Crawford: Yeah, assuming it's adopted in the way that you and the Department and the Commission all sort of are tending to agree towards you know.

Ms. Young: Yeah, so in the bill that the Department puts forth in the Discussion Draft, we have the triggers as being, starting with the change in zoning and going up from there. And actually the administration has reached out to--I can't remember who it is a department staff to have Janet, Dr. Six to even look for environmental assessments. But right now with this bill the way the "Discussion Draft" read, it would start with change in zoning and it would just go through the discretionary permits that happen from that point. We can't do SMA because that's a state law but it has all the other ones that are in Title 19 from there. We also included grading and grubbing, that's kind of the very last process. But at least at the change in zoning or district boundary amendment, community plan, all these preliminary stages especially change in zoning before you really have a site plan you would then need to know what your cultural sensitivity designation is. We are envisioning a system where if it's a high it's a red or known or close to known and those triggers for the red, green and yellow are all in the bill in the Discussion Draft. Inaudible...near a historic place, if it's got a high, maybe even edm sensitivity, and if the medium it's got a likelihood to effect historic properties you have a site plan that doesn't take into account, you have heiaus then Dr. Six would probably send it to the Cultural Resources Commission. If you're in a high sensitivity area including near burials, it will probably go to the Cultural Resources Commission. At that point, if it's in Hana Community Plan district area you would have the option to have them refer it to you, the Hana Advisory Committee and then you would review the project, make your

comments back to Cultural Resource Commission and then they would make a determination of the project and then put conditions on it and they would condition it to the point where it no longer have the potential to impact cultural resources. So a well designed project is less likely to get triggered ... (inaudible)... Burial all over, you know it's going to have to go through this full review process.

Mr. Crawford: Thank you Gina. So in this sense, we the Hana Advisory Committee where officially the Hana Advisory Committee would be taking a role to the Maui Planning Commission but in this sense we would become Advisory to the Cultural Resource Commission in relation to the cultural overlay. Is that correct?

Ms. Young: We amended the, I think it's in Title 2, the section covering the Cultural Resources Commission and in there we added also to the Hana Advisory Committee section of the law of the Maui County Code, we went and added the Cultural Resources Commission. So it wouldn't be only with projects with cultural sensitivity, it could be any project because they also review historic buildings, they look at archaeological reports that are submitted for projects. If they want and you can make a request to them, but they can start, if it's passed, sending any types of items on their agenda to you folks.

Mr. Crawford: Okay and then as far as the SMA you mentioned because it's a state level designation that the county doesn't really have jurisdiction over that but is there a way that if a project came to the Hana Advisory Committee because of like an SMA special use permit that we could like use the cultural overlay that you know like it's available to look at as part of our process even if it's not sort of officially triggered.

Ms. Young: Yes, it's a public document however the burials would be something called a fishnet so they won't actually pinpoint them. But it would probably be something that would be included in the report I assume from time to time. But it would be very easy to print the TMK with the different layers and you also have Dr. Six available to you. So even now she's available to you and you have HICRIS too and you have reports that are submitted in your SMA, they are often AIS, Archeology Inventory Surveys, you can ask Dr. Six more questions about them too and have kind of the same robust review already.

Mr. Crawford: Okay. I'm just thinking of the project, the application that we're dealing with right now, as certain archaeological reports dealing with the site itself but part of the sensitivity of that site is that it's part of a larger complex which isn't really taken into account and I could see how although it may...like the timing it's not going to apply to this site but in the future if there was a similar kind of project that would be very helpful to be able to look at an overlay of the whole area and see that particular property in relationship to the complex around it.

Ms. Young: And you just hit on one of the biggest problems with the current system. Is that it does isolate things down to TMKs and ancient Hawaiians didn't use it. You can't look at a big thing that way, so part of our criteria is, is it near or adjacent to also and the current reports that you get are only limited to that particular parcel, but when we have the overlay map and the



sensitivity designations, they will be based on a relationship to a larger area. Because of exactly what you just said.

Mr. Crawford: Okay.

Chair Mardfin: First I'd like to mention that Becky Lind has just joined us. Becky, where are you calling from.

Ms. Lind: Aloha, I'm calling from my house at Wainapanapa and nobody is in the room. So sorry I ran late.

Chair Mardfin: There's one specific thing I noted and Mr. Kunkel you can rule me out of order if you think I'm getting this wrong, but it seems to me that the Hana Advisory Committee to the Maui Planning Commission is now being asked if this whole thing goes to what it looks like the way it's going that we will have additional duties. That is we will be giving advice not only to the Maui Planning Commission but also to the um. I'm going to get the name wrong. The County Cultural Resources Commission and I think it will be helpful if this body as a committee member on the committee made a motion to the effect that we will be willing and able to accept such additional duties. Mr. Kunkel, did I overstep my position?

Mr. Kunkel: No, not at all sir and yeah, I think that's exactly the kind of comment you're being asked as a committee to respond to. Yeah, do you approve of this or do you disapprove of it or do you have no comment on it. Yeah, I think it's totally appropriate.

Chair Mardfin: I just ask this particular aspect of it whether the Hana Advisory Committee is willing and able to take on the duties of also being an advisory to the Cultural Resources Commission.

Mr. Kunkel: Yeah, I infer they want your committee's opinion on that: are you in favor of it or are you opposed to it.

Chair Mardfin: Anybody want to make a motion?

Mr. Crawford: Well I think he was asking that rhetorically, not saying that we should...

Chair: No, I didn't mean it rhetorically, I meant would somebody would like to make a motion that we are willing and able to accept such additional duties...

Mr. Crawford: Well do we need to make a motion specifically for that? I mean I think the question before us is the overall bill that's being proposed and that's part of the recommendation. What he was saying is if they would be asking that question, not that we need to make that decision right now.

Ms. Young: When you make your specific comments, Chair if you don't mind.

Chair: Sure.

Ms. Young: When you make your specific comments about the bill, that's a very appropriate comment to ask at that time that would be whenever you're done with your discussion and questions, that would be one of your comments that you could make and then you could do it by consensus ... (inaudible)... Or you could do it throughout your discussion. I'm sorry I'm going back to my old Planner or you can go along each question and take your motions and somebody just keeps track of your comments on a case by case. Someone does need to keep track of your comments, so Ward you got to remember that one. But you could do it on a motion basis at the moment and just keep, you know, each comment you make so either way works.

Ms. Takakura: Excuse me Chair Mardfin. I'm taking notes and so I will review them with you, all of your notes before we, so.

Chair Mardfin: I will not take a failure to make a motion at this time as disinclination to take on the additional duties. Any other Committee Members. Clayton, Scott, Mary Ann.

Mr. Wariner: Dean here, but not on this subject, but I have a question.

Chair Mardfin: Please.

Mr. Wariner: I know this in a page 1 through 3 or 4 on the ordinance amending Chapters 2.28. and some others regarding rules for all of the Commissions, all of the Committees, the Advisory Committees. Is this the first time we've had this kind of code to follow? It discusses when all meetings will be held, what punishment can be levied if people don't come to meetings, it's just kind of like the rules for commissions and I don't understand why it's in this bill about culture.

Ms. Young: Chair, would you like me to take that one?

Mr. Wariner: Am I looking at the wrong...

Ms. Young: No. That's a great question, Dean. So how bills are written is they take the existing code and anything new to the code is underlined and anything taken out is in a bracket so on that page that you're looking at, you're looking at the existing County Code. You probably never read the section on what governs you folks. You may remember when the Council added rules for missing meetings, that was fairly recent, but that was already adopted so anything that's underlined in that section is the new information that we're providing to you.

Mr. Wariner: I see, okay. Thank you.

Chair Mardfin: Jacky, did you want to say something?

Ms. Takakura: I was basically just going to explain the same thing that Gina said but I did want to just for um to think about. You know one of the concerns of the Maui Planning Commission was they don't want redundancy, like say the Maui Planning Commission refers something and then the CRC refers something. You know they don't want to you know have an advisory

committee have to review something twice so I guess we have to make sure that if both the Commission and the CRC refer something that hopefully you can review it at once and it not be at two separate times on reviewing the same item. So I guess we just have to make sure we're organized when we do make referrals that you're not having to review things twice. If you were to get something from the Maui Planning Commission and the CRC for example, and we don't want to make things take longer in the process. That's another concern of the Maui Planning Commission.

Chair Mardfin: Um I have one question, I don't know whose it for. On page, the second page of the July 7<sup>th</sup> letter from the Department of Planning, at the very bottom, it says, details that are proposed bills and it has no. 2, six members of the CRC will be appointed by the County Council and 3 members would be appointed by the Mayor. Currently all members are appointed by the Mayor and confirmed by the Council and I don't, there are two parts to my question. The first part is, has it been resolved or is it still up in the air. And the second is, is that item consistent with either the current charter or with changes in the charter that may or may not be adopted by the people of Maui at the general election of 2022.

Ms. Takakura: So Chair...oh, go ahead Gina.

Ms. Young: I just wanted to give you a background on why that happened, that's in my other testimony that I get to the other committees. I forget you guys read everything. It's a really great question. So it's underlined, so it means it's changing the process and that is something that was recommended by the Council staff actually when we did the bill because they wanted, when they formed the new advisory committees for Haiku and Kihei, they changed the appointment process to what's in there to the Council appointing the majority of them and the Mayor doing less of them. They wanted to bring and then even for you folks that appointment process would change. They wanted to bring that appointment process and update the Cultural Resources Commission. They also changed that, put that language in because of concerns that lack of transparency with the current process and a concern that maybe sometimes those appointments have more develop-pro development and that with the Council you may be won't get that same kind of concern. So that's why that was done in there. We did inadvertently expand the size of the Cultural Resources Commission and that's why it's so great to have Planning reviewing all these bills because it was done by accident, so we have no plans to turn it up to 9. The 7 is fine with us the way it is. We can fix that when it comes back. That is something that is not in the Charter, Ward, the Charter only establishes those commissions, it doesn't lay out the appointment process otherwise if it did, it would need to be a charter amendment voted on the ballot.

Chair Mardfin: Okay, because I knew there was something. I was also on the Charter Commission and there was a lot of back and forth on how members are named and there was at least one member beside that was on there that was very concerned that appointment power would be taken away from the Mayor and this person was against this idea. That appointment power would be taken away from the Mayor and given to the Council. The Charter Commission itself, each Council member was allowed one nominee so that made 7 and then, it made 9 and then the Mayor nominated two so that made it a commission of 11. But I just know there's a lot of sensitivity around this whole thing.

Ms. Young: Yeah.

Ms. Takakura: Chair Mardfin, you know the Department recommends just leaving it the way it is. You know with the Mayor appointing and it being confirmed by the Council and actually the CRC agreed with the Department that we would like to see the CRC appointments just be the same as they are now.

Chair Mardfin: Okay. I mean I don't care one way or the other, I just wanted to make sure the issue was raised and resolved. And since I was on the Charter Commission, I knew what things are driving a hot poker and what aren't. Mary Ann.

Ms. Kahana: Yeah, this is a question for Gina, um I'm going back to what Mavis had shared sites that's being sold and ah with this bill, how can we take this bill into play. Can we refer some of these areas to your division because I understand your division you know you guys are the experts, you all went to school, studied this type of topic that we're discussing okay, but the people here like our cultural practitioners, those who have lived here for a long time for generations, they may be able to refer you that we think this area should be studied. Will your division take this as an option for our people to make referrals or it's just potential wise and only your division would make those decisions.

Ms. Young: The decisions would be made by Dr. Six or by the County archaeologist too, that's Dr. Six right now. So you could speak with her. Now she would need to have the resources and the GIS person who has the time and they haven't purchased the drone yet. But she would be the one that would decide. The bill actually, trying to think which bill, one of the bills actually says in there that she will determine which area or resources go to first to map. And I wish she were here today to talk about her ability to do that. It's something we would need to ask her how that would work and whether or not we can get that drone out and start using it to do our own mapping. Cause I don't know how that would affect properties being sold however with the exception that you would then have documented. Um historic resources on there which could affect the price of the property or I don't know that a land sale would trigger a review of the property but if something were already previously done, at least it would come up on the map as an area with maybe a high sensitivity. We could probably discourage any kind of development because of it.

Chair Mardfin: Mary Ann, there's also a book called Sites of Maui that would...

Ms. Kahana: Yeah, I'm familiar with that book, ah Ward.

Chair Mardfin: Okay, cause I'm sure they'll check through that and there's a whole section by Moku of all the sites that would be of concern. And I know Janet Six is familiar with that. Becky, were you trying to ask something?

Ms. Takakura: Chair Mardfin, this is Jacky from the Planning Department. I just wanted to add that in the Discussion Draft, the one that the Department and Gina had worked on, with the establishment, we do have it here that if any person or agency may nominate an area for cultural

overlay district designation. So you know hopefully the resident experts of the community you know would be able to provide that information to the archaeologist.

Ms. Kahana: Thank you, thank you. That that's what I'm getting at. That's important to me. Mahalo.

Chair Mardfin: Any of the Committee Members have something to add? Um we're being asked if there's no war, I think we're being asked to, we have three options I believe. One is to recommend approval of the proposed bill with or without comments or recommended revisions, two recommend denial of the proposed bill to the Maui County Council or three vote to defer action on the proposed bill in order to gather specific additional information. Does any Committee Member care to make a motion. Scott, you're muted.

Mr. Crawford: Um it seems to me, I mean overall I would like to express support for this general effort and I think that there's actually two different bills that are sort of being merged and there's an overall agreement about the direction of that between the you know the Council Office and the Planning Department and so I don't think we necessarily need to recommend like specific amendments or anything like that but you know overall I'd like to, before I put this in a formal motion, I want to just sort of talk it through. That I think we would like to recommend is that we support the establishment of the cultural overlay, that we support the addition of the Cultural Resources Commission as a body that can advise things to and refer things to the Hana Advisory Committee. And basically you know that we're willing to take on that additional responsibility and that you know when sensitive items in the Hana District come up before the CRC that we would like to have the opportunity for the Hana Advisory Committee to be able to have a hearing and offer opportunity for public comment and for us to make our recommendations on that. Is there anything else that should be added to that? That's my sort of general sense of what I would like to recommend as a formal motion.

Chair Mardfin: A motion to recommend? Approval...

Mr. Crawford: Yes.

Chair Mardfin: On the agenda, it has two things, a and b. B is the Hana Cultural Overlay District and a. is the general concept we've been talking about. Are you...

Mr. Crawford: Well, from my understanding the idea of the Hana Cultural Overlay has been kind of folded into the larger effort because of the change in the funding status and I do want a, you know express my my appreciation for, you mentioned Erin Wade as the one that got that in there and then the Mayor for supporting that and then the Council for supporting it, to put the funding in the budget so this project can be done on County-wide basis so that we're not dealing with just the Hana Overlay as a whole. I mean not individually, but we're supporting the overall effort and you know the effort of the parties working towards the agreement that everybody is that you know is agreeable to everybody as far as the final bill.

Chair Mardfin: Can I take that as a recommended approval of proposed bills? Plural?

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Mr. Crawford: Yes, something along those lines and I guess I'm kind of asking for guidance on that from the Department or from Gina on you know does that make sense: we're recommending approval of the proposed bills with you know the comments that I outlined basically. Bill combined.

Chair Mardfin: Is there a second to that?

Ms. Young: You could also – Scott, in response to your question, if you don't mind...

Mr. Crawford: Yeah.

Ms. Young: Okay, you can also request that Hana be mapped as one of the first communities to be mapped given the number of sites, sensitive sites, history, something like that. It's going to take a while to get to everybody without ... (inaudible)

Mr. Crawford: Yeah that makes sense. I think since we're not specifically doing a Hana Cultural Overlay separately, we would like to recommend that Hana and East Maui in general be a high priority for the resources to go into making the map you know ready to actually be used.

Chair Mardfin: Is there a second to Scott's motion of general approval.

Mr. Wariner: Dean seconds.

Chair Mardfin: Thank you very much Dean. Is there any discussion? Any Committee Members...

Mr. Wariner: Yes, Ward, Ward, Dean here.

Chair Mardfin: Yes.

Mr. Wariner: As I read these two bills, everything that we've been talking about is covered. Ah we're not specifically told to report or make suggestions to the Cultural Commission, but I think it's understood in the context of these two bills and I think we should be interested in being able to contribute to the Cultural Commission, but I think it's pretty well stated in this whole document that we would be included.

Chair Mardfin: Yes, and Scott in his motion specifically acknowledged that it would be the Hana Advisory Committee to the Maui Planning Commission that would serve as advisory to the County Cultural Resources Commission.

Mr. Crawford: I see that specific language is actually added in the proposed ordinance on the bottom of the first page. Hana Advisory Committee and the Maui Planning Commission and then underlined is and Maui County Cultural Resources Commission.

Chair Mardfin: Right. Are there any other comments to be edited to this motion in discussion? Becky?

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Ms. Lind: Um, just a quick question. Can you hear me okay?

Chair Mardfin: Yes.

Ms. Lind: Okay, um so this would be combined with our regular meetings? Or is it separate meetings? Just nutsy boltsy stuff, just a quick question on that.

Chair Mardfin: I this is maybe my opinion but we just like at our last zoom meeting. I'm sorry Bluejeans meeting, we dealt with one part of the agenda but not the other. I think they could be combined, I think they need not be combined, it could be separate. But that's just my view.

Ms. Takakura: Chair Mardfin, if I may, what I would anticipate it would be similar to how the Maui Planning Commission would refer something to you, you know if something comes to the CRC and they would like to get the HAC to review it, then they would refer it and then it would be on your agenda, just like how items from Planning Commission are.

Chair Mardfin: Correct, that's how I see it too. Anybody else? Clayton, Mary Ann, Scott you all seem frozen to me. Is that just my computer?

Mr. Carvalho: Chair, we just came back.

Chair Mardfin: Oh, okay. Um, I would like to add one other thing that I would like in the minutes with this and that is that in addition to the Hana Moku being have a cultural overlay, that the Mokus of Koolau, Kipahulu, Kaupo and if needed Kahikinui Mokus also be included in the cultural overlay fairly early on in the process if possible.

Mr. Wariner: Ward.

Chair Mardfin: Yes

Mr. Wariner: I think one of the other Committee Members can make that an amendment and deal with that item first and then the second item the whole bill.

Chair Mardfin: I'm sorry...

Mr. Crawford: Actually, I did when Gina suggested we're not, it's not a separate overlay but what I suggested was that Hana and East Maui, all of East Maui be a priority for the development of the map. And so I didn't refer to the Mokus specifically but I'm happy to have that be included in the notes as or in the contents of the motion that it is, we're recommending all of the Mokus in East Maui be a high priority for the mapping process.

Chair Mardfin: Sure Scott, I didn't pick up on that right away. I'm glad Dean did. Any other comments before we vote. Things that people want to get slipped under the door. Are we ready for a vote? Seeing no objection, I'm going to call off your names and you can say aye if you agree with this motion and nay if you do not. Um Becky.

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Ms. Lind: Aye

Chair Mardfin: Clayton.

Mr. Carvalho: Aye  
Chair Mardfin: Scott

Mr. Crawford: Aye

Chair Mardfin: Mary Ann. Mary Ann you're muted. I'm going to temporarily skip Mary Ann. Dean Wariner.

Mr. Wariner: Aye.

Chair Mardfin: Mary Ann

Mr. Carvalho: You're mute.

Chair Mardfin: She may be frozen.

Mr. Crawford: You can ask her to give--oh there she is.

Chair Mardfin: Thumb up, thumb down. Mary Ann, you're still muted for some reason but your microphone doesn't look muted. Mary Ann, can you vote either aye or nay? Thumb up or thumb down?

Mr. Carvalho: Yeah she's frozen.

Chair Mardfin: She looks frozen to me. I, Ward Mardfin votes aye. And so it's 1, 2, 3, 4, 5. Dean, you said yes didn't you?

Mr. Wariner: Yes.

**It was moved by Committee Member Scott Crawford, seconded by Committee Member Dean Wariner, then unanimously**

**VOTED:**        **recommend approval of the Department's proposed bill to the Maui Planning Commission; in addition, the HAC would like to advise the Cultural Resources Commission (CRC); and requests mapping for Hana/East Maui (including all Hana Mokus) to be a high priority.**

*(Assenting: C. Carvalho, Jr; S. Crawford; M. Kahana; B. Lind; W. Mardfin; D. Wariner)*

*(Excused: L. Kahaleuahi)*



Chair Mardfin: Okay. So we don't know Mary Ann's but there are no nays and there are 1, 2, 3, 4, 5 ayes so that is sufficient to pass it. Mary Ann is giving a thumbs up, so that makes it 6 – zero and the motion passes. Are there any other comments, suggestions, would anybody in the audience like to make any testimony. I declare that testimony is closed.

**C. NEXT REGULAR MEETING DATE: SEPTEMBER 6, 2022, 4:30 P.M.**

Chair Mardfin: Going on to the rest of our meeting. Our next regular meeting as I understand it is September 8 at 4:30 p.m. Is that seem to work out for most of you?

Mr. Wariner: I will be out of state on that day. So I will not be able to attend.

Chair Mardfin: Okay. Becky, are you likely to be able to make it?

Ms. Lind: I think so, I just realized I don't have my phone on me so let me run to the restroom and grab my phone and I'll check my calendar.

Chair Mardfin: I am going to check on my calendar in the kitchen. Give me a second.

Mr. Crawford: Can I clarify with, whether that meeting will be on BlueJeans or possibly be in person as we had some discussion previously of trying to have an in-person meeting for the as I understand the Stice project which will be on the agenda for that meeting.

Mr. Carvalho: We agreed on that in the first rescheduling yeah where we would provide an in-person option.

Mr. Crawford: Yes, we did.

Chair Mardfin: Scott what did—you were asking whether it would be in person at Hana School or BlueJeans? What was the answer.

Mr. Crawford: It hasn't been answered yet.

Chair Mardfin: It hasn't been answered.

Mr. Carvalho: Chair, I know we proposed it and we just didn't agree on a date, the last time when we proposed it and I think people were more keen to showing up in person.

Mr. Crawford: We originally discussed—I mean what we originally had proposed was to have the in-person meeting at the School Cafeteria on the same day as the site visit and then that wasn't able to be scheduled so it was pushed back to the regular quarterly meeting of September 8<sup>th</sup> and so I think, my sentiment is that we should have at least an option for an in-person meeting you know as the law requires that we also have a virtual option as well, but that we have an in-person site in Hana that people could come to testify on that subject.

Chair Mardfin: Becky.

Ms. Lind: Just a quick note on that, so the cafeteria is the only space on Hana Campus that doesn't have internet. If there's another option anywhere, it would probably be a lot easier to do. I know Skylar works really hard to set it up for them when they need it, but it's like pulling a 300 foot cord across the lawn while there's kids running around so any other spot on campus besides the cafeteria, would make a lot more sense. Also, I think I am available on the 8<sup>th</sup>.

Chair Mardfin: Mary Ann, I think you're trying to speak but we can't make it out.

Ms. Kahana: ...Inaudible... Can you see me now?

Chair Mardfin: We can see you Mary Ann. That thumbs up is that for the meeting date?

Mr. Carvalho: I can make the meeting date, Chair.

Chair Mardfin: Thank you, Clayton.

Ms. Kahana: I'm sorry, Ward, having problems with the audio on my end so I chimed in on my phone.

Chair Mardfin: Okay, can you do it on September 8<sup>th</sup>?

Ms. Kahana: What day is that I'm sorry. The day.

Mr. Carvalho: Thursday yeah.

Chair Mardfin: I think it's a Thursday.

Mr. Carvalho: It's Thursday.

Ms. Kahana: Yes, I can.

Chair Mardfin: Good. At the school cafeteria good? I understand Becky's concern that people want to testify, it would be difficult.

Mr. Carvalho: Becky, don't they have an after school program there still?

Ms. Lind: Yes, there's the Youth Center that's operating out of the cafeteria and they don't have wifi. Uncle has been trying to get wifi there for a long time but there's no. I think yeah, it's really difficult to make that happen. Um there's other spaces, let's see, let's think, Thursday at 4:30, the gym now has wifi, let's see where else on campus. Let's see I'm trying to think, oh the band room, the band room should be available. Yeah, the after school program ends at 4pm, so the band room should be available at 4:30 and it's got wifi and air conditioning. But I don't know. I'm just putting it out there for just looking—does it need to be big enough to be open to the public...

Mr. Gima: And I vote, aye. And then we have one recusal. So it's one, two, three, four. Motion doesn't pass again.

***It was moved by Ms. Sally Kaye, seconded by Mr. Zane de la Cruz, then***

***VOTED: To recommend approval of the Planning Department's recommendations, with their three amendments, to the Maui County Council. -- FAILED.***

(Assenting: Z. de la Cruz, R. Gima, S. Kaye, C. Trevino)  
(Dissenting: E. Grove, S. Preza)  
(Excused: N. Alboro, S. Menze)  
(Recused: E. Atacador)

*(The Commission tabled the agenda item, then revisited and voted on the agenda item later in the meeting.)*

Mr. Whittaker: So you may just want to defer the item to the next meeting and reconsider with more commissioners present.

Mr. Gima: Okay.

Ms. McLean: Chair, I believe, was um, was Commissioner Alboro going to join again when she got home?

Mr. Gima: That was her plan. She said it would probably take about half an hour because she gets back on.

Ms. McLean: So we may be able to table this and, and take a vote later in the meeting since you've already gone through so much discussion, if she rejoins.

## **C. UNFINISHED BUSINESS**

- 1. BILLS FOR 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; AND CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING A HANA CULTURAL OVERLAY DISTRICT** *(Item was discussed and deferred at the Lanai Planning Commission's July 20, 2022 meeting.)*

**Ms. Michele Chouteau McLean, AICP, Planning Director, transmitting Resolution No. 22-79, FD1, referring to the Maui, Molokai and Lanai Planning Commissions two proposed bill to amend Maui County Code:**

- A. To combine the provisions of the historic districts with new cultural overlay districts and change how such districts are established; expand the advisory capacities of the Hana, South Maui and Paia-Haiku Advisory Committees to include the Maui County Cultural Resources Commission (CRC); change how CRC members are appointed; require the planning director to appoint the principal archaeologist to serve as a resource to the CRC; and establish criteria for grading or grubbing permits in the cultural overlay district.**
- B. To establish a Hana Cultural Overlay District for all land situated within the Hana Moku. (J. Takakura)**

**The entire text of the proposed bills for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/132847/Resolution-22-79-relating-to-proposed-bills-for-cultural-overlay-districts>**

Mr. Gima: Okay. What about the rest of the Commissioners? Any preference? Okay, hearing none, then we'll move on to the next agenda item which is unfinished business, bills for ordinance amending Chapter 2.28, 2.88, 19.48, 19.52, and 20.08, Maui County Code, relating to the Maui County Cultural Resources Commission, in the Maui County Cultural Overlay District, and Chapter 19.50, Maui County Code, establishing a Hana Cultural Overlay District. Michele McLean, Planning Director, transmitting Reso 22-79 FD1 referring to the Maui, Molokai, and Lanai Planning Commissions two proposed bill to amend Maui County Code. Number one, to combine the provisions of the historic district with new cultural overlay districts and change how such districts are established; expand the advisory committees' capacities of the Hana, South Maui and Paia-Haiku Advisory Committees to include the Maui County Cultural Resources Commissions, CRC; change how CRC members are appointed; require the Planning Director to appoint the principal archaeologist to serve as a resource to the CRC; and establish criteria for grading or grubbing permits in the cultural overlay district. Two, to establish a Hana Cultural -- excuse me -- Overlay District for all land situated in the Hana Moku.

So Jacky, will you provide a summary of this item, and why it was deferred from our July meeting before we take public testimony?

Ms. Takakura: Chair Gima, so, in the handout, it's kind of a big handout. There's three things. One is a memorandum from the Department which kind of summarizes the bill, and the Department's concerns and recommendations. The second part of the bill, or the packet, is the bill from the County Council. And then the last part of the packet is what the Department had originally been working on with Council Member Sinenci's office and the County's archaeologist. So there's three parts of the memorandum.

But the general summary of the bill -- and I do have a short power point here if you're interested -- is to, um, create these new cultural overlay districts. And, um, the bill from the County Council proposes to combine them with Historic Districts, um, to expand the advisory capacities of some of the advisory committees on Maui so that they would also advise the Cultural Resources Commission. It has some changes on how the CRC is set up, appointed. And it has a criteria for grading or grubbing permits. And it also includes a Hana Cultural Overlay District as an example.

The reason it was deferred last time because, um, I think it was getting kind of past 8:30 p.m., and I think we loss quorum so we had to table it for that time. I believe we did open up public hearing just to take testimony, but then we deferred to this meeting.

So Chair Gima, if you want, I can share my screen if you are ready for me to do that. I'll follow your instructions.

Mr. Gima: Yes, by all means, but before that, procedurally do we need to do a public hearing again since we took it the last time?

Ms. Takakura: Chair Gima, we had opened and closed the public hearing. We had opened for testimony at that time, so we don't need to, um, this is not considered a public hearing again because we did open and close at that time, at the last meeting.

Ms. McLean: Yeah, even though this isn't a formal public hearing, it is still an agenda item, and we do need to take testimony.

Mr. Gima: Okay, before you do your power point, can talk a little about --. There were questions about why we had two sets of recommendations, right. We had one that the Planning Department provided us, and there was this draft, discussion draft. And because we don't have minutes, I cannot look up why or what, what we decided. I know we had a testifier that provided lengthy testimony explaining that, but could you summarize that for us again please?

Ms. Takakura: Yes, thank you, Chair Gima. So I do want to acknowledge Gina who is with Council Member Sinenci's office who has been with this bill since the beginning, and she has a great deal of information on how it was established. And then our cultural resources planner, Annalise Kehler, who's also on the call, who's a great resource on all this information. Um, let's see, I have a whole pile of notes from the different commissions so --.

So the purpose -- this is just from my notes from July 20<sup>th</sup>. The purpose was to fill in the gaps because, you know, there is some federal laws and there are some state laws. But, um, you know, we believe that more oversight is needed. And so having a County Cultural Overlay would help fill in those gaps. And it would provide a local review. And this Cultural Overlay, it would be a really good information for property owners so that they know -- you know, before they start anything, they know what to look out for. They know what additional protections

they might need to do. And this came at the suggestion of Dr. Lebo from the State Historic Preservation District. It would really help them because it would supplement their work.

The plan as Dr. Six had explained to -- it might have been to another Commission -- but it would be following something that, I guess, the military uses where you have a low, medium, and high level of sensitivity and things that might be high sensitivity would go before the, could go before the Cultural Resources Commission. But, you know, it's really to give property owners a heads up that, hey, you know, take these precautions or do this research before you start anything not when you're already digging and building and have invested money into things.

One of the things that Gina had also mentioned is that this -- we're thankful to the administration -- that funding has been provided for the creation of a cultural map and that would be island wide, instead by community plan area so, you know, we wouldn't have to do just the Hana Moku. That might be one we want to start with, but, you know, we could actually focus an entire island and not just community plan.

Let's see. Yeah, the other thing that I had mentioned that Gina had recommended that, you know, that things with a higher sensitivity go before the Cultural Resources Commission. And that is my notes from July 20<sup>th</sup>.

Mr. Gima: So, so the Planning Department's recommendation that was provided to us in our July meeting is consistent with the discussion draft points?

Ms. Takakura: Yes. That's correct Chair Gima.

Mr. Gima: Okay. Alright.

Ms. Takakura: I just want to throw in there that the only difference is, you know, the, the initial discussion draft didn't consider some of these changes that are proposed to the make up of the Cultural Resources Commission. And when consulted with the Cultural Resources Commission, you know, they basically supported the Department's bill and, you know, don't feel that any of those changes are necessary. So that's that. The Department is recommending your review and hopefully approval of the discussion draft.

Mr. Gima: Okay, go ahead and share your screen.

Ms. Takakura: Let me try. Share screen. Stop sharing. Do you see a Blue, the BlueJeans? Okay, wrong one. Stop sharing. Now, no? BlueJeans still? Okay. Yeah, I'm really sorry. I'm not sure how this works on --. I'm going to --.

Mr. Gima: Well, Jacky, we all have the power point packet.

Ms. Takakura: Yeah, maybe we just --. Screen two. Yeah, I don't know how to get to that.

Mr. Gima: Commissioners can refer to her slides that came in our packet.

Ms. Takakura: So just for some background information and if you've taken the Native Hawaiian Law course, this will be a review. You know, there are Federal and State Laws that provide some protection for burial and archaeological sites. The County does not have its own regulations. And we know that there are some places that have cultural and archaeological remains. It could be disturbed by development. So by having this cultural overlay it would alert developers, property owners, and neighbors that special consideration may be needed to protect cultural assets. So this bill, as I mentioned, would help fill in the gaps by including a local review. Because I mentioned, you know, there are some Federal laws, and then there's HRS Chapter 6E. Yeah, so this would supplement, not replace any of those.

So the next page, the one that's called background, I think it's page three. As I mentioned, you know, we believe that the existing regulations have proven to be inadequate so County level protections would be really helpful. If you could look at the discussion draft attached to the memo report, and that, that shows the original intent of the bill which was to create an overlay that's in addition to zoning and it does not change the zoning. So what that means is if a parcel is zoned Residential, or Ag, or Rural, it's still Residential, or Ag, or Rural. This is just an overlay, not in addition to zoning.

Some of the parts of the bill in our discussion draft include a nomination process for, you know, what areas would be considered, you know, culturally sensitive. And a designation process by the County Council, GIS maps which as I mentioned are going to be funded and there's positions, so that's great news. We can do the, you know, islands. And then procedures for updates and appeals. And then, of course, you know, we don't want to forget about grading permits because that's important.

So now I'm on slide four of the proposed bill, and this is just a summary of what the bill was that came from the County Council. If you look at this one versus the discussion draft, you can see that the two are pretty different. The proposed bill puts the cultural overlay in with the historic districts, and it changes how the districts are established. It expands the advisory capacities of the Hana, South Maui, and Paia-Haiku Advisory Committees, to make them advisory to the CRC. It would change how the CRC members are appointed, and it would require the Planning Director to appoint the archaeologist even though the archaeologist does not work for the Department of Planning. She works for the Managing Director. It would establish criteria for grading and grubbing permits. And then there's that additional bill that establishes that Hana Cultural Overlay District for Hana Moku. But as Gina had explained, I think it was to Maui and Molokai, that one is an example. The plan now would be to do, you know, an entire island at a time.

So some of our concerns were that, you know, this bill with these proposals to change the Cultural Resources Commission, you know, came out without consulting with the CRC. They should be consulted. And, you know, when we did consult with them, they didn't feel the

changes were necessary. The assignment of staff, like I mentioned, the archaeologist really can't be -- doesn't work for the Department of Planning so that would be kind of awkward.

There's some terminology that is not familiar to us in land use. Although, I guess, these are common terms, like, equal indicators. That's a common term in archaeology. So we've, you know, would have to learn some new terms for us land use planners.

As I mentioned about zoning districts, we want to make sure it's really clear that, a zoning district versus an overlay are two different things, and that we wouldn't lose the zoning district of a parcel. So that this overlay is just, you know, a different, something different. Just, you know, kind of like we have flood zones or special management area.

The process and procedures are different in the proposed bill. We prefer ours. There's a lack of guidelines and restrictions. The grading and grubbing, you know, it really belongs in Title 20 because that's the Chapter that Department of Public Works refers to. They don't really refer to Title 19. That's Planning. And then finally, if, if an overlay was going to be created for a particular zoning district like Hana Moku which was suggested, you know, we should figure out the process first and what's going to be included and what's not included before we, you know, declare an overlay.

So the Lanai Planning Commission can review the bill, we can discuss it further. I do know that our Cultural Resources Planner is here, and also Gina is here. They're, they're great resources on this information. Maybe Lanai Planning Commission want to propose some comments or amendments.

Initially the bill that came from the County Council said they don't want an amended bill back. But, actually, in further discussion, they're, they're fine with accepting an amended bill. So if the Lanai Planning Commission does have amendments, you know, we welcome them. Or the Planning Commission can recommend denial or vote to defer. So, um, hopefully you were able to following along with your PDF of the power point. I'm sorry. I'm just not able to use this computer in the conference room. But that's all I have and we can refer to any page on the slide show that you might, you know, have questions on or anything. And that's all I have. Thank you.

And let me, I would, again, Annalise and Gina are . . . (inaudible) . . .

Mr. Gima: Okay. Thank you, Jacky. Commissioners, any questions, comments?

Ms. Kaye: I think we have to take public testimony. Did I not hear that correctly?

Mr. Gima: Yes. Yeah. Jacky, in the Planning Department's packet, in terms of our options, three of them are listed in the packet. In your power point there are four recommendations.

Ms. Takakura: So Chair, at the time we wrote this memo we were under the impression that the County Council does not wish to receive revised or new legislation. So on page five of the



memo report we had, you know, had these comments, these four bullet items to be recommended. But in further discussions with Gina, Council Member Sinenci's office, we learned that it would be okay to have a revised bill which actually is exactly what we're saying from that discussion draft. So that's what we are recommending. Yeah, you could actually -- I see that on page six I only have three because at the time I didn't know we could propose a bill with revisions. Sorry about that. There was some confusion on this one.

Mr. Gima: So the Planning Department is recommending approval of the proposed bill to the County Council? Is that accurate?

Ms. Takakura: The Planning Department is recommending approval of the discussion draft version.

Mr. Gima: Oh.

Ms. Takakura: We have some serious concerns about the bill that came from the County Council.

Mr. Gima: Okay. Thanks for that clarification. Commission members, any questions for Jacky following her presentation? Okay, Lisa?

Ms. Grove: So is it -- I just want to clear that all of the parties that have been working on this including Sinenci's office are in agreement with the recommendation that you're making? The proposed changes and so on so forth. I think that's what you said, I just wanted confirm.

Ms. Takakura: Thank you Commissioner Grove. If the Chair wouldn't mind calling on Gina. She's such a great resource on this topic. I think she would shed a lot of light on this.

Mr. Gima: Um, yeah, hold on.

Ms. Takakura: Generally speaking.

Mr. Gima: So the Planning Department's recommendation to approve the discussion draft is consistent with Council Member Sinenci's committee. That's what you're asking, right, Lisa?

Ms. Grove: That all parties have come together and have agreed on the, the proposed draft.

Mr. Gima: Okay.

Ms. Takakura: Yes.

Mr. Gima: Okay. So since, since you answered in the affirmative, then, um, maybe we don't need any further clarifications. Okay, any other comments, questions, about the Planning Department's recommendation to approve the discussion draft to the Maui County Council?

Or, do you want to, do you have any comments or amendments to the discussion draft that goes to the County Council?

Ms. Takakura: Excuse me Chair Gima? I just want to say one thing. May I? Jacky.

Mr. Gima: Sure.

Ms. Takakura: So in the discussion draft, page three and five, where we refer to the various agencies, such as the burial councils, we need to add Molokai Burial Council. And that's on page three and five. That Burial Council is separate from the Maui and Lanai one. That's all.

Mr. Gima: Okay. So that would be an amendment to --. Page five. Okay, Molokai. Alright, what's your pleasure Commissioners?

Mr. Whittaker: Chair, before you call for a vote, Michele McLean was correct that although you held your public hearing, this is an agenda item. So just -- I don't think there's anybody here to testify, but we should call for public testimony before engaging in deliberation.

Mr. Gima: Thanks for the reminder both from you and Lisa. Okay, so Leilani, do we have anybody wishing to testify on this agenda item.

Ms. Ramoran-Quemado: Chair, there's no one signed up to testify.

Mr. Gima: Okay. Denise, anybody at the Lanai office wanting to testify?

Ms. Fernandez: There are no testifiers at the Lanai Office.

Mr. Gima: Okay. Thank you, Denise. At this time, I'll close public testimony. Hearing no discussion on this item --

Ms. Kaye: I'm sorry. I'm sorry.

Mr. Gima: Who's --?

Ms. Kaye: That's me.

Mr. Gima: Oh, Sally?

Ms. Kaye: Sorry Chair. Yes, I'm sorry. I have some typographical changes. I would be happy to e-mail them to the Planning Department. But the one that really sticks out at me is on page five, under section two, there's add ethnographic and scientific data Janet to work on which probably --. I mean we can't approve this with that, with that in there. We can't recommend approving it with that in there. And the others are really stylistic. I don't want to take up

people's time. It's like my job to find typos and I'd be to just do it. I mean, you can take it as a citizen. It doesn't have to come the Commission, but I do have a few typos recommendations.

Ms. McLean: Thank you, Sally. Chair, we can, if the Commission is going to make a motion to recommend approval of the bill, then that motion can include deleting that last phrase from section two. And thank you so much for pointing that out. I swear we didn't put that in that just to test you to see that you read the whole bill. Um, so you would want to take that out. Then, we always have the authority to make non-substantive grammatical changes. So if you want to send those along, we'd be happy to incorporate them too. That doesn't need to be a part of your motion.

Ms. Kaye: Thank you.

Mr. Gima: Okay, thanks Sally. Before we move to that, Zane and Sally, your video is off. So in order to vote, you need to be on video.

Mr. de la Cruz: I may need to log off again because it's not showing.

Ms. McLean: I can see their video.

Mr. Gima: . . . (inaudible) . . . off.

Ms. Grove: Am I off for everyone because I'm here.

Mr. Gima: I don't know why your video is on . . . (inaudible) . . .

Mr. de la Cruz: I can see you.

Ms. Atacador: I can see you too.

Mr. Gima: Okay, there we go. Okay, at this time, I will entertain a motion to recommend approval of the discussion draft as amended to the Maui County Council.

Ms. Grove: So moved.

Ms. Kaye: Second.

Mr. Gima: Okay. It's been moved by Commissioner Grove, seconded by Commissioner Kaye that we recommend approval of the discussion draft as amended to the Maui County Council. Any further discussion? Okay, hearing none, all in favor please raise your hands. Okay, all opposed? Raise your hand. Any abstentions, raise your hand. Okay, motion passes unanimously. Thank you.

***It was moved by Ms. Elisabeth Grove, seconded by Ms. Sally Kaye, then unanimously***

**VOTED:**        ***To recommend approval of the discussion draft, as amended, to the Maui County Council.***

(Assenting:    *N. Alboro, E. Atacador, Z. de la Cruz, E. Grove, R. Gima, S. Kaye, S. Menze, S. Preza, C. Trevino)*

**B.     PUBLIC HEARING (Action to be taken after public hearing.)**

**1. A BILL FOR ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO TRANSIENT ACCOMMODATION CAPS**

Mr. Gima: Um, okay, procedurally, Corp Counsel, um, what, what is the -- Michele what are you guys recommending regarding the first agenda item?

Ms. McLean: Keola, if you want to jump in first. I don't think it matters. We say the same thing, I think.

Mr. Whittaker: Sure. So I believe it was Commissioner Alboro who wasn't here for the vote, so you may want to re-do the motion and get her input. I think there were two sort of different options, each that received four votes, so maybe get her thoughts after making a motion on it and perhaps we can to five votes on a motion.

Ms. McLean: . . . (inaudible) . . .

Ms. Grove: . . . (inaudible) . . . Commissioner Menze on the first round of voting?

Ms. McLean: I was just going to add that. I think Commissioner Menze had been locked out.

Ms. Menze: Yeah, I was locked out.

Mr. Whittaker: Okay, so both. So I would recommend re-doing the motion and seeing if we can get to a majority.

Mr. Gima: So, do we have to, um, make available to Nikki and Sherry both motions or just the main motion?

Mr. Whittaker: What I'd recommend is doing the main motion, and perhaps Shelly can explain the amendment that she made, and there can be a discussion about that...and then go from there. And you could make the main motion, have Shelly make her amendment and see if you can get a vote on the amendment. And if that vote fails, then go back to the main motion and take a vote on that. So there's multiple ways to do this. . . . (inaudible) . . .

Ms. McLean: Chair, if I can assist a little bit. Just to refresh the Commissioners who were

MICHAEL P. VICTORINO  
Mayor  
MICHELE CHOUTEAU MCLEAN, AICP  
Director  
JORDAN E. HART  
Deputy Director




**DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793**

July 7, 2022

**MEMORANDUM**

**TO: MAUI COUNTY CULTURAL RESOURCES COMMISSION  
MOLOKAI PLANNING COMMISSION  
LANAI PLANNING COMMISSION  
MAUI PLANNING COMMISSION**

**FROM: MICHELE CHOUTEAU MCLEAN, AICP**   
**PLANNING DIRECTOR**

**SUBJECT: BILLS FOR ORDINANCES 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 CREATION OF MAUI COUNTY CULTURAL OVERLAY  
DISTRICT DESIGNATION PROCESS; AND CHAPTER 19.50,  
MAUI COUNTY CODE, ESTABLISHING A HANA CULTURAL  
OVERLAY DISTRICT**

The attached Resolution No. 22-79, FD1 was adopted by the County Council on April 1, 2022 which transmits two proposed bills for ordinance for the following:

1. Combine the provisions of the historic districts with new cultural overlay districts and change how such districts are established; expand the advisory capacities of the Hana, South Maui and Paia-Haiku Advisory Committees to make them advisory to the Maui County Cultural Resources Commission (CRC) in addition to the Maui Planning Commission; change how CRC members are appointed; require the planning director to appoint the principal archaeologist to serve as a resource to the CRC; and establish criteria for grading or grubbing permits in the cultural overlay district.
2. Establish a Hana Cultural Overlay District for all land situated within the Hana Moku.

Please refer to the attached bills for more information.

The Department of Planning (Department) worked with Councilmember Shane Sinenci and the County's principal archaeologist on a draft bill relating to cultural resources overlays that

would be distinct from and in addition to zoning districts; however, the proposed bills before you have been revised in both process and content. The Department supports the intent of the proposed bills, but supports the earlier approach and does not support all parts of the proposed bills or their approach. A “discussion draft” version of a proposed bill using the earlier approach is attached for information and context.

### **Background Information**

Currently, federal and state laws provide some protection for cultural resources. In 1990, the United States government passed the Native American Graves Protection and Repatriation Act (NAGPRA), which provides procedures for the safe return of culturally significant items that are encountered on federal lands, Native American tribal lands, Hawaiian Home Lands, or housed in repositories such as museums, federal agencies, and other entities or institutions receiving federal funds. NAGPRA covers native human remains, funerary objects/moepū, sacred objects, and objects of cultural patrimony.

On the state level, Hawaiʻi Revised Statutes Chapter 6E covers the state historic preservation review process and Native Hawaiian burial sites, *i.e.*, a site not situated in a known, maintained, actively used cemetery, where iwi are discovered or known to be present and appear to be at least 50 years old. The State Historic Preservation Division (SHPD) reviews and comments on projects that may affect historic properties, including Native Hawaiian burial sites. For burials identified through an archaeological inventory survey or known through oral or written testimony, the Island Burial Council determines whether to preserve in place or relocate previously identified iwi kupuna.<sup>1</sup>

The County follows state and federal regulations regarding protection of cultural resources and, in some cases, is responsible for enforcing them. Because there are cases where there is no clear enforcement authority (for example, SHPD does not have inspectors), and because there appears to be some dissatisfaction with existing federal and state protection of cultural resources and sites, County-level cultural protections are being proposed.

### **Details of the Proposed Bills**

The first proposed bill for ordinance includes the following:

1. The Hana advisory committee, and the two new advisory committees for South Maui and Paia-Haiku, become advisory to the CRC, in addition to the Maui Planning Commission. They could hold public hearings and carry out duties on behalf of the CRC upon request.
2. Six members of the CRC would be appointed by the County Council and three members would be appointed by the Mayor. Currently, all members are appointed by the Mayor and

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<sup>1</sup> Baldauf, N. (2020) *Iwi Kupuna Native Hawaiian Burial Laws*. Native Hawaiian Law Training Course

confirmed by the Council.

3. The Planning Director must appoint the County's principal archaeologist to serve as a resource to the CRC and the principal archaeologist must serve as a liaison to SHPD.
4. Chapter 19.48 is updated to allow for properties to be designated Cultural Overlay District for areas that contain a great density of cultural and archaeological resources or other relevant characteristics indicating the potential for cultural resources that could be disturbed by development.
5. A new definition is created for "archaeological eco-indicator" which means "any organism or physical land feature indicative of an environment or set of environmental conditions relating to cultural resources."
6. A new definition is created for "cultural overlay district" which 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."
7. A cultural overlay district is created by nominating a site to the CRC, which then must consult with SHPD, the Island Burial Council, Office of Hawaiian Affairs (OHA), and the appropriate planning commission. The criteria for the cultural significance of the site is listed in the bill. The County Council ultimately establishes the cultural overlay district by ordinance.
8. Amends the grading and grubbing permit processes to incorporate consideration of the cultural overlay districts.

The second proposed bill establishes the Hana cultural overlay district for the entire Hana Moku.

#### **Agency Comment**

The Department contacted the following State agencies for comments on April 14, 2022: Department of Business, Economic Development and Tourism, Office of Planning and Sustainable Development, Department of Land and Natural Resources, and OHA. At this time none replied by the deadline for this memorandum. The Department of Public Works was also asked to review the proposed bills.

#### **Department Concerns with the Proposed Bills**

**Sec. 2.28.050:** The CRC should be consulted on the proposal to make the three advisory committees advisory to them and how the CRC would request advisory committee review. It is not clear what the advisory committees would review for the CRC.

**Sec. 2.88.030:** The Department believes that members of the CRC should continue to be appointed by the Mayor and confirmed by the Council. It is fundamental that both the Administration and Council have a role in all board and commission appointments. The CRC has had difficulty maintaining quorum for years, and the Department suggests that the CRC consist of

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seven members instead of nine. This suggestion should be reviewed by the CRC, however.

**Sec. 2.88.090:** The Department does not have the authority to appoint the principal archaeologist, who is an employee of the Department of Management. The term "principal archaeologist" should be defined if it will have duties pursuant to this ordinance. This provision could be revised to state that the Planning Director must appoint an employee of the Department with expertise in archaeology, architecture, architectural history, Hawaiian culture, history or historic preservation to support the CRC and act as liaison to SHPD, and that other County personnel may act as liaison to SHPD.

**Sec. 19.48.015:** The prior approach used terms such as cultural landscape, cultural sensitivity and historic property, which are more common and intuitive. The term "eco-indicator" does not appear to have an obvious existing contextual relationship to cultural resources or archaeology. Rather than creating new terms, existing terms should be used and defined in plain language.

**Sec. 19.48.020:** The bill states "the cultural overlay district does not alter the underlying zoning of a property." A cultural overlay district should not be defined as zoning or called a "district." Parcels normally follow a single chapter in the code such as Residential or Agriculture or Hotel, not multiple chapters. There are clear exceptions for specific purposes like parking, home businesses or accessory dwellings. It is not clear how a parcel would be subject to two zoning districts as they relate to land use. The prior version of the bill created an actual overlay, similar to the Special Management Area (SMA). Like SMA, it would provide additional restrictions, protections and review in addition to the restrictions and standards of the underlying zoning district.

The bill states that the nomination process is initiated by an agency, organization or individual, ~~then it states the principal archaeologist must prioritize areas for recommendation to the CRC for establishment of the districts. This should be reconciled.~~

The Department does not think that the establishment of historic districts and cultural overlay districts should be intermingled; they have different purposes and functions. Historic Districts appear to remain as actual zoning districts while cultural overlay districts appear to be regulations in addition to zoning, and yet they are established the same way. This is faulty.

For example, a proposed historic district for a town like Makawao, which would seek to protect its architectural design and upcountry character, should not be reviewed by the burial council or OHA. The criteria also neglect areas with architectural significance or that are associated with historic periods rather than just one historic event. At the same time, the criteria miss the concept of cultural landscapes that might occupy several lots or parcels.

**Sec. 19.52.020:** The proposed changes to this section are not substantive and greatly improve the current language and clarify the existing process. However, this section provides no



guidelines, process or restrictions for proposed development within a cultural overlay district, only in historic districts. In effect, the bill allows the creation of cultural overlay districts without any accompanying restrictions or standards. The prior approach, as noted in the attached “discussion draft” calls for cultural sensitivity designation levels based on specific criteria and for certain types of permits and approvals to be reviewed differently if they are within a cultural overlay. These provisions are lacking from the proposed bill.

**Sec. 19.52.025:** Regulations or processes relating to grading or grubbing permits do not belong in Title 19. They belong in Title 20, which the bill also provides.

Additional staff may be needed to assist the principal archaeologist.

The establishment of the Hana cultural overlay district should be initiated after the process to create cultural overlays is established. The proposed nomination does not comply with the criteria of the proposed legislation; for example, it does not include the inventory of sites within the district, or the other criteria established in Sec. 19.48.020 of the proposed bill. The associated map and text do not clearly articulate the geographic limits of the proposed district. The associated map makes reference to moku areas extending makai of the shoreline. The County’s jurisdiction ends at the shoreline where the State’s jurisdiction begins. County legislation should be limited to the boundaries of the County’s jurisdiction.

### **Recommendation and Options**

The Resolution specifically states that the County Council does not wish to receive revised or new legislation. However, the Department cannot recommend approval of the proposed bill as drafted. The Department recommends that the proposed bill be revised to:

- Create a separate chapter in Title 19 for cultural overlays rather than adding them to the existing historic districts.
- Create a clear and logical process to establish cultural overlays that uses commonly recognized terms and definitions, uses most of the criteria from the proposed bill, and involves the principal archaeologist, CRC and planning commissions with final approval by the County Council.
- Adds restrictions and guidelines for properties that are within cultural overlays to protect cultural resources, including provisions relating to grading and grubbing permits.
- Includes public and landowner notification before a cultural overlay is established, and rights to appeal decisions relating to the establishment of a cultural overlay.

Some of these recommendations are featured in the prior approach provided in the attached “discussion draft.”

The commission has the following options:

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1. Recommend approval of the proposed bill with or without comments or recommended revisions to the Maui County Council.
2. Recommend denial of the proposed bill to the Maui County Council.
3. Vote to defer action on the proposed bill in order to gather specific additional information.

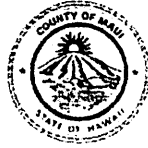
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Attachments

CC: Hana Advisory Committee  
Annalise Kehler, Cultural Resources Planner

KATHY L. KAOHU  
County Clerk



JAMES G.M. KRUEGER  
Deputy County Clerk

**OFFICE OF THE COUNTY CLERK**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/county/clerk](http://www.mauicounty.gov/county/clerk)

April 6, 2022

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino* 4/7/22  
Mayor Date

For transmittal to:

Ms. Michele McLean  
Planning Director  
County of Maui  
Wailuku, Hawaii 96793

Dear Ms. McLean:

Transmitted herewith is a certified copy of Resolution No. 22-79, FD1, which was adopted by the Council of the County of Maui, State of Hawaii, on April 1, 2022. Also attached is a copy of Committee Report No. 22-24.

Respectfully,

*Kathy L. KaoHu*

KATHY L. KAOHU  
County Clerk

/lks

Enclosure

# Resolution

No. 22-79, FD1

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.

APPROVED AS TO FORM AND LEGALITY:

*Stephanie Chen*

STEPHANIE M. CHEN  
Department of the Corporation Counsel  
County of Maui

pa:ans:22-073a

INTRODUCED BY:

James M. Shannon

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

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 resources 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 or Maui County cultural resources commission. Each recommendation must be read aloud during the Maui planning commission's or the Maui County cultural resources 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] also referred to as the "commission."

B. The commission [shall] 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 appointments. Commission members should have a demonstrated interest, competence, and knowledge in historic and cultural resources preservation.

C. The majority of the commission 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 to the extent such professionals are available in the community. The commission [shall] 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] 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 of the County of Maui (1983), as amended, shall apply to the commission.] Sections 13-2.2 and 13-2.6 through 13-2.15 of the revised charter of the County of Maui (1983), as amended, apply to the commission.

E. All future appointments to the commission [shall] 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.

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

1. The member has provided the mayor, the council, or the commission 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 mavor-appointed seats will be filled by the mavor."

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 commission. 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."

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:**

<b>19.48.010</b>	<b>Title and purpose.</b>
<b>19.48.015</b>	<b><u>Definitions.</u></b>
<b>19.48.020</b>	<b><u>Establishment or modification of districts—</u> <b>Report and hearing.</b></b>
<b>19.48.030</b>	<b>Applicability.</b>
<b>19.48.040</b>	<b>Administration.</b>
<b>19.48.050</b>	<b>Enforcement.</b>
<b>19.48.060</b>	<b>Reserved.</b>

**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 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, or archaeologically significant, and valuable to the public. Establishment of historic districts and cultural overlay districts also serves 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.

“Commission” 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 district or cultural overlay district boundaries. Upon a determination by the commission that the nomination is complete, the nomination must be forwarded by the commission to the State historic preservation division, appropriate burial council, and the State office of Hawaiian affairs for review and comment. The commission must hold a public hearing on the nomination and make findings regarding the significance of the district. Upon a determination by the commission that a geographically defined area is historically or culturally significant, the commission 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 cultural resources commission'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 is culturally significant 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. Consists of or exists in close proximity to a known burial site or burial grounds.

C. The principal archaeologist must prioritize areas for recommendation to the commission 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] commission.

**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] commission [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. The [cultural resources] commission may delegate the approval of certain minor applications to the planning director [pursuant to] in accordance with the [cultural resources] commission’s rules of practice and procedure.

C. The [cultural resources] commission [shall] 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] the commission, and [shall] must review the plans according to procedures [as] set forth in this article.

D. The [cultural resources] commission [shall] 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 commission 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 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 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 to disapprove [such] the plans [shall be considered] is a final decision of the [cultural resources] commission 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] 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 established in this article 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 commission. The commission 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.

B. 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 site, burial ground, burial 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] may 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, 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."

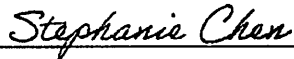
SECTION 9. Section 20.08.160, Maui County Code, is amended to read as follows:

**"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 planning director 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:



STEPHANIE M. CHEN  
Department of the Corporation Counsel  
County of Maui  
LF2021-0010  
APT-39 2022-03-30 Ord Amd Ch 2.28, 2.88, 19.48, 19.52, & 20.08  
apt:misc:039abill03\_exhibit1

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.

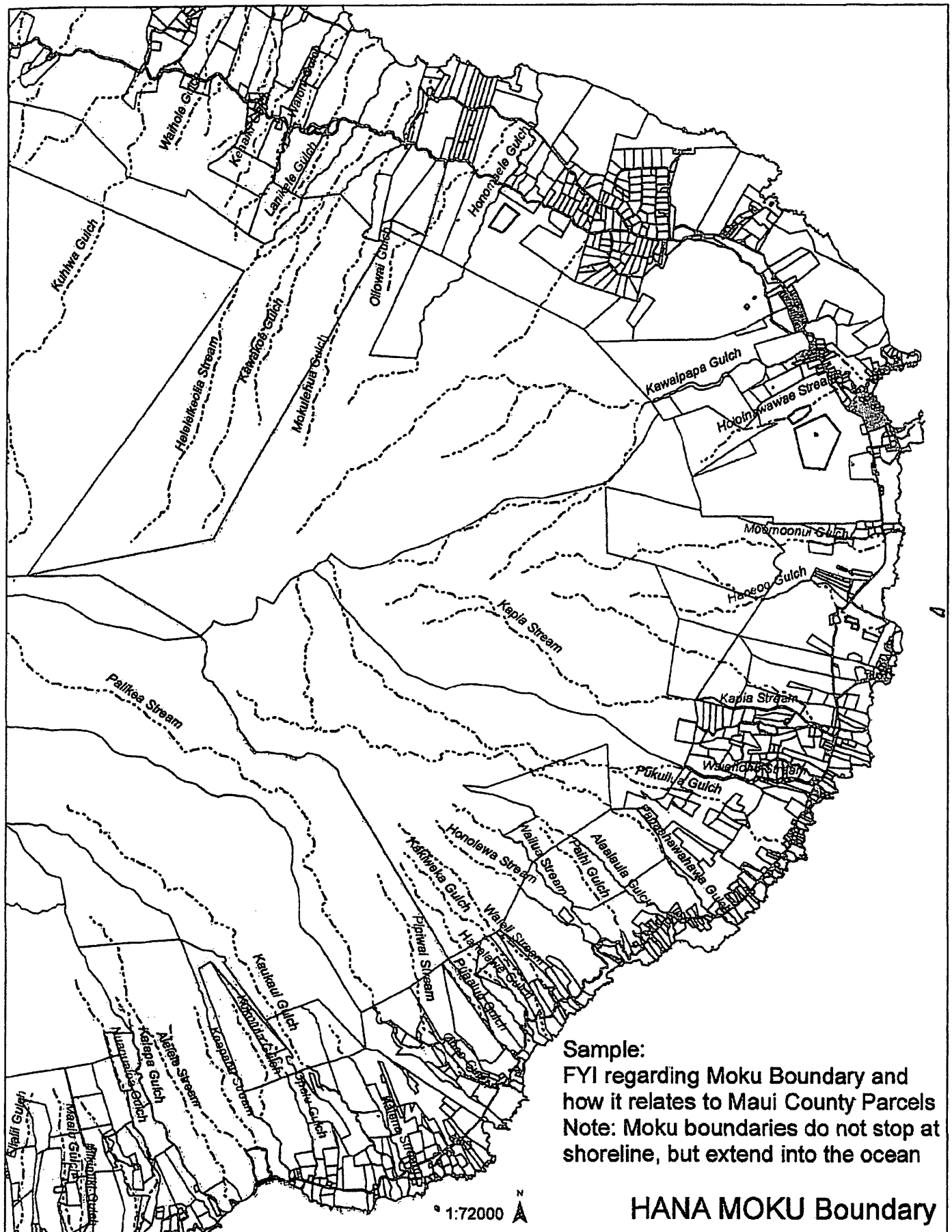
APPROVED AS TO FORM AND LEGALITY:

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STEPHANIE M. CHEN  
Department of the Corporation Counsel  
County of Maui

apt:misc:039abill02\_exhibit2

Exhibit “2”



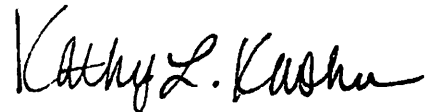
# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 22-79, FD1, was adopted by the Council of the County of Maui, State of Hawaii, on the 1st day of April, 2022, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



---

COUNTY CLERK

**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

March 18, 2022

**Committee**  
**Report No. 22-24**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Agriculture and Public Trust Committee, having met on November 30, 2021, and February 22, 2022, makes reference to County Communication 21-534, from Councilmember Shane M. Sinenci, transmitting a proposed resolution entitled "REFERRING TO THE LĀNAʻI, MAUI, AND MOLOKAʻI PLANNING COMMISSIONS AND THE MAUI COUNTY CULTURAL RESOURCES COMMISSION PROPOSED BILLS RELATING TO CULTURAL OVERLAY DISTRICTS."

The purpose of the proposed resolution is to refer to the Lānaʻi, Maui, and Molokaʻi Planning Commissions and the Maui County Cultural Resources Commission two proposed bills, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY DISTRICT ZONING," and "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH THE HANA CULTURAL OVERLAY DISTRICT," for review and comment.

The purposes of the proposed bills are to amend Title 19, Maui County Code, to establish cultural overlay district zoning and a Hāna cultural overlay district to protect important cultural resources and promote careful planning and preservation for the benefit of future generations.

By correspondence dated February 16, 2022, the Chair of your Committee transmitted a revised proposed resolution and attached revised proposed bills 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 CULTURAL RESOURCES COMMISSION AND MAUI

**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

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**Committee**  
**Report No.** 22-24

COUNTY CULTURAL OVERLAY DISTRICTS,” and “A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING THE HĀNA CULTURAL OVERLAY DISTRICT.”

Your Committee noted cultural overlay districts are geographically definable areas with features that are culturally, historically, or archaeologically significant, such as iwi kūpuna (ancestral remains), burial sites, historical sites, and cultural artifacts.

Your Committee also noted the need for cultural overlay districts to protect and preserve cultural resources in sensitive areas, ensure better planning and development in and around these areas, and prevent or mitigate disturbances and other issues.

As an overarching statement in support of cultural preservation, your Committee notes the Countywide Policy Plan states: “That which makes Maui County unique in the world will be preserved, celebrated, and protected for generations to come.”

Your Committee further notes establishing cultural overlay districts would advance the following County of Maui, 2030 General Plan directives:

**Countywide Policy Plan**

Objective B.4: Preserve and restore significant historic architecture, structures, cultural sites, cultural districts, and cultural landscapes. (page 49)

**Maui Island Plan**

Objective 2.1: Our community respects and protects archaeological and cultural resources while perpetuating diverse cultural identities and traditions. (page 2-10)

**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

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**Committee**  
**Report No. 22-24**

Objective 2.2: A more effective and efficient planning and review process that incorporates the best available cultural resources inventory, protection techniques, and preservation strategies. (page 2-11)

Your Committee received public testimony in unanimous support of the overall policy and goals of the proposed legislation.

Your Committee noted the proposed bills were developed in collaboration with the County's Principal Archaeologist, Department of Planning, and the Department of the Corporation Counsel.

Your Committee discussed the proposed bill relating to the Cultural Resources Commission ("CRC") and cultural overlay districts, including the following proposals:

- In addition to advising the Maui Planning Commission, the Hāna, South Maui, and Pa'ia-Ha'iku Advisory Committees would also advise the CRC. (Section 2.28.050)
- Model the CRC appointment process and vacancy procedures to match those of the advisory committees, with six members appointed by the Council, and three members appointed by the Mayor. (Section 2.88.030)
- Require CRC members to have knowledge of cultural resources preservation. (Section 2.88.030)
- Appoint the Principal Archaeologist as a resource person to the CRC and to act as the liaison to the State Historic Preservation Division. (Section 2.88.090)



**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

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**Committee**  
**Report No. 22-24**

- Amend the title and purpose, and add definitions for “archaeological eco-indicators,” “commission,” and “cultural overlay districts.” (Sections 19.48.010 and 19.48.015)
- Delineate the process and criteria for nominating and establishing districts, including review by the Principal Archaeologist, CRC, appropriate planning commissions, and Council. (Section 19.48.020)
- Include the Planning Director in the review process for historic districts. (Section 19.52.020)
- Place review authority for cultural overlay districts with the CRC and the Principal Archaeologist. (Section 19.52.025)
- Require applications for grading or grubbing permits to be reviewed by the Principal Archaeologist. (Section 20.08.160)

Your Committee discussed further revising the proposed bill, including the following amendments:

- Provisions relating to the Hāna Advisory Committee should also include the South Maui and Pa‘ia-Ha‘iku Advisory Committees, as well as any new advisory committee that may be created.
- Provisions relating to the Maui Planning Commission and CRC should also include the Lāna‘i Planning Commission and Moloka‘i Planning Commission.

The Principal Archaeologist said cultural overlay districts would inform residents, the public, and potential developers that special considerations may be needed to accommodate cultural resources.

**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

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**Committee**  
**Report No. 22-24**

A Deputy Corporation Counsel said the proposed legislation would apply only to ground-altering activities and would not affect underlying zoning, but would place an additional level of review when the proposed criteria were met.

Your Committee discussed the presence of cultural resources and sensitive areas throughout the County, and supported prioritizing and designating sites that are already known and under threat, even if located within a larger area that has yet to be completely mapped or designated.

Your Committee also discussed the proposed bill to establish the Hāna Cultural Overlay District was provided primarily for illustrative purposes.

Your Committee voted 6-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Sinenci, Vice-Chair Johnson, and members King, Molina, Paltin, and Rawlins-Fernandez voted "aye." Committee member Lee was excused.

Your Committee is in receipt of a revised proposed resolution attaching revised proposed bills, 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," and "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.50, MAUI COUNTY CODE, ESTABLISHING THE HĀNA CULTURAL OVERLAY DISTRICT," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Agriculture and Public Trust Committee **RECOMMENDS** the following:

1. That Resolution 22-79 as revised herein and attached hereto, entitled "REFERRING TO THE LĀNA'I, MAUI, AND

**COUNCIL OF THE COUNTY OF MAUI**  
**AGRICULTURE AND PUBLIC TRUST**  
**COMMITTEE**

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**Committee**  
**Report No. 22-24**

MOLOKA'I PLANNING COMMISSIONS AND THE MAUI  
COUNTY CULTURAL RESOURCES COMMISSION PROPOSED  
BILLS RELATING TO CULTURAL OVERLAY DISTRICTS," be  
ADOPTED; and

2. That County Communication 21-534 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of  
the Council.



SHANE M. SINENCI, Chair

apt:cr:22039aa:ans

**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 22-24 were adopted by the Council of the County of Maui, State of Hawaii, on the 1st day of April, 2022, by the following vote:**

<b>MEMBERS</b>	<b>Alice L. LEE Chair</b>	<b>Keani N. W. RAWLINS- FERNANDEZ Vice-Chair</b>	<b>Gabriel JOHNSON</b>	<b>Natalie A. KAMA</b>	<b>Kelly T. KING</b>	<b>Michael J. MOLINA</b>	<b>Tamara A. M. PALTIN</b>	<b>Shane M. SINENCI</b>	<b>Yuki Lei K. SUGIMURA</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>

**Resolution No. 22-79, FD1 was Adopted.**



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**COUNTY CLERK**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2022)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO  
ESTABLISH CULTURAL OVERLAY DISTRICTS

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

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

**"Chapter 19.46**

**CULTURAL OVERLAY DISTRICTS**

Sections:

<b>19.46.010</b>	<b>Title and purpose</b>
<b>19.46.020</b>	<b>Establishment</b>
<b>19.46.030</b>	<b>Requirement for cultural sensitivity designation.</b>
<b>19.46.040</b>	<b>Designation updates</b>
<b>19.46.050</b>	<b>Appeals</b>
<b>19.46.060</b>	<b>Regulations based on cultural sensitivity designation.</b>

**19.46.010. Title and purpose.** The ordinance codified in this article is known and may be cited as the "Maui County Cultural Overlay District Ordinance." As stated in the Countywide Policy Plan, Maui County government has a responsibility to protect cultural resources. Certain geographically definable areas contain a great density of cultural and archaeological remains to the extent that development in these areas is highly likely to disturb archaeological and burial sites. Many of these sites are likely significant, and require consideration and careful planning to ensure that the past is not erased but preserved for the benefit of generations to come.

The establishment of cultural overlay districts or cultural overlays in culturally sensitive areas will alert developers, property owners, and nearby residents that special consideration may be needed to protect cultural assets and lay out an efficient review process.

**19.46.020 Establishment.** A. Cultural overlay district designations are in addition to zoning and do not change the zoning designation of land.

B. Any person or agency may nominate an area for cultural overlay district designation.

C. The County of Maui principal archeologist must provide a nomination application which must include the following:

1. Applicant name and contact information
2. Overlay district map
3. Regional map
4. Photos of the area if possible
5. Information on the area's fulfillment of the criteria listed in 19.46.020H.
6. Other relevant information.

D. Nomination applications must be submitted to the principal archeologist.

E. There is no fee for nomination applications.

F. Complete applications meeting the criteria established in 19.46.020H must be processed by the principal archeologist and a proposed bill for an ordinance must be drafted by the principal archeologist and a cultural overlay district map by county Geographic Information System (GIS) staff within 90 days of submittal of a complete application and submitted to the County Council who must process the bill in accordance with 19.46.020.I.

G. Utilizing GIS technology to display a wide range of cultural information spatially employing a cultural landscape approach.

H. Criteria for cultural overlay district designation. A cultural overlay district must be a geographically definable area that is culturally significant and must exhibit one or more of the following:

1. Have a pattern of or complex of sites that exhibit integrity and have the potential to reveal further information about Maui County's history, and meet at least one of the following criteria:
  2. Be associated with historic events that made contributions to broad patterns of Maui County's history.
  3. Be associated with an important person from Maui County's past.
  4. Be an example of a particular type, period, or method of construction, or have high artistic value.

5. Have potential to reveal further information about Maui County's history (pre- or post-contact).

6. Have important value to Native Hawaiian people or to another ethnic group because of associations with cultural practices or because of associations with traditional beliefs events, or oral accounts that are important to the group's history and cultural identity.

7. Have religious value in the established traditions of the Hawaiian culture.

8. Retain components of a traditional lifestyle are widely recognized as important in maintaining the cultural identity of the community

9. Are or are in close proximity to a known burial site or burial grounds

I. Procedure for cultural overlay district designation. Council shall designate overlay districts by ordinance. The Council shall transmit a copy of the bill to the respective Planning Commission, Cultural Resources Commission, Maui Lānaʻi Island Burial Council, Office of Hawaiian Affairs, and Department of Land and Natural Resources State Historic Preservation Division, which shall have 120 days to provide a recommendation to the Council. If no recommendation or comments are provided, Council may act on the bill.

**19.46.030. Requirements for cultural sensitivity designation.** A. The principal archaeologist working with county GIS staff is responsible for establishing and updating each cultural overlay district map within 30 days of a new or updated overlay district ordinance.

B. In a cultural sensitivity designation, the principal archaeologist must determine which of the following criteria listed in 19.46.020H exist on the property and display each generally on the cultural overlay district map.

C. The level of cultural sensitivity may be high, medium, or low based on the quantity of culturally sensitive criteria as defined in 19.46.020H:

1. Areas that contain four or more of the criteria are deemed to have a high level of sensitivity and be displayed in red on any County mapping.

2. Areas that contain two or three of the criteria must receive a medium designation and be displayed in yellow on any County mapping.

3. Areas that contain one of the criteria must receive a low designation and be displayed in green on any County

mapping, provided that areas with known burials are deemed to have a high sensitivity.

D. Prior to the issuance of any of the following approvals for property located within a cultural district overlay district, the principal archaeologist must establish a cultural sensitivity designation:

1. Change in zoning under section 19.510.040.
2. Community plan amendment under section 2.80B.110.
3. Conditional zoning under section 19.510.050.
4. District boundary amendment under chapter 19.68.
5. Grading or grubbing permit under chapter 20.08.
6. Special use permit under section 19.510.070.
7. Subdivision approval under section 18.08.100.

E. A separate permit fee is required for applications listed in 19.46.030D and located in a cultural overlay district. The permit fee is to be dedicated to a cultural resource protection revolving fund.

**19.46.040 Designation Updates.** Cultural sensitivity levels may change as new information is discovered and recorded.

1. As new information is received by the principal archeologist from SHPD, private or public archeologists, or lineal descendants the information shall be placed onto a draft update map by County GIS staff. Update map adoption bills shall be provided to the Council at least every six months.

2. Any person or agency may request a draft property sensitivity designation update, provided new information has been submitted about the subject property or properties located within a designated radius based upon the archaeological, ethnographic and scientific including soil and drainage as provided in administrative rules. Draft property sensitivity designation update adoption bills based upon a request by a person or agency shall be submitted to the Council within 30 days of the request.

3. Council shall have 90 days to act on cultural district overlay district map update bills. Bills not acted on are deemed approved.

**19.46.050 Appeals.** Appeals of a designation or designation update may be made by a property owner or a lineal descendent to the County Council within forty-five days from the date of determination. The Council may set a new designation by adoption of a resolution.

**19.46.060 Regulations based on cultural sensitivity designation.** A. For land within a cultural overlay district, if historic property is identified, activities granted by the permit must



stop until approval to proceed is granted by the State historic preservation division and the principal archaeologist.

B. For land within a cultural overlay district, onsite monitoring by a professional approved by the State historic preservation division and the principal archaeologist may be provided during ground-altering activities.

C. For land within a cultural overlay district, the principal archeologist may impose conditions on the permit triggering the review to mitigate potential impacts, including site avoidance.

D. For land within a cultural overlay district with a medium or high cultural sensitivity, the permit and project information may be transmitted to the State Historic Preservation Division, Cultural Resource Commission, Maui Lanai Island Burial Council, Aha Moku Council, Office of Hawaiian Affairs, and Department of Hawaiian Homelands as applicable for review and comment to assist the principal archeologist in establishing permit conditions.

E. For land within a high designation area, development may not be initiated until a cultural site avoidance plan or plan reviewed by the principal archeologist and approved by the Maui Lānaʻi Island Burial Council and or Cultural Resource Commission as applicable.

SECTION 2. Section 1.04.010, Maui County code, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Cultural landscape approach means using a holistic overview incorporating the principals of ecosystem management. This includes understanding the spatial relationships among cultural resources in relation to the natural and built environment. Add ethnographic and scientific data Janet to work on

SECTION 3. Section 18.08.100, Maui County code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“E. In a cultural overlay district, the principal archaeologist must establish a cultural sensitivity designation and may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 4. Section 19.04.040, Maui County code, is amended by adding new definitions to be appropriately inserted and to read as follows:

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

“‘Overlay district’ or ‘overlay’ means the same as in section 2.80B.020.”

SECTION 5. Section 19.06.010, Maui County code, is amended to read as follows:

**19.06.011 Overlay district districts designated.** The County has the following overlay districts in addition to the use zone districts provided in 19.06.010:

A. Cultural overlay districts:

SECTION 6. Section 19.68.040, Maui County code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“D. In a cultural overlay district, the principal archaeologist must establish a cultural sensitivity level and may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 7. Section 19.510.040, Maui County code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“D. In a cultural overlay district, the principal archaeologist must establish a cultural sensitivity level and may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 8. Section 19.510.050, Maui County code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“I. In a cultural overlay district, the principal archaeologist must establish a cultural sensitivity level and may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 9. Section 19.510.070, Maui County code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“F. In a cultural overlay district, the principal archaeologist must establish a cultural sensitivity level and may establish permit conditions to mitigate any potential impacts before approval.”

SECTION 10. Subsection 19.510.010.D.9, Maui County Code, is amended to read as follows:

“9. Preliminary archaeological and historical data and comments from the department of land and natural resources and office of Hawaiian affairs of the State, and if applicable, a preservation/mitigation plan which has been reviewed and approved by the department of land and natural resources and office of Hawaiian affairs of the State; if located in a cultural overlay district and subject to Section 19.46.030, the cultural sensitivity level established by the principal archaeologist;”

SECTION 11. Subsection 20.08.040 is amended by adding a new subsection to be appropriately inserted and to read as follows:

“E. No person shall commence or perform any cut or fill on land located in a Cultural Overlay District as defined in Chapter 19.46, Maui County Code without a grading permit.”

SECTION 12. 20.08.080, Maui County code, is amended to read as follows:

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

SECTION 13. 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 14. Administrative rules may be adopted by the principal archeologist

SECTION 15. This Ordinance takes effect on approval.

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