

ORDINANCE NO. _____

BILL NO. 154 (2022)

A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19 AND 20, 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:

<u>19.46.010</u>	<u>Title and purpose</u>
<u>19.46.020</u>	<u>Establishment</u>
<u>19.46.030</u>	<u>Requirement for cultural sensitivity designation.</u>
<u>19.46.040</u>	<u>Designation updates</u>
<u>19.46.050</u>	<u>Appeals</u>
<u>19.46.060</u>	<u>Regulations based on cultural sensitivity designation.</u>

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 that uses 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.

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 that are widely recognized as important in maintaining the cultural identity of the community

9. Are in, 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 applicable Planning Commission, Cultural Resources Commission, applicable 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 will be displayed in red on any County mapping.

2. Areas that contain three of the criteria must receive a medium designation and will be displayed in yellow on any County mapping.

3. Areas that contain one of the criteria must receive a low designation and will 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 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 recognized by the applicable Island Burial Council, 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 within 90 days 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 recognized by the applicable Island Burial Council 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 required 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 Resources Commission, applicable Island Burial 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 and, if required, an appropriate mitigation plan is reviewed by the principal archeologist and approved by the applicable Island Burial Council or Cultural Resources Commission as applicable.”

SECTION 2. 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 3. 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” means an area where certain additional requirements are superimposed upon a base zoning district or underlying zoning district and where the requirements of the base or underlying district may or may not be altered.”

SECTION 4. Section 19.06.010, Maui County code, is amended to read as follows:

“19.06.011 Overlay districts designated. The County has the following overlay districts in addition to the base zone districts provided in 19.06.010:

- A. Cultural overlay districts
- B. Wetlands overlay districts”

SECTION 5. 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 6. 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 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 19.510.070, 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 9. Subsection 20.08.040, Maui County Code, is amended by adding a new subsection to be appropriately inserted and to read as follows:

“E. No person 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 10. Subsection 20.08.080, Maui County Code, is amended to read as follows:

“Drainage, engineering slope hazard report, and erosion control plans [shall] must be submitted to the applicable soil and water conservation [district(s)] district and to the department of land and natural resources' state historic preservation division for review and comment. Applicants [shall] must provide information sufficient to enable the reviewing agencies to determine that the proposed work will be in conformance with the most current standards on file at the department of public works of the soil and water conservation [district(s)] district and will meet the requirements of chapter 6E, Hawaii Revised Statutes, and related administrative rules. Final approval or disapproval [shall] must be made by the County within ten days after receiving the reviewing agencies' comments. 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 11. The principal archeologist may adopt administrative rules to implement this ordinance.

SECTION 12. 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 13. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND
LEGALITY:

Corporation Counsel
County of Maui

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INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE