

AGRICULTURE AND PUBLIC TRUST COMMITTEE

Council of the County of Maui

MINUTES

November 1, 2022

Online Only via BlueJeans

CONVENE: 1:30 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair
Councilmember Gabe Johnson, Vice-Chair
Councilmember Kelly Takaya King, Member
Councilmember Alice L. Lee, Member (Out at 2:58 p.m.)
Councilmember Michael J. Molina, Member (In at 1:32 p.m.)
Councilmember Tamara Paltin, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member (In at 2:19 p.m.)

STAFF:

Alison Stewart, Legislative Analyst
Kasie Apo Takayama, Legislative Analyst
Richard Mitchell, Legislative Attorney
Maria Leon, Committee Secretary
Yvette Bouthillier, Committee Secretary
Lei Dinneen, Council Services Assistant Clerk
Shelly Espeleta, Supervising Legislative Analyst
Nālani Fujihara, Hawaiian Language Communications Specialist

Gina Young, Executive Assistant to Councilmember Shane M. Sinenci
Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama

Zhantell Lindo, Council Aide, Molokaʻi District Office
Denise Fernandez, Council Aide, Lānaʻi District Office
Mavis Medeiros, Council Aide, East Maui District Office
Christian Balagso, Council Aide, West Maui District Office
Daniel Kanahele, Council Aide, South Maui District Office
Jade Rojas-Letisi, Council Aide, Makawao-Haʻikū-Pāʻia District Office

ADMIN.:

Christie Trenholme, Deputy Corporation Counsel, Department of the Corporation Counsel (APT-66 and -67)
Michael Hopper, Deputy of the Corporation Counsel, Department of the Corporation Counsel (APT-66 and -67)
Michelle McLean, Director, Department of Planning (APT-66)
Jacky Takakura, Deputy Director, Department of Planning (APT-66)
Johann Lall, Geographic Information System Analyst V, Department of Planning (APT-66)

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Janet Six, Principal Archaeologist, Department of Management (APT-66)
Kali Arce, Director, Department of Agriculture (APT-67)
Weston Yap, Deputy Director, Department of Agriculture (APT-67)

OTHERS: Ke‘eaumoku Kapu, CEO, ‘Aha Moku O Maui (APT-66)
Barbara Barry (APT-66 and -67)
Noelani Ahia (APT-66)
Faith Chase (APT-66 and -67)
Autumn Ness, Director, Beyond Pesticides (APT-67)
Georgia Pinsky (APT-67)

Additional Attendees: (5)

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR SINENCI: . . .(gavel). . . Hey, aloha ‘auinalā and osiyo. Welcome to the Agriculture and Public Trust Committee meeting of Tuesday, November 1st, 2022. I’m Shane Sinenci, your Committee Chair. And Members, in accordance with Sunshine Law, if you’re participating virtually, please identify by name who is present with you. For the record, I’m here at the Hāna District Office with Staff members Mavis Medeiros and Dawn Lono. Joining us today we have Committee Vice-Chair, Councilmember Gabe Johnson. Osioyo.

VICE-CHAIR JOHNSON: Aloha, Chair. Osioyo, if I’m doing that correctly, to you, the Councilmembers, and community members. There are no testifiers at the Lāna‘i District Office, and I’m alone in my workspace, and ready to work. Mahalo, Chair.

CHAIR SINENCI: Mahalo, Vice-Chair Johnson. And I do see Mr. Hopper on. Hopper, did you have anything prior to the meeting? Or you’re just joining us?

MR. HOPPER: No, thank you, Chair. Yeah, I’m...I’m...I’m joining today, and I believe Ms. Trenholme from our office is...is also available.

CHAIR SINENCI: Okay. Thank you. Next we have Councilmember Kelly King. Aloha ‘auinalā and osiyo.

COUNCILMEMBER KING: Aloha ‘auinalā and osiyo. I think that’s how you pronounce it. There are no testifiers at the South Maui District Office. I’m still transmitting from my home office, and there’s nobody in the house with me at the time...at this time. And I’m looking forward to getting through this agenda. It’s really great legislative actions I’m hoping we take today, so let’s go.

CHAIR SINENCI: Mahalo, Member King. Yeah, thank you very much. Next we have Council Chair Alice Lee. Aloha and osiyo.

COUNCILMEMBER LEE: Aloha, Chair. Osioyo to you and everyone. I’m here in my workspace, home alone, looking forward to your meeting. Thank you.

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CHAIR SINENCI: Mahalo. Next we have Councilmember Tamara Paltin. Aloha and osiyo.

COUNCILMEMBER PALTIN: Osiyo and aloha 'auinalā kākou. Broadcasting live and direct from the historic district of Lāhainā. I have with me Angela Lucero and Christian Balagso, and we have nobody waiting to testify at the district office at this time. Thank you.

CHAIR SINENCI: Mahalo, Member Paltin. And I do see Councilmember Mr. Mike Molina. Aloha for joining us and osiyo.

COUNCILMEMBER MOLINA: Aloha and osiyo, Mr. Chair. Sorry for being a bit tardy, but looking forward to a wonderful APT meeting. I'm transmitting from my residence under the virtual bridge here in Makawao, and there's no one else in the building. And there are no testifiers at the Pā'ia District Office. Mahalo, Mr. Chairman.

CHAIR SINENCI: Mahalo, Member Molina. And no worries, I know you had a busy morning this morning. Finally, I don't see Council Vice-Chair Rawlins-Fernandez. She may be in route, but we'll recognize her as soon as she joins. Our Non-Voting Committee Members are Councilmember Tasha Kama, as well as Councilmember Yuki Lei Sugimura. They're always welcome to join us if they so choose to. From the Administration, we did see Mr. Hopper, Deputy...from the Corporation Counsel, and he also mentioned Ms. Trenholme. We also have Miss...Dr. Janet Six, the Principal Archaeologist, joining us. Aloha and osiyo.

MS. SIX: Aloha and osiyo.

CHAIR SINENCI: Thanks for joining us. Also we've invited Director Molina from the Public Works, as well as Director McLean from the Planning Department. And it looks like...oh, Miss...Mr. Yap is here for Director Kali Arce from the Department of Agriculture. Aloha and osiyo. Staff joining us today in this meeting is our Legislative Analyst Ms. Alison Stewart. Aloha and osiyo.

MS. STEWART: Aloha, Chair, Members.

CHAIR SINENCI: Our Legislative Analyst, Ms. Kasie Apo Takayama. Aloha and osiyo. Our Committee Secretary, Ms. Maria Leon. Aloha and osiyo.

MS. LEON: Aloha, Chair and Members.

CHAIR SINENCI: And our Assistant Clerks Ms. Jean Pokipala, as well as Ms. Lei Dinneen. Aloha and osiyo. I do see that Mr. Remi Mitchell, our Legislative Attorney, is also on the call. Aloha and osiyo.

MR. MITCHELL: Aloha and osiyo, Chair and Members.

CHAIR SINENCI: Mahalo. Okay. Members, today we have two items, APT-66, Bill 154 (2022)

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to Establish the Cultural Overlay Districts, and also APT-67, Bill 160 (2022) Relating to the Kula Agriculture Park Phase I Expansion Area. Members, testifiers wanting to provide video or audio testimony should have joined the online meeting via the BlueJeans link or phone number listed on today's agenda. Please also see the last page of the agenda for information on connectivity. If you are logged into the BlueJeans meeting, Staff will add you to the testifier list, which will be posted in the chat. If you would prefer to testify anonymously, please indicate in the chat and you will be assigned a testifier number. Oral testimony may be given at the beginning of the meeting or before an agenda item. If you'd like to testify before an item...an agenda item, please indicate in the chat or when you are called upon, otherwise Staff will assume you'll be testifying at the beginning of the meeting. Chat should not be used for discussion or comments. Testify...testimony is limited to three minutes. If you're still testifying beyond that time, I'll kindly ask you to conclude. When testifying, please state your name unless you wish to remain anonymous, if you're testifying on behalf of an organization, or if you're a paid lobbyist. Please be courteous to others by turning off your video and microphone while waiting for your turn to testify. Written testimony is encouraged, and can be submitted online at mauicounty.us/agendas. Detailed instructions on how to use eComment are available at mauicounty.us/testify. As always, thank you for your patience if there are any technical difficulties. And with that, Staff, can you please call the first two testifiers?

. . . BEGIN PUBLIC TESTIMONY . . .

MS. STEWART: Chair, the first testifier is Ke'eaumoku Kapu, to be followed by Barbara Barry.

CHAIR SINENCI: Aloha, Mr. Kapu.

MR. KAPU: Aloha. Can you hear me?

CHAIR SINENCI: Yes, we can hear you.

MR. KAPU: Okay. I'm going to have to keep my camera off. My connection not so good over here. Mahalo for this opportunity for me to testify on the Item 154, the cultural overlay. I think it's really important that this...you guys really look seriously into passing this because the area in question that we have been long, long time addressing a lot of the issues pertaining to the historic properties and the overlays of this very area, Lāhainā. There have been years, I would say, that we've been seriously advocating about this very parcel from Kauaula River [sic] all the way to Pioneer Mill. A lot of anomalies that there is, the...a lot of the Land Commission award and royal patents of this whole area is really, really serious. And especially at the same time, we are at the point of addressing some known burials that are in the area that basically is kind of in disarray at this moment, and hoping that the State Historic Preservation Division (*audio interference*). But it kind of gives us an opportunity to really look at the overlay as a possibility to protect other historical properties in that area. On behalf of 'Aha Moku O Maui, I'm the CEO, and if you have any questions, I'm open for that. Mahalo. Thank you.

CHAIR SINENCI: Mahalo, Mr. Kapu, for your testimony this afternoon. Members, any

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questions for the testifier? Seeing none. Again, mahalo for joining us this afternoon.

MR. KAPU: Thank you.

CHAIR SINENCI: I believe Staff had called Ms. Barry.

MS. BARRY: Aloha, Chair, Vice-Chair, and Committee Members. I hope everyone is doing well today. I wrote this down, let me see if I can say it. Osiyo. Did I get it?

CHAIR SINENCI: Osiyo.

MS. BARRY: Good. I am here because I'd like to testify on both Bill 154, APT-66, and 160, APT-67. There's such an important need for the cultural overlay to protect all the historic places that are...that deserve to be, you know, protected for all future generations. So, I'm really excited to see this bill coming forward, and I...I certainly hope that it can get passed quickly and these areas protected because that's what's so special about this County is that we have so much history here, and...and we...we want to protect it, and...and...and treasure it, and honor it. So, mahalo for bringing this bill forward. The second bill, 160, I did write this out. I did go over the bill last night, and made some notes. I might go over my three minutes, but if I do, I have it written down and I can email it. Oh, I forgot to tell you my name is Barbara Barry. My grandson's sleeping in the other room, so if he wakes up I may have to dash and get him. But other than that, I'm here by myself. I'm not a paid lobbyist, and I'm speaking as a private citizen. So, get that out of the way. Okay. I'll go over this. I strongly support Bill 160 pertaining to amending Chapter 22-04A [sic], Maui County Code, relating to the Kula Ag Park expansion Phase I. Thank you for bringing this bill forward and for the chance to share my mana'o with you on this important issue. Organic farmers deserve the right to farm without pesticide contamination, GMO drift, and contamination from polluted water sources that have been tainted with runoff from pesticides and herbicides not compatible with organic standards. One thing I'm not sure where this should be inserted, but I think it's only fair that if a leaseholder wants to relinquish their lease or sublease, anyone on a waiting list should be given priority, and then notice to new farmers wanting to apply for an ag plot. There's been way too many expansion of Kula Ag Park lots to people that are just doing deals with each other, and it's never being open to the general public. So, I don't know where that would fit into this, but I just think it's fair to have it be available to people that might have been waiting for a long time. There...there doesn't appear to ever have been much of a waiting list. So, I think requiring a waiting list of organic and conventional applicants could be established. So, I've been told for the last four years that there's been no waiting list at the Kula Ag Park, which seems really odd to me. So, yeah, I wanted to mention that. On page 2, the K...K...KAP committee members, I support a rep from both parks, not just the current park, but both parks, to sit on the Kula Ag Park Committee. And...and I don't know if there's any talk about separating the Kula Ag Parks and having their own committees, but I think it's good to have one committee overseeing all the ag parks, whether they be on Lāna'i, Moloka'i, however many we end up in Maui County. So, I...I think that everyone who is a member of a certain park should have a seat on the...on the board...on the list of commissioners. Maybe this could be figured out by reducing one of the public

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slots or, you know, adding to it at a later...later point. But I...I think it's just fair that representation for the Kula Ag Park be including all the parks. On page 2.E., I feel that this should be...include the language, including the input and design of future ag parks, so that the Kula Ag Park commissioners are a part of that design and...and decision process on how big the lot should be, or how it should actually be laid out. Because this is something that...that's important, and not everybody is looking at the...the smaller farmers, you know, like why are lots all so big? Why don't we make them smaller so our young farmers can...can get into having an ag plot and be able to manage it successfully? So, that was something I wanted to have you consider. On page 4, number 2, including the word "financial" in front of anywhere where there is the word "interest." So, instead of just other leaseholders having an interest in a potential lot, it's a financial interest that is really is the key...key point here because interest could mean a lot of different things. On page 6, adding the language to foods for local consumption must be given priority over nonfood crops, including seed crops and other export crops. So, we...we focus on making sure that we're supporting farmers who want to feed our County, you know, not someplace else or something else. So, that...for some reason my...my thing didn't continue to copy, so let me just get into my...my Gmail here. I'm...I'm probably at my three minutes. But let me see here. Okay. What else do I have here? Okay. That's why. Oh, page 8.F. and page 9.G., all sublease agreements must submit an application and be reviewed by the commissioners. Add this language anywhere where it's only by the approval of the director. That's been going on way too long, and we just need to --

MS. STEWART: Chair?

MS. BARRY: -- make sure that the commissioners are...are --

MS. STEWART: Chair?

MS. BARRY: -- reviewing that.

CHAIR SINENCI: Staff?

MS. STEWART: Chair, I'm sorry, the alarm has gone off, but I don't think you heard it.

CHAIR SINENCI: Oh *(audio interference)*.

MS. BARRY: No, I did not.

CHAIR SINENCI: Yeah. I did not either. Okay. Mahalo, Ms. Barry, for your testimony. And if you want, you can go ahead and send those --

MS. BARRY: I just have...

CHAIR SINENCI: -- you can go ahead and send those --

MS. BARRY: I can request a little bit more. I just have a tiny bit more.

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CHAIR SINENCI: Did you want to send them in?

MS. BARRY: Yeah, I...I...I can, but I don't know if you'll see it in time for this deliberation. There's just one more thing that I think is really important, if I could just mention it please?

CHAIR SINENCI: Let me check if there's any questions from the Members of Ms. Barry. No...oh, we have a question from Member Paltin, and then Member King.

MS. BARRY: Okay. Thank you.

COUNCILMEMBER PALTIN: Thank you, Chair. I was wondering what was the other thing that was really important?

MS. BARRY: Thank you.

CHAIR SINENCI: Ms. Barry?

MS. BARRY: There's no damage deposit required for any of our leaseholders in the...in the parks, and I know the County's on the hook right now for cleaning up a hazardous site. And there...there just needs to be something in the Code where the leaseholder gets...assumes liability for any kind of cleanup, whether it be, you know, a bond or whatever. And also, if there's subleasing going on, that the lot should be inspected before a new leaseholder takes it on so they're not taking on someone else's liability. And that...that's the end of it. So, mahalo.

COUNCILMEMBER PALTIN: And to clarify, is subleasing spelled out allowed?

MS. BARRY: Yes, it is...it is allowed. It...it happens quite often.

COUNCILMEMBER PALTIN: Oh. And does the County get involved with the subleasing part of it, or is it between the two parties?

MS. BARRY: That is always a little bit...been a little bit of a mystery to me. So, I...I...I'm not exactly sure about how to answer that. It...it seems like the County should get involved when it comes to subleasing because it's County property, it's taxpayer funded ag park, so I don't think it should be backroom deals, personally.

COUNCILMEMBER PALTIN: Okay. Thank you.

MS. BARRY: Thank you.

COUNCILMEMBER PALTIN: And...and if you would, please send that in because I'm not...I'm not sure I got it all exactly how you said it.

MS. BARRY: And then I should send it to which address?

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COUNCILMEMBER PALTIN: tamara.paltin@mauicounty.us. . . *(timer sounds)*. . .

MS. BARRY: Okay. Got it. Thank you.

CHAIR SINENCI: Also send it to the APT Committee.

MS. BARRY: Okay. Got it. I'll...I'll send it there. Thank you.

CHAIR SINENCI: Okay. Next we have a question for you from Member King.

COUNCILMEMBER KING: Well, one of...thank you, Chair. One of my questions was going to be--hi, Barbara--was going to be --

MS. BARRY: Hi, Kelly.

COUNCILMEMBER KING: -- to send that to all the Committee Members so we could look at it in real time when we're discussing this bill. But I did have a question about the subleasing issue. And is there anything in the rules for the ag park that somebody can't make money off of a sublease? Because we're leasing these lands at a lower rate to people. And if they turn around and, you know, double the...the rent for the next person, they're making money off of what really should not be...you know, they should give up their...their site, their lot, and...and leave it open for the next person instead of that.

MS. BARRY: I don't believe that there is any kind of over...oversight or rules about that. I...I also wonder, if someone's assuming the lease, are they paying out...are they paying someone for that lease? And...and that should be part of the...the County information as well. I don't think it should just be between the two parties, myself.

COUNCILMEMBER KING: Right. So...so, the sub...subleasing is going on, but you don't have any...the Kula Ag Park doesn't have any rules about it one way or another?

MS. BARRY: No. Or not only subleasing, but assigning leases, I don't believe there are any disclosure rules about anybody...what they're charging or, you know, how that works.

COUNCILMEMBER KING: Okay. All right. Thank you. Thanks for being here.

MS. BARRY: Thank you. Yeah, thank you so much. Buh-bye.

CHAIR SINENCI: Councilmember Johnson? Hold up, Barbara.

MS. BARRY: Oh, I'm here. Thank you.

CHAIR SINENCI: Okay.

VICE-CHAIR JOHNSON: Thank you, Chair. Good afternoon, Ms. Barry. Good to see you.

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I...you know, you asked...the...the Members asked you some questions that actually I...I wasn't aware of as well, so I was wondering if you...with your knowledge, would you be willing to be a resource when that item comes up, are you free?

MS. BARRY: You know, I should be. I have a sleeping baby here and, you know, once he wakes up then I'm a little distracted, but he should be going back to his dad about 2:30 or so. So, I can do my best. I'm happy to be on the call. Thank you.

CHAIR SINENCI: Members, with...are there any objections to asking Ms. Barry to stay on as a...for the second item?

COUNCILMEMBERS: No objections.

COUNCILMEMBER KING: Thanks, Gabe. Good idea.

CHAIR SINENCI: Okay. Okay. Great. Thank you.

MS. BARRY: Mahalo.

CHAIR SINENCI: Staff, could you please call the next two testifiers?

MS. STEWART: Chair, the next testifier is Noelani Ahia, to be followed by Faith Chase.

CHAIR SINENCI: Aloha, Ms. Ahia.

MS. AHIA: Aloha 'auinalā. Mahalo nui, Council, for being here today, and taking testimony. I'm testifying on Bill 154, and I'm testifying in support. As I've testified multiple times, this is such an important bill because it will give us the opportunity to have a visual understanding and...and a paper understanding of what exists in any particular area before development moves forward. So, not only is it an important cultural resource for our people going forward, but it will be helpful for developers to understand what is there, and hopefully prevent litigation and issues in the future because they'll be able to address it in advance. I haven't seen the newest version, I understand there was work...some work done on it since the last Committee meeting, and so I'm hoping to hear more about those changes in the discussion. But one thing I wasn't made aware of is that in a previous version, the Principal Archaeologist was going to have authority to impose conditions, and evidently that is not congruent with the County Charter, so it was relanguaged to say that the Principal Archaeologist can make recommendations. And so what I'm...I've been told that it's the practice of the agencies to...to implement whatever recommendations are made by other departments, but I would like clarification from the Planning Department and Public Works that that is, in fact, the practice, and that if the Principal Archaeologist, for example, puts a mitigation that includes site avoidance, that that will, in fact, be attached to the permit as it moves forward so that we can protect especially our burials and our sacred sites. Because there is no State law right now that actually provides for site avoidance. And people are...often misunderstand the process of archaeology. What happens is a developer hires a contract archaeology firm that is paid by the developer, not by the State, or...or

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some sort of neutral entity. And oftentimes, the archaeologists...there...there are some on island who are fantastic, and there are some who...who don't do good work, in my opinion. And what they'll do is they get paid for an outcome, and they will purposely not find things during the study because if they're found after the study, there's a different legal standard for how they're treated. And basically, they can dig up our burials as long as they record them after the fact. And that is not okay, it's...it's...it's inhumane, and it's not pono. And this...this ordinance is going to be able to help us address that since the State isn't able to do it. And by allowing the...the Principal Archaeologist to put conditions that the departments will implement will allow us to protect areas that we know are burial grounds, that we know are heiau, that we know have very special mo'olelo about them beforehand, before...before a developer goes in with a bulldozer and traumatizes everybody, including the construction workers. So, this is going to benefit them too because I'll tell you, I've been on a lot of construction sites, and our construction workers, both the Kanaka Maoli and other people, they don't feel good when they hit burials. They tell me about nightmares, they tell me about getting sick afterwards, they tell me about people in their family getting sick, and it's not fair to put that kind of burden on them either just so that they can have a job and put food on the table. So, I'm hoping that this legislation is really something that's going to be impactful for our whole community so that we can have more Maui ola and health and well-being. So, mahalo nui for the time today. Thank you so much.

CHAIR SINENCI: Mahalo, Ms. Ahia. Members, any questions for the testifier? I was going to ask her if she could stay on as a resource as the 'Aha Moku representative, as well as a lineal descendent...certified lineal descendent with SHPD in the Wailuku area. Any objections?

COUNCILMEMBERS: No objections.

MS. AHIA: I...I definitely can if...if you folks want that. I do have to clarify something though before we move forward.

CHAIR SINENCI: Go ahead, Ms. Ahia.

MS. AHIA: In...in terms of lineal descendent, I'm actually not recognized as a lineal descendent, and that's something in the bill that I think we have to address because there is no process for recognizing lineal descendants to an area. Lineal descendants are recognized to specific burials, and you have to know the name of the person who's buried there --

CHAIR SINENCI: Okay.

MS. AHIA: -- according to the way SHPD runs it. That's not what the State AG says, but that is how SHPD is applying the law. I'm recognized as a cultural descendent.

CHAIR SINENCI: Okay. Mahalo for that clarification. Members...oh, we have a question for you from Member Paltin.

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COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Ahia, for your testimony. I just was trying to clarify, the concern is that if the cultural or the Principal Archaeologist makes a recommendation, that that recommendation has to be implemented.

MS. AHIA: Correct, that is the concern. I'm told it's the practice, but of course, that practice could change with a different Administration and different people in those positions. So, I want to be clear, and have on the record what...you know, what...not only what the practice is, but how...how are we going to enforce that, and how are we going to make sure that we don't get someone who's the head of Public Works in the future who's going to completely ignore the Principal Archaeologist.

COUNCILMEMBER PALTIN: I...I heard...I don't know, I think...I don't know if...and you said something about the Charter doesn't allow for it. Do you also know...I had heard that the U.S. Constitution is also a problem in that regarding terms of delegation of authority to a third party. Are...are you aware of that as well?

MS. AHIA: I can't speak to U.S. constitutional law in that...in that respect. My apologies. I...I suspect it's something you folks should probably vet.

COUNCILMEMBER PALTIN: Because I had a similar issue with the SLR-XA and whatnot about it changing from 3.2 to 3.8, or 5.8, or so forth, and we couldn't just name the SLR-XA or something else because they said that was unconstitutional because it's a delegation of authority to a third party that's not elected or appointed to be the decision-maker.

MS. AHIA: Well, you'd have to ask Corp. Counsel, but it seems like the directors place...place conditions on permits all the time, and they're technically a...they would be a third party because they're not elected either. *(Audio interference)*.

COUNCILMEMBER PALTIN: But we don't have to...

MS. AHIA: *(audio interference)*

COUNCILMEMBER PALTIN: Yeah. We don't have to listen to them, right?

MS. AHIA: Well, I mean the...the...the permit applications, they...they're listened to by the...by the applicant, right, the applicant is required to do whatever conditions are put on in order for them to receive the permit. So, we have to ensure that the conditions are allowed to be added, and that there is an enforcement process if those conditions are not complied with. And that's another issue I'm not sure if this bill addresses yet is enforcement and compliance with the...with the recommended...or the...so the...so the Principal Archaeologist would recommend, and then the department head would have to attach those conditions to the permit, is my understanding.

COUNCILMEMBER PALTIN: Okay. Thank you.

MS. AHIA: Thank you for the question.

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CHAIR SINENCI: Mahalo, Member Paltin. Members, any objections to keeping on Ms. Ahia should we have any questions? Okay. And then some of the questions proposed, we can go ahead and...and discuss them during our discussion period of...of the item. I believe our next testifier was Ms. Chase. Aloha, Ms. Chase.

MS. CHASE: Good afternoon, Chair Shane Sinenci. Good afternoon, Committee Members. You know, I just got to say, I love coming to your Committee meetings. There's just such groovy stuff going on. This...these two things that are on your agenda are super protect the people, protect our...our ancestors. Okay. So, first of all, you know, what the previous testifier Ms. Ahia said about our Kānaka working on these jobs, it's really dreadful when...you know, they're just trying to make...the permits read what they do, the archaeologists do what they do, they...they make any kind. But really, it always falls on the laborers, at...at...at the end of the day, who are just trying to make money. So, this...thank you for this...this. The cultural overlays is like one of the greatest things that's ever...that's ever happened. And I know all the iwi kupuna protectors and...agree. But I just got to tell you that my friend went to...just an example, my friend went to go haul sand, questionable sand, his brake...somebody...what they call like they do a false dump into his truck. Like I guess those big...those big semi-trucks, you got to have it like locked in a certain double, triple, quadruple brake before they put the load in, and it wasn't set yet, and somebody went false drop. His semi-truck bounced, fell over, they thought he was make, he was...he was going to the morgue, and he came back to life. And that was because that sand he had in the back of his truck had iwi in it. He has Peterbilt...he has a big Peterbilt and lauhala on this...tattooed on his arm. Okay. This always falls on the shoulders of our workers, our laborers. It's really sad. So, thank you for doing the frontend work on all that. The...the Kula Ag Park, this is a great day...oh, my gosh. I must have testified over a dozen times on having organic representation, or change it up, or why does the Farm Bureau have so much representation. This is superb. I can't remember what all the...I...I can't look at everything at the same time. What is this? The...I just trust that we have the expert maybe making testimony today. All those restricted use pesticides that...that...the...that big chunk, that big section in this is supported. I don't think that you actually have a choice but to support it because you know that your community and your County voted for protection in all...in all fashions in this way. So, thank you for this day. Good luck. Thank you.

CHAIR SINENCI: Mahalo, Ms. Chase, for your testimony this afternoon. Members, any questions for Ms. Chase? Seeing none. Again, thank you. Staff, any more testifiers that want to testify at the beginning of the meeting?

MS. STEWART: Chair, the last name on the list at this time is Autumn Ness.

CHAIR SINENCI: Aloha, Ms. Ness.

MS. NESS: Aloha, everybody. I'm Autumn Ness. I want to clarify that I do work for Councilmember Johnson, but I am not here in that capacity, I'm here as the Director of the Hawai'i program of Beyond Pesticides. A lot of the stuff in the bill...Bill 160 is a little self-explanatory, so I'm just going to focus on the part that I know about, which is the

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part that talks about reserving the expansion area for organic practices. I had a couple of questions from various people in the community, so I thought I would address this, about what the difference is between reserving the park for organic practices, and requiring organic certification. So, I want to just be really clear that that's different. So, in the bill, it requires that...it's the same language we used for the County-owned lands bill, that if it's allowed in organic farming, then it's allowed in the organic ag park expansion area. If it's not allowed in organic farming, then it's not allowed. And the good...the benefit of that is that we don't have to be the experts every year when a new product, or a new amendment, or a new chemical comes out, we don't have to just figure out whether it's safe or not. There's a National Organic Standards Board that every year reviews things, and decides whether or not it's allowed in organic practices. And so, the section in this bill refers to that body. So, it's very clear, you can look at the website, what's allowed, what's not--done. We don't have to do any of that. It doesn't require that folks in that part be certified by the USDA as an organic farmer, which I think is really good. Because a lot of folks here don't want the certification, and we're a small enough island where we know our farmers, in so many cases we know that their practices are good. Part of the bill does require that they submit a land and soil management plan. That also is taken from the organic standards law because if you are an organic farmer, you have to have a soil management plan. It's just part of being a farmer. So, it's like the very light version of how do we regulate organic practices or not without requiring certification. So, if we require a plan, we require that they use only products that are allowed in this...under this law, and at the end of the year, we require reporting, which is exactly what the Organic Standards Act does, then we're kind of like, you know, make...making sure everyone adheres to the organic standards law without requiring that they be certified. So, I'm here to answer questions about any of that if you like. I think that's it. Okay. Thanks, guys.

CHAIR SINENCI: Mahalo, Ms. Ness. Members, I know Ms. Ness is testifying on her own, but I did want to ask her to be a resource in the capacity of Member Johnson's Staff that has been working on this bill as well.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay. Okay. Mahalo, Ms. Ness. Okay. It looks like we also have Ms. Pinsky signed in to testify. Aloha, Ms. Pinsky.

MS. PINSKY: I found it. Sorry, I don't use BlueJeans very often. I found it. I'm in Zoom a lot. Okay. Hi. Aloha.

CHAIR SINENCI: Aloha. Did you --

MS. PINSKY: Thank you for...

CHAIR SINENCI: -- want to testify now or when the bill comes up?

MS. PINSKY: I can testify now, that would be wonderful. Thank you.

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CHAIR SINENCI: Okay. Go ahead.

MS. PINSKY: Okay. So, aloha, and thank you for taking the time to hear my input today. I'm here to testify in support of Bill 160. I read it, and I think it's great work, and I applaud Member Johnson's Staff on creating this. I've been working in beginning farmer training on Maui since 2017. I've worked with about 120 beginning farmers to date, from all backgrounds and all walks of life. Many of them were coming to farming as a second or even third career, but a common passion for good, clean food (*audio interference*) feed others while feeding the earth is central to their dedication. Farming doesn't pay well, it feels good. The Maui Farmer Network was founded in 2020, and in Fiscal Year '22, we earned a small grant from the Office of Economic Development for farmer navigational coaching. Today, there are about 25 farmers that I work with on a weekly basis as they move towards making their goals of growing good, clean, healthy food into a career. The obstacles for making this goal a reality are huge, and the dedication and commitment must come from within. The struggles and challenges are at every level of the operation, but secure access to land is the largest and most prevalent obstacle to the expansion of Maui's agricultural industry. Little caveat, little opinion, this is due, in my humble opinion, to the real estate market and the ongoing capitalistic, commercial, colonialist views about the highest and best use of land is the highest price that someone is willing to pay. I continue to suggest and encourage that we look at ways to reevaluate and redefine highest and best use. Our farmers and our food are more than land values, they're dedicated to using regenerative, environmentally sound choices with their ag operations. They're more than willing to give away their abundance to family, friends, and neighbors. 100 percent of the farmers I have worked with over the years are focused on regenerative methods. Chemical farming is already a thing of the past in the ag circles that I live and work in. Please pass Bill 160, and dedicate the 260 acres of Kula Ag Park expansion to good, clean, regenerative methods of agriculture. In relation to what Autumn was just saying in the previous testimony, there's a new national organization called Certified Naturally Grown. They have a fabulous website. There are a few farms on Hawai'i Island now that have completed this certification process. It is far more accessible and affordable, and less complex, than the USDA organic certification process. I encourage you to look it up and learn more. Many of the farmers that I work with are working towards becoming certified naturally grown. I strongly encourage you to dedicate the Kula Ag Park expansion for organic practices. I would love to see two new seats on the ag park committee focused on hearing the voices of regen farmers and beginning farmers. I also read there's a clause for limiting the quantity of lots that one person can lease to further ensure land access for all. I think this is a good suggestion, and I support this clause. Thank you.

CHAIR SINENCI: Mahalo, Ms. Pinsky, for your testimony this afternoon. Members, any questions for the testifier? Seeing none. Okay. Thank you.

MS. PINSKY: Thank you.

CHAIR SINENCI: Staff, was Ms. Pinsky the last one signed up to testify?

MS. STEWART: Chair, for the beginning of the meeting and for the first agenda item, yes, but

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if you'd like to make a last call.

CHAIR SINENCI: Is there anyone else wishing to testify at this time? Please go ahead and unmute yourself. Okay, Members, seeing none. Without objection, I'll now proceed with the first item on today's agenda item, including testimony after my brief presentation.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Member Paltin?

COUNCILMEMBER PALTIN: Thanks, Chair. Sorry to disrupt your flow. I just was read...before during lunch, was reading the testimony for November 4th, and I just wanted to point out, I think that Dr. Caires sent his email for your Bill 160 to the wrong place. Because I didn't see it on Friday's agenda, but there's testimony for Bill 160 written from Dr. Caires, like number 14 or 15 in the November 4th written testimony that the Clerk sent us. So, just wanted to let you know about that so that we take his points into consideration when that item comes up.

CHAIR SINENCI: Okay. Any objection to receiving written testimony, as well as Mr. Caires' testimony?

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay. And Staff, so I'm not closing testimony at this time, I'm just waiting until after the presentation, yeah?

MS. STEWART: Chair, would you like to call a brief recess?

CHAIR SINENCI: Okay. Recess in two minutes, come back at 2:16. APT meeting is now in recess. . . .(gavel). . .

RECESS: 2:14 p.m.

RECONVENE: 2:19 p.m.

CHAIR SINENCI: . . .(gavel). . . Aloha 'auinalā kākou, and welcome back to the APT Committee meeting of Tuesday, November 1st, 2022. Before we begin, I'd like to recognize Vice-Chair, Member Rawlins-Fernandez. Aloha 'auinalā.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha, Chair. E kala mai for my tardiness. I am at the Moloka'i District Office, alone on my...alone in the office. Mahalo, Chair. Oh, no testifiers here.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. We did get a text from your office. And...and before we proceed, I would...Members, if there are no objections, I'll close testimony at the beginning of the meeting.

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COUNCILMEMBERS: No objections.

CHAIR SINENCI: Great. Mahalo for that.

ITEM 66: BILL 154 (2022), TO ESTABLISH CULTURAL OVERLAY DISTRICTS

CHAIR SINENCI: Okay. Members, our first item is APT-66, Bill 154 (2022), to Establish the Cultural Overlay Districts. The Committee is in receipt of the following. Bill 154 (2022), entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY DISTRICTS." The purpose of Bill 154 is to establish cultural overlay districts or cultural overlays in culturally sensitive areas. County Communication 22-266, from the Committee Chair, transmitting a proposed FD1 version of Bill 154 (2022), entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, TO ESTABLISH CULTURAL OVERLAY MAP AND SENSITIVITY DESIGNATIONS." The purpose of Bill 154, FD1 is to establish a cultural overlay map to protect cultural resources. Before any discussion, I will now take any public testimony. Staff, will you please call any testifiers for this item?

MS. STEWART: Chair, there are no testifiers on the list at this time.

CHAIR SINENCI: Okay. Is there anyone else wishing to testify at this time for this item? Go ahead and unmute yourselves. Okay. Without objection, I will now close public testimony on this item.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Thank you, Members.

. . . END PUBLIC TESTIMONY ON ITEM (66) . . .

CHAIR SINENCI: Okay. Moving right along. Members, as I explained last week, this is the very end of a long process to codify a cultural overlay map and the design process for designating and protecting culturally sensitive properties. We've had six Committee meetings, and there were six Planning Commission, CRC, and Hāna Advisory Committee meetings, on this legislation. We've also been working closely with Dr. Six, Corporation Counsel, the Department of Planning, Public Works, on the bill language. These are the people and the Department heads that will be administering the bill, and so, their input and support have been invaluable. We had hoped to have a signed bill today, but we understand Corporation Counsel is very understaffed, and the bill signature is usually done after the last Committee meeting, so they provided us with their edits today, which are included in the ASF posted at the beginning of this meeting. We feel this is a much better process than having them make the amendments on the floor, as is often done. I'll go through the ASF in a minute to explain their edits, and you'll see that they are designed to clarify the bill. Our Principal Archaeologist, Dr. Six, had one small

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clarification on using the wording “oral traditions” versus “meles and chants.” The Director of Planning and Public Works had a few clarifying comments, as you will see. We also included the ‘Aha Moku councils in the process, you will see that as well in the bill. This was inadvertently overlooked in the Planning Department’s version of the bill. I also want to explain why we have decided to wait to make any changes to the Cultural Resources Commission. Director McLean asked that we give the process outlined in this bill a chance to work, then if we later find the need to change, that we make those changes in response to specific permit review problems. I recognize her experience, and I’m willing to give this a chance to work before going down that route. I am very pleased with the corporation [sic] and considerable time spent with Dr. Six, Dr. McLean, Director Molina, Corporation Counsel Mr. Hopper, Corporation Counsel Mr. Whittaker. We have everyone except Mike here today to answer any questions you may have about the SF...the ASF before we vote. For our discussion, I would like to focus on this proposed CD1 version of the bill, which makes revisions to the ASF version posted at the last Council meeting. I will now go through the revisions, following the appropriate motions to substitute the bill. So, with that, I would first like to entertain a main motion to recommend passage of Bill 154 (2022), at first reading.

VICE-CHAIR JOHNSON: So moved.

COUNCILMEMBER KING: Second.

CHAIR SINENCI: Okay. It’s been moved by Vice-Chair Johnson, and seconded by Councilmember King. Mahalo for that. For discussion, I move to substitute Bill 154 (2022), with the proposed FD1 version attached to County Communication 22-266, and further, substitute the proposed FD1 version with the CD1 proposal that was distributed today.

VICE-CHAIR JOHNSON: So moved.

COUNCILMEMBER KING: Chair, when was that distributed? I didn’t...I didn’t get it for some reason.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR SINENCI: Ms. Stewart?

COUNCILMEMBER PALTIN: You might have to refresh your browser because it didn’t show up on mine until I pressed that arrow.

COUNCILMEMBER KING: In Granicus?

COUNCILMEMBER PALTIN: The circle arrow.

MS. STEWART: Chair? Yes, it was distributed at the beginning of the meeting. It should be available on Granicus.

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COUNCILMEMBER KING: But was it distributed to each Councilmember's email?

MS. STEWART: Chair? No, it...it --

CHAIR SINENCI: Ms. Stewart?

MS. STEWART: -- was not.

COUNCILMEMBER KING: Oh, okay. So, it was just put on Granicus?

MS. STEWART: Yes, Councilmember King.

COUNCILMEMBER KING: Okay. Let me just find it.

CHAIR SINENCI: It looks like Maria had included it in the chat.

COUNCILMEMBER KING: Was that number 4 on Granicus?

CHAIR SINENCI: Ms. Stewart?

MS. STEWART: Chair, let me confirm.

COUNCILMEMBER RAWLINS-FERNANDEZ: It's in the chat, right, Chair?

CHAIR SINENCI: Yes.

MS. STEWART: Chair, yes. It's in the chat, and it's also number 4 on Granicus.

COUNCILMEMBER KING: Okay. Great. Thanks.

CHAIR SINENCI: Okay. It's been moved by Vice-Chair Johnson, and seconded by Member Rawlins-Fernandez. Mahalo for that. So, just to explain the double substitution. FD1 was the version of the bill discussed at the last Committee meeting under Rule 7(B), posted at the last Council meeting. So, in the interim, further changes were recommended by the departments, so the FD1 version is superseded by the current CD1 version, which includes all the previous revisions. So, this combined motion would allow us to focus on the most updated bill. Okay. With that, Members, for discussion, I will now describe the revisions in the proposed Bill 154, CD1. Okay.

COUNCILMEMBER PALTIN: Sorry, I missed that. What'd you say?

CHAIR SINENCI: I'll go...I'll go through the...the...the CD1...Bill 154, CD1 at this time, the amendments. Everybody got them? Okay. Okay. Amend the proposed FD1 version as follows. Number 1, amend the title to add Title "16" and to add "Cultural" to the term "Cultural Sensitivity Designations" throughout. Number 2, amend proposed Section 19.46.010 to clarify the purpose language. Number 3, amend proposed Section 19.46.020 to: (a) specify the role of the Principal Archaeologist and GIS Staff in

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establishing and updating the cultural overlay map by Ordinance; (b) clarify that the overlay map does not change the underlying zoning; (c) specify the 100-day [sic] timeline for review and comments from the Cultural Resources Commission and other consulting entities; and (d) to add the 'Aha Moku councils as a consulting entity when applicable. Number 4...

COUNCILMEMBER KING: Chair? Chair?

CHAIR SINENCI: Member King?

COUNCILMEMBER KING: Under (c) you said 100 day, but I'm looking...the...the document I'm looking at it says 120-day timeline.

CHAIR SINENCI: Yeah, 120-day timeline.

COUNCILMEMBER KING: Thank you.

CHAIR SINENCI: Continuing on. Number 4, amend proposed Section 19.46.030 to reorder subsections (A) and (B) and setting the cultural sensitivity designation criteria first, followed by how these designations are to be displayed on the overlay map. 5, amend proposed Section 19.46.030(A)(5) to specify the role of the Principal Archaeologist or the State Historic Preservation Division in determining an area's potential to reveal further information about the County's history. 6, amend proposed Section 19.46.040 to be consistent with the established amendment process and procedures. 7, amend Section 19.46.050(C) to: (a) provide that the Principal Archaeologist may advise a permitting agency to transmit an application for review and comment to the Cultural Resources Commission and other consulting entities; (b) add 'Aha Moku councils as the consulting entity when applicable. 8, amend Section 19.46.050(D) to clarify the role of the Principal Archaeologist in determining appropriate mitigation and site avoidance plans. 9, amend Section 19.46.050(E) to provide notification of the Principal Archaeologist if a historic property is identified after work has commenced under an applicable permit or approval. 10, in Sections 2 through 13, incorporate amendments for clarity and consistency in proposed amendments to Titles 16, 18, 19, and 20, of the Maui County Code, relating to permits, approvals, exclusions, and other applicable provisions impacted by the establishment of a cultural overlay map. 11, in Section 16, restate that a cultural overlay map is to be transmitted to the Council within one year of this Ordinance's effective date. Staff, was there an item...was there anything else? I thought I saw a 12 on another...or was that just nonsubstantive revisions?

MS. STEWART: Chair, I believe that is the entirety of the ASF.

CHAIR SINENCI: Okay. Okay. So, with that, Members, I'll now take any questions, comments, and if you have any motions to amend. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Just a general question for you. I think on your eleventh proposal, in Section 11, you state that a cultural overlay map is to be transmitted to the Council within one year of the ordinance's effective date. Just curious

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how one year was...and not, say, six months and...how one year was determined to be, I guess, the best time, I guess, for the effectiveness...or the going into effect of the law?

CHAIR SINENCI: I know that the departments had proposed some of these changes. And that's how long probably it'll take to do the map is a year.

COUNCILMEMBER MOLINA: Okay. So, it's more department driven, yeah, to...okay. All right. Thank you.

CHAIR SINENCI: Mahalo, Mr. Molina. Vice-Chair Johnson?

VICE-CHAIR JOHNSON: Sorry, Chair, I wasn't raising my hand. Thank you.

CHAIR SINENCI: Oh. Member King?

COUNCILMEMBER KING: That was me. Thank you, Chair. I was just going to just mention that the one year was what we landed on for the wetland overlay map as well, so that may be what...and that came from the Department too, just to let you know, Member Molina.

CHAIR SINENCI: Mahalo, Member King, for that. Any other questions about any of the amendments for our Department heads? Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I'll...is...are we available to ask Corp. Counsel?

CHAIR SINENCI: Mr. Hopper?

MR. HOPPER: Yes, Chair.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Hopper. I just was wondering on the part where...I don't know if it's 19.46.050(C)(A) or 5...section...amendment 5.19.46.030(A)(5) [sic] where the role of the Principal Archaeologist...or 19.46 where the role of the Principal Archaeologist is just to provide a recommendation, and we can't make it be the condition or something. Is that the reason why the Principal Archaeologist recommendation can't be included as a condition because of that U.S. Constitution delegating authority to the third party, or is there another reason?

MR. HOPPER: I...I'd say that's not exactly...it's not the Federal Constitution, I think it's more of an issue of your Charter and the...the...the types of permits that get...are going to...the ordinance says several types of permits get reviewed if there's a sensitivity designation on the property, and it lists the types of permits. Some of them, I think it's pretty obvious that the archaeologist wouldn't be able to just impose a permanent condition. There's...Change in Zoning is one of them, and...and district boundary amendment is another type where the archaeologist is...is allowed to recommend conditions. Those final decisions on what conditions to put on those are...are Council decisions, and that's both pursuant to HRS, and pursuant to the...the County Charter as far as zoning and...and HRS also for zoning. The other permits were certain grading permits, certain

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building permits, and subdivisions. And those...those approvals, under the Charter, are...are to be granted by the Public Works Director. So, the Public Works Director would be the one to make a final decision on approval or denial and imposing conditions. Now, I...I believe the current...what happens currently is that the Public Works Director for those...those applications will send out comments to appropriate agencies, those agencies respond with...with comments. You know, it'll go to Fire, it'll go to Water, it'll go to, you know, other appropriate agencies. They'll provide comments and recommended conditions. For subdivision, for example, those conditions get placed on the subdivision, and if there's an appeal...there's an appeal of the subdivision to the BVA, and then the condition gets challenged through that mechanism, and that's my understanding. Public Works Director can correct me if I'm wrong. So, the concern with saying the Director...the...the archaeologist can impose conditions that are mandatory on these types of permits were...were...was the...the Charter responsibility given to the directors, or in some cases, the Council, on the ultimate approval over the permit. So, that was the...the...the theme that we had looked at on...on those...those specific types of approvals. So, it's more that. I understand the constitutional issue. That would...that would not necessarily apply because I think you are...there...I understand the delegation issue, but I think if...if this ultimately going to be a condition of a permit, there's a method to challenge that permit through a...through a BVA appeal of the director decision to...to deny it or not. And through zoning, I suppose, someone could file a lawsuit if they had an unconstitutional condition, or if they had a...a denial of zoning for...for some reason. So, I don't think it's so much the Federal due process issue, I think it's more of the particular permits that get reviewed are...are...the decision-maker under those permits under the Charter are specific, either agencies, or in some cases, Council.

COUNCILMEMBER PALTIN: Then I guess my follow-up question to that would be if the Charter delegates the authority specifically to the Director to make the decision, and the Director chooses not to take into consideration what the Principal Archaeologist recommends, would it be possible to say that any recommendation of the Principal Archaeologist is also given to not only the Director of whatever department, but the Mayor and the Council as well? Just so that there's, you know, we...the right and the left and the middle hands all know what's going on?

MR. HOPPER: As far as notification, yeah, I think that that's fine. It may also...looking at this now, and I've been over this bill a few times, we may also want to specify that if it's not somewhere else in the bill, that for these permits, the Director is required to send it to the Principal Archaeologist to make clear that it's not just they may establish permit conditions, but it has to get sent to the archaeologist, that that's mandatory. I think this suggests that it's supposed to be mandatory, but I think maybe both that. And, you know, if...if you want those recommendations, I think that's going to be a government record so I think you can require that get transmitted to the...to...to other...to those...those parties.

COUNCILMEMBER PALTIN: Okay. Then if my colleagues agree with me, that would be my legislative intent, to mandate Principal Archaeologist review and transmittal of that review to Department...not only the Department head, but the Council and the Mayor.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

COUNCILMEMBER PALTIN: Do you want me to speak to the motion?

CHAIR SINENCI: Yeah.

COUNCILMEMBER PALTIN: Or --

CHAIR SINENCI: It's been moved --

COUNCILMEMBER PALTIN: did I make a motion?

CHAIR SINENCI: -- by Member Paltin, seconded by Member Rawlins-Fernandez, to include those agencies. Discussion?

COUNCILMEMBER PALTIN: Thank you, Chair. I...I...I just want to make sure we step up to the line of our authority if we can't cross it over. Just, you know, if we're having this whole outline or overlay, that we should mandate that the information gets sent to the Principal Archaeologist for review, and that whatever the Principal Archaeologist's recommendation is, if we can't mandate that the Department head follow it, that we at least have full transparency of what is being recommended so that nothing gets hidden. And perhaps through that process, the...the right thing will happen if there's no other way to mandate otherwise. Thank you.

CHAIR SINENCI: Any other discussion? Vice-Chair Johnson, and then Member King.

VICE-CHAIR JOHNSON: Thank you, Chair. I assume this question would be for Dr. Six if she's available. Throughout the bill, we have this term...or this phrase, "recommend permit conditions to mitigate potential impacts." And the mitigation is the kind of thing that I'm curious about. Good afternoon, Dr. Six. So, it's in regards to the idea of, you know, what types of mitigation are we speaking on? Oh, I'm sorry. You can't hear me, or we can't hear you.

CHAIR SINENCI: You're...you're muted, Janet.

VICE-CHAIR JOHNSON: That was...

CHAIR SINENCI: *(audio interference)*

VICE-CHAIR JOHNSON: I guess...

CHAIR SINENCI: Oh, she's going to go ahead and put on her...

VICE-CHAIR JOHNSON: Chair, if...if you want, we can move on to the other...to Councilmember King, and then we can come back to Dr. Six when she's ready...if you're okay with that.

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CHAIR SINENCI: Janet...

MS. SIX: Can you hear me now?

VICE-CHAIR JOHNSON: Oh, now we can hear you.

MS. SIX: Yeah, I've been having some weird issues with...with all these, you know, not just BlueJeans, where it...it wouldn't let me unmute. So, if you want to ask your question again, I can hear you...I can hear you now.

VICE-CHAIR JOHNSON: All right. Yeah.

MS. SIX: I'm sorry. I'm sorry.

VICE-CHAIR JOHNSON: Well, good to see you, Dr. Six. Thank you --

MS. SIX: Hello.

VICE-CHAIR JOHNSON: -- for being here --

MS. SIX: Yeah.

VICE-CHAIR JOHNSON: -- and just have a question. You know, throughout the bill, it mentions this phrase, it recommends permit...permit conditions to mitigate potential impacts, and the mitigation is what I'm curious about. So, can you give us some examples of what types --

MS. SIX: Sure.

VICE-CHAIR JOHNSON: -- of mitigation or...

MS. SIX: Sure.

VICE-CHAIR JOHNSON: Okay. That's my question.

MS. SIX: It's...it's always situational. It's always depending on where you are, what you're doing, how much ground altering you have. But say you wanted to build something on a large parcel that had, you know, sites on there, we might have an avoidance...as Ms. Ahia had mentioned, you know, put in a condition for avoidance. You're doing somewhere...you're working somewhere in the pu'uone, the sandhills, that has known burials, I would maybe ask for remote sensing in the forms of ground penetrating radar, but I would always back that up with data from the GIS database, and why I'm asking for these things. So, those are a couple of examples, but it all just depends where you're working, what you're doing, and what we know about the parcel. So, there'd be a number of different types of mitigation or --

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VICE-CHAIR JOHNSON: Okay.

MS. SIX: -- or conditions, you know, or recommendations of conditions, you know.

VICE-CHAIR JOHNSON: So, during my time working in conservation, this is kind of a side...side story, but it has a point. But basically, some folks would have a certain amount of take of, you know, endangered species, and they would just be forced to pay a fine, and that would be considered like a mitigation...a way to...yeah, you might have killed a few hoary bats, but if you pay us the fines, it's okay. So, I'm wondering if...that's my concern. Like that's where I'm...I'm leading with this, Dr. Six, is if someone applies for a permit and says yeah, we might find some iwi kupuna, but if we pay a fine, we're...we're...we now mitigate that...that problem and we're good. So, I just want to be clear on the record, is that on the table, or is that not on the table?

MS. SIX: As far as I can...my reading of the bill is that I don't have a lot of enforcement. That would be, you know, a different agency, I would imagine. But from what I understand, talking to Public Works, and...and Planning, and the heads, it...it basically...if I put conditions, and I make a strong recommendation that these are the conditions, if they don't meet the conditions, the permit wouldn't be issued. You know, they...like they can't just ignore it. But I don't know the answer to if they go ahead and...because again, that goes over to SHPD, and even with SHPD, they don't have...it goes to DOCARE under...you know, so there's different levels if you're...if you're going to just go in and...with great abandon. And...and my job position description that you folks created for me is basically to preserve Maui's most sacred and per site. So, the idea is, if I know there's sites in the area, or adjacent to the area, approximal to the area, and I have a really good reason why I'm asking for these conditions, I would be able to provide data, maps, examples of why. And then it just...hopefully people would, you know, do the right thing, but that's obviously not always what happens. But I don't, as far as I know, have any authority to fine anyone, but I mean, I don't think there's a big enough fine. If you go willy-nilly and start to dig up pre-contact burials, or post-contact burials, that's pretty...pretty serious.

VICE-CHAIR JOHNSON: Yeah. I just want to make sure that folks can't buy their way out of...of that. So, that's...that's my questions. Thank you. Thank you so much, Dr. Six.

MS. SIX: Sure. Sure.

VICE-CHAIR JOHNSON: Thank you, Chair.

MS. SIX: Sure.

CHAIR SINENCI: Mahalo, Vice-Chair Johnson. Member King?

COUNCILMEMBER KING: Thank you. That was a good question. Mine's pretty simple. I just wanted...I was going to ask Member Paltin where your...did you...what section that your...your amendment would go in?

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COUNCILMEMBER PALTIN: I'll...I'll leave it to the lawyery folks to determine the appropriate section for my legislative intent. The basic intent is that it needs...the...the mandate is that the Principal Archaeologist review it, and whatever the recommendation is gets transmitted to not only the Department Director, but also the Council and the Mayor, so that, you know, we all know what's going on.

COUNCILMEMBER KING: Yeah, no, I --

COUNCILMEMBER PALTIN: I won't...

COUNCILMEMBER KING: -- support that. I was just trying to see if you had wording or we can go ahead and...

MS. SIX: Can I ask...can I ask a question about that real quick?

COUNCILMEMBER KING: Go ahead and *(audio interference)*

MS. SIX: Would you want to see...would you want to see...like if I didn't make...like I didn't put any conditions, do you want to see those too, or do you want to see just the ones where I would put special...would...would recommend special conditions on the permit?

COUNCILMEMBER PALTIN: Probably just the ones where you recommend condition. If...if you don't have any recommendations, then there's no need for us to see it. But I'm open to other Members if...if they want to see everything, but I...I think that would be a lot.

MS. SIX: That's what I was wondering. I'm thinking it's mostly if I do have specific strong recommendations for conditions be attached to permit that you would want to see those. And in other cases, where I say oh, yeah, I don't see a problem with this work, it's minor ground altering in a nonsensitive area, that you're not going to want to look at every permit. So, that was my clarification.

COUNCILMEMBER PALTIN: Yes.

MS. SIX: Thank you.

COUNCILMEMBER PALTIN: Thanks for clarifying it. *(Audio interference)*.

COUNCILMEMBER KING: Okay. So, was that...was that...was the intent to put it under the action by the County Council, 19.68.040?

CHAIR SINENCI: We have Mr. Hopper.

MR. HOPPER: If I may, Chair. I think it depends on which permits you would like to see if conditions are imposed on. But if...if you want to see them in...in...in all potential cases, I think this amendment would be made, I think, in sections...Section 7 of the bill, Section 9, 10, and actually, anyplace where it says that if land has a cultural sensitivity designation, that...that...that the...anyplace where the archaeologist can recommend

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conditions, we would want to see those recommended conditions transmitted, as well as the...the statement that...that the permits would be sent to...for the...the...the permits or requests would be sent to the...the archaeologist. And I think...you know, I don't want to go over section, but I think it sounds like the intent is that whenever there's a permit called out that says, these permits have to...to...that the archaeologist can provide...recommend conditions, that those changes be made to each of those sections. Unless there's certain ones you don't think you...you want transmitted, but I think that's up to --

COUNCILMEMBER KING: I think she --

MR. HOPPER: -- up to the body.

COUNCILMEMBER KING: -- yeah, it looks like she wants them...to all. So, we can...if we...we can vote on that with the intent of you putting those...that change in there, I guess. Wherever it needs to be put in. Okay.

CHAIR SINENCI: Mahalo, Member King. Is Director McLean on to explain the process as far as including the archaeologist's conditions, or what's the current process, Director McLean?

MS. MCLEAN: Thank you, Chair. And thank you for your opening comments. I also want to thank you, and Gina, and Corp. Counsel, and everyone involved in this, it was really a collaborative effort to get to this point, so we really appreciate that. Looking at the types of applications that are covered under Section 19.46.050, when we get a Change in Zoning application, community plan amendment application, district boundary amendment application, special use permit application, those will get routed to various agencies for comment. So, those are usually pretty large projects, so they get sent to a whole variety of agencies, Federal, State, and County. Obviously the Principal Archaeologist would be added to the checklist. And then when the Staff report is put together for the Planning Commission, all agency comments are included as an exhibit. Agency comments sometimes are just informational for the applicant to know what they might be facing down the road, or sometimes they do suggest conditions kind of implicitly, or they're explicit and request straight-out a condition. So, we have to kind of read into those and understand the nature of the comments. But if there's an implicit or explicit condition, then it does get added as a recommended condition unless there's really some super compelling reason not to. Either by the time we write the Staff report, new information has come in, or the applicant proposes some sort of alternative, but it'd be very unusual for...for us to not include conditions that are recommended by the experts who we rely on. So, the Planning Commission will get those, and then with most of these applications, the Council is the final decision-making authority, so you folks would get that packet, the commission gets that packet. So, it would be duplicative for you to get those comments for those applications that eventually come back to you for approval, but for the other ones, you know, if you want to know what's being recommended, not all those will come before you.

CHAIR SINENCI: Mahalo, Director McLean. And can you explain the enforcement once

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the...the permit condition is added?

MS. MCLEAN: If it's a condition that's added to...to a land use permit, to a Change in Zoning, community plan amendment, district boundary amendment, or special use permit, that would be for the Planning Department to enforce. If it's added to a grading permit, or a building permit, or some other kind of permit that we don't administer, it would be up to that Department, so like Public Works, to enforce. So, it would depend on the type of permit that the condition was added to, and which Department is...is responsible for that enforcement.

CHAIR SINENCI: Yeah, we have a question for you from Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Director McLean. I just was wondering if it was possible to clarify the legislative intent, that if we are already getting the comments from you...through you from the Principal Archaeologist, we wouldn't require it duplicatively [sic], that just the once would suffice.

MS. MCLEAN: If you required that for...I'm saying that you don't...if you want to see the Principal Archaeologist's recommendations, you are going to see them for the land use permits that eventually come to you, so you don't need to get that through another vehicle. You can, you just get them twice, you know. For the other permits, for grading and grubbing permits, subdivisions, building permits, blasting permits, you don't see those. So if you did want to see the archaeologist's comments for those, that would really be the only way to get that, is by saying in the bill that those need to be sent.

COUNCILMEMBER PALTIN: Thank you. Yeah, that would be...that would be my legislative intent. And the...the processes that you follow, that we get the...all of the agencies' recommendations on land use documents, that's standard practice, regardless of who is the Director?

MS. MCLEAN: Well, it was the practice before I joined the Department. I...you know, I...I...I don't know that that's codified, but I think for you folks to have the complete record, you have to see the whole Staff report. I don't see how that could be excluded. We send you the meeting minutes. The Staff report really has the most substantive information, so it's hard for me to see a future Planning Director, no matter their . . . (inaudible) . . . not including that packet, that that would be very unusual to me.

COUNCILMEMBER PALTIN: Okay. Thank you. Just wanted to clarify. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member Paltin. And Staff, did we...we get the...the legislative intent of Member Paltin's motion?

MS. STEWART: Chair, I believe so. Thank you.

CHAIR SINENCI: Members, are you ready to vote on the amendment? Voice...voice vote? All in favor of the amendment as proposed by Member Paltin, raise your hand and say "aye."

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COUNCILMEMBERS: Aye.

CHAIR SINENCI: Five “ayes,” zero “noes.” Amendment passes. Members, are there any other proposed...oh, six...seven. Yeah, seven “ayes.”

**VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and
 Councilmembers King, Lee, Molina, Paltin, and
 Rawlins-Fernandez.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR SINENCI: Members, any other proposed amendments? Okay. We have a main motion on the floor to recommend passage of Bill 154, CD1...oh, Member Molina, go ahead.

COUNCILMEMBER MOLINA: Yeah, Mr. Chair. No, sorry, just a question for the Department. You know, at the last meeting, there was some, I guess, concerns from the Department about the version of the bill that was being discussed. So, if I can ask Director McLean, is the Department now satisfied with what’s put into the revised version here? And does it adhere to any potential gaps that may have been overlooked from Hawai’i Revised Statutes? So, just in short, if you guys take on the revised bill, you guys are okay with this now?

MS. MCLEAN: Yes. And again, really appreciating Chair Sinenci and his Staff for the collaboration. There was one edit...there were a few manini things that we can talk to Staff about offline that aren’t substantive in any way, but there was one substantive change, and one of the testifiers mentioned this. In most instances, the Principal Archaeologist recommends conditions, but there’s one instance where it still says, the archaeologist imposes conditions. And I don’t know if that was purposeful, if there’s one instance where the archaeologist has that authority, or if that should also be “recommends.” That’s really the only substantive comment that I had on this latest version, and that’s in 19.46.050(B).

COUNCILMEMBER MOLINA: So, it’s a matter of wording, yeah?

MS. MCLEAN: And...and...and honestly, we’re fine with it either way, it’s really in terms of

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Council's policy, but also, whether the attorneys say that the archaeologist can have that authority.

COUNCILMEMBER MOLINA: Okay. Well...

MS. MCLEAN: My understanding was that it should all be "recommends," but in that instance, if the authority can be established then that's fine with us. I just want to make sure that --

COUNCILMEMBER MOLINA: Okay.

MS. MCLEAN: -- we got it straight.

COUNCILMEMBER MOLINA: Okay. Mr. Chair, can we hear --

MS. MCLEAN: Thank you.

COUNCILMEMBER MOLINA: -- from Corporation Counsel on the concern from the Director regarding that?

MR. HOPPER: Yes.

CHAIR SINENCI: Mr. Hopper?

MR. HOPPER: Chair, I think I agree. I think there's...there's the generics...there's the...the 19.46.050 goes through and lists the permits that are required, and then has a general statement that says, for that land, the archaeologist may impose conditions. I think that that should be changed similar to the other sections afterwards, that...that...that amend each separate section for the...the...the permit itself. So, I think corresponding amendments should be made to that as well. I imagine that was probably the intent of going through the ASF. I don't want to speak for Staff that...that worked on that, but I...I imagine that was the intent was to include that, so I think that's an important catch. Because when you make the changes in the...in the later portions, it should be...this portion should be consistent with that. So, this isn't...this...this...I think that's a good change to make.

COUNCILMEMBER MOLINA: Chair, if I can...so, Mr. Hopper, we could basically pass this out of Committee, then at first reading, that change could be considered then...at first reading at Council?

MR. HOPPER: I'm...I'm not sure. I think I'm getting from...yeah, I think...Staff has...has put in the chat that that was an inadvertent omission, and can be...can be corrected. I'm not sure if the best action right now is to make that as a...as an amendment, or if, you know, OCS Staff has concerns with doing that without that being on the ASF. But I do think that should be corrected in order to get a bill that, you know, we could approve. I think that was the intent though.

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COUNCILMEMBER MOLINA: Okay. All right. Thank you, Mr. Hopper. Thank you, Chair.

CHAIR SINENCI: Yeah, mahalo, Mr. Molina. Yeah, we can make that...that change. And...and mahalo to Director McLean for...for bringing that up to fix that. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to clarify. Is it not that the Principal Archaeologist can't even trigger a review? Because that seems pretty...it's just a review. Like it's like sending it to the CRC, or sending it to the SHPD. It's not like he's...they're imposing a condition; they're just triggering a review. So, if...if we can, I would...I would love to keep that authority with the Principal Archaeologist.

MR. HOPPER: I --

CHAIR SINENCI: Mr. Hopper (*audio interference*).

MR. HOPPER: -- I think...to clarify, this section isn't supposed...isn't really saying anything other than what the later sections say. It says for land with a cultural sensitivity designation, the Principal Archaeologist may impose conditions on the permit, triggering the review to mitigate potential impacts, including site avoidance. So, the permit triggering the review are the seven permits listed above...or eight permits listed above, so that's not changing. I think the concern is the wording "may impose conditions." I think it's may...you can keep that...that...that paragraph, but I think you would say may recommend conditions. I think a...in this section, we would also say it's sent to the archaeologist for review for these permits, and...and...and also, say may...may recommend conditions. And I think we would also...may need to say with a cultural sensitivity designation. I think a couple of the later permits said high cultural sensitivity designation, but I may need to...to clarify that. But I think you...you would be making similar amendments to this section that you did to the...to the sections below this that would have the same...same wording, so I don't think you're really changing anything there. This...this section was...is just a general statement that whenever any of these permits are reviewed, the archaeologist should be reviewing them, and may recommend conditions. We say that in each section below, but I think this section states that, and should be consistent with the other latter sections. And I think that was intended, but just not put in there because it wasn't one of the other...in one of the other sections.

COUNCILMEMBER PALTIN: Oh, so it's just the wording that's the problem, it's not the intent?

MR. HOPPER: Yeah. I mean I think this says the same thing as the...it says later, which is for any of these eight permits, they've got to go to the archaeologist, and the archaeologist may recommend conditions. And I think you...you may want to add that...that wording that says, you know, that the...the...the recommendations for those certain permits are provided to...to the...the Council and Mayor. Although you may not want to say that in this section because you don't want it in every one of these permits. So, but yeah, I...I think just to make sure that this language isn't inconsistent with what you say below, for each permit would be the key.

COUNCILMEMBER PALTIN: Okay. Thank you for clarifying that for me.

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CHAIR SINENCI: Mr. Hopper, would it...sorry, would it be better if we did...provided that in an...in an amendment today?

MR. HOPPER: I...I...I think so because that would give us the ability through...after clerical review to potentially approve the ordinance before first reading. I wouldn't want to go about making that change as part of our review without...without a...without that...that being specified by the...by the Committee. So, I...I think and...

CHAIR SINENCI: *(audio interference)*.

MR. HOPPER: Oh, sorry.

CHAIR SINENCI: Oh, go ahead, finish.

MR. HOPPER: Oh, I...I think Ms. Young had specified a potential change, but if you wanted to say for land with a cultural sensitivity designation. I don't know if you want to leave it at that because some of the later ones say high cultural sensitivity designation. But I think you could say for land with a cultural sensitivity designation...you know, maybe we can take a brief recess on this. Because in a couple of the latter sections, it says high sensitivity designation are...are the only ones that get...that get reviewed, but I...I still want that to be consistent with...with this, and get that intent. So, I don't know if you can take a brief recess and I can speak with Ms. Young on that because I think she had worked on the amendment summary form, and I just want to be consistent throughout.

CHAIR SINENCI: Okay, Mr. Hopper. And yeah, Members, if that's okay, we've passed our mid-meeting mark. So, we'll go ahead...is ten minutes okay, Mr. Hopper? Okay. So, we can take our mid-meeting break. With that, the APT...

MR. HOPPER: I...I...I...yes.

CHAIR SINENCI: We'll take our break, yeah--is in recess until 3:17. ...*(gavel)*...

RECESS: 3:07 p.m.

RECONVENE: 3:19 p.m.

CHAIR SINENCI: ...*(gavel)*... Aloha 'auinalā, and welcome back to the APT Committee meeting of Tuesday, November 1st. It is 3:19. Mahalo, everybody, for that brief recess. And so, Mr. Hopper, did you have anything to share before we take the vote on the amendment?

MR. HOPPER: Yes. Just to clarify the amendment, I think for...what Director McLean had referenced, 19.46.050(B), I think the appropriate changes would be to specify that the Principal Archaeologist may recommend conditions on the permit triggering the review to mitigate the impacts, including site avoidance. And then to also clarify that the

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permit...those...those permits are required to be sent to the archaeologist. I don't think you need to add in the change about the...that those...any conditions that are recommended being sent to the Council and the Mayor in this section because you're doing it in the other sections, and it sounds like in a couple of those other sections, you didn't want to require that if it's already a Council permit. So, I think those are the two changes to be made. I think if...if...if Staff understands those changes, then that's...that's good, and we could move on with the vote. If there's any additional clarification, I could provide it.

CHAIR SINENCI: Staff, did you get that?

MS. STEWART: Chair, yes. Thank you.

CHAIR SINENCI: Okay. Was the...the main amendment as Ms. Young had put in the chat to change "impose" to "recommend." Is that the main one, Mr. Hopper?

MR. HOPPER: Yes, and also to specify, like you did in the other similar sections, that the permits are required to go to the Principal Archaeologist for review, which I think is implied, but should be stated expressly.

COUNCILMEMBER PALTIN: So moved.

CHAIR SINENCI: Okay. Sorry. There's some work being...okay. So, Members, are we all ready to take a vote on the amendment? Okay. We'll entertain a motion to amend the 19.46.050(B) to change the word "impose" to "recommend" and...to "recommend" and to be consistent with the rest of the bill.

COUNCILMEMBER PALTIN: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR SINENCI: Okay. It's been moved by Member Paltin, and seconded by Member Molina. Further discussion?

COUNCILMEMBER PALTIN: I think that this is good for consistency, and so, good idea.

CHAIR SINENCI: Member Paltin? I do not...

COUNCILMEMBER PALTIN: That's it.

CHAIR SINENCI: Okay. I do not see Member...Committee Vice-Chair Johnson or Member...Chair Lee. Staff, we can still go ahead with the vote?

COUNCILMEMBER KING: Chair?

CHAIR SINENCI: Member King?

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COUNCILMEMBER KING: I thought I saw a message from Chair Lee in the chat that she had to leave at 3:00. So, I don't think she's...I think she's --

CHAIR SINENCI: Oh, okay.

COUNCILMEMBER KING: -- not going to come back.

CHAIR SINENCI: Okay. Thank you for that.

COUNCILMEMBER KING: Sure.

CHAIR SINENCI: Oh, there's Committee Vice-Chair. Okay. So, all in favor of the amendment, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR SINENCI: Okay. It looks like six "ayes," one excused, Chair Lee. Motion passes.

**VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and
 Councilmembers King, Molina, Paltin, and
 Rawlins-Fernandez.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Lee

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR SINENCI: Okay. Members, if there aren't any other considerations...Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. In that same section, *(audio interference)* 46.050, in the *(audio interference)* sections, it says for land with a cultural sensitivity designation. Would it help to amend "a" to "any" so that it...it's more inclusive of every kind of cultural sensitivity designation? Should I ask that question of Miss...of Dr. Six?

CHAIR SINENCI: Which Department...

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MS. SIX: I'm sorry, I'm sorry. It's really hard for me to get my audio to work. So, what you...I'm sorry, you want any sensitivity designation, not just high? Is that what you were asking? Yeah, I mean...

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

MS. SIX: Yes. I mean the idea is that if it has a sensitivity designation, that it would come to me, I would take a look at it, see what we know about the parcel, why it has that designation, and then make my recommendations. So, it would be anything with a cultural sensitivity designation. That's how I understand it. Not just ones --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. SIX: -- that are high, but ones that --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. SIX: -- you know, would...would also be medium, and even low, if it's...depending on what kind of sites, and what kind of work is going to be done.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Can I confirm that with Corporation Counsel, their read on it is what Dr. Six understands? To...you know, if Dr. Six is not the cultural archaeologist, sometimes (*audio interference*) her understanding only, that future archaeologists would understand the same thing.

CHAIR SINENCI: Mr. Hopper?

MR. HOPPER: So...so...so the question is whether a reference to land with a cultural sensitivity designation means any designation. It could be the...any of the --

COUNCILMEMBER RAWLINS-FERNANDEZ: Any...any level.

MR. HOPPER: -- designations. Yes. And that...that's correct. And that phrase "a cultural sensitivity designation" is used throughout. I think it means any designation, including even the...the low...there's low, medium, and...and high, and...and in any of those that have that designation, this would be triggered. There's some cases where this only applies for high designations. Review, as I understand it, will have to be done for anything with a cultural sensitivity designation. If that's what Council intends, then that's...then that's certainly something that...that you can have. But yes, using the words "land with a cultural sensitivity designation" means one with a designation that's on the map, and there's a process in the...in the ordinance on how that gets designated. So, it's any designation, whether it's high, medium, or...or low.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Hopper. So, for D, where it has specifically high cultural sensitivity? That...

MR. HOPPER: Yes, that would be different. That would be for high only, correct.

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COUNCILMEMBER RAWLINS-FERNANDEZ: And Chair, you wanted that subsection to...to say high? Or Dr. Six? Because of the mitigation plan?

CHAIR SINENCI: Dr. Six, do you have a comment? She's been having audio problems.

COUNCILMEMBER RAWLINS-FERNANDEZ: Dr. Six? Oh, okay. Chair, do you know? Or anyone else that's acting as a resource for us?

MS. AHIA: It was my understanding that they would...that it's for all designations, so that may be a mistake that it says "high" in that particular instance. I was told that it...that all designations would be reviewed. Maybe...maybe Ms. Flammer can...Ms. Young can...sorry...clarify, if she's on.

MR. HOPPER: Chair, I think this is one of the only sections that says "high." The...the other sections that say "a designation" do get reviewed. This is one of the sections that says "high," so I presume the intent was to say for this section it applies only if we're...there's a high designation. For the other sections that say, "a designation," that meant any, but Council should be specific on...on the intent, for sure.

MS. YOUNG: Did...did you want me to explain the intent?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

MS. YOUNG: Chair?

CHAIR SINENCI: Go ahead, Gina.

MS. STEWART: Chair?

MS. YOUNG: I understand...

MS. STEWART: I'm sorry, this is Staff. Would...would you like to designate Ms. Flammer as...Ms. Young as a resource?

CHAIR SINENCI: Members, any objections to having Ms. Young?

COUNCILMEMBERS: No objections.

MS. YOUNG: Okay. Great. Thank you. It's my understanding that if you are doing the site avoidance plan, you need a site to avoid. So, it...it...that's...that's why it was written that way. So, those other criteria that are added in there are actual physical sites. It...it could...we could take out "high," and it would be just fine, and...and Janet could just review all of them, and then have the ability. She can do a mitigation plan for any permit that she's reviewing, it was just the site avoidance, but if...if you prefer it, really, it doesn't make a difference to remove "high," and it would be consistent with everything else. It's...it's really the Members' preference.

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MR. HOPPER: Well...

MS. SIX: Can I...oh, I have audio now, can I say something? Can you hear me? Okay. Sorry about...I'm sorry about my technological glitches. When it has a sensitivity designation, if it's low, I may recommend that it doesn't even need 6E review, so some of my recommendations would be we can proceed in a more faster way. In some cases, it...where it has a high designation, it would be different. So, you know, the idea of a cultural sensitivity designation of high, medium, and low, it doesn't...it doesn't mean I'm not going to have recommendations for even low ones because it may be in an area that doesn't have a lot of potential to impact sites that aren't known, that I would go ahead and...and make it easier for the process. And so, the idea is to take each one as...so we want to the designation so that I can make the appropriate recommendations. Does that make sense?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. And so, Dr. Six, in that section, it's saying that development may not be initiated until a cultural site avoidance plan, and if required, an appropriate mitigation plan, is reviewed by the Principal Archaeologist, and approved by the applicable island Burial Council. So, regardless of what level...so, even if it's a low cultural sensitivity designation, you would still want this to be followed here, so we should remove high?

MS. SIX: Yeah. Because again, you could have...you could have some types of cultural sites that are less significant than others because all sites are not created equal. So, just because there's sites on a parcel, I mean the ones obviously that would jump out would be heiau, iwi, which would, you know, would have more significant than say a pig pen or a plantation infrastructure. So, depending on the types of sites, and the designation of the area and/or parcel, that I could make recommendations. So, and if there's a site on...like a known site, as Gina was saying, we're going to...we're going to avoid it...you know, that's going to be a site that's significant. Because you can, under 6E rules, sometimes document a site very well and take it down. Say it's a ranching wall, it...it is historic, it is over 50 years old, so in some cases, with the proper documentation, you are able to actually remove features from the landscape. In other cases, those would be protected, and there would be buffers, and the preservation plan, and site avoidance. It's always so specific on what they're doing, where they're doing, and how much ground, so it's really hard for me to make it black and white. I apologize.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Dr. Six. Oh, okay. Mr. Hopper?

MR. HOPPER: Chair? Just...just to clarify, this section appears to say that no development may be initiated until a cultural site avoidance plan, which sounds like that's a required condition, is reviewed by the archaeologist, and approved by the Burial Council or Cultural Resources Commission as determined by the Principal Archaeologist. So, this...this seems to have language that...that sort of requires this as a condition, and I assume that's why it was listed as only for those properties of a high designation. If you take out "high," it sounds like there's a required site avoidance plan to be recommended for every...for every single permit under any designation, even if it's a low designation.

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So, I assume that's why that "high" was put in there initially, because if you take this out it would read, "for land with a cultural sensitivity designation, development may not be initiated until a cultural site avoidance plan," which is...which would be required, "is reviewed by the archaeologist and others." And I don't know if the archaeologist wants a cultural site avoidance plan in all cases with any sensitivity designation. I presume that's why the word "high" was in there because this requires something different through the conditions than the other...other areas. So, that's...I just want to make clear that this is...this requires something different than just a general review, it requires more specific things that I presume were there only because they were high. If you want to require as a condition...as a recommended condition a site avoidance plan in every single case where there is a designation at all, that's what would happen, I think, if you take out the word "high." So, I just want to make that clear.

MS. SIX: And I'm sorry, I misunderstood. So, I agree with that. If it's...if it has a high designation, there are sites that we know that are on the parcel, or we know there's something that happened on the parcel, and there would be...you know, in that case, I agree. I'm sorry, I misunderstood. I just want --

COUNCILMEMBER RAWLINS-FERNANDEZ: No, no.

MS. SIX: -- people to understand that the --

COUNCILMEMBER RAWLINS-FERNANDEZ: So...

MS. SIX: -- designations are all going to be...I'm going to be looking at all of them, but yeah, I wouldn't...wouldn't be doing site avoidance for every single --

COUNCILMEMBER RAWLINS-FERNANDEZ: Right.

MS. SIX: -- level.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I'm...I'm going...I'm going to interject. So, in...in its entirety, Section D says, "for land with a high cultural sensitivity designation or that includes criteria listed under Subsection" the two subsections, "development may not be initiated until a cultural site avoidance plan and, if required, an appropriate mitigation plan is reviewed." So, it's...it's only saying if it's required. Or is it saying that development may not be initiated until a site avoidance plan, that part is required, and then --

MR. HOPPER: I...

COUNCILMEMBER RAWLINS-FERNANDEZ: -- if required, an appropriate mitigation plan.

MR. HOPPER: I think we should clarify Council's intent here, but the way I read this language, it says the site...the cultural site avoidance plan is required as a recommended condition in all cases. And then if required, the appropriate mitigation plan would have to be reviewed...a mitigation plan could also be required. Again, let's clarify what Council and

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archaeologist would want in this case, but I presume the use of the high designation was intentional in this paragraph.

CHAIR SINENCI: Member Rawlins, was that...did that answer your question? Do you want to keep the high cultural sensitivity designation?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I think *(audio interference)* is correct, *(audio interference)* section. I guess it's not super clear. So . . .*(inaudible)*. . . So, it includes criteria listed under the two different subsections. Development may not be initiated until a cultural site avoidance plan is reviewed by the Principal Archaeologist, and approved by the island Burial Council. So, I...I don't...I guess I don't read it as this subsection requiring a cultural site avoidance plan. It's referencing two other sections that say if a site avoidance plan and mitigation plan are required, then it would be reviewed by the archaeologist and applicable island Burial Council or CRC.

CHAIR SINENCI: Hopper?

MR. HOPPER: I...I mean if...if the Council wants it to be permissive, then we can certainly write that language. You could say...say something like...I don't know if you wanted to say high, but you could say a...sort of among the conditions the archaeologist could recommend could include these types of site avoidance plans and mitigation plans, something along those lines. If that's how you want to...to have it, I think we could come up with...with language, just...I hadn't prepared that before...before the meeting, so that's something we may need to...I...I'm not an expert at...at...at those types of plans, but I...I think I can read the...the...the wording to decide what's...you know, to look at what's mandatory and what's permissive, so we can work that out. But maybe knowing the Council's intent on that would...would assist. But that's why I was only cautioning about taking out the word "high" may lead to some required site avoidance plans where the archaeologist might not be able to fit it...fit one in, in a given case. So, that's...that's why I provided that caution.

CHAIR SINENCI: I...I personally would want it to be more mandatory than permissive. Paltin?

COUNCILMEMBER PALTIN: Thank you. I'm...I'm no wordsmith or lawyer, and I got couple other questions, but in this case, could we say if necessary, or is that not legislative drafting? That would be, I think, the legislative intent, if a site avoidance plan is necessary, then I would...that would be my wording.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair? Chair?

CHAIR SINENCI: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. The question is, do we keep high, or do we remove high, that's all. That's...that's the only section...I mean that's the only word in that subsection that is in question. So, I'm...I'm...I'm looking at it in its entirety, and then...because I'm leaning toward removing the word "high" that...and that's all, just that word.

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CHAIR SINENCI: I'm agreeable to that. Member Rawlins-Fernandez, did you want to make the motion to remove high?

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I move to remove the word "high" in Subsection D.

COUNCILMEMBER PALTIN: Second.

CHAIR SINENCI: Okay. (*Audio interference*) by Member Rawlins-Fernandez to remove the word "high" in Subsection D, and seconded by Member Paltin. Discussion?

COUNCILMEMBER RAWLINS-FERNANDEZ: No further discussion. Mahalo, Chair.

CHAIR SINENCI: Member King?

COUNCILMEMBER KING: So, I...I'm gathering from Mr. Hopper that that could be written in a way that it doesn't require every...every single designation to have that plan? That's what we're trying to do here?

MR. HOPPER: Chair?

CHAIR SINENCI: Mr. Hopper?

MR. HOPPER: I mean if all you do is take out the word "high," it does sound to me like the...there's a requirement for a site avoidance plan, at least, before development, and that that's a condition the archaeologist has to recommend in every...every case, regardless of the designation. If you don't want that to be the case, we would...we would look at other wording. But that's...if you just take out "high," I think that's what's going to be required of the archeologist in...in those cases.

COUNCILMEMBER KING: Okay. So, what would your recommendation be if we wanted to justify that her recommendations...she can make recommendations on all levels of designations?

MR. HOPPER: Well, if you took out "high," it would say "for land with a cultural sensitivity designation, or that includes the criteria." You could say the Principal Archaeologist may...may recommend a site avoidance plan, and if required, an appropriate mitigation plan be reviewed by the Principal Archaeologist, and approved by the applicable island Burial Council or Cultural Resources Commission as determined by the Principal Archaeologist, or something along...along those lines. That's...that's what I would say to make it clear that this...that...that those are...those are the options of the...of the Principal Archaeologist. But again, I'm just doing this on the fly here, I...I would want time to discuss it with the archaeologist that's actually going to be doing the review to sort of figure out what the best way to go about that. And again, I didn't work on the original high designation, so I presume there's a reason that was there, so I would want to defer to the archaeologist on sort of what she'll be reviewing in these cases. Sorry I

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can't be clearer.

COUNCILMEMBER KING: So...so, Member Rawlins-Fernandez, so...are you okay with putting that intent in the motion, however it's...it gets written? I mean because I'm assuming the intent is not to require that plan for every designation...or was it?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR SINENCI: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, basically, Mr. Hopper just kind of flipped the words...the existing language here around so that it gives the archaeologist that leeway to...to not require it for every...in every situation. But Chair, I wanted to call on Ms. Ahia, as one of our resource personnel, to speak to that level of cultural sensitivity.

CHAIR SINENCI: Ms. Ahia?

MS. AHIA: Hi. Thank you so much. I just wanted to get some clarity. Because the way that I understand that high, medium, and low designations are created is based upon number of sites. So, I just want to clarify that if it's only one site, and it's considered a low designation, but it's a significant site, say it's a heiau, or...or a burial site, that doesn't necessarily make it less important. So, I guess maybe I need some clarification from Ms. Young or Dr. Six to...to be certain that we are not making sites seem less important if there are less numbers of them. Does that make sense?

MS. SIX: It's not number of sites, it's significance of sites. So, whenever the site is known and has an SIHP number, it already has a significant criteria assigned to it.

MS. AHIA: Right.

MS. SIX: So, if you have something with a very high significance, it's associated with important personages, important events, unique architectural styles, all those things that are the 6E significance criteria. That's going to give that site more weight than if there's 20 sites that have low significance. I mean the number --

MS. AHIA: Okay.

MS. SIX: -- is going to have some impact, right, but it's also site type, as I tried to awkwardly use the example of plantation site might not be as important as a heiau, which is significantly culturally, religious to a group, all those things. So, it's...it is numbers, but it's also the...the weight of the individual sites that will be showing. And I...I...example is a heat map. Like when we all see radar coming, and we can see where the storm is, right? So, when you take and weigh all these sites, and the number of sites, and you bring that data in, you're going to get a thunderstorm in certain areas where you're going to see that there's a number of cultural sites that have high significance. And so, it's similar to what we call a heat map is one way to display it. So,

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it's not just numbers of sites, but also the significance of those sites. And I always use Moku'ula as the example of ticks every box, right. It doesn't have necessarily architectural integrity anymore because it was buried, but it has all the other things...events, association, religion, burials. So, that would have a much heavier weight than just...you know.

MS. AHIA: Okay. You're using the 6E criterion like...like a burials criterion E. So...

MS. SIX: Well, if it's somebody...if it's Kamehameha it might be E and A, it might be --

MS. AHIA: Right.

MS. SIX: -- I mean it could be more than one. Yeah.

MS. AHIA: Right. But...but those things would be...would fall under the high sensitivity areas and not the low because it's only one site. I just want to clarify that.

MS. SIX: Oh, no, if there's one...if there's one important site, it would...depending on...again, on the...depending on the area because we...we want to look at TMKs because that's what we work within the modern realm, but we also want to look at areas, right. So, proximity. So, proximity to important sites, and I think, of course, the Maui Lani Phase 6, I think about what we know about that area, what we know about what's potentially on Phase 8, what we already do know is there, and those are the types of things. So, it is numbers, but it's also type...site type, and then what you're doing in the area.

MS. AHIA: That's helpful clarification in terms of this language for high versus medium and low in...in terms of that language for this clause. Thank you for that clarification, Dr. Six.

MS. SIX: Sure.

CHAIR SINENCI: Mahalo, Ms. Ahia. And Members, 19.46.030, I was reminded A(2) is...refers to historic structures. Member Rawlins-Fernandez, did you...your questions answered?

COUNCILMEMBER RAWLINS-FERNANDEZ: I did. I withdraw my motion.

CHAIR SINENCI: So, we do have a...a motion to amend on the floor. Member Paltin?

COUNCILMEMBER PALTIN: Oh, I thought she withdrew her motion, and I'll withdraw --

CHAIR SINENCI: Oh *(audio interference)*.

COUNCILMEMBER PALTIN: -- my second.

CHAIR SINENCI: Okay.

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COUNCILMEMBER PALTIN: But I did have another couple concerns that if we could talk it out, if that's all right, Chair? Sorry.

CHAIR SINENCI: Okay. We did have a second item, I apologize, but we can have the next APT meeting for that second item if we want to continue this discussion. I just wanted to let the people on for the second item know that I can dedicate the entire meeting next time for the Kula Ag Park. Okay. Go ahead.

COUNCILMEMBER PALTIN: Thank you, Chair. I'm so sorry. With the talk about designations, I was concerned about how...first...my first concern would be on page 4 of the ordinance. B(3), it's not clear to me how hatched areas will be treated, and how they're defined. Is there another section where we would address if it's considered a designation, or should it be clarified in a separate paragraph about hatched areas where there's a lack of cultural resource information?

CHAIR SINENCI: Staff, did we...oh, we can...did we have hatched areas?

MS. YOUNG: You want me to explain?

CHAIR SINENCI: Oh, go ahead, Ms. Young.

MS. YOUNG: Sure. In talking with our GIS Staff, we learned, actually, that the hatching will not work. So, that was a good catch. You may want to just amend it to just remove the hatching. And then if you wanted to be specific, you could add a number 4 that said areas that lack any criteria will have no designation.

COUNCILMEMBER PALTIN: Okay. So moved.

CHAIR SINENCI: It's been moved by Member Paltin to --

COUNCILMEMBER PALTIN: For the legislative intent just stated.

CHAIR SINENCI: -- get rid of the hatching, and to also add a number 4. Gina, can you include that in the chat please?

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

COUNCILMEMBER PALTIN: Number 4 for areas that lack cultural resource information will have no designation.

CHAIR SINENCI: Moved by Member Paltin, seconded by Member Rawlins-Fernandez. Discussion? Member Paltin?

COUNCILMEMBER PALTIN: Just trying to make sure that we...we know what to do with areas that don't have any cultural information. And I guess this is the best option at this time to move the entirety of the bill forward. It could possibly be revisited as the overlay map is created about how to address areas with no cultural information available.

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CHAIR SINENCI: Any other discussions? Okay. We'll call for the vote. All in favor of the amendment, raise your hand and say "aye." Oh. Oh, did we...you want a response from Dr. Six? Go ahead, Dr. Six.

MS. SIX: Oh. In areas that don't have a designation, the permit would still come to me, and I'd take a look at what I know, but likely would have to go to SHPD. And then they would probably ask for something like an AIS, and then we would have information about it. Because what we're going to be working with is SHPD data, OHA data, existing data, and sometimes, if there hasn't been development, and there hasn't been an archaeological inventory survey, there could be tons of sites, but they haven't been documented. So, we would treat those areas very...very carefully. We'd look at what we know, like there could be a survey on one side, and a survey on the other side, that show military sites and ranching sites. Then I would say this area, although it doesn't have a designation because there's none known, given what we know in the proximity, we would ask for these conditions...or again, defer that to SHPD. And then SHPD, when they don't have enough information, they always ask for an inventory survey. So, places that have...haven't had surveys yet, and sites aren't documented, that usually the...the...they're usually asking for an archaeological inventory survey. And then if there are no sites found, then it's an archaeological assessment, and it's recorded as such. And then in the future, that goes into the map, so then I would know that there's an AA or an AIS done on that parcel, and what they found. So, it would still --

COUNCILMEMBER PALTIN: So...

MS. SIX: -- it would not be no regulations; it would just be that I wouldn't be able to make any kind of determinations based on the information at hand. Does that make sense?

COUNCILMEMBER PALTIN: So, it sounds like that it would still be a designation. I'm not sure what we would call it though.

MS. SIX: Well, that's what we were trying with the hatch, like how do we like say like...because...because it's true. If you look at the...at the SHPD data that we have, it's mostly post-1990, and in areas that lots of development have occurred. That doesn't mean the other areas don't have any sites. So, that was a thing we kind of wrestled with because there is a lot of information out there, but in some cases, you know, we don't have enough to make a determination. But we also don't want to say it's oh, yeah, go wild because we don't know anything...we want to, you know, work with SHPD always, you know, working under the 6E regulations to make sure we can find out the most about the area. But the overlay would help me look at what we do know in the area, and then help make determinations on areas that we don't have specific information on.

COUNCILMEMBER PALTIN: And do you think that's an issue that could be revisited once the overlay has been created, and we just get this overlay started, and then --

MS. SIX: Yeah.

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COUNCILMEMBER PALTIN: -- possibly at that...or along the way, we can...we can amend it to name a designation that's appropriate?

MS. SIX: Yes. Yeah, absolutely. The map is the...as...as the database is built out, and the cultural overlay maps are generated, we are going to want to, you know, take...revisit some of this because we are...we're...are working with a theoretical, hypothetical map. And what we see with SHPD is we have a concentration of information in certain areas, and then there's an absence...that's because the State only gets information from contracted archaeologists, universities, or, you know, Bishop Museum. So, there's lots of areas that aren't known. So, yeah, as the map goes, it will constantly be revisited, those areas. And the designations may change as we get information, right?

COUNCILMEMBER PALTIN: Okay. Would it...would it be possible to amend my motion to say that areas that lack cultural resource information will have a currently unknown designation instead of not having a designation? Would that be appropriate, Mr. Hopper?

MR. HOPPER: Chair, I just was going over the criteria of the...the bill. The intent, I think, was that you needed to have a cultural sensitivity designation of high, medium or low before it would be sent to the archaeologist. If you want to have all permits sent to the archaeologist, regardless of a sensitivity designation, that would be every property in the County. So, if that's your intent, I guess you could go...go that route, but the...the way the bill's structured right now, you need a cultural sensitivity designation of high, medium or low before it goes to the archaeologist for review and permit conditions, otherwise it wouldn't...I mean there might another thing that requires review, like SHPD requirements, or other things. But right now, under the bill, unless you have one of those designations, you...you would not go to the archaeologist for review under this bill. If you...if you give a designation on the map to everything in the County, then every single permit, regardless of designation, would have to go to the archaeologist. And I imagine that's probably a much broader scope than as the bill was drafted. So, I don't know what the...what the intent is, but that would be a bit different than, I think, how the bill is currently worded.

COUNCILMEMBER PALTIN: Okay. Then I guess for the purposes of moving forward at this time, we'll leave it with no designation, and try to address that in a...a future separate bill. Does that sound amenable to the Members and the...Dr. Six?

MS. SIX: Well, and...and the truth is, right now, speaking with Jordan Molina from Public Works and other people, they send everything to SHPD. If...you know, they just send it to the State. If it has ground altering, it goes to SHPD for determination. So, I don't want everything to come to me. In some cases, I'm not the authority. I'm working with SHPD, right, and if we have significant sites already identified through surveys and, you know, other aspects, then we can...I can make some determinations and some recommendations. But where there's no information, the default is normally to send it to SHPD, and then they'll send back asking for usually an archaeological inventory survey or at the minimum, monitoring.

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COUNCILMEMBER PALTIN: Okay.

MS. SIX: Depending on the scope...scope of work and the amount of ground being moved.

COUNCILMEMBER PALTIN: Okay. Then I'm...I'm...I'm okay to move forward with the legislative intent that we originally said, that areas that lack cultural resource information will not have a designation, and...and we can do our best to...it seems like it...it is addressed by SHPD review in that case, so I'll stick with the motion and the legislative intent as originally stated.

CHAIR SINENCI: Mahalo, Member Paltin. Everybody ready to take the vote to the amendment? All in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR SINENCI: Okay. Six "ayes," one excused, zero "noes." The motion passes.

**VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and
 Councilmembers King, Molina, Paltin, and
 Rawlins-Fernandez.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Lee

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR SINENCI: Okay. Members...Member Paltin?

COUNCILMEMBER PALTIN: Couple more, just clarifications.

CHAIR SINENCI: Did I see that Member...I mean Miss...Dr. Six will have to leave at 4:00? So, the...we've got a couple minutes with her, if you have any questions directed to her.

COUNCILMEMBER PALTIN: Yeah, those...those were for her.

MS. SIX: I can...I can stay a few more minutes. I can stay a few more minutes. Sorry.

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CHAIR SINENCI: Okay.

MS. SIX: Yeah, go ahead.

CHAIR SINENCI: Go ahead.

COUNCILMEMBER PALTIN: Okay. Thank you. I just was wondering, through this bill, would...the County would be able to rely on your recommendation not to send an application for SHPD review? Like you would be the final authority if we don't need to send it for SHPD review? If you say don't need to, then we're like well, the Principal Archaeologist said no need.

MS. SIX: Well, I've been working with SHPD, and when we...we envisioned this bill, we've been working on this forever, is that I'm kind of a filter. So, if there's something I can say with...with impunity that I feel doesn't need to go to SHPD, I would still let SHPD know. And this is what I've been doing with different divisions and departments, is that I write a cover letter that says I've reviewed it, based on my review, I...I recommend...I...no historic property is affected, and ask for SHPD's concurrence. It goes much faster. It doesn't mean it doesn't go to SHPD, it just doesn't go and wait for 45 days for them to get the letter back. You know, because I've already done the due diligence for them, and I am permitted by them, so I've been working very well with Andrew McAllister, and Iolani Kauhane, and Dr. Susan Lebo. So, the goal...the goal is for when I feel it's appropriate that, you know, I can write that cover letter that says I've reviewed it, based on what I know about the area, this is my recommendation, no historic property is affected. And so the turnaround would be must faster, that's the idea. And then things don't get caught in the, you know, sausage grinder, you know, that they --

COUNCILMEMBER PALTIN: And...

MS. SIX: -- they...they move quickly because I've already got eyes on it, I make my recommendations. And so far, everything I've done, they've concurred with...you know, that I...you know, because I have my reasons why I'm making that statement.

COUNCILMEMBER PALTIN: Okay. And I think that answers my next question, is that your review would be preceding SHPD review, and the intent is if SHPD doesn't need to do a deep dive, it speeds up the process, so that's the intent.

MS. SIX: And in certain cases, they absolutely need SHPD review, and then in some cases, I can make additional recommendations for conditions on the permit. So, if...you know, in certain high...high sensitive...high sensitivity areas that six...SHPD is very limited in what they can ask. I could...I could another condition, or recommend another condition, such as ground penetrating radar, or such as, you know, something like that in certain areas. But again, with my criteria of why I'm saying it, what the data is, and why...you know, and then...so it would be addition to SHPD in some cases, in some cases...but always working with them. And the other thing that is...I've spoken to Gina about is that SHPD has an MOU with USGS, who has their own archaeologist, who's also permitted by SHPD, so we can get an MOU so that everyone's comfortable that I am

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working directly with SHPD, and I'm not going rogue, and I'm not avoiding them. So, the idea, after this is all passed, we can continue to. But SHPD, I can just tell you, is very happy for some help, and additional eyes on it that just help things...don't need to go to them, that I can say, you know, I've already looked at it, and then they can concur really quickly. And I've had this turnaround like in a week sometimes because I've already done the preliminary review for them.

COUNCILMEMBER PALTIN: So, I guess my follow up would be, do you think that that needs to be codified as a practice for the Principal Archaeologist, or an administrative rule, or is that not something that we need to do at this point?

MS. SIX: I think it's...I don't think it needs to be done at this point because I...I've been working with SHPD directly on this, and...and we've got an understanding, and a working groove for the last couple years. But I think...many people seem to be concerned when we were talking about me having...like being able to put conditions on a permit rather than just make recommendations. That...that we make sure that I'm working within the parameters. right, because I am permitted by SHPD. I can't ignore 6E regulations, I can't override them. But what I can do is assist SHPD. Because. as you know. there's two people for the Island of Maui, and development has gone crazy, and they're backlogged. So, if...anything I can do to help move things through in a...in a good pono way, I think that's one of the...one of the goals of this bill. Because...because there'll be areas that will absolutely need SHPD oversight, as well as the County Archaeologist, and then there's also going to be times that I can advise SHPD, and maybe move things faster.

COUNCILMEMBER PALTIN: Okay. Thank you. Sorry. Thank you. I think that addresses my concerns. Thank you so much for taking the time to explain --

MS. SIX: Sure.

COUNCILMEMBER PALTIN: -- that.

MS. SIX: Sure.

CHAIR SINENCI: Mahalo, Member Paltin. Do you have any --

COUNCILMEMBER PALTIN: Thank you, Chair.

CHAIR SINENCI: -- do you have any...do you have any other amendments to consider for us today? Okay. All right, Members. So, we have a main motion on the floor to recommend passage of Bill 154, CD1 (2022) on first reading. If there are no further amendments...if there are any more further amendments, the Chair will call for a vote. And I see Director McLean.

MS. MCLEAN: Excuse me, Chair. I...I just wanted to clarify if the motion would include allowing Staff to make nonsubstantive and grammatical changes. That might be a given, I just wanted to make sure. Thank you, Chair.

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MS. APO TAKAUAMA: Chair, this is Staff. I just...if I can clarify this motion. So, we currently have two motions on the table right now. We have the substitution, and then we'll have *(audio interference)*.

CHAIR SINENCI: Kasie, you're...you're coming in very echo. Can you repeat that?

MS. STEWART: Chair? Chair, this is Alison. If you'd like to take a vote on the motion to substitute first, followed by a vote on the main motion as amended.

CHAIR SINENCI: Okay. Members, can we take a quick two-minute recess?

COUNCILMEMBER RAWLINS-FERNANDEZ: No objection.

CHAIR SINENCI: The APT Committee meeting is in recess until 4:07. . . .*(gavel)*. . .

RECESS: 4:05 p.m.

RECONVENE: 4:12 p.m.

CHAIR SINENCI: . . .*(gavel)*. . . Will the APT Committee meeting of Tuesday, November 1st, please come back to order. Mahalo, Members, for that quick break. Okay. With that, I will now call for the vote on the motion to substitute.

VICE-CHAIR JOHNSON: So moved.

CHAIR SINENCI: Okay. It's been moved by Member Johnson --

COUNCILMEMBER MOLINA: Second.

CHAIR SINENCI: -- seconded by Mr. Molina.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair? Point of order.

CHAIR SINENCI: Okay. Go ahead. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry *(audio interference)*. E kala mai if you already explained this and I missed it, but I thought Staff said that we have two motions on the floor, the main motion, and the motion to substitute.

CHAIR SINENCI: Yeah. So *(audio interference)*.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, we don't need another motion. Okay.

CHAIR SINENCI: Staff?

MS. STEWART: Chair, yes, you are ready for the vote on the main...on the motion to substitute.

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VICE-CHAIR JOHNSON: I withdraw my motion.

CHAIR SINENCI: Wait.

COUNCILMEMBER MOLINA: I withdraw my second.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, you would just call, and then we raise our hand and say “aye.”

CHAIR SINENCI: Oh, okay. All right. All in favor of the motion to substitute, please raise your hand and say “aye.”

COUNCILMEMBERS: Aye.

CHAIR SINENCI: Okay. It looks like six “ayes,” one excused, Chair Lee. Motion passes.

**VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and
 Councilmembers King, Molina, Paltin, and
 Rawlins-Fernandez.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Lee

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR SINENCI: Thank you, Members. Okay. Now, the Chair will call for a vote on the main motion as amended to recommend passage on the first reading of Bill 154, CD1 (2022) entitled “A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COMMUNITY [sic] CODE, TO ESTABLISH CULTURAL OVERLAY MAPPING [sic] AND SENSITIVITY DESIGNATIONS;” and incorporating any nonsubstantive revisions; and revisions for consistency with the Maui County Legislative Drafting Guide.

MS. APO TAKAYAMA: Chair, can we also just include filing of County Communication as well?

CHAIR SINENCI: And also the filing of the County Communication. Thank you, Staff. Okay. It was moved by...who was it moved by? Sorry.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR SINENCI: Member Rawlins, did you move?

COUNCILMEMBER RAWLINS-FERNANDEZ: No, it was moved earlier. I think it was by Member Johnson, your Vice-Chair, but I don't know who seconded. Maybe Staff has the...has those notes.

MS. APO TAKAYAMA: Yes. It was a motion by Councilmember Johnson, and then a second by Councilmember King.

COUNCILMEMBER RAWLINS-FERNANDEZ: But --

CHAIR SINENCI: Oh, so...

COUNCILMEMBER RAWLINS-FERNANDEZ: -- so, Chair?

CHAIR SINENCI: Go ahead, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: I just wanted to clarify because I thought I heard you say to Member King that we're going to defer this today, but --

CHAIR SINENCI: No, not --

COUNCILMEMBER RAWLINS-FERNANDEZ: -- you're...

CHAIR SINENCI: -- not this one, the second...the second one.

COUNCILMEMBER RAWLINS-FERNANDEZ: All right. Thank you for that clarification. I am ready to vote on the main motion to recommend passage...

CHAIR SINENCI: Okay. All those in favor, please raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR SINENCI: Okay. It looks like --

COUNCILMEMBER KING: I know we just lost --

CHAIR SINENCI: -- we lost --

COUNCILMEMBER KING: -- we lost Keani.

CHAIR SINENCI: -- Member Rawlins-Fernandez. Okay. We have...

COUNCILMEMBER PALTIN: I thought since she was ready to vote "aye."

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CHAIR SINENCI: We have five “ayes,” two excused, Member Rawlins-Fernandez, and...I...I know she wanted to be part of this vote, right? We’ll give it a second.

COUNCILMEMBER KING: There she is. Let’s vote while she’s here. Hurry.

CHAIR SINENCI: Okay. We waited for you, Member Rawlins-Fernandez. All in favor, raise your hand and say “aye.”

COUNCILMEMBER RAWLINS-FERNANDEZ: *(audio interference)* Chair.

COUNCILMEMBERS: Aye.

CHAIR SINENCI: Okay. That’s six “ayes,” one excused, Chair Lee, no “noes.” The motion passes.

**VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and
 Councilmembers King, Molina, Paltin, and
 Rawlins-Fernandez.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Lee

MOTION CARRIED.

**ACTION: Recommending FIRST READING of BILL 154, CD1 (2022) and
 FILING of communication.**

CHAIR SINENCI: Thank you, Members. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I know we voted, and I know it’s against the rules, but I guess we’re in Committee, so there’s a little bit more flexibility. Am I...am I frozen again? That was a super unflattering frozen screenshot of me. But I was frozen, and I was thanking you, and...and Ms. Young, and Ms. Ahia, and Dr. Six for all of your work. That’s all. Mahalo, Chair.

CHAIR SINENCI: Thank you, Member...Member Rawlins-Fernandez. I wanted to ditto that as well. Everybody has put in a lot of work in this, so I appreciate all of the work up to this point, and for all of your amendments. Mahalo nui. Thank you, Members. Okay. As I stated earlier, we have a second item, and we’ve got a little bit of time to go ahead and introduce it, take testimony. Then like I said, we can dedicate our next APT meeting to

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Member Johnson's Kula Agriculture Park bill.

**ITEM 67: BILL 160 (2022), RELATING TO KULA AGRICULTURAL
PARK PHASE I EXPANSION AREA**

CHAIR SINENCI: So, our second item, APT-66 [sic], the Committee is in receipt of Bill 160 (2022), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 22.04A," of the "MAUI COUNTY CODE, RELATING TO KULA AGRICULTURAL PARK PHASE I EXPANSION AREA." Bill 160's purpose is to implement organic standards and regulations to the Kula Agriculture Park. And before discussion, I will now take testimony. Staff, are there anyone signed up for the second item to provide testimony?

MS. STEWART: Chair, there are no testifiers signed up for this item.

CHAIR SINENCI: Okay. Is there anyone else to testify on this item, please go ahead and unmute, request testimony. Okay. Seeing none. Oh, did I hear...without objection, I will now close public testimony on this item.

COUNCILMEMBERS: No objections.

. . . END PUBLIC TESTIMONY ON ITEM (67) . . .

CHAIR SINENCI: Okay. Okay. So, I...Members, I had mentioned this one...I'll just quickly refer to Councilmember Johnson for just some quick comments, and then...again, we'll...we'll reschedule this for our next APT meeting.

VICE-CHAIR JOHNSON: Okay. Thank you, Chair. I appreciate this opportunity to speak before we, you know, get in and dig into this great legislation that we have on the expansion on the Kula Ag Park, and making it more for the organic side of farmers. I know that we don't have much time to expand on it, but I just want to say that, you know, as a former farmer, this is really important legislation to open up the . . .(inaudible). . . to...for that diverse economy that we often speak of. Everybody's got to eat, and this is a great way for the County to move forward, and help with helping our farmers. So, I'll leave it at just that because we're running short on time. And I know that this issue would involve a deeper discussion. So, mahalo for this opportunity to just speak on that little time. Mahalo, Chair.

CHAIR SINENCI: Mahalo, Vice-Chair Johnson. And I also wanted to mahalo all of our resources, and Ms. Ness, Director of Agriculture Ms. Kali Arce, as well as Mr. Kenneth Yamamura, Ms. Faith Chase, and Ms. Barbara Berry for coming on and testifying this afternoon. So, with that, Staff, is there anything else before we...oh, Members, without objection, I'll defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS. (excused: ALL).

ACTION: DEFER, no discussion.

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CHAIR SINENCI: Thank you. And Staff, is there anything else before we adjourn today?

MS. STEWART: Chair, there is no further business before the Committee.

CHAIR SINENCI: Okay. Thank you, Members. The time is now, oh, 4:21, and this meeting of the Agriculture and Public Trust Committee of Tuesday, November 1st, is now adjourned. . . .(gavel). . .

ADJOURN: 4:21 p.m.

APPROVED:



SHANE M. SINENCI, Chair
Agriculture and Public Trust Committee

apt:min:221101:mll:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATION

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

DATED the 1st day of December 2022, in Kula, Hawai'i

A handwritten signature in black ink, reading "Daniel Schoenbeck", is positioned above a horizontal line.

Daniel Schoenbeck