

EXHIBIT 1

Hawaii State Level Agreement – Cultural Resources

CULTURAL RESOURCES REVIEW PROCESS

NOTE: Data on Exhibits 2 through 6 are considered CONFIDENTIAL AND SENSITIVE and are NOT for public disclosure. File separately. Each office will keep an addendum to each client’s conservation file, a separate 420 record, or a file of cultural resource consideration and compliance actions. Unauthorized use of this information may result in penalties or sanctions.

DATA ON Exhibits 2 THROUGH 6 ARE EXEMPT FROM FREEDOM OF INFORMATION ACT (FOIA).

NRCS-Pacific Islands Area policy on Cultural Resources requires that conservation planners document their evaluation of cultural resources using Exhibits 2 through 6, whichever fits the need, for all conservation plans. **All findings should be considered when completing the “Recommendations” section of the “Environmental Effects Worksheet”.**

All forms must be signed by NRCS and the client to show concurrence.

- Exhibit 2 will be completed by field office personnel who have received cultural resources training.
- Exhibit 3 will be completed by field office personnel who have received cultural resources training, and reviewed by the Cultural Resources Specialist (CRS).
- Exhibit 4 will be initiated by field office personnel who have received cultural resources training, and completed by the CRS.
- Exhibits 5 and 6 will be completed by field office personnel who have received cultural resources training with assistance from the CRS.

Consultation Procedures

Consultation is an important part of our cultural resource responsibilities (Section 106 NHPA). Throughout this process, consultation should take place as needed with local Native Hawaiian or other relevant ethnic communities rather than just the Office of Hawaiian Affairs (OHA). Consultation may involve more than just one group. The community can choose a representative to be their spokesperson.

The Office of Hawaiian Affairs representative for that county or district is consulted for the specific purpose of suggesting specific groups for consultation, but it is the local community that makes the decision.

See Glossary of Terms.

Step 1 – DETERMINE POTENTIAL OF PROPOSED ACTION

Planner must first determine if the proposed conservation practices have the potential to cause effects on historic properties, assuming such historic properties exist.

- A. NOT UNDERTAKINGS** - primarily management-related or non-intrusive, benign practices that will not require ground excavation or subsurface disturbance. Field offices within the State of Hawaii shall refer to the list of practices shown in Appendix C of the State Level Agreement. Practices shown in Appendix B may also be placed in this category if their installation is considered to be non-intrusive. If the proposed practices are not determined to be undertakings complete **Exhibit 2**. Submit a copy to the CRS.
- B. UNDERTAKINGS** - have the potential to have an effect on cultural resources. Field offices within the State of Hawaii shall refer to the list of practices shown in Appendix A and Appendix B of the State Level Agreement. If the proposed practices are determined to be undertakings complete **Steps 2 and 3 below**.

Step 2 – DETERMINE AREA OF POTENTIAL EFFECT (APE)

Determine the **Area of Potential Effect (APE)**: the geographic area or areas within which NRCS planned actions or activities may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist (for additional guidance, refer to the National Cultural Resources Procedures Handbook – Part 601.22(C)).

- The **APE** is influenced by the scale and nature of the proposed actions and may be different for different kinds of effects caused by the proposed actions.
- The **APE** should include all borrow, fill or temporary storage areas, access roads and any other such lands that would be directly or indirectly affected by the proposed actions.

Step 3 – FIELD INVESTIGATION IN APE FOR CULTURAL RESOURCES

Planner must conduct field investigation to determine the **presence** or **absence** of potentially significant surface historic properties in the **Area of Potential Effect (APE)**. The CRS may be requested to assist in the field investigation.

- A. ABSENT:** If potentially significant surface historic properties are **absent** and the proposed practices will not extend deeper than the previously disturbed layer, complete **Exhibit 3**. Considerations for absence include:
- Natural conditions (e.g. too dry, too wet, too steep, too rocky, erosion / sheet wash)
 - Cultural use ascertained from informants (e.g. previous land use: plantation, ranching).
 - Method of previous disturbance ascertained from informants (e.g. bulldozing, chaining, other mechanical means)

Even if surface features are absent, possible subsurface features may remain. It is important to record as accurately as possible, background information to validate the

absence of surface cultural resources. Failure to do so may lead to work halts or interruptions during construction or installation of practices.

- B. PRESENT:** If potentially significant surface historic properties are **present**, and the proposed practices are **Undertakings**, the client must be informed that the agency may not be able to offer assistance until compliance requirements can be met in such culturally sensitive areas. **Go to Step 4.**

Step 4 – CRS DOES PRELIMINARY REVIEW

If the NRCS CRS does a field investigation of the APE and finds that the cultural resources present are potentially significant historic properties, and the proposed practices are **Undertakings**, the field planner initiates **Exhibit 4** and sends it the CRS. The CRS, assisted by field personnel, will document the site and complete the preliminary assessment using **Exhibit 4**.

- A.** If it is determined that the cultural resources are not significant according to the National Register of Historic Places criteria, the client can continue with the proposed action.
- B.** If it is determined that the cultural resources are potentially significant historic properties, NRCS will first attempt to avoid effects to the resource by:
- Moving the practice to another area;
 - Changing the work limits;
 - Changing to an acceptable alternative practice or measure;
 - Modifying the practice design.
1. If the client agrees to any of the above to **AVOID** affecting the resources, the decision will be documented by completing **Exhibit 5**. **Once signed by all parties**, a copy is sent to the CRS who must notify the State Historic Preservation Division (SHPD) of the presence of the cultural resources and NRCS' action to avoid said resources.
 2. The client may, at their own expense, hire a qualified professional private archaeologist to map, research and conduct a significance assessment of the cultural resources, have the report reviewed and approved by the State Historic Preservation office. **Go to Step 5.**
 3. If the client does **NOT** want to consider Avoidance and wishes to proceed with the original plan, NRCS must withdraw assistance. The decision will be documented by completing **Exhibit 5**. The client's signature documents their understanding of the decision.
- C.** If it is determined that the site is physically too large in size and in scope of work, and are beyond the capabilities of NRCS, as determined by the CRS, the client must, at his own expense, hire a qualified professional private archaeologist to map, research and do a significance assessment of the cultural resources, have the report reviewed and approved by the State Historic Preservation office. **Go to Step 5.**

Step 5 – CLIENT FINANCES OWN ASSESSMENT

If the client hires, at their own expense, a qualified professional private archaeologist to map, research, document and conduct a significance assessment of the cultural resources, the report must be reviewed and approved by the State Historic Preservation Division. **Exhibit 6** will be used to document the decision.

If, **after** the report has been approved by the SHPD, the client wishes to continue working with NRCS, the client **must** follow the recommendations as noted in the report.

- a. If the cultural resources are found **not** to be eligible for listing on the State or National Register of Historic Places and SHPD, OHA and the representative of the local Native Hawaiian or relevant ethnic community concur, planning and implementation may proceed.
- b. If the cultural resources are found to be eligible for listing on the State or National Register of Historic Places, the client must, at his own expense, work with and develop mitigation measures, and request concurrence of the State Historic Preservation Division and the representative of the local Native Hawaiian or relevant ethnic community, to mitigate the effects of the proposed conservation practices upon Historic Properties.
 - 1) If SHPD concurs, implementation of mitigation measures may proceed at client's expense, and planning and implementation of conservation practices may proceed with NRCS assistance.
 - 2) If SHPO does not concur, consider avoidance again.
 - a. If the client refuses to consider avoidance, NRCS will withdraw further planning and implementation assistance at the project site.
 - b. If the client agrees to avoid the historic properties, NRCS will assist with planning and implementation at the project site.

GLOSSARY OF TERMS

ACHP (Advisory Council on Historic Preservation) – aka the Council; the major policy advisor to the Government in the field of historic preservation. ACHP is an independent Federal agency that promotes historic preservation nationally by providing a forum for influencing Federal activities, programs, and policies that affect historic properties, advising the President and Congress, advocating preservation policy, improving Federal preservation programs, protecting historic properties and educating stakeholders and the public. Of the 20 members that make up the Council, the President appoints 4 members of the general public: 1 Native American or Native Hawaiian, 4 historic preservation experts, 1 governor and 1 mayor; the rest include the Secretary of the Department of the Interior, and of Agriculture, 4 other Federal agency heads designated by the President, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation and the President of the National Conference of State Historic Preservation Officers (NCSHPO). ACHP's regulation "Protection of Historic Properties" aka as "**36 CFR** (Code of Federal Regulations) **part 800.**" See below.

Adverse Effect – The reduction in the characteristics that make an historic property eligible for the National Register of Historic Places. This is evidenced by diminishing the integrity of the

location, design, setting, materials, workmanship, association, or other qualities that are important to defining the significance of the historic properties.

Area of Potential Effect (APE) – geographic area or areas within which an undertaking (project, activity, program or practice) may cause changes in the character or use of any cultural resources present.

Consultation – with State Historic Preservation Division (SHPD), Office of Hawaiian Affairs (OHA) and local Native Hawaiian community to identify historic properties potentially affected by the undertaking, assess its effects and see ways to avoid, minimize or mitigate any adverse effects on historic properties. Consultation should be appropriate to the scale of the undertaking and the scope of Federal involvement. Provides a reasonable opportunity to identify their (SHPD, Native Hawaiians, relevant ethnic group) concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate their views on the undertakings' effects on such properties and participate in the resolution of adverse effects.

Cultural Resources – generic term used for structural remains, objects that maybe found in the field that may be remains of past human activity and accomplishments. NRCS considers cultural resources equivalent to “historic properties” as defined by the Advisory Council on Historic Preservation (ACHP) regulations for compliance with Section 106 of the National Historic Preservation Act (NHPA).

Cultural Resources Specialist (CRS) - NRCS' archaeologist with professional qualifications according to the Secretary of the Interior's standards.

Field Investigation – an on-site field examination of an undertaking's area of potential effect (APE). It is designed to locate and document evidence of the presence or absence of cultural resources.

HAR – Hawaii Administrative Rules establishes the guidelines, limitations and parameters for specific types of actions within the context of the Hawai'i Revised Statutes (HRS) for each department/office. Specific and binding regulations decided on by the state department/office.

Hawaii Register of Historic Places – A listing maintained by the State Historic Preservation Division (SHPD), Department of Land and Natural Resources (DLNR), of identified districts, sites, buildings, structures, and objects associated with American and Hawaiian history, architecture, archaeology, engineering and culture that have met stringent significance criteria. These properties are worthy of preservation. The State Register exists to aid in preservation of properties that are significant, in part, because of their linkage to, and integrity with, their surroundings, and thus are vulnerable in a way that items removable to archives are not.

HRS – Hawaii Revised Statutes are laws enacted by the legislature to guide agencies.

Historic Properties – cultural resources that possess certain characteristics that qualify them under the criteria of the National Register of Historic Places to be eligible to be listed on the State or National Register of Historic Places. NRCS considers cultural resources equivalent to “historic properties” as defined by the Advisory Council on Historic Preservation (ACHP) regulations for compliance with Section 106 of the National Historic Preservation Act (NHPA).

National Historic Preservation Act (NHPA) – established a program for the preservation of historic properties throughout the nation. Is the basis for the tribal consultation provisions in

ACHP regulations. Section 101(d)(6)(B) requires Federal agencies in carrying out their Section 106 responsibilities, to consult with the local Native Hawaiian or relevant ethnic community that attaches religious and cultural significance to historic properties that may be affected by an undertaking.

National Register of Historic Places - a listing maintained by the National Park Service, Department of the Interior, of identified districts, sites, buildings, structures, and objects associated with American history, architecture, archaeology, engineering and culture that have met stringent significance criteria. These properties are worthy of preservation. The National Register exists to aid in preservation of properties that are significant, in part, because of their linkage to, and integrity with, their surroundings, and thus are vulnerable in a way that items removable to archives are not.

OHA – Office of Hawaiian Affairs, the official State representative agency for indigenous Hawaiians, established by the State in 1978.

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their actions on historic properties and afford ACHP a reasonable opportunity to comment on such undertakings. The purpose of Section 106 is to avoid unnecessary harm to historic properties from Federal actions. Agencies must make a reasonable and good faith effort to identify Native Hawaiians or relevant ethnic group that attach such significance but may now live at great distances from the undertaking's area of potential effect. Agencies must provide the ACHP with reasonable opportunity to comment with regard to such undertakings. NHPA only requires consultation with Native Hawaiian or relevant ethnic organizations regarding those properties of traditional religious and cultural importance that are listed in or eligible for the National Register. The 106 process must be completed "prior to the approval of the expenditure of any Federal funds on the undertaking. This does not prohibit the agency from conducting or authorizing nondestructive project planning activities.

7 CFR 610.2 – USDA NRCS Technical Assistance scope.

SHPD - State Historic Preservation Division, part of the State Department of Land and Natural Resources (DLNR)

SHPO – State Historic Preservation Officer. The State Historic Preservation Officer is the Director of DLNR.

36 CFR part 800 – Protection of Historic Properties – Section 106 Process (see above).

Undertaking – any project, activity, program or practice that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effect.