STATE LEVEL AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND THE
STATE OF HAWAII,
DEPARTMENT OF LAND AND NATURAL RESOURCES,
STATE HISTORIC PRESERVATION DIVISION

Relative to: Conservation Assistance

PURPOSE

This State Level Agreement (SLA) implements Stipulation 2.A. (State Level Agreements) of the National Programmatic Agreement among the USDA Natural Resources Conservation Service (hereafter referred to as NRCS), Advisory Council on Historic Preservation (hereafter referred to as ACHP), and the National Conference of State Historic Preservation officers, relative to conservation assistance on private and public lands.

The purpose of this agreement is to tailor compliance procedures and requirements of the National Historic Preservation Act (NHPA) and the Section 106 implementing regulations to local conditions in Hawaii that could not be uniformly addressed at the national level, and to facilitate NRCS conservation assistance on private and public lands.

The NRCS and the Hawaii State Historic Preservation Division (SHPD) agree that execution of this Agreement provides for implementation of policies and procedures developed by NRCS to more effectively ensure that effects of conservation activities on historic properties are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

WHEREAS, The United States Department of Agriculture, Natural Resources Conservation Service (USDA NRCS) has entered into an amended agreement titled Programmatic Agreement Among the USDA Natural Resource Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers Relative to: Conservation Assistance (dated May 31, 2002) (hereinafter referred to as the National Agreement); and

WHEREAS, The National Agreement (Attachment 1) allows NRCS to comply programmatically with its obligations under the National Historic Preservation Act (NHPA) (16 U.S.C. 470) and related legislation dealing with cultural resources and requires NRCS to follow its policies and procedures for protecting cultural resources issued in the NRCS General Manual (GM) 420, Part 401 Cultural Resources (Archeological and Historic Properties) (Attachment 2); and

WHEREAS, The Hawaii State Historic Preservation Officer (hereafter referred to as SHPO) is appointed by the governor to administer the programs of the National Historic Preservation Act for that State and is charged with assisting federal agencies through maintenance and sharing of cultural resource inventory information and with preparation of a comprehensive statewide historic preservation plan.

WHEREAS, Stipulation 2.A. of the National Agreement and NRCS General Manual (GM) 420 Part 401.33 require each state NRCS office and its counterpart SHPD to develop a state level

agreement (SLA) in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, The State Conservationist for the NRCS in Hawaii has consulted with the Hawaii State Historic Preservation Division (SHPD) pursuant to GM 420 Part 401.33; and

WHEREAS, The definitions given in GM 420 Part 401.02 are applicable throughout this state level agreement;

NOW THEREFORE, The Hawaii NRCS and the Hawaii SHPD agree to the following stipulations and will ensure that they are implemented:

STIPULATIONS

I. Conservation Practices and Compliance Section with 106 of NHPA (36 CFR 800) for the Conservation Operation Technical Assistance (COTA) Program (7CFR 610.2).

The objectives of this program are to assist individual land users, communities, conservation districts and other units of state and local government, as well as other Federal agencies to meet their goals for resource stewardship and to assist individuals in complying with Federal, state and local requirements. NRCS technical assistance provided to individuals is provided through conservation districts in accordance with the memorandum of understanding that is signed by the Secretary of Agriculture, the governor of the State, and the conservation district.

Conservation Practices that have a high potential to affect cultural resources when installed according to standard NRCS criteria are considered UNDERTAKINGS. Cultural resource consideration and section 106 compliance are required for these practices. See Appendix A for a list of conservation practices in this category.

Conservation practices may affect cultural resources unless they are installed under two different situations. **First**, the installation of the practice will not exceed the depth, extent or kind of previous cultivations (18-24 inches/46-61cm); **second**, if the land has not been previously cultivated and the installment of the practice will result in no ground disturbance. If these situations apply, no further cultural resource considerations are needed. These conservation practices are considered as Undertakings EXCEPT when non-intrusive. See Appendix B for a list of conservation practices in this category.

Conservation practices that are primarily management related and will not have any physical effects or alter a cultural resource are NOT considered as Undertakings. Some of these practices are not just benign but provide beneficial effects by affecting soil or cover stability. Such practices do not require cultural resources considerations. See Appendix C for a list of conservation practices in this category.

A. Determination of NOT an Undertaking

If all of the proposed conservation practices are determined **NOT** to be an Undertaking, the decision will be documented by NRCS and the client using **Exhibit 2 "No Undertakings – No Potential Effect on Historic Properties"**. The document will become part of the official client file. Practice implementation may proceed with no further cultural resource considerations.

B. Determination of Undertaking

If any proposed conservation practice is determined to be an Undertaking, NRCS and the client will follow the process outlined below:

1. **Determine the Area of Potential Effect (APE).**
   Determine the Area of Potential Effect (APE): the geographic area or areas within which an undertaking may cause changes in the character or use of any cultural resources present.

2. **Determine Absence or Presence of surface cultural resources.**
   NRCS will do a physical inventory of the APE to determine the absence or presence of surface cultural resources. The NRCS Cultural Resources Specialist (CRS) is invited to assist in the field investigation.

   a. If it is determined that surface cultural resources are **ABSENT**, the determination will be documented using **Exhibit 3 "Historic Properties Absent within APE"**. Supporting documentation may include photographs and oral history (interview with client, neighbors, knowledgeable members of the community). The document will become part of the client's official case file. A copy will be sent to the NRCS CRS. Planned work may proceed.

   b. If it is determined that Cultural Resources are **PRESENT**, the District Conservationist will request the NRCS CRS for assistance to document and assess the cultural resource.

3. **Documentation**

   a. If it is determined that the site can be documented (mapped, photographed, GPS-ed, described) within a one-day period, the NRCS CRS will document the cultural resource. The NRCS CRS will consult with OHA and/or the local Native Hawaiian community and SHPD, to determine if the site qualifies to be listed on or is eligible for listing on the National or State Register of Historic Places. The NRCS CRS will complete **Exhibit 4 "Cultural Resources Present – CRS Preliminary Assessment"**, and prepare a report to be sent to SHPD for their review and acceptance.

   b. If it is determined that the site **cannot** be documented (mapped, photographed, GPS-ed, described) within a one-day period, the client will need to hire and finance on their own, a qualified professional archaeologist to document the cultural resource. The archaeologist must consult with the NRCS CRS and SHPD to determine if the cultural resource is listed or is eligible for listing on the National or Hawaii State Register of Historic Places. The NRCS CRS will consult with OHA and/or the local Native Hawaiian community regarding the assessment of eligibility.

4. **Assessment of Eligibility**

   a. If the identified cultural resource, after consultation with State Historic Preservation Division (SHPD), OHA and/or the relevant ethnic group, is determined **NOT** to be eligible for listing on the National or Hawaii State Register of Historic Places, it is not a historic property and NRCS conservation activities may proceed.

   b. If the identified cultural resource, after consultation with SHPD, OHA and/or the relevant ethnic group, is determined to be a historic property qualified to be listed on or is eligible for listing on the National or Hawaii State Register of Historic Places, the client and/or landowner, must be notified of the findings and the following options must be considered.

5. **Action Options**

a. **Avoidance**. This is the preferred action by USDA NRCS. NRCS will document the decision using **Exhibit 5 "Cultural Resources Present – AVOIDANCE"**, and send it to the CRS. The CRS will prepare a report for SHPD in order that the site can be entered into their site data base.

b. **Non-Compliance**. If the client does not want to comply with NRCS policy,
   1) NRCS will withdraw assistance; or
   2) The client, at their own expense, must hire a qualified professional archeologist meeting the Professional Qualifications Standards of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, appropriate to property type, to conduct a100% archaeological survey, map, research and prepare a report for review and approval by SHPD.
      a. A preservation or mitigation plan must be developed for the site if it is determined that the site is eligible for listing on the National Register of Historic Places. The CRS will consult with SHPD, and the relevant ethnic group to discuss the site, its significance and how the effect can be mitigated. The mitigation plan must also be submitted for review and approval by SHPD. The client, at their own expense must implement this mitigation plan. After the mitigation has been implemented, NRCS may continue with technical/financial assistance. **Exhibit 6 "Cultural Resources Present – Client to Finance Own"** will be completed by the NRCS CRS.
   3) If the client chooses not to avoid or hire at their own expense a qualified professional archaeologist meeting the Professional Qualifications Standards of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, NRCS must withdraw assistance.

2. **Inadvertent Discovery During Installation**

A. If potential historic properties (midden including charcoal, bone, shell; buried features such as a rock pavement, hearth, ditch, wall, structures), are encountered during the installation of conservation practices, **WORK IN THE IMMEDIATE AREA MUST STOP RIGHT AWAY** and the client must contact their local NRCS District Conservationist (DC), who will contact the NRCS CRS.

- **The find will be assumed to be a Historic Property until the CRS is able to consult with SHPD.** NRCS, in consultation with SHPD, will make the determination.

1. If the inadvertent discovery is determined **not** to be a culturally significant feature by NRCS and SHPD, work may proceed.

2. If the inadvertent discovery is determined to be eligible for listing on the National or State Register of Historic Places, complete the requirements under I.C.5.b.

B. If the inadvertent discovery is a **possible human burial**, the remains will not be moved and will be covered with soil or a tarp (or other suitable cover) to prevent any further visual or physical disturbance.

1. The client must notify the local NRCS District Conservationist (DC) who will contact the NRCS CRS, local police and SHPD. SHPD will determine if the skeletal remains are human.

2. If the skeletal remains are determined not to be human and the site not culturally significant, the project may proceed.

3. If the skeletal remains are human but are determined NOT to be over 50 years old, the jurisdictional Police Department must be contacted.

4. If the skeletal remains are determined to be human and over 50 years old, the client and NRCS must comply with the existing policies of the State of Hawaii, Hawaii Revised Statutes (HRS) 6E-43.6, to ensure proper treatment of the human remains. If need be, SHPD will make the ethnic determination in accordance with Hawai`i Administrative Rules (HAR) 13-13-300.

3. The role and responsibilities of NRCS trained and certified field personnel.

A. Trained field personnel means those personnel who:
   1. Have completed NRCS cultural resources training Modules 1-8;
   2. Are familiar with the State Level Agreement;
   3. Are able to recognize cultural resources in the field.
   4. Are familiar with their island/county State Historic Preservation Division (SHPD) personnel (name, phone number) and know how to contact them (i.e., inadvertent or human skeletal remains discovery) when the NRCS CRS is not available.

B. The professional NRCS Cultural Resources Specialist:
   1. Meets the Secretary of the Interior's professional standards (36 CFR part 61) and SHPD's Rules Governing Professional Qualifications (HAR §13-281-3).
   2. Is familiar with NRCS policy (GM 420.401), NHPA and Section 106 (36 CFR Part 00), the USDA NRCS –ACHP - NCSHPO National Programmatic Agreement, HAR 13 Chapters 275-283, and the State Level Agreement;
   3. Is able to develop historic properties treatment recommendations.

4. Consultation

The NRCS CRS will consult with SHPD, the Office of Hawaiian Affairs (OHA) for the specific purpose of suggesting specific groups for consultation, and the relevant ethnic group on a case–by-case basis.

5. Watershed Protection, Watershed Surveys, and Flood Prevention

The Watershed Protection and Flood Prevention Act, P.L. 83-566, August 4, 1954, (16 U.S.C. 1001-1008) authorized this program. The purpose of the Watershed Program, including River Basin operations, is to assist Federal, State, local agencies, local government sponsors, tribal governments, and program participants to protect and restore watersheds from damage caused by erosion, floodwater, and sediment, to conserve and develop water and land resources, and solve natural resource and related economic problems on a watershed basis. The program provides technical and financial assistance to local people or project sponsors, builds partnerships, and requires local and state funding contribution.

Resource concerns addressed by the program include watershed protection, flood prevention, erosion and sediment control, water supply, water quality, opportunities for water conservation, wetland and water storage capacity, agricultural drought problems, rural development, municipal and industrial water needs, upstream flood damages, water needs for fish, wildlife, and forest-based industries, fish and wildlife habitat enhancement, wetland creation and restoration, and public recreation in watersheds of 250,000 or fewer acres.

The focus is to identify solutions that use land treatment, structural and nonstructural measures to solve resource problems on a watershed scale. Conservation activities under this program routinely are more involved and of greater scale than those under COTA program.

A. All sites with planned structural activities will be field investigated by the NRCS Cultural Resource Specialist, who will determine the presence or absence of cultural resources.

Findings of the investigation and research will be reported to SHPD.

1) If cultural resources are found, the CRS will determine if the cultural resources qualify to be listed on or are eligible for listing on the National or Hawaii State Register of Historic Places.

6. Private Property Rights

A. Private land owners have ownership of historic properties found on their land, with the exception of human remains, grave markers, and associated artifacts, which will be held in trust by the State of Hawaii (HAR §13-278-5).

B. All historic property located on lands owned or controlled by the State shall be the property of the State. The control and management of the historic property shall be vested in the Department (HAR §13-275 §6E-7)

C. Historic Properties on State land cannot by altered or destroyed by lessees.

7. Access to Files

A. Cultural Resources locational data shall be restricted from public access in order to protect the resource and property upon which it is located. The legal authority for this is found in:

1. Section 304 of the National Historic Preservation Act (NHPA), as amended;
2. Hawaii Administrative Rules §13-275 §6E-43
3. Section 470hh of the Archaeological Resources Protection Act ARPA) of 1979;
4. Freedom on Information Act (FOIA) Subpart B Section 31.14 Exemption (b)(3)(b);
5. Privacy Act of 1974 (a)(4) and (5);
6. USDA – NRCS General Manual 420, Part 401;
7. USDA – NRCS National Cultural Resources Handbook Part 601;
8. USDA – NRCS National Instruction No. 601.61 – National Programmatic Agreement for Cultural Resources Compliance

B. USDA Information Resource Management and Technical Guide policies and procedures require proper use and security protection of databases and other documentation maintained by NRCS, as stated in the national Freedom of Information Act and Privacy Act contained in the 2002 Farm Bill.

C. Cultural resources locational (TMK, ahupua`a name) data are necessary for SHPD to assess the resources' significance and record management. Locational data will be included in the Appendix of the report for review. This appendix with the locational data will be removed from the document after the review and filed separately (see 1). The remainder of the report containing information about the general whereabouts of cultural resources identified in the area may be made accessible to the public.

D. All data and associated records resulting from recovery and analysis activities are the property of NRCS. Upon request, NRCS will provide copies of the results of analysis and other records to landowners, and/or cooperating agencies, or interested persons directly involved with an undertaking, which required data recovery in accordance with data sharing policies and the Freedom of Information Act and Privacy Act (2002 Farm Bill) (Attachment 3).

E. The NRCS Cultural Resources Specialist will have the right to access the site records/ data bases maintained by SHPD for information required to review and clear compliance with Section 106.

8. Coordination on Matters of Statewide Concerns

If matters at the county level cannot be resolved, the NRCS District Conservationist will contact the NRCS CRS. The SHPD will contact the NRCS CRS on matters relating to

cultural resources of statewide concern. The NRCS CRS will be the point of contact with state level SHPD.

9. **Compliance During Emergencies**

A. Emergency Watershed Protection (EWP)

The purpose of the Emergency Watershed Protection program is to undertake emergency measures, including the purchase of flood plain easements, for runoff retardation and soil erosion prevention to safeguard lives and property from floods, droughts, and the products of erosion on any watershed whenever fire, flood or any other natural occurrence is causing or has caused a sudden impairment of the watershed.

Program objective is to assist sponsors and individuals in implementing emergency measures to relieve imminent hazards to life and property created by a natural disaster. Activities include providing financial and technical assistance to remove debris from streams, protect destabilized streambanks, establish cover on critically eroding lands, repairing conservation practices, and the purchase of flood plain easements. The program is designed for installation of recovery measures.

1) NRCS emergency work procedures are implemented by the State Conservationist in response to requests from the local government for assistance after disaster event(s).

2) The State Conservationist will notify SHPD and the Advisory Council on Historic Preservation (ACHP) as soon as practicable of the declaration of emergency within 10 days of the disaster or 2 days after access is permitted to damaged areas. NRCS will take into account SHPD comments received within 7 days of notification for all subsequent emergency work.

   a) The NRCS CRS will consult with the SHPD to determine areas of high probability for historic properties. The CRS will then be involved in assessing impacts to these areas with the objective of avoidance. If these areas cannot be avoided and historic sites are discovered, the CRS will notify SHPD. The CRS will evaluate the resource. The NRCS Hawaii State Conservationist will then make a final decision based on the CRS's evaluation, consultation with SHPD, and the need to protect life and property.

B. For major disasters, NRCS may elect to waive all or part of its cultural resources responsibilities as allowed under 36 CFR 78.

10. **Exemptions**

In addition to the broad categories of NRCS activities or programs exempted under the national agreement, the specific conservation practices listed in Appendix C of this State Level Agreement are exempt from section 106 compliance requirements for the case-by-case review. These are primarily management related or non-intrusive, benign practices that will not require ground excavation or subsurface disturbance. As such, they are not considered undertakings which could impact historic properties.

11. **Reporting Procedures**

The NRCS CRS/CRC will prepare a report within 30 days for all undertakings that have a potential to affect eligible properties that follows HAR §13-276-3, archeological inventory survey format including:

- Identification of the problem encountered;
- Review of Area of Potential Effect;
- Absence or presence of probable historic properties;
- Measures undertaken to relieve imminent hazards to life and property;
- Effect on historic properties.

12. Amendment Procedures

NRCS and SHPD agree to review this State Level Agreement on an annual basis. Should either signatory determine that some or all of the terms of this Agreement need to be changed or voided, that signatory shall immediately request the other to consider amending this Agreement. Such an amendment shall be executed in the same manner as the original Agreement.

13. Dispute Resolution

Should either signatory feel that the processes called for in the State Level Agreement are not being followed, that signatory will consult with the other signatory to resolve the concern. If the concerns cannot be resolved by the signatories, NRCS will request the advice of the ACHP. The advice received from the Council will be taken into consideration by NRCS and SHPD to resolve the concern.

14. Failure to Comply with Agreement

A. In the event that NRCS does not carry out the terms of this State Level Agreement, NRCS will comply with 36 CFR Sections 800.4 through 800.6 with regard to individual undertakings covered by the Agreement.

B. Execution of this State Level Agreement and implementation of its terms evidences that NRCS is taking into account the effects of its assistance activities on historic properties, and afforded the SHPD a reasonable opportunity to comment on the program and its likely effects on historic properties.

15. Signatures

By: _____ Date: 2-08-07

Peter Young
Chairperson and State Historic Preservation Officer
Department of Land and Natural Resources
State Historic Preservation Division

By: _____ Date: 2/8/07

Lawrence T. Yamamoto
Director – Pacific Islands Area
Natural Resources Conservation Service
United States Department of Agriculture

Appendix A
Conservation Practices Considered as Undertakings

The following conservation practices, as found in the NRCS Field Office Technical Guide (FOTG), and in consultation with the State Historic Preservation Division, are considered undertakings which could impact historic properties. **Section 106 compliance is required for these practices.**

Practice Name	Code	Practice name	Code
Access Road	560	Precision Land Forming	462
Dam	402	Recreation Land Grading and Shaping	566
Dike	356	Recreation Trail and Walkway	568
Diversion	362	Sediment Basin	350
Firebreak	394	Streambank and Shoreline Protection	580
Forest Stand Improvement	666	Structure for Water Control	587
Forest Trails and Landings	655	Surface Drainage, Field Ditch	607
Grade Stabilization Structure	410	Surface Drainage, Main or Lateral	608
Grassed Waterway	412	Terrace	600
Irrigation Regulating Reservoir	552	Tree/Shrub Site Preparation	490
Irrigation Storage Reservoir	436	Underground Outlet	620
Irrigation Water Conveyance, High Pressure, Underground, Plastic Pipeline	430DD	Vertical Drain	630
Irrigation Water Conveyance, Steel Pipeline	430FF	Waste Storage Facility, Fabricated Structure Pond	313
Land Clearing	460	Waste Treatment Lagoon	359
Land Smoothing	466	Water and Sediment Control Basin	638
Lined Waterway or Outlet	468	Water Harvesting Catchment	636
Open Channel	582	Wetland Creation	658
Pond	378	Wetland Enhancement	659

Appendix B

Conservation Practices Considered Undertakings Except When Non-Intrusive by NRCS

The following conservation practices, as found in the NRCS Field Office Technical Guide (FOTG), and in consultation with the State Historic Preservation Division, are considered as undertakings when installed under one or two situations:

1. If installation of the practice will exceed the depth or extent of previous intensive cultivation. or mechanical disturbance in modern times.
2. If the installation of the practice will result in ground disturbance for the first time.

Practice Name	Code	Practice Name	Code
Animal Mortality Facility	316	Hillside Ditch	423
Animal Trails and Walkways	575	Irrigation Land Leveling	464
Brush Management	314	Irrigation System, Microirrigation	441
Channel Bank Vegetation	322	Irrigation System, Sprinkler	442
		Irr. System, Surface & Subsurface	443
Composting Facility	317	Pasture and Hay Planting	512
Conservation Cover	327	Pipeline	516
		Range Planting	550
Conservation Crop Rotation	328	Recreation Area Improvement	562
Contour Farming	330	Restoration and Management of Declining Habitats	643
Contour Orchard and Other Fruit Area	331	Riparian Forest Buffer	391
Cover Crop	340	Riparian Herbaceous Cover	390
Critical Area Planting	342	Solid/Liquid Waste Separation Facility	632
Cross Wind Trap Strips	589C	Stream Crossing	578
Deep Tillage	324	Stream Habitat Improvement and Management	395
Fence	382	Stripcropping	585
Fence, Non-electric	382A	Tree/Shrub Establishment	612
Fence, Electric	382B	Tree/Shrub Pruning	660
Fence, Game-proof	382C	Use Exclusion	472
Field Border	386	Vegetative Barrier	601
Filter Strip	393	Waste Utilization	633
Fuel Break	383	Watering Facility	614
Grazing Land Mechanical Treatment	548	Wetland Restoration	657
Heavy Use Area Protection	561	Wildlife Watering Facility	648
Hedgerow Planting	422	Windbreak/Shelterbreak Establishment	380
Herbaceous Wind Barriers	603	Windbreak/Shelterbreak Renovation	650

Appendix C
Conservation Practices Exempt from Case-By-Case Review

The following conservation practices, as found in the Hawaii NRCS Field Office Technical Guide (FOTG), and in consultation with the State Historic Preservation Division, are not considered undertakings which could impact historic properties. These are primarily management-related or non-intrusive, benign practices that will not require ground excavation or subsurface disturbance. Section 106 compliance is not required for these practices.

Practice Name	Code
Amendments for Treatment of Agricultural Waste	591
Atmospheric Resource Quality Management	370
Fishpond Management	399
Forest Slash Treatment	384
Irrigation Water Management	449
Manure Transfer	634
Mulching	484
Multi-Story Cropping	379
Nutrient Management	590
Pest Management	595
Pond Sealing or Lining, Compacted Clay Treatment	521D
Pond Sealing or Lining, Flexible Membrane	521A
Prescribed Grazing	528
Residue Management, Seasonal	344
Residue and Tillage Management, Mulch Till	345
Residue and Tillage Management, No Till/Strip Till/Direct Seed	329
Residue and Tillage Management, Ridge Till	346
Roof Runoff Structure	558
Upland Wildlife Habitat Management	645
Waste Facility Cover	367
Waste Treatment	629
Wetland Wildlife Habitat Management	644

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.

EXHIBIT 2

Hawaii State Level Agreement – Cultural Resources

No Undertakings – No Potential for Effect on Historic Properties

NOTE: Data on this form is considered CONFIDENTIAL AND SENSITIVE and is NOT for public disclosure. File separately from Client folder. Unauthorized use may result in penalties or sanctions. DATA ON THIS FORM IS EXEMPT FROM FREEDOM OF INFORMATION ACT.

Prepared for: Client Name: _____ ☐ Owner ☐ Operator

Business Name: _____ Program _____

Project site location: Island: _____ TMK: _____

District: _____ *Ahupua`a*: _____

PURPOSE OF WORKSHEET

The purpose of this worksheet is to document conservation practice(s) within the project site that are not considered "Undertakings."

DOCUMENTATION

The project site includes the area where to the proposed practice(s) will be implemented (Area of Potential Effect – APE), plus any surrounding area, which could potentially be affected by such implementation.

A. If the proposed conservation practices are primarily management related or non-intrusive, benign practices that will not require ground excavation or subsurface disturbance, and do not have the potential to have an effect on historic properties, they are determined to **not** be undertakings. 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.

B. If the proposed conservation practices will require ground excavation or subsurface disturbance and have the potential to have an effect on historic properties, they are determined to be **undertakings. STOP**. Do not use this Exhibit. See Exhibit1 for instructions on how to proceed.

A determination of "No Undertakings - No Historic Properties Affected" can be made only if **ALL** of the proposed conservation practices listed on the following table are non-intrusive practices. These practices are primarily management-related or benign practices that will not require ground excavation or subsurface disturbance.

Planned Non-Intrusive Practices

Code	Practice Name	Acres	Code	Practice Name	Acres

Section 106 Compliance will not be required and the planning and implementation of the proposed conservation practice may proceed with NRCS assistance.

Inform the client of the procedures for discovery during installation and private property rights: If potential historic properties (burials, buildings, artifacts, archeological remains, etc.) are found during practice installation, all work must stop and the client must contact NRCS, SHPO and the County Police Dept. immediately. Landowners have ownership of historic properties found on their land, with the exception of human remains, grave markers, and associated artifacts; which are the property of the State of Hawaii.

According to the National Programmatic Agreement and the State Level Agreement, the proposed practices ARE NOT UNDERTAKINGS and do not have the potential to have an effect upon historic properties. Therefore, there will be No Effect on Historic Properties.

Field
Planner:_____Date:_____

I have discussed with said planner the proposed practices and concur that the proposed practices are not undertakings and do not have the potential to have an effect upon historic properties.

District Conservationist/Certified Planner:_____

USDA NRCS Office: _____ Date _____

I have read the above and discussed with said planner and District Conservationist and agree that these are the proposed non-intrusive conservation practices I plan to install. If at anytime, plans change and new conservation practices are considered, I will so inform the planner and the DC.

Client:_____ Date:_____

3. Mail or FAX the following to the CRS for PRS entry. (X when completed.)

☐ A copy of this Worksheet.

☐ A copy of the project site map identifying the project site boundaries by overlaying the
tax map over the topographic map.

4. ☐ File the originals in a separate location from the client's case file.

EXHIBIT 3

Hawaii State Level Agreement – Cultural Resources

HISTORIC PROPERTIES ABSENT WITHIN APE

NOTE: Data on this form is considered CONFIDENTIAL AND SENSITIVE and is NOT for public disclosure. File separately from Farm Folders. Unauthorized use may result in penalties or sanctions. DATA ON THIS FORM IS EXEMPT FROM FREEDOM OF INFORMATION ACT.

Prepared for:
Client Name: _____ ☐ Owner ☐ Operator

Business Name:_____Program_____

Project site location:

Island:_____TMK:_____

District:_____*Ahupua`a*:_____

I. PURPOSE OF WORKSHEET

The purpose of this worksheet is to document the results of a field investigation when surface cultural resources are **absent** in the Area of Potential Effect (APE). The initial field investigation is to be conducted by the planner who has received cultural resources training. The CRS may be requested to assist in the investigation.

2. DOCUMENTATION:

Record the following conditions at the proposed project site.

Past land use:_____

Past Plantation/ranch (name)_____

Present land use:_____ _____

Vegetation (name shrubs, trees, grasses):_____

Elevation (top/bottom): _____/_____annual rainfall: _____

Soil type(s):_____ slope (%) _____

Stoniness: _____

Water features present or nearby (check all that apply):

☐ stream ☐natural pond ☐ man-made pond ☐ well ☐ ditch

Other info: _____

Informant:_____

Field investigation done on (date):_____

By (names):_____

Reason(s) for absence of surface cultural resources:_____

_____

Other Considerations

Bulldozing leaves "push piles" or scars on large boulders, bedrock, and/ or the ground is left unnaturally level. Bulldozing, chain dragging or other mechanical means, would have removed or disturbed the top 18 (45cm) and anything within it.

The absence of surface features does not preclude the absence of **subsurface** features. It is important to record as accurately as possible any 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.

3. Planned Practices & Their Relationship to the State Level Agreement

Code	Practice Name	Acres	**SLA Appendix A, B, or C**

Continue on another sheet if needed.

Inform the client of the procedures for discovery during installation and private property rights: If potential historic properties (burials, buildings, artifacts, archeological remains, etc.) are found during practice installation, all work must stop and the client must contact NRCS, SHPO and the County Police Dept. immediately. Landowners have ownership of historic properties found on their land, with the exception of human remains, grave markers, and associated artifacts; which are the property of the State of Hawaii.

I have done a physical inventory of the Area of Potential Effect (APE) where the proposed practices will be installed. No probable cultural resources were observed. The CRS has done a background research and it is not likely that subsurface cultural remains will be found. There will be No Effect on Historic Properties.

Field Planner:_____Date:_____

I have discussed with said planner the absence of probable cultural resources within the proposed Area of Potential Effect (APE) and concur that no probable cultural resources had been observed. The CRS has done a background research and it is not likely that subsurface remains will be found. There will be No Effect on Historic Properties.

District Conservationist/Certified Planner:_____

USDA NRCS Office: _____ Date _____

EXHIBIT 4

Hawaii State Level Agreement – Cultural Resources

CULTURAL RESOURCES PRESENT – CRS PRELIMINARY ASSESSMENT

NOTE: Data on this form is considered CONFIDENTIAL AND SENSITIVE and is NOT for public disclosure. File separately from Farm Folders. Unauthorized use may result in penalties or sanctions. DATA ON THIS FORM AND ATTACHMENTS ARE EXEMPT FROM FREEDOM OF INFORMATION ACT.

Prepared for: Client Name: _____ ☐ Owner ☐ Operator

Business Name: _____ Program _____

Project site location: Island: _____ TMK: _____

District: _____ *Ahupua`a*: _____

Field Planner: _____ Date sent to CRS: _____

CRS: _____ Date of Field Investigation: _____

PURPOSE OF WORKSHEET

Cultural Resources have been observed to be present in the Area of Potential Effect within the project parcel. The Field Planner has contacted the Cultural Resources Specialist to do a field investigation and a preliminary review. This worksheet records the CRS' preliminary findings. If it is found that the work necessary will be in excess of what NRCS can do, the client will have to decide, in consultation with NRCS, whether to avoid the cultural resources (NRCS' preferred action) or to hire their own qualified professional archaeologist to perform the work.

Pre-field: all of the following is required by the CRS from the field planner **prior** to the CRS site visit.

_____ Project parcel showing Area of Potential Effect

_____ Proposed conservation practice map with location of cultural resources.

_____ Photographs of cultural resources and surrounding area (identified, dated, view described)

Post-field:

_____ Map of site w/features and GPS coordinates.

_____ Description and photographs of features and site (identified, dated, view described)

_____ Description and photographs of terrain and vegetation (identified, dated, view described)

_____ Evaluation of cultural resources/features and site in general: the features must

be evaluated according to the National Register of Historic Places (NRHP) criteria to determine their significance, if they are eligible to be listed in either the National or State Register. A significance determination must be made before work may proceed.

SUMMARY OF FINDINGS:

Function: (check all that apply)

___ Agriculture ___ Habitation ___ Plantation ___ Ranching
___ Religious ___ Military ___ other (describe):

Features: (check all that apply)

___ ditches ___ mounds ___platforms ___ terraces
___walls ___ other (describe):

Approximate age of the cultural resource: ___ Pre-contact (prior to Capt. Cook)
___ Post-contact (after Capt. Cook) ___ Plantation ___ Ranching
___ Military ___Less than 50 years old ___ Indeterminate

The above is based on: _____

_____

_____

_____

_____

_____

_____

SIGNIFICANCE CRITERIA

For each 50 year-old+ cultural resource identified by the field investigation, determine if it meets the following National Register of Historic Preservation significance criteria (a **and** either b, c, d, e, or f):

☐ **a.** the site possesses **integrity** of **location, design, setting, materials, workmanship, feeling**, and **association**; and
(Notes)

☐ **b.** is associated with **events** that have made a significant contribution to the broad patterns of our history; or
(Events)

☐ **c.** is associated with the **lives of persons** significant in our past; or
(Person/s)

☐ **d.** embodies the **distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
(Notes)

☐ **e.** has yielded or may be likely to yield, **information** important in prehistory or history; or
(Notes)

☐ **f.** per the Hawaii State Historic Preservation Division, it has an **important traditional cultural value** to the Native Hawaiian people or to another ethnic group of the State due to associations with traditional cultural practices, beliefs, events, or oral accounts.
Ethnic group:

Traditional Cultural value (describe):

_____

_____

_____

_____

___ The cultural resource has been determined **NOT** to be significant historic properties because it is not over 50 years old based on : _____
and the following reasons: _____

_____

_____

_____

_____

☐ The scale of work involved in this project will be beyond the time and resources the NRCS CRS will be able to do a proper field survey, mapping, consultation, and writing a report to make an accurate assessment of the cultural resources present. The report has to be reviewed and approved by SHPO prior to work starting. Although initially more expensive, it benefits the client to hire his own archaeologist. If the client wishes to pursue this course of action, complete **Exhibit 6**.

☐ The client wishes to continue working with USDA NRCS and agrees to follow NRCS policy of **AVOIDANCE** of cultural resources. **Exhibit 5** will be used to document this decision.

☐ The client wishes to continue working with USDA NRCS but does not wish to follow NRCS policy of **AVOIDANCE** of cultural resources. The planner and DC have discussed with the client and the client understands that if he chooses not to follow NRCS policy of **AVOIDANCE** of the cultural resources, he must finance and hire on his own a qualified professional archaeologist to do the archaeological work necessary to continue as an NRCS client. **Exhibit 5** will be used to document this decision.

Cultural Resource Specialist _____

USDA NRCS Office _____ Date _____

EXHIBIT 5

Hawaii State Level Agreement – Cultural Resources

CULTURAL RESOURCES PRESENT - AVOIDANCE

NOTE: Data on this form is considered CONFIDENTIAL AND SENSITIVE and is NOT for public disclosure. File separately from Farm Folders. Unauthorized use may result in penalties or sanctions. DATA ON THIS FORM IS EXEMPT FROM FREEDOM OF INFORMATION ACT.

Prepared for: **Client Name:**_____ ☐ **Owner** ☐ **Operator**
Business Name:_____

Project site location: Island:_____TMK:_____

District: _____ *Ahupua'a*: _____

PURPOSE OF WORKSHEET

The purpose of this worksheet is to document the presence of cultural resources within the project site and the decisions made by the client regarding avoidance.

A field investigation by planner _____ and

_____on (date)_____

observed the **presence** of cultural resources within the Area of Potential Effect (APE) of the proposed project.

DOCUMENTATION

The following were observed at the proposed project area.

Present land use:_____

Vegetation (name shrubs, trees, grasses):_____

Elevation (top/bottom): _____/_____annual rainfall: _____

Soil type(s):_____ slope (%) _____

Stoniness: _____

Water features present or nearby (check all that apply):

☐ stream ☐natural pond ☐ man-made pond ☐ well ☐ ditch

Past land use:_____

Other info: _____

Cultural resources observed within the APE: check as many as apply:

☐ walls ☐ platforms ☐ mounds ☐ artifacts_____

☐ charcoal ☐ terraces ☐ buildings ☐petroglyphs ☐ cave/lava tube

☐ other: _____

☐ Photographs of above: identified, dated and named (client/project) are attached.

Informant:_____

Field investigation done on

(date):_____

By (names):_____

Maps attached:

A. ☐ tax map with project parcel outlined.

B. ☐ tax map overlaid on topographic and aerial photo maps with project parcel outlined.

C. ☐ tax map overlaid on soil map with project parcel outlined.

D. **Conservation Plan maps:**

1) ☐ placement of the proposed practices within the APE;

2) ☐ location of the cultural resources of concern within the APE.

3) ☐ proposed changes to the original plan to avoid the cultural resources.

E. . **Planned Practices & Their Relationship to the State Level Agreement :**

Code	Practice Name	Acres	SLA Appendix A, B, or C

Continue on another sheet if needed.

Caution for Client

Inform the client of the procedures for discovery during installation and private property rights: If potential historic properties (burials, buildings, artifacts, archeological remains, etc.) are found during practice installation, all work must stop and the client must contact NRCS, SHPO and the County Police Dept. immediately. Landowners have ownership of historic properties found on their land, with the exception of human remains, grave markers, and associated artifacts; which are the property of the State of Hawaii.

Planner and DC

According to the National programmatic Agreement and the State Level Agreement, cultural resources are present within the Area of Potential Effect (APE) and must be avoided. I have discussed the alternatives with the client.

Planner: _____ Date:_____

The client, planner and I have discussed the presence of cultural resources within the proposed Area of Potential Effect (APE). The planner has presented alternatives to the client. The client has chosen to:

- ☐ avoid having an effect on cultural resources by changing/modifying plans.
- ☐ not continue working with NRCS.
- ☐ hire and finance on his/her own, a qualified private professional archaeologist, and follow the recommendations of the findings: preservation or mitigation (Complete Exhibit Note 6).

District Conservationist/Certified Planner:_____

USDA NRCS Office: _____ Date _____

Client's decision (choose one and sign)

1. I have been informed and shown the map and photographs of the cultural resources on my property within the APE. I choose to continue working with NRCS: I will change/modify my original actions to **AVOID** effect upon the historic properties. I have discussed this decision with the planner and the District Conservationist.

Client:_____Date:_____

2. I have been informed and shown the map and photographs of the cultural resources on my property within the APE. I choose not to abide with NRCS policy. I understand, therefore, that **NRCS** must **withdraw their assistance**. I have discussed this decision with the planner and the District Conservationist.

Client:_____Date:_____

3. I have been informed and shown the map and photographs of the cultural resources on my property within the APE. I do not wish to AVOID the cultural resources. I choose to finance on my own, a professional qualified archaeologist to do a more intensive archaeological survey to map, research and do a more accurate significance assessment of the cultural resources, have the report reviewed and approved by the State Historic Preservation Office prior to any work starting (CRS completes Exhibit 6). I will share said report with NRCS and should mitigation or preservation be necessary,

comply with said document. I have discussed this decision with the planner, the District Conservationist, and the CRS.

Client:_____Date:_____

NRCS CRS

A copy of this Exhibit, including all maps and the client's decision were received by the CRS on (date): _____

from planner:_____.

Even if the client chooses to avoid effect on historic properties, the presence of the cultural resources including maps will have to be reported to the SHPD.

I have reported the presence of the cultural resources on the property and the client's decision to the State Historic Preservation Office.

CRS: _____Date: _____

Filing

File the original in a separate location from the client's case file.

EXHIBIT 6

Hawaii State Level Agreement – Cultural Resources

CULTURAL RESOURCES PRESENT – CLIENT TO FINANCE OWN SURVEY & ASSESSMENT

NOTE: Data on this form is considered CONFIDENTIAL AND SENSITIVE and is NOT for public disclosure. File separately from Farm Folders. Unauthorized use may result in penalties or sanctions. DATA ON THIS FORM IS EXEMPT FROM FREEDOM OF INFORMATION ACT.

Prepared for: Client Name: _____ ☐ Owner ☐ Operator

Business Name: _____ Program: _____

Project site location: Island: _____ TMK: _____

District: _____ *Ahupua`a*: _____

Field Planner: _____ Date sent to CRS: _____

PURPOSE OF WORKSHEET

Cultural Resources have been observed to be present in the Area of Potential Effect (APE) within the project parcel. The field planner contacted the Cultural Resources Specialist who has done a field investigation and a preliminary review (Exhibit 5).

The NRCS CRS will discuss the results of the preliminary review with the client and his/her archaeologist.

_____ Tax map showing project parcel.

_____ Project parcel showing Area of Potential Effect.

_____ Proposed conservation practice map with rough draft map of site w/features GPS-ed.

_____ General description of features and site.

_____ Description and photographs of terrain and vegetation.

_____ Evaluation of cultural resources/features and site in general.

The results of the preliminary review have found that the work necessary to accurately document and determine the significance of the cultural resources is beyond the scope of work of the NRCS CRS. The planner, DC, and CRS have discussed with the client and the client understands that if he/she chooses not to follow NRCS policy of **AVOIDANCE** of the cultural resources, he must finance and hire on his own a qualified professional archaeologist to do the archaeological work necessary to continue as an NRCS client.

This worksheet is to be filled out by the CRS to document the client's decision to finance and hire on his/her own, a qualified professional archaeologist to do a 100% investigation of the APE, map, describe, photograph and GPS the cultural resources, do

background research and make a determination of significance of said resources according to the criteria set up by the National Register of Historic Places. A report must be submitted to the State Historic Preservation Division for review and approval. The report has to be reviewed and approved by SHPO prior to work starting. Although initially more expensive, it benefits the client to hire his/ her own archaeologist.

The client will share said report with the NRCS CRS. The NRCS CRS will consult with SHPO and the relevant ethnic community regarding the significance determination.

- ✓ If all parties agree that the cultural resources are not significant and do not qualify under the criteria set by the National Register of Historic Places (NRHP), NRCS and the client may proceed with the proposed plan.

- ✓ If all parties agree that the cultural resources are significant under the criteria set by the NRHP and are eligible to be listed in the State or National Register of Historic Places (NRHP), a mitigation plan must be designed, reviewed and approved by SHPO. The client must adhere to the mitigation plan.

_____ I will finance and hire on my own, a qualified professional archaeologist to do a 100% field investigation, map, describe and GPS the cultural resources, do background research and determine the significance of said resources.

_____ I will share said report with the NRCS CRS. The CRS will consult with SHPO and the Hawaiian or relevant ethnic community the significance determination.

_____ I will comply with the mitigation plan as designed.

Client: _____Date: _____

Client has read and understood the criteria by which the cultural resources on his property have been evaluated.

Client has given NRCS CRS a copy of the archaeological report written by

_____.

I have discussed the archaeological report with said client.

Client understands the mitigation plan and will work with NRCS to comply with it.

CRS: _____Date: _____

ATTACHMENT 1:

USDA NRCS, ACHP and NCSHPO
Nationwide Programmatic Agreement

Website: http://policy.nrcs.usda.gov/scripts/lpsiis.dll/H/H_190_601_61.htm

ATTACHMENT 2:

NRCS General Manual 420, Part 401
Cultural Resources (Archeological and Historic Properties)

Website: http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_420_401.htm.

ATTACHMENT 3:

USDA NRCS Farm Bill 2002
Freedom of Information Act

Website: http://www.usda.gov/da/foia.htm