

**PROTOTYPE PROGRAMMATIC AGREEMENT  
BETWEEN THE  
US DEPARTMENT OF AGRICULTURE,  
PACIFIC ISLANDS AREA NATURAL RESOURCES CONSERVATION SERVICE  
STATE OFFICE,  
AND THE  
HAWAII STATE HISTORIC PRESERVATION OFFICER,  
REGARDING CONSERVATION ASSISTANCE**

**WHEREAS**, the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) administers numerous voluntary assistance programs, special initiatives, and grant and emergency response programs for soil, water, and related resource conservation activities available to eligible private producers, States, commonwealths, Federally Recognized Tribal governments, other government entities, and other applicants for conservation assistance, pursuant to the Agricultural Act of 2014 (2014 Farm Bill, Public Law 113-79); Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-3341, Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and executive and secretarial orders, implementing regulations and related authorities; and

**WHEREAS**, NRCS, through its conservation assistance programs and initiatives, provides assistance for activities with the potential to affect historic properties eligible for or listed in the National Register of Historic Places (NRHP), including National Historic Landmarks (NHLs) and therefore constitute undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations, 36 CFR Part 800, including the provisions of these regulations addressing NHLs at 36 CFR Part800.10; and

**WHEREAS**, NRCS has determined that the requirement to take into account the effects to historic properties of its undertakings may be more effectively and efficiently fulfilled through the use of a Prototype Programmatic Agreement (Prototype Agreement); and

**WHEREAS**, the NRCS Pacific Islands Area (PIA) State Office has consulted with the Hawaii State Historic Preservation Officer (SHPO) and followed the instructions in the ACHP letter that accompanied the Prototype Agreement, dated November 21, 2014; and

**WHEREAS**, NRCS also is responsible for fulfilling the requirements of the National Environmental Policy Act (NEPA), including the use of categorical exclusions, and coordinating NEPA and Section 106 reviews, as appropriate; and

**WHEREAS**, NRCS developed this Prototype Agreement in consultation with the National

Conference of State Historic Preservation Officers (NCSHPO) and its members, interested Indian tribes, Native Hawaiian organizations (NHOs), historic preservation organizations (such as the National Trust for Historic Preservation), and the Advisory Council on Historic Preservation (ACHP); and

**WHEREAS**, in accordance with 36 CFR Part 800.14(b)(4), the ACHP has designated this agreement as a Prototype Agreement, which allows for the development and execution of subsequent prototype agreements by individual NRCS State office(s) (State-based Prototype Agreements) to evidence compliance with Section 106; and

**WHEREAS**, this State-based Prototype Agreement conforms to the NRCS Prototype Agreement as designated by the ACHP on November 21, 2014, and therefore, does not require the participation or signature of the ACHP when the NRCS State Office and the SHPO agree to the terms of the State-based Prototype Agreement; and

**WHEREAS**, this Prototype Agreement replaces the 2002 nationwide “Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers relative to Conservation Assistance,” as amended in 2011 and 2012, which expired on November 20, 2014; and

**WHEREAS**, the NRCS State Conservationist is the responsible federal agency official within the state for all provisions of Section 106, including consultation with the SHPO and NHOs to negotiate the State-based Prototype Agreement; and

**WHEREAS**, the State-based Prototype Agreement does not apply to undertakings occurring on or affecting historic properties on Tribal lands, as defined by Section 301(14) of the NHPA, without prior agreement and execution of a State-based Prototype Agreement with the concerned Indian tribe; and

**WHEREAS**, the NRCS has consulted with Indian tribes and NHOs during development of the national Prototype Agreement; and

**WHEREAS**, this Prototype Agreement does not modify the NRCS’ responsibilities to consult with Indian tribes and NHOs on all undertakings that might affect historic properties and properties of religious and cultural significance to them, regardless of where the undertaking is located, without prior agreement by the concerned Indian tribe or NHO, and recognizes that historic properties of religious and cultural significance to an Indian tribe or NHO may be located on ancestral homelands or on officially ceded lands near or far from current settlements; and

**WHEREAS**, when NRCS conducts individual Section 106 reviews for undertakings under this State-based Prototype Agreement, it shall identify and invite other agencies, organizations, and individuals to participate as consulting parties; and

**NOW, THEREFORE,** the NRCS PIA State Office and the Hawaii SHPO agree that undertakings in the State of Hawaii shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

This State-based Prototype Agreement is applicable to all NRCS undertakings carried out in the State of Hawaii. This is inclusive of, but not limited to, the following NRCS Farm Bill programs: EQIP, AMA, CSP, CIG, EWP, ACEP, and RCPP. Should additional NRCS Farm Bill programs be developed and implemented in the future, these programs shall be subject to the provisions contained within this Prototype Agreement. This agreement is also inclusive of Conservation Technical Assistance (CTA), i.e. the development, review, and/or approval of a NRCS-Certified Conservation Plan.

The NRCS PIA shall ensure that the following stipulations are met and carried out:

### **I. Applicability.**

- a. Once executed by the NRCS and the Hawaii SHPO, this State-based Prototype Agreement sets forth the review process for all NRCS undertakings subject to Section 106 in the State of Hawaii.
- b. Execution of this State-based Prototype Agreement supersedes any existing State Level Agreement with Hawaii SHPO executed under the previous NRCS nationwide Programmatic Agreement, but does not replace any existing project-specific Section 106 agreements (Memoranda of Agreement or Programmatic Agreements).
- c. This State-based Prototype Agreement applies only when there is a Federal Preservation Officer (FPO) in the NRCS National Headquarters (NHQ) who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716). If a FPO is not employed by the NRCS, the NRCS PIA shall inform the Hawaii SHPO, and will engage in standard Section 106 consultation pursuant to 36 CFR Part 800 until such a time as a FPO is employed.
- d. This State-based Prototype Agreement applies only where there is staffing or access to staffing (through contracted services or agreements with other agencies) who meet the Secretary of Interior's (SOI) Professional Qualification Standards in the NRCS PIA. If there is no staffing or access to staffing, the NRCS PIA shall inform the Hawaii SHPO, and will engage in standard Section 106 consultation pursuant to standard 36 CFR Part 800 until such a time as there is staffing or access to staffing.

### **II. Roles and Professional Qualifications.**

- a. The NRCS PIA Director is responsible for oversight of PIA's performance under this State-based Prototype Agreement.
- b. The NRCS shall ensure all NRCS staff or individuals carrying out Section 106 historic preservation compliance work on its behalf, including the senior historic preservation professional staff member (the Cultural Resources Specialist (CRS)), are appropriately qualified to coordinate

the reviews of resources and historic properties as applicable to the resources and historic properties being addressed (site, building, structure, landscape, resources of significance to NHOs, and other concerned communities). Thus, these staff and consultants must meet the SOI's Professional Qualification Standards and have the knowledge to assess the resources within an undertaking's area of potential effects (APE). To qualify for the CRS position, the CRS shall have two (2) years field experience in Hawaii and the Hawaii SHPD (State Historic Preservation Division) shall be provided the opportunity to review and comment on the credentials of any potential CRS candidate prior to candidate selection. Any professional individual consultants retained by NRCS shall meet the SOI's Professional Qualification Standards, and have a permit issued by the Hawaii SHPO to perform archaeological work in the State of Hawaii.

c. The NRCS PIA Director is responsible for consultation with the Hawaii SHPO and NHOs to develop consultation protocols. These responsibilities may not be delegated to any other staff, nor carried out on behalf of NRCS by another federal agency.

d. The NRCS CRS and/or professional consultants shall provide technical historic property and resource information to the NRCS PIA Director for use in Section 106 findings and determinations, after appropriate consultations with the SHPO, NHOs, and discussions with the landowner. The CRS shall monitor and oversee the work and reporting of all NRCS field office personnel and professional consultants. The CRS shall also assist the NRCS PIA Director in determining whether an undertaking has the potential to affect historic properties, triggering Section 106 review, pursuant to 36 CFR Part 800.3(a).

e. The NRCS Planners (i.e. District Conservationists, Resource Conservationists, Soil Conservationists, Soil Conservation Technicians) shall work with the NRCS CRS to complete historic preservation compliance (Section 106) field records for the agricultural producer's (NRCS' client or voluntary applicant for assistance) files and for use in producing initial historic property identification records (as set forth and outlined in NRCS' operational guidance, the National Cultural Resources Procedures Handbook, Title 190, Part 601). The NRCS Planners involved in implementing this State-based Prototype Agreement, shall complete the NRCS' web, classroom, and field awareness training acquired through USDA's AgLearn training site prior to working with the CRS. All training must meet the requirements specified in Stipulation III.

f. The CRS shall oversee development of the scope of work for investigations within the APEs for identified undertakings (see 36 CFR Part 800.4). The NRCS or producers may contract professional consultants to assist with cultural resources compliance studies. The NRCS shall ensure these contractors meet the SOI's Professional Qualifications Standards and are permitted to perform historic compliance work in the State of Hawaii by the Hawaii SHPO in conformance to Stipulation II.b.

g. The NRCS PIA Director remains responsible for all consultation with the SHPO and NHOs, and all determinations of NRHP eligibility and effect. The NRCS PIA Director may not delegate consultation for findings and determinations to professional consultants or producers/applicants for conservation assistance.

h. The Hawaii SHPO, if provided sufficient data on a proposed undertaking and APE for the proposed undertaking by the NRCS PIA Director shall consult and provide a response to the NRCS within 30 calendar days. The definition of sufficient data is provided in 36 CFR Part 800.11.

i. The ACHP shall provide technical guidance, participate in dispute resolution, and monitor the effectiveness of this agreement, as the ACHP deems appropriate.

### **III. Training.**

- a. The NRCS shall require the CRS overseeing cultural resource work to take the NRCS Cultural Resources Training Modules 1-9 and either the ACHP's Section 106 *Essentials* course or a course with similar content approved by the NRCS FPO. Training must be completed prior to the CRS overseeing implementation of this State-based Prototype Agreement. The CRS shall review and update training completion with their supervisors and include their training in their Individual Development Plans.
- b. The NRCS shall require that Hawaii-based NRCS Planners (i.e. District Conservationists, Resource Conservationists, Soil Conservationists, Soil Conservation Technicians) involved in implementing this State-based Prototype Agreement complete the NRCS Cultural Resources Modules 1-6 and 9 in AgLearn and the Hawaii Cultural Resources Modules 7 & 8 training, consisting of classroom and field-based learning before fulfilling any planner responsibilities outlined in this agreement. NRCS Planners who have completed cultural resources training in another state will be required to complete the Hawaii Cultural Resources Modules 7 & 8 training.
- c. The NRCS shall invite the Hawaii SHPD staff to participate in presentations at agency classroom or field trainings.
- d. The NRCS shall provide the Hawaii SHPD staff with training on the provisions contained within this State-based Prototype Agreement.
- e. NRCS shall encourage all personnel overseeing cultural resources work to take additional appropriate specialized training as provided by the SHPO, NHOs, the ACHP, National Park Service, General Services Agency or other agencies.

### **IV. Lead Federal agency.**

- a. For any undertaking for which the NRCS is the lead federal agency for Section 106 purposes per 36 CFR Part 800.2(a)(2), NRCS staff shall follow the terms of this State-based Prototype Agreement. The NRCS shall notify the Hawaii SHPO of its involvement in the undertaking and the involvement of the other federal agencies.
- b. For any undertaking for which the NRCS is not the lead federal agency for Section 106 purposes, including those undertakings for which the NRCS provides technical assistance to other USDA or other federal agencies, the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the lead federal agency agrees, NRCS may follow the approved alternative procedures in place for that agency.

### **V. Review Procedures.**

- a. In consultation with the Hawaii SHPO, the NRCS has identified those undertakings with little to no potential to affect historic properties, and listed those undertakings in Sections I. and II. of Appendix [A].
  1. Upon the determination by the NRCS that a proposed undertaking is included in Section I. or Section II. of Appendix [A], and when NRCS has made a determination of "no historic properties affected", the NRCS is not required to consult further with the Hawaii SHPO for that undertaking, and the undertaking may proceed as planned.
  2. The NRCS shall document the "no historic properties affected" determination on the NRCS

PIA Cultural Resources Technical Note #2 in Appendix [B]. The CRS shall submit to the Hawaii SHPO on a quarterly basis, a hard-copy and a PDF copy on CD of the Cultural Resources Technical Note #2 and a summary spreadsheet report.

b. In consultation with the Hawaii SHPO, the NRCS has identified those undertakings with little to no potential to affect historic properties or potential to affect historic properties dependent on their installation method, and listed those undertakings in Section III. of Appendix [A]. In consultation with the Hawaii SHPO, the NRCS has identified those undertakings that always have potential to affect historic properties, and listed those undertakings in Section IV. of Appendix [A].

1. Upon determination by the NRCS that a proposed undertaking included in Section III. of Appendix [A] is *non-intrusive* and therefore has little to no potential to affect historic properties, and when NRCS has made a determination of “no historic properties affected”, the NRCS is not required to consult further with the Hawaii SHPO for that undertaking, and the undertaking may proceed as planned.

i. The NRCS shall document the “no historic properties affected” determination on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B]. The CRS shall submit to the Hawaii SHPO on a quarterly basis, a hard-copy and a PDF copy on CD of the Cultural Resources Technical Note #2 and a summary spreadsheet report.

2. Upon determination by the NRCS that a proposed undertaking included in Section III. of Appendix [A] is *intrusive*, or that a proposed undertaking is included in Section IV. of Appendix [A], and therefore has potential to affect historic properties, the NRCS may be required to consult further with the Hawaii SHPO for that undertaking, as described below.

i. The NRCS shall define the undertaking’s APE and a NRCS Planner shall conduct a preliminary field inspection of the APE to determine the presence/absence of cultural resources. The NRCS Planner shall then document the results of the field inspection on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B] and submit it to the CRS. The CRS shall review the Cultural Resources Technical Note #2 submittal, and conduct background research inclusive of a literature review to further identify the potential for presence/absence of cultural resources (see Appendix E for a listing of potential cultural resource types in Hawaii). Background research sources shall include Hawaii’s SIHP (State Inventory of Historic Places) database files, NRHP/HRHP (National Register of Historic Places / Hawaii Register of Historic Places) sites, and archival maps, including Land Commission Award maps and/or Boundary Commission maps. If the CRS determines that the undertaking is located within an area with potential for historic properties, a field inspection by the CRS may be necessary.

ii. If the NRCS determines that cultural resources are absent from the APE, and when the CRS has made a determination of “no historic properties affected”, the NRCS is not required to consult further with the Hawaii SHPO for that undertaking, and the undertaking may proceed as planned.

1. The NRCS shall document the “no historic properties affected” determination on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B]. The CRS shall submit to the Hawaii SHPO on a quarterly basis, a hard-copy and a PDF copy on CD of the Cultural Resources Technical Note #2 and a summary spreadsheet report.

iii. If the NRCS determines that cultural resources are present within the APE, or during the literature review determines that the APE is located in an area with a potential for the

discovery of previously unknown historic properties, the CRS and/or professional consultants retained to assist with cultural resource compliance studies shall, in consultation with the Hawaii SHPO and NHO, conduct an inventory survey to identify and evaluate historic properties that may be affected by the undertaking, assess potential effects, and identify strategies for resolving adverse effects prior to installation of the conservation practice or implementation of the action.

1. The NRCS may provide its proposed APE, identification of historic properties, scope of identification efforts, and determination of effects in a single transmittal to the Hawaii SHPO, NHOs, and other consulting parties. This documentation must meet the substantive standards in 36 CFR Part 800.4-5 and 800.11.
  2. The NRCS shall attempt to avoid adverse effects to historic properties whenever possible; where historic properties are located in the APE, NRCS shall describe how it proposes to modify, buffer, or move the undertaking to avoid adverse effects to historic properties.
  3. The CRS shall invite SHPD staff to accompany the CRS on field visits and/or inventory surveys when historic properties are documented within the APE.
- iv. Where the NRCS proposes a determination of “no adverse effect” to historic properties, the Hawaii SHPO and NHO shall have thirty (30) calendar days from receipt of the documentation to review and to concur, or not. The NRCS shall take into account all timely comments.
1. If the Hawaii SHPO, a NHO, or another consulting party disagrees with NRCS’ determination, it shall notify the NRCS in writing within the thirty (30) calendar day time period. The NRCS shall consult with the Hawaii SHPO, the NHO, or other consulting party to attempt to resolve the disagreement. If the disagreement cannot be resolved through this consultation, NRCS shall follow the dispute resolution process in Stipulation VIII. below.
  2. If the Hawaii SHPO does not respond to the NRCS within the thirty (30) calendar day period, the NRCS shall document the lack of response on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B], and may move forward with the undertaking.
  3. If a NHO does not respond to the NRCS within the thirty (30) calendar day period, the NRCS shall document the lack of response on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B].
  4. If the Hawaii SHPO concurs, the NRCS shall document the concurrence on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B], and may move forward with the undertaking.
  5. The NRCS shall document the “no adverse effect” determination on the NRCS PIA Cultural Resources Technical Note #2 in Appendix [B]. The CRS shall submit to the Hawaii SHPO on a quarterly basis, a hard-copy and a PDF copy on CD of the Cultural Resources Technical Note #2 and a summary spreadsheet report.
  6. The NRCS Planner shall modify the producers’ jobsheets to require that the producer adhere to the avoidance measures, thereby ensuring “no adverse effect” to historic properties. The NRCS Planner shall physically verify that the avoidance measures are in place and document this on the Cultural Resources Technical Note #2.
- v. Where the NRCS makes a determination of “adverse effect” to historic properties, the

NRCS shall propose measures to minimize or mitigate the adverse effects, following the process in 36 CFR Part 800.6, including consultation with other consulting parties, notification to the ACHP, and development of a Memorandum of Agreement (MOA) to resolve the adverse effects. Where the NRCS makes a determination of “adverse effect” to a National Historic Landmark, the NRCS shall propose measures to minimize or mitigate the adverse effects, following the process in 36 CFR Part 800.6 and 800.10, including consultation with ACHP and the National Park Service Pacific West Region National Historic Landmark Program Coordinator, and development of a MOA to resolve the adverse effects.

1. The NRCS shall verify that the mitigation measures agreed to in the MOA have been executed prior to the producer’s contract implementation.
- c. The list of undertakings provided in the Appendix [A] may be modified through consultation and written agreement between the NRCS PIA Director and the Hawaii SHPO without requiring an amendment to this State-based Prototype Agreement. The NRCS PIA will maintain the Appendix A master list and will provide an updated Appendix A to all consulting parties with an explanation of the rationale (metadata) for classifying the practices accordingly. This Appendix A master list shall be provided to the Hawaii SHPO on a yearly basis.
- d. The Stipulation V. Review Procedures are illustrated in Appendix C.
- e. For all Conservation Technical Assistance (CTA)-developed NRCS-Certified Conservation Plans, the NRCS shall advise the producer that state laws may be applicable, including Hawaii Revised Statutes (HRS) Chapter 6E and its’ implementing regulations (Hawaii Administrative Rules (HAR) Chapters 197-198, 275-284, and 300). The NRCS will require the producer to sign Cultural Resources Technical Note #1 (see Appendix B) that advises the producer to consult with the Hawaii SHPO prior to implementation of conservation practices in the CTA-developed NRCS-Certified Conservation Plan.
1. The NRCS CRS shall submit to the Hawaii SHPO a copy of all NRCS-Certified Conservation Plans which do not result in a NRCS Farm Bill program contract, immediately following CRS review of the plan. This submittal shall include copies of the Cultural Resources Technical Notes #1 and #2.

## **VI. Emergency and Disaster Management Procedures involving the NRCS’ Emergency Watershed Program**

- a. The NRCS PIA Director shall notify the Hawaii SHPO immediately or within 48 hours of an emergency determination, following the NRCS’ Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 (April 2005).
- b. The NRCS PIA State Office shall prepare procedures for exigency (following the rules for NRCS’ EWP regarding immediate threat to life and property requiring, response within 5 days of the emergency determination) in consultation with the Hawaii SHPO and NHOs. These procedures are provided in Appendix D.
- c. If the NRCS PIA State Office has not developed specific procedures for responding to exigencies, the NRCS shall follow the recently approved guidelines for Unified Federal Review issued by the Department of Homeland Security, Federal Emergency Management Service (DHS, FEMA), the Council on Environmental Quality (CEQ), and the ACHP in July 2014, or the procedures in 36 CFR Part 800.12(b).

## **VII. Post-review discoveries of cultural resources or historic properties and unanticipated effects to historic properties.**

a. Where construction has not yet begun and a cultural resource is discovered after Section 106 review is complete, the NRCS shall consult to seek avoidance or minimization strategies in consultation with the Hawaii SHPO and NHOs, and/or to resolve adverse effects in accordance with 36 CFR Part 800.6.

b. The NRCS shall ensure that every contract for assistance includes provisions for halting work/construction in the area when potential historic properties, including burials and human remains, are discovered or unanticipated effects to historic properties are found after implementation, installation, or construction has begun. When such a discovery occurs, the producer who is receiving financial assistance or their contractor shall immediately notify the NRCS PIA Director, CRS, supervisory NRCS personnel for the area, and the landowner/applicant.

1. If non-burial cultural resources are inadvertently discovered, the NRCS CRS shall notify the Hawaii SHPD of the discovery via email and telephone. The NRCS CRS shall inspect the discovery within twenty-four (24) hours, if weather permits, and in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), the Hawaii SHPD, the NRCS State engineering or program supervisor (as appropriate), the landowner/producer (whomever NRCS is assisting), the CRS shall establish a protective buffer zone surrounding the discovery. This action may require inspection by NHO cultural resources experts and Hawaii SHPD staff in addition to the CRS.
2. If bones (human or non-human) are discovered, the NRCS CRS shall notify the Hawaii SHPD of the discovery and local police, pursuant to all applicable state burial laws and ordinances, Hawaii Revised Statutes (HRS) Chapter 6E, and Hawaii Administrative Rules (HAR) Chapter 300. The NRCS CRS shall inspect the discovery within twenty-four (24) hours, if weather permits, and in consultation with the local NRCS official (field office supervisor or District or Area Conservationist), the Hawaii SHPD, the NRCS State engineering or program supervisor (as appropriate), the landowner/producer (whomever NRCS is assisting), the CRS shall establish a protective buffer zone surrounding the discovery. This action may require inspection by NHO cultural resources experts and Hawaii SHPD staff in addition to the CRS.
3. All NRCS contact with media shall occur only under the direction of the NRCS Public Affairs Officer, as appropriate, and the NRCS PIA Director.
4. Security shall be established to protect the resources/historic properties, workers, and private property. Local law enforcement authorities will be notified in accordance with applicable State law and NRCS policy in order to protect the resources. Construction and/or work may resume outside the buffer only when the NRCS PIA Director determines it is appropriate and safe for the resources and workers.
5. The NRCS CRS shall notify NHOs and the ACHP no later than forty-eight (48) hours after the discovery and describe NRCS' assessment of the National Register eligibility of the property, as feasible and proposed actions to resolve any adverse effects to historic properties. The eligibility determination may require the assessment and advice of concerned NHO, the Hawaii SHPO, and technical experts (such as historic landscape architects) not employed by NRCS.
6. The Hawaii SHPO, NHO and ACHP shall respond within forty-eight (48) hours from receipt

- of the notification with any comments on the discovery and proposed actions.
7. The NRCS shall take any comments provided into account and carry out appropriate actions to resolve any adverse effects.
  8. The NRCS shall provide a report to the Hawaii SHPO, NHO and the ACHP of the actions when they are completed.
- c. When human remains are discovered, the NRCS shall follow all applicable state burial laws and ordinances (HRS Chapter 6E, and HAR Chapter 300), including the Native American Graves Protection and Repatriation Act, and implementing regulations, when on federal lands, and related human rights and health statutes, where appropriate. The NRCS shall also refer to the ACHP's Policy Statement regarding *Treatment of Burial Sites, Human Remains and Funerary Objects* and the ACHP's Section 106 Archaeology Guidance. The NRCS shall also follow USDA and NRCS policy on treatment of human remains and consultation (the NRCS National Cultural Resources Procedures Handbook, Title 190, Part 601).

### **VIII. Dispute resolution.**

- a. Should any consulting or signatory party to this State-based Prototype Agreement object to any actions proposed or the manner in which the terms of the agreement are implemented, the NRCS PIA Director and the CRS shall consult with such party to resolve the objection. If the NRCS PIA Director determines that such objection cannot be resolved, they will:
1. Forward all documentation relevant to the dispute, including the NRCS PIA Director's proposed resolution, to the Hawaii SHPO, NRCS FPO and Senior Policy Official (SPO Deputy Chief for Science and Technology) and the ACHP. The ACHP shall provide the FPO, SPO, and NRCS PIA Director with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and any signatory or consulting parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NRCS may make a final decision on the dispute and proceed. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties, and provide them and the ACHP with a copy of the written response.
- b. The NRCS PIA State Office responsibility to carry out all other actions subject to the terms of this State-based Prototype Agreement that are not the subject of the dispute remains unchanged.
- c. Any signatory or consulting party to this State-based Prototype Agreement may request the ACHP provide its advisory opinion regarding the substance of any finding, determination, or decision regarding compliance with its terms.
- d. At any time during the implementation of this State-based Prototype Agreement, a member of the public may submit an objection pertaining to this agreement to the NRCS PIA Director, in writing. Upon receiving such an objection, the NRCS PIA Director shall notify the NRCS SPO and FPO, and the Hawaii SHPO, take the objection into account, and consult with other consulting parties as appropriate to resolve the objection. The NRCS PIA Director shall notify the SPO, FPO, and the Hawaii SHPO of the outcome of this process.

### **IX. Public Involvement**

The public was involved during the development of the national Prototype Programmatic Agreement. The NRCS PIA Director will ensure that the public participates in Section 106 review as set forth above in Section V (reference to other parties).

#### **X. Annual reporting and monitoring.**

a. Every year following the execution of this agreement, commencing September 30, 2016, until it expires or is terminated, the NRCS PIA Director shall provide all signatory and consulting parties (including those parties who participate in the consultation but do not sign the agreement) and the FPO a summary report identifying and detailing all work undertaken pursuant to its terms; a summary of the nature and content of meetings held with the Hawaii SHPO and NHOs; and an assessment of the overall effectiveness of the State-based Prototype Agreement. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NRCS' efforts to carry out the terms of this agreement.

1. The NRCS FPO shall use the state reports to provide, through the NRCS SPO, an annual report to the ACHP.
2. The NRCS PIA Director shall use the state report to assess the need for annual meetings with the Hawaii SHPO and NHO each fiscal year.

b. The NRCS PIA Director will participate in an annual review with the NRCS Regional Conservationist regarding the effectiveness of the State-based Prototype Agreement and submit a written (email) report following this review to the SPO (Deputy Chief for Science and Technology).

c. The NRCS PIA Director, the Hawaii SHPO, or NHO may request that the ACHP participate in any annual meeting or agreement review.

#### **XI. Compliance with applicable State law.**

The NRCS shall comply with relevant and applicable state law, including permit requirements on state and private lands.

#### **XII. Duration of Prototype Agreement.**

This State-based Prototype Agreement will be in effect for five (5) years from the date of execution unless amended or terminated pursuant to Stipulation XIII below.

#### **XIII. Amendment and termination.**

a. This State-based Prototype Agreement may be amended if agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, is filed with the Hawaii SHPO, the NRCS FPO and SPO, and the ACHP.

b. If any signatory to this State-based Prototype Agreement, or the ACHP, determines that its provisions will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII.A. If within thirty (30) calendar days, or other time period agreed upon by the signatories, an amendment cannot be agreed upon,

any signatory or the ACHP may terminate the agreement upon written notification to the other signatories.

c. If this State-based Prototype Agreement is terminated, or expires without being extended via the amendment process described above, and prior to continuing work on any undertaking, NRCS shall comply with 36 CFR Part 800 for all individual undertakings in the State of Hawaii.

d. NRCS will consider requests from other USDA agencies to become a signatory to this State-based Prototype Agreement following formal written requests and appropriate discussion with and approval by the Hawaii SHPO, the NRCS FPO and SPO, and joint USDA Agency -NRCS State Office consultation with the ACHP, NCSHPO, and NHOs, and other consulting parties, as appropriate. Such inclusion of the USDA agency may require amendment to this State-based Prototype Agreement.

Execution of this State-based Prototype Agreement by the NRCS and the Hawaii SHPO and implementation of its terms evidence that the NRCS has taken into account the effects of its undertakings in the State of Hawaii on historic properties and afforded the ACHP a reasonable opportunity to comment.

**Signatory Parties**

PACIFIC ISLANDS AREA (PIA) NATURAL RESOURCES CONSERVATION SERVICE



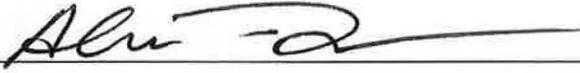
BRUCE PETERSEN, NRCS PIA Director

01/05/2016

Date

**Signatory Parties**

HAWAII STATE HISTORIC PRESERVATION DIVISION



ALAN DOWNER, Deputy State Historic Preservation Officer (SHPO)

1.5.16

Date

## APPENDIX A

### LIST OF UNDERTAKINGS IN NRCS PACIFIC ISLANDS AREA (HAWAII)

Pursuant to Stipulation V.a. above, in consultation with the Hawaii SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Sections I. and II. have little or no potential to affect historic properties. The NRCS is not required to consult further with the Hawaii SHPO under Section 106 for any undertaking that is included in Sections I. and II. of this appendix.

Pursuant to Stipulation V.b. above, in consultation with the Hawaii SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Section III. have little or no potential to affect historic properties *if installation methods are non-intrusive*, generally meaning:

- installation will not exceed the depth or extent of previous cultivation or mechanical disturbance in modern times (i.e. generally not deeper than 18" -36"), and/or
- installation will not result in ground disturbance for the first time

If the NRCS determines that a proposed undertaking included in Section III. is non-intrusive and therefore has little to no potential to affect historic properties, the NRCS is not required to consult further with the Hawaii SHPO for that undertaking as outlined in Stipulation V.b.1.

Pursuant to Stipulation V.b. above, in consultation with the Hawaii SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Section III. have potential to affect historic properties *if installation methods are intrusive*, generally meaning:

- installation will exceed the depth or extent of previous cultivation or mechanical disturbance in modern times (i.e. generally deeper than 18" -36"), and/or
- installation will result in ground disturbance for the first time

If the NRCS determines that a proposed undertaking included in Section III. is intrusive and therefore has potential to affect historic properties, the NRCS may be required to consult further with the Hawaii SHPO for that undertaking, as outlined in Stipulation V.b.2.

Pursuant to Stipulation V.b. above, in consultation with the Hawaii SHPO, the NRCS, through the qualified CRS as described in Stipulation II.b., has determined that the following undertakings listed in Sections IV. have potential to affect historic properties. If the NRCS determines that a proposed undertaking is included in Section IV. and therefore has potential to affect historic properties, the NRCS may be required to consult further with the Hawaii SHPO for that undertaking, as outlined in Stipulation V.b.2.

## I. PROGRAMMATIC UNDERTAKINGS WITH LITTLE TO NO POTENTIAL TO AFFECT HISTORIC PROPERTIES

- a) Technical Determinations – Technical determinations based on empirical or factual findings and determinations of compliance or non-compliance including, but not limited to, wetland determinations, determinations of highly erodible land, certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like.
- b) Soil Survey – The NRCS conducts soil survey activities that involve no ground disturbance or are limited to small-scale field investigations, such as small shovel holes, auger holes, probe holes, and core hole; the potential for these activities to affect historic properties is minimal. Larger scale field investigations, such as soil investigation pits, do have a potential to affect historic properties and require review as an undertaking following Stipulation V. Additionally, the discovery provisions outlined in Section VII above apply to any cultural resources or historic properties identified during soil survey of any scale.

## II. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH LITTLE TO NO POTENTIAL TO AFFECT HISTORIC PROPERTIES

<b>Practice Code</b>	<b>Practice Name</b>
472	Access Control
366	Anaerobic Digester
327	Conservation Cover
328	Conservation Crop Rotation
330	Contour Farming
331	Contour Orchard and Other Perennial Crops
340	Cover Crop
589C	Cross Wind Trap Strips
297	Feral Swine Management
386	Field Border
393	Filter Strip
512	Forage and Biomass Planting
603	Herbaceous Wind Barriers
595	Integrated Pest Management
449	Irrigation Water Management
484	Mulching
590	Nutrient Management
528	Prescribed Grazing
329	Residue and Tillage Management - No Till
345	Residue and Tillage Management - Reduced Till
557	Row Arrangement
798	Seasonal High Tunnel System for Crops
646	Shallow Water Development and Management
601	Vegetative Barrier
633	Waste Utilization
CAP102	Comprehensive Nutrient Management Plan
CAP104	Nutrient Management Plan
CAP106	Forest Management Plan
CAP108	Feed Management Plan
CAP110	Grazing Management Plan
CAP112	Prescribed Burning Plan
CAP114	Integrated Pest Management Plan
CAP118	Irrigation Water Management Plan
CAP122	Agricultural Energy Management Plan - Headquarters (CAP122)
CAP124	Agricultural Energy Management Plan - Landscape
CAP130	Drainage Water Management Plan
CAP138	Conservation Plan - Organic Transition

CAP142	Fish and Wildlife Habitat Plan
CAP146	Pollinator Habitat Enhancement Plan
AIR03	Replace burning of prunings and other crop residues with non-burning alternatives
AIR04	Use drift reducing nozzles, low pressures, lower boom height and adjuvants to reduce pesticide drift
ANM03	Incorporate native grasses and/or legumes into 15% or more of the forage base
ANM09	Grazing management to improve wildlife habitat
ANM29	On-farm forage based grazing system
ANM32	Extend existing filter strips or riparian herbaceous cover for WQ protection and wildlife habitat
ANM37	Prescriptive grazing management system for grazed lands
ANM40	Extending existing field borders for water quality protection and wildlife habitat
ANM61	Hosting a grazing related field day
CCR98	Improved Resource Conserving Crop Rotation (IRCCR)
ENR01	Fuel use reduction for field operations
ENR10	Using N (nitrogen) provided by legumes, animal manure and compost to supply 90 to 100% of the N needs
ENR12	Use of legume cover crops as a nitrogen source
PLT06	Renovation of a windbreak, shelterbelt, or hedgerow for wildlife habitat
PLT15	Establish pollinator and/or beneficial insect habitat
PLT16	Intensive rotational grazing
PLT18	Increasing on-farm food production with edible woody buffer landscapes
PLT20	High residue cover crop or mixtures of high residue cover crops for weed suppression and soil health
PLT30	Monitor pasture health using pasture condition scores (PCS)
SOE05	Intensive no-till (Organic or Non-organic systems)
SQL04	Use of cover crop mixes
SQL05	Use of deep rooted crops to breakup soil compaction
SQL08	Intercropping to improve soil quality and increase biodiversity
SQL11	Cover cropping in orchards, vineyards and other woody perennial horticultural crops
SQL12	Intensive cover cropping in annual crops
SQL14	Integrate grazing into crop and forest systems
SQL15	Utilize the soil health nutrient tool to assess soil nutrient pools
SQL18	Soil health crop rotation
SQL19	Management for rangeland soil health
WQL05	Apply nutrients no more than 30 days prior to planned planting date
WQL07	Split nitrogen applications 50% after crop emergence
WQL09	Apply phosphorus fertilizer below soil surface
WQL10	Plant an annual grass-type cover crop that will scavenge residual nitrogen
WQL20	Transition to organic cropping systems
WQL31	Land application of treated manure
WQL33	Use of non-chemical methods to kill cover crops
WQT03	Irrigation pumping plant evaluation
WQT08	Decrease irrigation water quantity or conversion to non-irrigated crop production

**III. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH POTENTIAL TO AFFECT HISTORIC PROPERTIES DEPENDENT UPON INSTALLATION METHOD**

<b>Practice Code</b>	<b>Practice Name</b>	<b>Undertaking with potential to affect historic properties because installation methods are INTRUSIVE</b>	<b>Undertaking with no potential to affect historic properties because installation methods are NON-INTRUSIVE</b>
311	Alley Cropping	if trees are planted	if shrubs are planted
575	Animal Trails and Walkways	if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
314	Brush Management	if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing shrubs, and/or if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
326	Clearing and Snagging	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
342	Critical Area Planting	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees	if installed via hand methods, and/or if installing shrubs, seeds, sod, etc.
375	Dust Control from Animal Activity on Open Lot Surfaces	if installed on a structure that is 50 years old or older	if installed on a structure that is less than 50 years old
374	Farmstead Energy Improvement	if installed on a structure that is 50 years old or older	if installed on a structure that is less than 50 years old
398	Fish Raceway or Tank	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

666	Forest Stand Improvement	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods and leaving the tree stumps in place, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
383	Fuel Break	if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing shrubs, and/or if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
548	Grazing Land Mechanical Treatment	if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
561	Heavy Use Area Protection	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
422	Hedgerow Planting	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
315	Herbaceous Weed Control	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

430	Irrigation Pipeline	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
441	Irrigation System, Microirrigation	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
442	Irrigation System, Sprinkler	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
460	Land Clearing	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if stumps are removed/excavated, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or involves cutting a tree to a stump (but not removal/excavation of stump), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
543	Land Reclamation, Abandoned Mined Land	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or exceeds depth/extent of previous disturbance	if installation does not exceed depth/extent of previous disturbance
544	Land Reclamation, Currently Mined Land	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or exceeds depth/extent of previous disturbance	if installation does not exceed depth/extent of previous disturbance
466	Land Smoothing	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

670	Lighting System Improvement	if installed on a structure that is 50 years old or older	if installed on a structure that is less than 50 years old
379	Multi-Story Cropping	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees, and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance at tree maturity	if installed via hand methods, and/or if installing shrubs, etc., and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance at tree maturity
516	Pipeline	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed directly atop the ground surface, or via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
521D	Pond Sealing or Lining, Compacted Clay Treatment	if installed on a pond that is 50 years old or older	if installed on a pond that is less than 50 years old
521A	Pond Sealing or Lining, Flexible Membrane	if installed on a pond that is 50 years old or older, and/or if liner's anchoring system is below the pond's berm or outside the previously disturbed area	if installed on a pond that is less than 50 years old; and/or if the liner's anchoring system will not go below the pond's berm and remains within the previously disturbed area
462	Precision Land Forming	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
533	Pumping Plant	if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure that is less than 50 years old, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
550	Range Planting	if installed on a forest and involves mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on range/pasture; or on a forest and plantings involve hand methods (shovels, etc), and/or installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

562	Recreation Area Improvement	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees, and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance at tree maturity	if installed via hand methods (shovels, etc) or chemical methods, and/or if installing shrubs, etc., and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance at tree maturity
566	Recreation Land Grading and Shaping	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
643	Restoration and Management of Rare or Declining Habitats	if removing trees/tree limbs,, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing brush, and/or if installed via hand methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
391	Riparian Forest Buffer	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance at tree maturity	if installed via hand methods (shovels, etc) or chemical methods, and/or if installing shrubs, etc., and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance at tree maturity
390	Riparian Herbaceous Cover	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
558	Roof Runoff Structure	if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure that is less than 50 years old, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
367	Roofs and Covers	if a new roof is installed on a structure that is 50 years old or older	if installed on a structure that is less than 50 years old; or if installed on the roof of a structure that is 50 years old or older via repair/replacement with materials in kind or with similar materials

381	Silvopasture Establishment	if installed via mechanical methods (i.e. heavy equipment / bulldozer / tractor), and/or if planting trees on a pasture or grasses in a forest, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance at tree maturity	if installed via hand methods (i.e. shovel, etc) and planting shrubs or grasses on a pasture, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
632	Solid/Liquid Waste Separation Facility	if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure that is less than 50 years old, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
570	Stormwater Runoff Control	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (shovels, etc), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
612	Tree/Shrub Establishment	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees, and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance at tree maturity	if installed via hand methods (i.e. via shovel) or chemical methods, and if planting shrubs, and/or if installation will not result in ground disturbance for the first time, or does not exceed the depth/extent of previous disturbance at tree maturity
660	Tree/Shrub Pruning	if pruning trees	if pruning shrubs
490	Tree/Shrub Site Preparation	if removing trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing shrubs, and/or if installed via hand methods (i.e. via shovel) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
645	Upland Wildlife Habitat Management	If removing trees/tree limbs, and/or if installation will result in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	If removing brush, and/or if installed via hand methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

634	Waste Transfer	if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure that is less than 50 years old; or if modifying a structure that is 50 years old or older via repair/replacement with materials in kind or with similar materials; and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
629	Waste Treatment	if installed on a structure that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure that is less than 50 years old; or if modifying a structure that is 50 years old or older via repair/replacement with materials in kind or with similar materials; and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
636	Water Harvesting Catchment	if installed on a structure/pond that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed on a structure/pond that is less than 50 years old; and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
614	Watering Facility	if installation entails replacement of a trough/tank that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation entails replacement of a trough/tank that is less than 50 years old, or if installation entails repair of a trough/tank that is 50 years old or older with materials in kind or with similar materials; and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
644	Wetland Wildlife Habitat Management	if removing trees/tree limbs, and/or if installation will result in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing brush, and/or if installed via hand methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
380	Windbreak/Shelterbelt Establishment	if planting trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance at tree maturity	if planting shrubs, and/or if installed via hand methods (i.e. via shovel) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed the depth/extent of previous disturbance at tree maturity

650	Windbreak/Shelterbelt Renovation	if removing and/or planting trees, and/or if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if removing or planting shrubs, and/or if installed via hand methods (i.e. chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
384	Woody Residue Treatment	if installation involves chipping methods (via use of a chipper)	if installation involves lop-and-scatter methods or piling methods
ANM38	Retrofit watering facility for wildlife escape and enhanced access for bats and bird species	if installation entails replacement of a trough/tank that is 50 years old or older, and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installation entails replacement of a trough/tank that is less than 50 years old, or if installation entails repair of a trough/tank that is 50 years old or older with materials in kind or with similar materials; and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
ANM39	Extending riparian forest buffers for water quality protection and wildlife habitat	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance at tree maturity	if installed via hand methods (shovels, etc) or chemical methods, and/or if installing shrubs, etc., and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance at tree maturity
ANM42	Forest stand improvement for wildlife habitat and soil quality	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods and/or involves cutting a tree to a stump (but not removal/excavation of stump), and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance
PLT22	Multi-story cropping , sustainable management of nontimber forest plants	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if planting trees, and/or if installation results in ground disturbance for the first time, or exceeds the depth/extent of previous disturbance at tree maturity	if installed via hand methods, and/or if installing shrubs, etc., and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance at tree maturity

PLT25	Prune low density pine or hardwood trees to improve tree quality and wildlife habitat	if pruning trees	if pruning shrubs
WQL22	On farm composting of farm organic waste	if constructing a composting facility	if piling of organic materials for composting
WQL28	Biological suppression and other non-chemical techniques to manage vegetation	if installed via mechanical methods (i.e. heavy equipment / bulldozer), and/or if installation results in ground disturbance for the first time, or exceeds depth/extent of previous disturbance	if installed via hand methods (chainsaw, axe, lopper, machete, etc) or chemical methods, and/or if installation will not result in ground disturbance for the first time, or does not exceed depth/extent of previous disturbance

IV. INDIVIDUAL NRCS CONSERVATION PRACTICES WITH POTENTIAL TO AFFECT HISTORIC PROPERTIES

Practice Code	Practice Name
560	Access Road
309	Agrichemical Handling Facility
396	Aquatic Organism Passage
672	Building Envelope Improvement
317	Composting Facility
402	Dam
324	Deep Tillage
356	Dike
362	Diversion
382	Fence
655	Forest Trails and Landings
410	Grade Stabilization Structure
412	Grassed Waterway
423	Hillside Ditch
464	Irrigation Land Leveling
436	Irrigation Reservoir
468	Lined Waterway or Outlet
582	Open Channel
378	Pond
555	Rock Barrier
350	Sediment Basin
574	Spring Development
578	Stream Crossing
395	Stream Habitat Improvement and Management
580	Streambank and Shoreline Protection
587	Structure for Water Control
607	Surface Drain, Field Ditch
608	Surface Drain, Main or Lateral
600	Terrace
568	Trails and Walkways
620	Underground Outlet
313	Waste Storage Facility
359	Waste Treatment Lagoon
638	Water and Sediment Control Basin
658	Wetland Creation
659	Wetland Enhancement
657	Wetland Restoration
ANM55	Creation and retention of snags, den trees and coarse woody debris for wildlife habitat
ANM57	Removal of all threats to sensitive wildlife species on the operation
PLT02	Monitor key grazing areas to improve grazing management

**APPENDIX B**  
**CULTURAL RESOURCES TECHNICAL NOTE #2**

Cultural Resources Technical Note #1 and Cultural Resources Technical Note #2 are Excel spreadsheets. They may be found at and downloaded from NRCS PIA's website within the Technical Resources page at:

[http://www.nrcs.usda.gov/wps/portal/nrcs/detail/pia/technical/?cid=nrcs142p2\\_037391](http://www.nrcs.usda.gov/wps/portal/nrcs/detail/pia/technical/?cid=nrcs142p2_037391)

# APPENDIX C REVIEW PROCEDURES FLOW CHART



## **APPENDIX D PROCEDURES FOR EMERGENCY RESPONSE**

Following these procedures for emergency response, the NRCS shall take into account the effects of their undertakings on historic properties while insuring that the main agency priority is the protection of life and property.

1. If the President declares an area to be a major disaster area, the NRCS shall provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA). FEMA is the lead federal agency for Presidentially-declared natural disasters. As outlined in Stipulation IV., the terms of this State-based Prototype Agreement shall not apply to that undertaking. If the FEMA or its designee agrees, NRCS may follow the approved alternative procedures in place for that agency.
2. When the PIA NRCS Director determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance and NRCS will assume the role of lead federal agency for all undertakings that occur on private and State of Hawaii lands. Following the NRCS's Emergency Watershed Program (EWP) final rule (see Section 216, P.L. 81-516 Final Rule, 7 CFR Part 624 [April 2005]) and 36 CFR 800.12, the NRCS shall consult with the Hawaii SHPO as outlined below.
  - a. NRCS shall notify the Hawaii SHPO immediately or within forty-eight (48) hours of the emergency determination.
  - b. Hawaii SHPO shall respond to this notification within seven (7) calendar days, providing comments, as well as providing the NRCS with a list of historic properties and a map(s) showing the location of these properties within the designated disaster area. If circumstances do not permit seven (7) calendar days for comment, the NRCS shall notify the Hawaii SHPO and appropriate NHO to invite comments within the time available.
  - c. For an emergency where there is a future, but not immediate, threat to life and property, the NRCS shall follow the review procedures outlined in Stipulation V. of this agreement with the exception that the Hawaii SHPO shall respond within fifteen (15) calendar days, or within the time available, to the NRCS's findings and/or determinations.
  - d. For an exigency where there is an immediate threat to life and property, the NRCS shall follow the procedures outlined in Stipulation V. as circumstances allow. The Hawaii SHPO shall respond to the NRCS's findings and/or determinations within seven (7) calendar days or within the available time period as determined by the NRCS PIA Director.
    - i. Under extraordinary circumstances and pursuant to 36 CFR 800.12(d) and 36 CFR 78.3, the NRCS PIA Director retains the right to waive the provisions of Section 106 and Section 110 of the NHPA and proceed with providing emergency assistance to eliminate an imminent threat to human life or property without Hawaii SHPO concurrence. If the NRCS PIA Director makes use of their waiver authority, the NRCS shall notify the Hawaii SHPO, NHO, and the Secretary of the Interior in writing pursuant to 36 CFR 78.4.

**APPENDIX E**  
**GLOSSARY OF ACRONYMS AND DEFINITIONS USED IN THIS DOCUMENT**

<b>ACEP</b>	Agricultural Conservation Easement Program (NRCS Farm Bill program)
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>AMA</b>	Agricultural Management Assistance (NRCS Farm Bill program)
<b>APE</b>	Area of Potential Effects—from ACHP regulations 36 CFR Part 800
<b>CEQ</b>	Council on Environmental Quality
<b>CFR</b>	Code of Federal Regulations
<b>CIG</b>	Conservation Innovation Grants (NRCS Farm Bill program)
<b>CRS</b>	Cultural Resources Specialist (NRCS employee meeting the SOI’s Professional Qualifications Standards for Archaeology, Architectural History, or History)
<b>CSP</b>	Conservation Stewardship Program (NRCS Farm Bill program)
<b>CTA</b>	Conservation Technical Assistance
<b>DHS</b>	Department of Homeland Security
<b>EQIP</b>	Environmental Quality Incentives Program (NRCS Farm Bill program)
<b>EWP</b>	Emergency Watershed Program (NRCS Farm Bill program)
<b>FEMA</b>	Federal Emergency Management Agency
<b>FPO</b>	Federal Preservation Officer
<b>HAR</b>	Hawaii Administrative Rules
<b>HRHP</b>	Hawaii Register of Historic Places
<b>HRS</b>	Hawaii Revised Statutes
<b>MOA</b>	Memorandum of Agreement
<b>NCSHPO</b>	National Conference of State Historic Preservation Officers
<b>NEPA</b>	National Environmental Policy Act
<b>NHL(s)</b>	National Historic Landmark(s)
<b>NHO</b>	Native Hawaiian Organization
<b>NHPA</b>	National Historic Preservation Act
<b>NHQ</b>	National Headquarters
<b>NRCS</b>	Natural Resources Conservation Service
<b>NRHP</b>	National Register of Historic Places
<b>PIA</b>	Pacific Islands Area
<b>RCPP</b>	Regional Conservation Partnership Program (NRCS Farm Bill program)
<b>SIHP</b>	State Inventory of Historic Places (maintained by SHPD)
<b>SHPD</b>	State Historic Preservation Division (Hawaii)
<b>SHPO</b>	State Historic Preservation Officer
<b>SPO</b>	Senior Policy Official (NRCS)
<b>SOI</b>	Secretary of the Interior
<b>SWCD</b>	Soil and Water Conservation District
<b>THPO</b>	Tribal Historic Preservation Officer
<b>USDA</b>	United States Department of Agriculture

**Cultural Resources / Historic Properties**

“Cultural resources,” in NRCS, are considered equivalent to “historic properties” as defined by the ACHP regulations for compliance with Section 106 of the NHPA [36 CFR 800.16(l)(1)]. Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (maintained by the Secretary of the Interior). This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

### **Examples of Cultural Resources Types in Hawaii**

Examples include, but are not limited to, the following types of traditional pre-Contact and post-Contact Hawaiian features – walls, alignments, trails, platforms, terraces, enclosures, hearths/firepits, rockshelters, caves/lava tubes, burials, shrines, heiau, mounds, depressions, modified outcrops, cupboards, fishponds, `auwai, lo`i, petroglyphs, pictographs, isolated artifacts, artifact caches, midden, etc.

Examples include, but are not limited to, the following types of post-Contact plantation agriculture, ranching, military, and transportation features – irrigation ditches/flumes/siphons/tunnels/culverts, reservoirs, cane haul roads, work camps, industrial mills, railroads, machinery/equipment, fences, rock walls, ranch outbuildings, ranching stations, water tanks/troughs, corrals, trails, bunkers, pillboxes, gun emplacements, batteries, military camps, airfields/runways, training areas, plane wrecks, shipwrecks, refuse dumps, midden, etc.