

# NATIVE HAWAIIAN ORGANIZATIONS IN THE SECTION 106 REVIEW PROCESS

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ADVISORY COUNCIL ON HISTORIC PRESERVATION  
DEPARTMENT OF THE INTERIOR OFFICE OF NATIVE HAWAIIAN RELATIONS  
HISTORIC HAWAI'I FOUNDATION

22 FEBRUARY 2020



## SECTION 2: PREPARING FOR SECTION 106 CONSULTATION



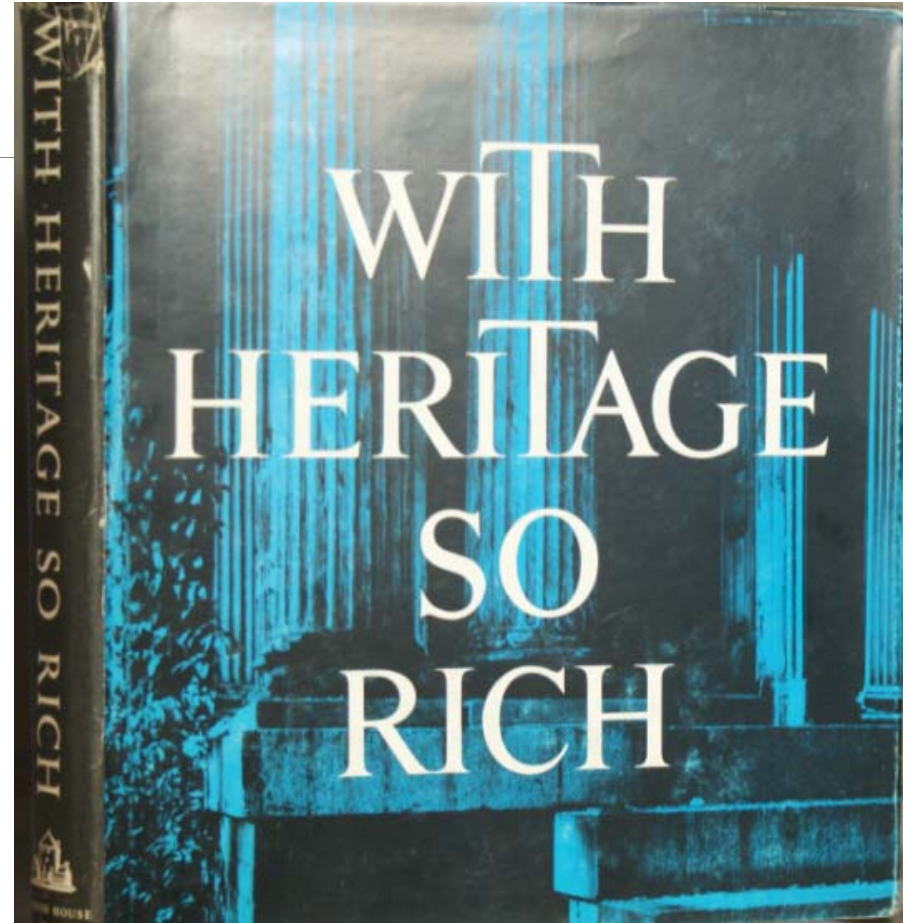
Huilua Fishpond National Historic Landmark, Kahana, O'ahu. Photo by Kai Markell, courtesy of OHA

## WITH HERITAGE SO RICH

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“ . . . the preservation movement . . . must go beyond saving bricks and mortar. It must go beyond saving occasional historic houses and opening museums. It must do more than revere a few national shrines. **It must attempt to give a sense of orientation to our society using structures and objects of the past to establish values of time and place.**”

*With Heritage So Rich*, p.193



# NATIONAL HISTORIC PRESERVATION ACT (NHPA)

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In 1966, Congress passed the National Historic Preservation Act. It was the most comprehensive preservation law the nation had ever known.

The act established permanent institutions and created a clearly defined process for historic preservation in the United States.



President Lyndon B. Johnson signing bill with Stewart Udall, Lady Bird, 1966. Photo ACHP.



# PURPOSE OF NATIONAL HISTORIC PRESERVATION ACT (NHPA)

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The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations.



Hanapēpē Salt Pans. Photo by HHF

# PURPOSE OF NATIONAL HISTORIC PRESERVATION ACT

The federal government's role is to "provide leadership" for preservation, "contribute to" and "give maximum encouragement" to preservation, and "foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony."



# NATIVE HAWAIIANS

In 1992, the NHPA was amended to clarify the roles of Indian tribes and Native Hawaiian organizations in the federal preservation program.

- Properties of religious and cultural significance to Native Hawaiian organizations may be eligible for listing in the National Register of Historic Places; and
- Federal agencies are required to consult with any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.



Halulu Heiau, Kaunolu NHL, Lānaʻi. Photo courtesy Lānaʻi Culture & Heritage Center



# NATIVE HAWAIIANS

The NHPA and 36 CFR Part 800.16(s) define “Native Hawaiian organizations” and “Native Hawaiian”:

(1) **Native Hawaiian organization** means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) **Native Hawaiian** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.





# Strategies for Preparing for Consultation

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# BE KNOWN to Federal Agencies

It is important for the NHO to make its identity known to federal agencies.

- Register on the [U.S. Department of the Interior list of NHOs](#). Multiple federal and state government agencies rely upon DOI's NHO list when seeking out NHOs for consultation purposes.
- Contact a federal agency's [Federal Preservation Officer](#) (FPO) for information, share concerns, or ask to be a consulting party on the federal agency's undertakings.



# ESTABLISH RELATIONSHIPS

## **Be proactive in establishing relationships with federal agencies**

It is important for NHOs, especially those whose mission is the stewardship of a place or area, to know their neighboring landowners. It may be that areas important to the NHO are bordered by federal agencies or entities that receive federal funds.

Knowing adjacent landowners means not only knowing who owns the lands or what neighboring lands are used for, but it also includes getting to know the people that reside or work there, and building a relationship.

Productive relationships can help build trust, understanding, and support.



Site visit to MCBH Ulupau Crater and Kahekili's Leap.  
Photo by HHF.

# IMPORTANT CULTURAL PLACES

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Knowing whether important and significant cultural places may be present and relating that information to a federal agency is essential.

Once consulting parties make areas known to the federal agency, it is then the federal agency's responsibility to determine the National Register significance of such properties in consultation with NHOs.



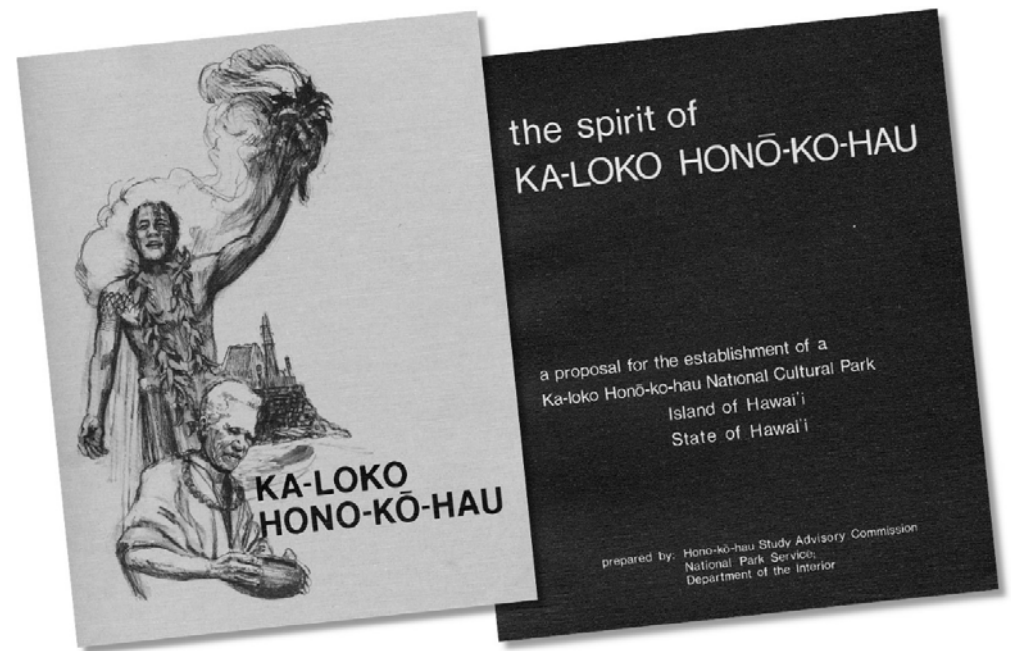
Āhole Holua Complex, South Kona, Hawai'i Island. Photo from NR nomination.



# HAVE A MANAGEMENT PLAN OR STRATEGY

It is helpful for NHOs to have or develop a management plan or preservation strategy for historic properties under their stewardship or use.

Such a plan or strategy may be helpful and not only identifies the historic properties of religious and cultural significance to the NHO, but describes the NHO's vision for preserving and managing those resources.



The "Spirit of Kaloko-Honokōhau" report was instrumental in the establishment of the National Historical Park in 1978, courtesy NPS.

# BE AWARE OF OPPORTUNITIES to consult on proposed federal actions

- News **media** – television, newspaper, radio; or hearing of it through word-of-mouth or **social media** websites.
- **Government bulletins.** For example, the State of Hawai'i, Office of Environmental Quality Control (OEQC), publishes a semi-monthly Environmental Notice. It contains both state and federal notices, including Section 106 actions, environmental impact statements, environmental assessments, and other notices of government actions that may affect historic properties.
- Federal and state **agency websites** often contain various planning documents that describe their short and long-term actions which could also trigger Section 106 consultation.



# Knowledge Check 4

Question

What are the steps of the Section 106 process?

Place in order:

**IDENTIFY**

**RESOLVE**

**ASSESS**

**INITIATE**

# Knowledge Check 4

Answer

What are the steps of the Section 106 process?

In order:

- 1. INITIATE**
- 2. IDENTIFY**
- 3. ASSESS**
- 4. RESOLVE**



## SECTION 3: BECOMING AWARE OF A PROPOSED FEDERAL ACTION



Rendering of a transit station adjacent to the Pearl Harbor National Historic Landmark, which was the subject of Section 106 consultation by the Federal Transit Administration and its local partner the Honolulu Authority for Rapid Transportation. Image courtesy of HART.

# Undertakings

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## 36 CFR Part 800.3

When federal agencies consider actions, they are required to determine if that action would be considered an “undertaking.”

An undertaking is defined as a project, activity, or program:

- funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency;
- those carried out with federal financial assistance; and
- those requiring a federal permit, license or approval.

If a federal agency determines that its proposed action is an undertaking, it is required to determine if the proposed action is a type of activity that has the potential to cause effects on historic properties.

# Defining the Area of Potential Effect

For undertakings with the potential to affect historic properties, federal agencies are required to delineate the Area of Potential Effect (APE).

The APE is a tool for the agency's effort to identify historic properties. Its purpose is to **identify the location in which the agency will look for historic properties.**

This is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.

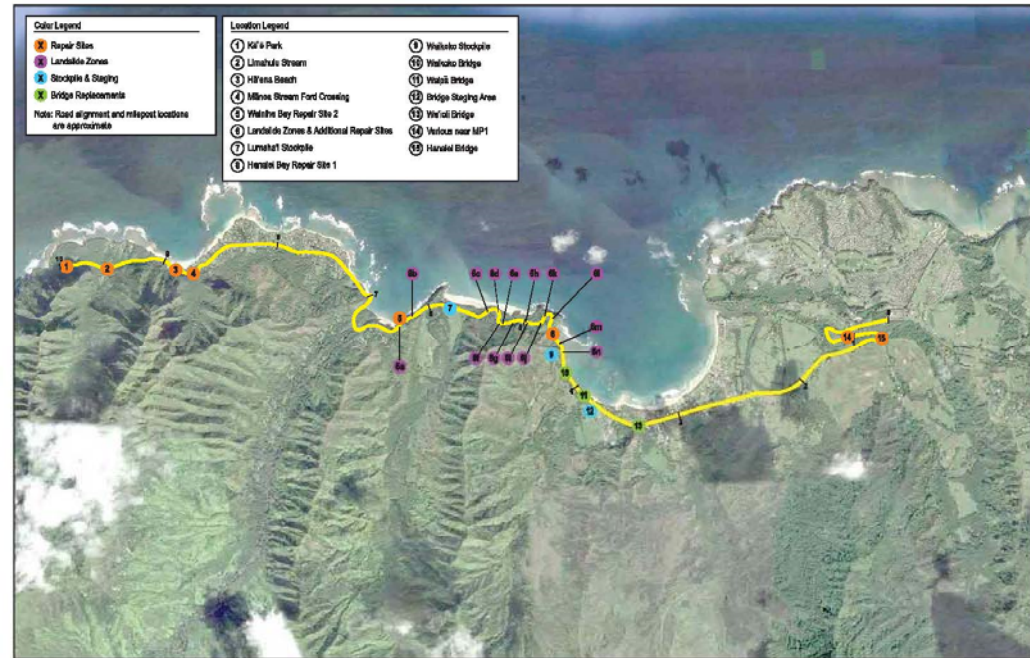


Figure 1: Locations of Sites, Hanalei to Hanalei  
Kaua'i Road Emergency Flood Repairs and Cleanup - Various Locations - April 2018

Kaua'i Road Repairs Project Location and APE Maps. Courtesy FHWA.

# Strategies During Section 106 Initiation

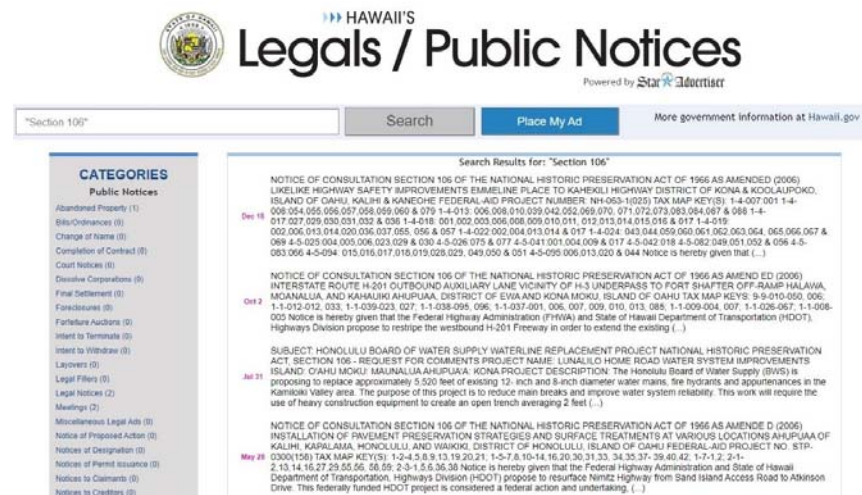
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# BE PREPARED TO RESPOND

When a federal agency determines its undertaking requires a Section 106 review, **the agency is responsible for identifying NHOs and initiating the consultation process.**

If an NHO has not **made itself known to the federal agency**, the SHPO, or is otherwise not on a government list, it is at a disadvantage and risks not being consulted on the federal agency's undertakings.



The screenshot displays the 'Legals / Public Notices' section of the Hawaii government website. The search bar at the top contains the text 'Section 106'. Below the search bar, there are three tabs: 'Section 106', 'Search', and 'Place My Ad'. The 'Section 106' tab is selected, showing search results for 'Section 106'. The results are listed under the heading 'Public Notices' and include categories such as 'Abandoned Property (1)', 'Bills/Ordinances (3)', 'Change of Name (3)', 'Completion of Contract (1)', 'Court Notices (3)', 'Dissolve Corporations (3)', 'Final Settlement (1)', 'Foreclosures (3)', 'Furniture Auctions (1)', 'Intent to Terminate (1)', 'Intent to Withdraw (1)', 'Licenses (1)', 'Legal Filings (1)', 'Legal Notices (2)', 'Mortgages (1)', 'Miscellaneous Legal Acts (1)', 'Notice of Proposed Action (1)', 'Notice of Designation (1)', 'Notice of Permit Issuance (1)', 'Notice to Claimants (1)', and 'Notice to Creditors (1)'. The search results for 'Section 106' are listed below the categories, showing three results with dates and descriptions. The first result is dated 'Dec 18' and is titled 'NOTICE OF CONSULTATION SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 AS AMENDED (2006)'. The second result is dated 'Oct 2' and is titled 'NOTICE OF CONSULTATION SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 AS AMENDED (2006)'. The third result is dated 'Jul 21' and is titled 'SUBJECT HONOLULU BOARD OF WATER SUPPLY WATERLINE REPLACEMENT PROJECT NATIONAL HISTORIC PRESERVATION ACT SECTION 106 - REQUEST FOR COMMENTS PROJECT NAME: LUNALUILI HOME ROAD WATER SYSTEM IMPROVEMENTS'. The fourth result is dated 'May 28' and is titled 'NOTICE OF CONSULTATION SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 AS AMENDED (2006)'. The search results are listed under the heading 'Search Results for: "Section 106"'.

# Understand the SCOPE and APE For the Undertaking

Federal agencies are required to include a project description, supporting information, maps, and description of the APE when consulting.

It is important for NHOs to carefully **review this information to understand the scope of the project** and boundaries of the APE.

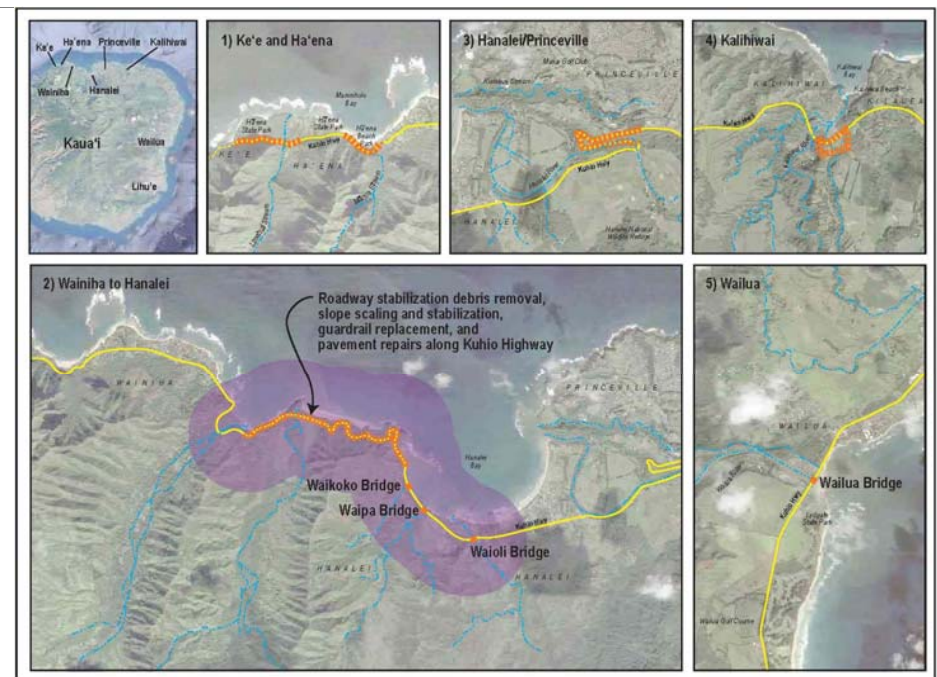


Figure 3: APE Map  
Kauai Emergency Flood Repairs and Cleanup - Various Locations - April 2018

Kaua'i Road Repairs Project Location and APE Maps. Courtesy FHWA.

# Determine if HISTORIC PROPERTIES will be AFFECTED by the Undertaking

Once the scope of the undertaking and its APE are understood, NHOs need to determine **whether historic properties of traditional religious and cultural importance to them might be located within the APE** or may be otherwise affected.

Effects to historic properties do not necessarily need to result in physical damage or destruction to be considered “adverse.”



Sinkhole at Kalaeloa, O'ahu, photo courtesy of ONHR.

# Understand the PURPOSE and LIMITATIONS of Section 106 Consultation

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Knowing the Section 106 process allows NHOs to develop appropriate engagement strategies and manage expectations.

Section 106 **provides consulting parties an opportunity to identify issues and participate in resolution of effects** to historic properties.

Section 106 does not address issues outside its purview and does not give consulting parties veto authority over the undertaking.



Mākua Military Reservation, O'ahu, photo ACHP



## Knowledge Check 5

### Question

A \_\_\_\_\_ is required to determine if its action is an undertaking that might affect historic properties.

- A. Federal Agency
- B. Applicant for Federal Assistance
- C. Native Hawaiian Organization
- D. Contract archaeologist or historian

## Knowledge Check 5

Answer

A \_\_\_\_\_ is required to determine if its action is an undertaking that might affect historic properties.

**A. Federal Agency**

B. Applicant for Federal Assistance

C. Native Hawaiian Organization

D. Contract archaeologist or historian

Federal agencies are required to determine if their actions are an undertaking that may affect historic properties.

# Knowledge Check 6

## Question

An \_\_\_\_\_ is the area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.

- A. Project Area
- B. Historic District
- C. Traditional Cultural Property
- D. Area of Potential Effect

## Knowledge Check 6

Answer

An \_\_\_\_\_ is the area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.

A. Project Area

B. Historic District

C. Traditional Cultural Property

**D. Area of Potential Effect or APE**

For undertakings with the potential to affect historic properties, federal agencies are required to delineate the Area of Potential Effect or “APE”.

This is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.