

NATIVE HAWAIIAN ORGANIZATIONS IN THE SECTION 106 REVIEW PROCESS

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

22 FEBRUARY 2020



SECTION 4: IDENTIFICATION OF HISTORIC PROPERTIES



Pu'ukoholā Heiau. Photo courtesy NPS

Requirements for federal agencies

36 CFR 800.4

Federal **agencies are required to identify historic properties**, including those of religious and cultural importance to NHOs, within the APE.

Federal agencies are required to make a **reasonable and good faith effort in identifying these properties** in consultation with the SHPO, NHOs, and other consulting parties.

Determining Eligibility

The ACHP's regulations require the **federal agency to apply the National Register eligibility criteria** in consultation with the SHPO and any NHO that attaches traditional religious and cultural significance to the property.

During such consultation, a federal agency may use in-house expertise or rely on information and recommendations provided by applicants or consultants/contractors.

The federal agency is legally responsible for decisions on National Register eligibility.

Most eligibility determinations made in the Section 106 process are called “consensus determinations” because agreement between the federal agency and the SHPO is all that is required; no formal nomination to or listing on the National Register is necessary.

WHAT IS A HISTORIC PROPERTY?

National Criteria:
National Register of
Historic Places
36 CFR Part 60
and Part 800.16

**Properties that meet the
criteria for eligibility** for
listing on the National
Register of Historic Places,
including those which any
Native Hawaiian organization
might attach religious and
cultural significance.

NATIONAL REGISTER OF HISTORIC PLACES



The National Register of Historic Places is the official list of districts, sites, buildings, structures, and objects worthy of preservation

The National Register is maintained and expanded by the National Park Service on behalf of the Secretary of the Interior.

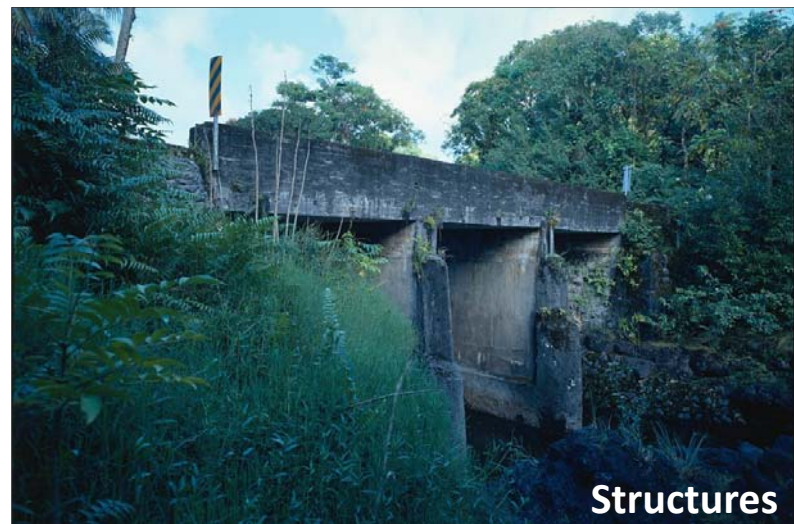
NPS instituted criteria for identifying significant historic properties

Historic Properties can be:



Buildings are intended to shelter some sort of human activity.

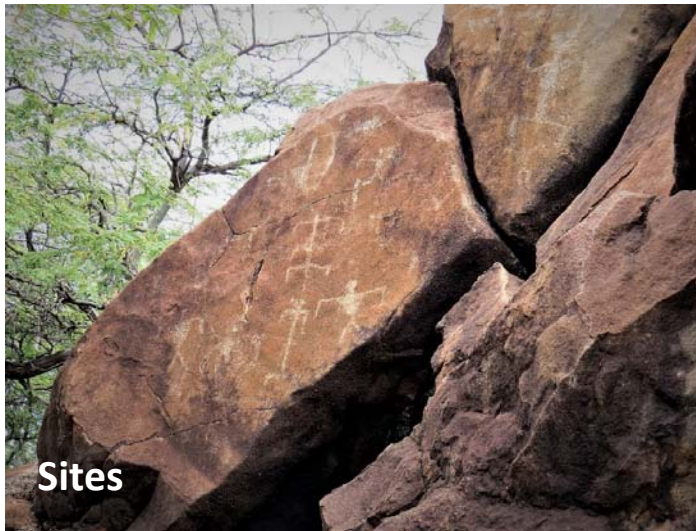
Examples include: a house, store, church, jail or other similar construction.



Structures are functional constructions meant to be used for purposes other than sheltering human activity.

Examples include: bridges, railroads and ships.

Historic Properties can be:



Sites

A **site** is the location of a significant event where the location itself possesses historic, cultural, or archeological value. Examples Include: battlefields, archaeological features, landscapes



Objects

Objects are usually artistic in nature, or relatively small in scale and simply constructed. Examples include monuments, sculptures and fountains.

Historic Properties can be:



A **district** is a geographically-definable area, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. Examples include: Kalaupapa NHL, Chinatown Historic District, Wailua NHL, Līhu'e Civic Center Historic District

SIGNIFICANCE CRITERIA

NPS instituted criteria for identifying significant historic properties

- A. Historic Event
- B. Historic Person
- C. Design/Construction
- D. Information Potential

Criterion A: Historical Events & Patterns

Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.



Lekeleke Burial Ground is significant for events associated with the battle of Kuamo'o. Photo ONHR.

Criterion B: Important Person

Properties may be eligible for the National Register if they are associated with the lives of persons significant in our past.



Washington Place, Honolulu, O'ahu. Photo by HHF.
Association with Queen Lili'uokalani

Criterion C: Architecture & Engineering

Properties may be eligible if they embody the distinctive characteristics of a type, period, or method of construction; or

that represent the work of a master; or

that possess high artistic values; or

that represent a significant and distinguishable entity whose components may lack individual distinction.



Bishop Museum's Hawaiian Hall is significant as an example of late 19th-century museum design and construction. Photo HHF.

Criterion D: Information Potential

Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.



Pōkāneloa and the Loa'a stone are significant for information about Native Hawaiian life and customs. Photo courtesy ONHR.

HISTORIC INTEGRITY

Setting **MATERIALS**
LOCATION
Workmanship **design**
Feeling **Association**

Integrity is the ability of a property to convey significance.

The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance.

To retain historic integrity a property will always possess several, and usually most, of the aspects.

Evaluation of historic significance

In consultation with the SHPO and NHOs, **federal agencies are required to evaluate the significance of historic properties, including those of religious and cultural significance to NHOs**, in accordance with the National Register criteria, to determine their eligibility.

The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the federal agency to **re-evaluate properties** previously determined eligible or ineligible.

NHO Special Expertise

During a Section 106 review when an NHO has indicated that properties of cultural and religious significance to them may be present within the APE, the federal agency must consult them and lacks the discretion to deny such a request.

Section 106 further requires that federal agencies acknowledge NHO special expertise in assessing the National Register eligibility of historic properties that may possess religious and cultural significance.

As such, federal agencies are obligated to consider information from NHOs regarding historic properties of religious and cultural significance to them.

What a Cultural Resource professional might see



Habitation

A cultural resource professional may see items that could be part of a habitation site with remnants and artifacts

Trail

A cultural professional might see a trail through the site and may look for additional information concerning the feature

Petroglyph

A cultural professional might see a petroglyph or petroglyphs

What a Native Hawaiian might see



Wahi Pana

Storyed places marked by geological features and view planes

Footpath

Footpath as part of a network of trails and places with historical or cultural traditions

Anchialine Pond

Anchialine ponds/springs with traditional cultural significance

Burial

Important burial caves or sites to the families

Petroglyph

petroglyph or petroglyphs

Confidentiality

Section 304 of National Historic Preservation Act states that:

(a) The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary [of the Interior], shall withhold from disclosure to the public information about the:

- location,
- character, or
- ownership

of a historic property if the Secretary and the agency determine that disclosure may:

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic property; or
- (3) impede the use of a traditional religious site by practitioners.

Confidentiality

Information about the character of a property is that which refers to

- its physical features
- setting
- age
- use
- purpose, or
- contents, such as artifacts.

Ownership is restricted as this knowledge could help locate the historic property or could result in unwelcome intrusion or attention.

The protected information is not only textual but can also include maps, photographs, electronic media, and other images.

Agency findings

The federal agency is required, in consultation with the SHPO, NHOs, and other parties, to **determine if historic properties within the APE will be affected** by the undertaking.

If the federal agency finds that either:

- there are no historic properties present, or
- there are historic properties present but the undertaking will have no effect upon them,

the federal agency is required to provide documentation of this finding to the SHPO and notify NHOs and other consulting parties.

If the SHPO, or the ACHP (if participating), does not object **within 30 days** of receiving the agency's documents, then the agency official's responsibilities under Section 106 are considered fulfilled.

Addressing disagreements

If there is a disagreement between the federal agency and the SHPO or NHO regarding the agency's finding, there is a process for documenting the disagreement, continuing consultation with the objecting party, or forwarding the finding and supporting documentation to the ACHP for review.

When submitting information to the ACHP, federal **agencies are required to notify all consulting parties and make their submittal available for public review.**

Upon receipt of the federal agency's submittal, the ACHP has 30 days to review and provide an opinion regarding the agency's finding.

The agency, after receiving the ACHP opinion is required to consider it and prepare a summary and rationale of its final decision to either affirm or revise its initial finding, and transmit these decision documents to the ACHP, SHPO, NHOs and other consulting parties.

Strategies For Identification

COMMUNICATE EFFECTIVELY

When consulting with agency officials regarding the identification of historic properties of religious and cultural significance, it is very important to provide information about historic properties to the federal agency.

Keep the National Register criteria in mind when providing information.

Understanding the terminology found in the Section 106 regulations is beneficial and will assist the NHO with interactions with the federal agency.



Preservation round table, photo courtesy HHF.

BE TIMELY and meet submission deadlines

When reviewing agency findings on the eligibility of historic properties or results of the identification of historic properties, consulting parties have a specific window of time in which to provide written comments or disagree with the findings.

It is very important that NHOs abide by these deadlines and submit their comments in a timely manner.

Federal agencies are not required to provide additional time or consider comments that are submitted after the deadlines.



The screenshot shows the Ka Wai Ola website with the header "BETA THE LIVING WATER OF OHA". The navigation bar includes "ARTICLES", "ARCHIVE", "VIDEOS", and "COMMUNITY". The main content area is titled "Ho'olaha Lehulehu | Public Notice: January 2020" and is dated December 30, 2019. It features social media sharing icons and a "Like" button. The notice is titled "Notice of Consultation: Section 106 of the National Historic Preservation Act of 1966 as Amended (2006)". It describes improvements to collector roads in the Kawaihau District of Kauai, including portions of Oloheua Road, Kukui Street, and Ulu Street. A map of the project area is included. The text states that the Federal Highway Administration (FHWA) and the County of Kauai Department of Public Works ("County") would like to update a notice published on August 1, 2019, regarding consultation under Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (2006) for this project. The project proposes to rehabilitate and resurface roadways.

Interested participants are requested to contact Mr. Joel Bautista, DPW Project Manager, via email at jbautista@kauai.gov, or by US Postal Service to County of Kauai Department of Public Works, Engineering Division, 4444 Rice Street, Suite 175, Lihue, HI 96766-1340. [Please respond by January 31, 2020.](#)

BE MINDFUL of different or opposing perspectives

During the initial stages of consultation, agencies may reach out to multiple NHOs or other consulting parties.

Depending on the scope and APE of the undertaking, **consulting parties may have different or possibly opposing agendas.**

For projects covering a large area or that have many different historic properties, it is possible for some consulting parties to focus only on a particular area or type of historic property, which could lead to consulting party disagreements.

Knowledge Check 7

Question

It is important to communicate effectively with federal agencies concerning the identification of historic properties, including those of religious and cultural importance to NHOs.

True or False?

Knowledge Check 7

Answer

It is important to communicate effectively with federal agencies concerning the identification of historic properties, including those of religious and cultural importance to NHOs.

TRUE

This statement is true:

Communicating effectively with federal agencies concerning the identification of historic properties is essential so that properties of traditional religious and cultural importance to NHOs may be evaluated under the National Register criteria and considered for adverse effects.

Knowledge Check 8

Question

Section 106 applies when . . .
(choose all that apply)

- A. A federal agency determines there is no undertaking.
- B. A federal agency funds, licenses, or approves a project.
- C. An undertaking may affect historic properties.
- D. An NHO determines there is a project

Knowledge Check 8

Answer

Section 106 applies when . . .
(choose all that apply)

- A. A federal agency determines there is no undertaking.
- B. A federal agency funds, licenses, or approves a project.**
- C. An undertaking may affect historic properties.**
- D. An NHO determines there is a project

Knowledge Check 9

Question

A federal agency is required to evaluate a property of religious and cultural significance to NHOs for National Register eligibility.

True or False?

Knowledge Check 9

Answer

A federal agency is required to evaluate a property of religious and cultural significance to NHOs for National Register eligibility.

TRUE

In consultation with the SHPO and NHOs, federal agencies are required to evaluate historic properties including those of religious and cultural significance to NHOs in accordance with the National Register criteria.

Knowledge Check 10

Question

A federal agency may withhold, from the public, information about ...
(choose all that apply)

- A. Location
- B. Character
- C. Ownership
- D. All of the Above

Knowledge Check 10

Answer

A federal agency may withhold, from the public, information about...

- A. Location
- B. Character
- C. Ownership
- D. All of the Above**

All of the above is correct: Section 304 and 800.11(c) of the regulations provides that a federal agency may withhold from public disclosure the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.