

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 7: PROJECT IMPLEMENTATION



‘Ōkala Islet and Leina o Pāpio Point, Waikolu, Moloka‘i. Photo by Scott Cheever, courtesy HHF.

ACHP role in Section 106 compliance

36 CFR Part 800.9

The ACHP may, on its own accord or at the request of any individual, NHO, federal agency, or organization, provide an agency with an advisory opinion **regarding the substance of any finding, determination or decision or regarding the adequacy of the agency compliance with Section 106 regulations.**

Review of post-review discoveries

36 CFR Part 800.13

Section 106 regulations provide that signatories to a MOA or PA may agree to stipulations regarding the **discovery of previously unidentified historic properties or unanticipated effects** to historic properties during the implementation of an undertaking.

Such stipulations typically provide for:

- stoppage of work,
- notification of signatories and other concurring parties,
- consultation on assessing the historic property or mitigation of adverse effect,
- a decision document, and a
- process for implementing any corrective actions.

Strategies During Project Implementation

Be Prepared For The DURATION of the Undertaking

The **execution of a MOA or PA does not necessarily end an NHO's involvement in an undertaking.**

Rather, it marks the beginning of perhaps the most important phase – the implementation of the undertaking. Depending on the nature of the undertaking, these activities could last many years.

NHOs may need to be prepared to monitor the federal undertakings and engage the parties to the programmatic agreement for many years.

Having previously developed relationships with these parties can be beneficial in building trust and resolving conflicts during the project.



Honolulu
Transit Station.
Photo by HHF.

Seek clarification from the federal agencies ON STATUS OF MOA OR PA IMPLEMENTATION

NHOs and other preservation organizations that are parties to an agreement are frequently the parties that oversee and monitor the terms of the agreement.

Consequently, it is very important for NHOs, while not obligated to do so, to monitor the work being conducted, schedule project status meetings with the federal agency and be clear in holding the parties accountable to the agreement.



Kalaupapa National Historic Landmark, Moloka'i. Photo courtesy ONHR.

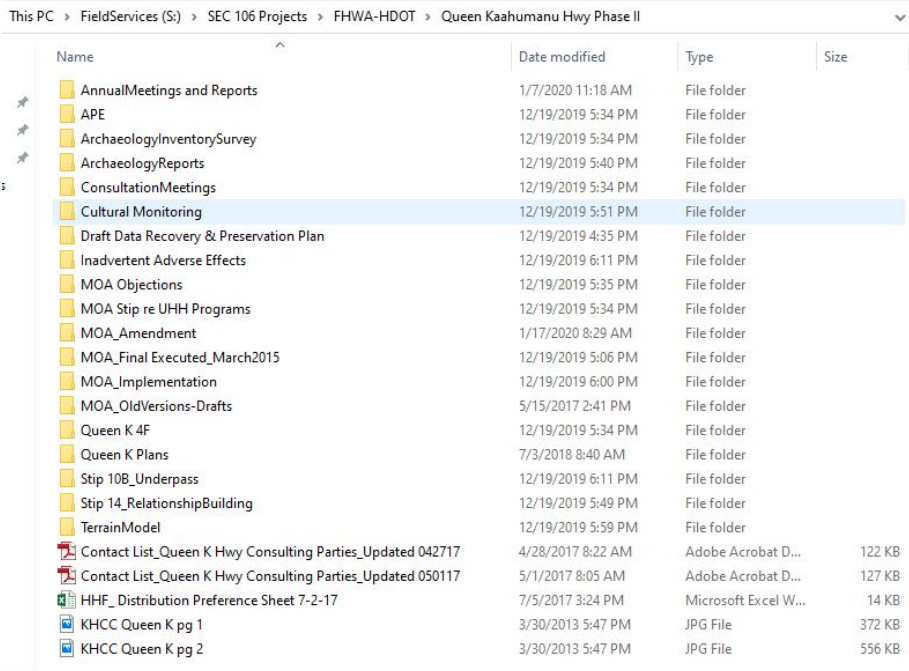
DOCUMENT, document, document

Keeping a copy of the documents sent by the federal agency as well as any correspondence, telephone conversations, meeting notes, and other communications with the agency, SHPO or ACHP.

This allows NHOs to **maintain an accurate record** of their involvement in the Section 106 process for a specific undertaking.

The record is valuable in the event disputes arise during the implementation of the undertaking.

It may also serve as guidance and a possible template for future Section 106 consultations.



Name	Date modified	Type	Size
AnnualMeetings and Reports	1/7/2020 11:18 AM	File folder	
APE	12/19/2019 5:34 PM	File folder	
ArchaeologyInventorySurvey	12/19/2019 5:34 PM	File folder	
ArchaeologyReports	12/19/2019 5:40 PM	File folder	
ConsultationMeetings	12/19/2019 5:34 PM	File folder	
Cultural Monitoring	12/19/2019 5:51 PM	File folder	
Draft Data Recovery & Preservation Plan	12/19/2019 4:35 PM	File folder	
Inadvertent Adverse Effects	12/19/2019 6:11 PM	File folder	
MOA Objections	12/19/2019 5:35 PM	File folder	
MOA Stip re UHH Programs	12/19/2019 5:34 PM	File folder	
MOA_Amendment	1/17/2020 8:29 AM	File folder	
MOA_Final Executed_March2015	12/19/2019 5:06 PM	File folder	
MOA_Implementation	12/19/2019 6:00 PM	File folder	
MOA_OldVersions-Drafts	5/15/2017 2:41 PM	File folder	
Queen K 4F	12/19/2019 5:34 PM	File folder	
Queen K Plans	7/3/2018 8:40 AM	File folder	
Stip 10B_Underpass	12/19/2019 6:11 PM	File folder	
Stip 14_RelationshipBuilding	12/19/2019 5:49 PM	File folder	
TerrainModel	12/19/2019 5:59 PM	File folder	
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KHCC Queen K pg 2	3/30/2013 5:47 PM	JPG File	556 KB

SECTION 9: WRAP UP AND LEARN MORE



Hawaiian Island Sunset. Image by David Mark from Pixabay

KEY POINTS

- The Section 106 review process offers the opportunity for NHOs to advocate on their own behalf regarding the preservation of their historic and traditional cultural places.
- Knowing whether important and significant cultural places may be present and relating that information to a federal agency is essential, keeping in mind confidentiality concerns.
- The NHPA requires that, in carrying out the requirements of Section 106, each federal agency must identify and consult with any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings.

LEARN MORE

Participants in the Section 106 review process may find the ACHP's classroom, webinar, and other e-Learning training courses helpful for more in-depth knowledge of the process, roles, and responsibilities. Learn more on the ACHP's website:

<https://www.achp.gov/training>

ADDITIONAL RESOURCES AT WWW.ACHP.GOV

- Policy Statement on the ACHP's Interaction with Native Hawaiian Organizations
- Consultation with NHOs in the Section 106 Process: A Handbook
- Guidance for Indian Tribes and NHOs: What to Ask Federal Agencies in the Section 106 Process
- NEPA-NHPA Section 106 Handbook
- Legal Comparison of NAGPRA-ARPA-Section 106
- ACHP Citizens' Guide to the Section 106 Process