

# 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





The Advisory Council on Historic Preservation promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy.



The Office of Native Hawaiian Relations was established by Congress in January 2004 to carry out the Secretary of the Interior's responsibilities for Native Hawaiians and the Hawaiian Home Lands Trust.

The Office serves as the liaison with the Native Hawaiian community and coordinates with the Department and its bureaus on actions that affect Native Hawaiian resources, rights, and lands.

# HISTORIC HAWAI'I FOUNDATION

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Founded in 1974, Historic Hawai'i Foundation is a membership-based, statewide non-profit organization that encourages the preservation of historic buildings, sites, objects and districts relating to the history of Hawai'i.

# Mahalo Sponsors

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# WHAT YOU WILL LEARN:

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- Purpose and framework of the NHPA Section 106 review process
- Definitions and criteria used to identify historic properties.
- Strategies for engaging in consultation.
- How to enhance the abilities of the Native Hawaiian community, through NHOs, to effectively interact and work with federal agencies during the Section 106 review process and project implementation.
- Steps for NHOs to participate effectively in the Section 106 process and work towards the preservation of historic properties of religious and cultural significance to NHOs.

# HANDOUTS

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- Agenda
- Section 106 Four-Step Process
- Pamphlet: ACHP's Citizens' Guide to Section 106
- Seminar Evaluation

# KNOWLEDGE CHECKS AND QUESTIONS

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## Answer Cards:

- True/False
- Multiple Choice

## Audience Questions:

- Index Cards for Questions



## SECTION 1: SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT



Haleakalā National Park, Maui. Photo courtesy ONHR

# NATIONAL HISTORIC PRESERVATION ACTION SECTION 106

- ❑ Requires Federal agencies to take into account the effects of their undertakings on any district, site, building, structure or object that is included or eligible for inclusion in the National Register, and to
- ❑ Afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.



'Āi'ōpio Fishtrap, Kaloko Honokōhau NHP. Photo by NPS.

# NHPA Section 106 Process (36 CFR 800)

## C O N S U L T A T I O N

### 1. INITIATE the process

- Determine undertaking
- Notify SHPO

- Identify NHOs and Other Consulting Parties
- Plan to involve the public

*Undertaking with potential to cause effects?*

YES

NO

Process complete

### 2. IDENTIFY historic properties

- Determine APE
- Identify historic properties

- Consult with SHPO, NHOs, and Other Consulting Parties
- Involve the public

*Historic properties present & affected?*

YES

NO

Process complete

### 3. ASSESS adverse effects

- Apply criteria of adverse effect

- Consult with SHPO, NHOs, and Other Consulting Parties
- Involve the public

*Historic properties adversely affected?*

YES

NO

Process complete

### 4. RESOLVE adverse effects

- Avoid, minimize, or mitigate adverse effects
- Notify ACHP

- Consult with SHPO, NHOs, and Other Consulting Parties
- Involve the public

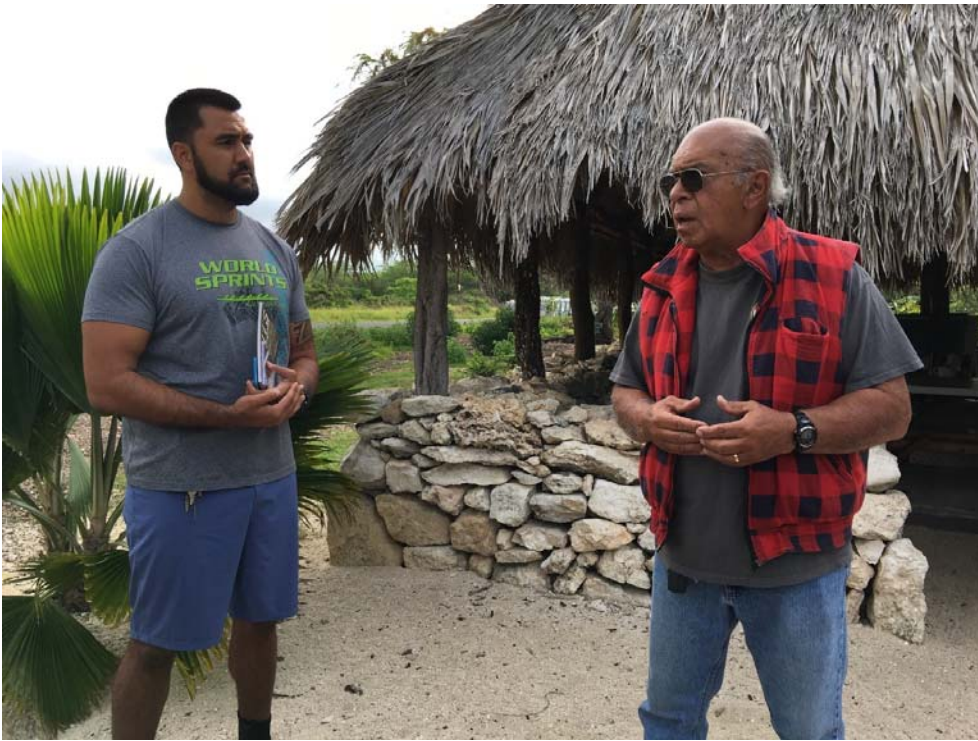
*Agreement (MOA/PA) or Program Comment*

Process complete; Implement agreement



# Step 1: Initiating the Section 106 Process

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Kalaeloa Culture and Heritage Park, O'ahu. Photo courtesy HHE.

If the federal agency determines that a proposed action is an “**undertaking**,” it identifies who should participate in the review.

**Consulting parties** may include:

- ACHP
- State Historic Preservation Officer/Division
- Native Hawaiian Organizations
- Applicant for Federal Assistance
- Historic Preservation Organizations and other with an interest in the preservation outcome
- Those with a legal or economic interest
- The public

The federal **agency initiates consultation** with the identified consulting parties.

## Step 2: Identifying & documenting historic properties

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Lyon Arboretum, Mānoa, O'ahu. Photo courtesy HHF.

The federal **agency identifies the historic properties** that could be affected by the proposed undertaking.

The agency **gathers information** to decide if any properties, including properties of religious and cultural significance to NHOs, in the area that may be affected by the project are listed, or are eligible for listing, on the National Register.

The agency **continues consultation** with the SHPO, NHOs and other consulting parties.

## Step 3: Assessing Effects on Historic Properties



Site visit to cultural sites and features on O'ahu's North Shore. Photo courtesy HHE.

The federal agency determines **how historic properties might be affected by the project** and whether any of those effects would be considered adverse.

The agency does so in consultation with NHOs and other participants in the review process. **Note that there are time frames at certain points in this step, so responding within those time frames is critical to ensure comments are considered.**

“Adverse effects” are those that diminish characteristics qualifying a property for inclusion on the National Register.

The outcome will either be a determination of **no adverse effect** or one of **adverse effect**.

## Step 4: Resolving Adverse Effects

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Consultation meeting involving FHWA, HDOT, ACHP, SHPD, OHA, NPS, Kona Hawaiian Civic Club, Makani Hou o Kaloko-Honokōhau, Historic Hawai'i Foundation. Photo courtesy HHF.

The federal agency, SHPO, NHOs and consulting parties work to **reach agreement on a resolution**.

In the final step of the process, the agency explores measures to avoid, minimize, or mitigate adverse effects to historic properties and reach agreement with the SHPO (and the ACHP if participating), NHOs and other consulting parties on measures to **resolve the adverse effects** to the historic properties.

Note that the regulations do not impose timeframes for this part of the process.

A Memorandum of Agreement (MOA) or Programmatic Agreement (PA), which records the stipulations and measures agreed upon to resolve adverse effects, is developed in consultation and executed prior to approval of the project.

# Knowledge Check 1

Question

The Section 106 review process provides NHOs the opportunity to share their concerns about historic properties of religious and cultural significance to them.

**True or False?**



# Knowledge Check 1

Answer

The Section 106 review process provides NHOs the opportunity to share their concerns about historic properties of religious and cultural significance to them.

**TRUE**

This statement is true: The Section 106 review process provides NHOs a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.

## Knowledge Check 2

Question

Federal agencies are not required to consult with others on projects that might affect historic properties.

**True or False?**

## Knowledge Check 2

Answer

Federal agencies are not required to consult with others on projects that might affect historic properties.

**FALSE**

This statement is false.

Federal agencies are required by the regulations 36 CFR PART 800 "Protection of Historic Properties" to consult with the appropriate state and local officials, NHOs, applicants for federal assistance and consider their views and concerns about historic preservation issues when making final project decisions.

## Knowledge Check 3

Question

A federal agency determines how a project may affect historic properties.

**True or False?**

## Knowledge Check 3

Answer

A federal agency determines how a project may affect historic properties.

### **TRUE**

This statement is true: A federal agency determines how historic properties might be affected by the project.

The agency does so in consultation with other participants, or consulting parties, in the review.