Preserving America's Heritage

CONSULTATION WITH NATIVE HAWAIIAN ORGANIZATIONS IN THE SECTION 106 REVIEW PROCESS: A HANDBOOK

June 2011

An independent federal agency, the Advisory Council on Historic Preservation (ACHP) promotes the preservation, enhancement, and productive use of our nation's historic resources and advises the President and Congress on national historic preservation policy. It also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Administration's Preserve America initiative.

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Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook

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I. About This Handbook

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f, requires federal agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those undertakings. The ACHP has issued the regulations implementing Section 106 (Section 106 regulations), 36 CFR Part 800, "Protection of Historic Properties." The NHPA requires that, in carrying out the requirements of Section 106, each federal agency must consult with any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings.

In 2008, the ACHP adopted the *ACHP Policy Statement on the ACHP's Interaction with Native Hawaiian Organizations.* The policy is intended to set "forth actions the ACHP will take to oversee the implementation of its responsibilities under the NHPA with respect to the role afforded to Native Hawaiian organizations in the NHPA." The policy includes three principles:

1. The ACHP acknowledges Native Hawaiian traditional cultural knowledge, beliefs, and practices and recognized their value in the understanding and preservation of historic properties in Hawaii;
2. The ACHP commits to working with Native Hawaiian organizations to fully consider the preservation of historic properties of importance to them; and,
3. The ACHP acknowledges the important contributions of Native Hawaiian organizations to the national historic preservation program.

While the policy does not directly apply to other federal agencies, it serves as a model for how federal agencies should interact with Native Hawaiian organizations in meeting their Section 106 responsibilities. At the very least, it serves to inform federal agencies of the ACHP's position regarding the role of Native Hawaiian organizations in the Section 106 process.

In fulfillment of the commitments in the policy statement, the ACHP offers this handbook as a reference for federal agency staff in Hawaii with responsibility for compliance with Section 106. Native Hawaiian organizations, State Historic Preservation Office (SHPO) staff, and other Section 106 participants may also find this handbook helpful. Readers should have a basic understanding of the Section 106 review process because this document focuses only on Section 106 consultation with Native Hawaiian organizations. It is not a source for understanding the full breadth of Section 106 responsibilities such as consulting with the SHPO or involving the public.

This handbook will be updated periodically by the ACHP when new information is obtained or laws or policies change. Agencies should also supplement this document with their own agency-specific directives, policies, and guidance pertaining to consultation with Native Hawaiian organizations.

In addition, federal agency staff may refer questions about the Section 106 review process, and the requirements to consult with Native Hawaiian organizations, to their agency's Federal Preservation Officer (FPO).

Finally, agency staff may obtain assistance from the ACHP in understanding and interpreting the requirements of Section 106. For general information on the requirements of Section 106, access the ACHP Web site at http://www.achp.gov. For additional questions about Native Hawaiian organization consultation, contact:

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II. Federal Government Consultation with Native Hawaiian organizations

A. Legal Requirements and Directives to Consult with Native Hawaiian organizations

1) Statutes

A number of federal statutes require federal agencies to consult with Native Hawaiian organizations[1]. This section will address only those applicable to historic preservation and cultural resource protection. It is useful to be familiar with various statutory requirements not only to ensure compliance, but also to explore opportunities to maximize consultation opportunities. For instance, if a project requires compliance with both Section 106 of the NHPA and the Native American Graves Protection and Repatriation Act (NAGPRA), it may be helpful to carry out consultation in a comprehensive manner. However, consultation under another statute or regulation does not satisfy the consultation requirements under Section 106.

The following are broad summaries of key federal historic preservation and cultural resource protection statutes that require federal agencies to consult with Native Hawaiian organizations or accommodate Native Hawaiian views and practices. This is not an exhaustive list of requirements, nor does it imply that each of these statutes is applicable to each proposed project.

- Amended in 1992, the **National Historic Preservation Act of 1966 (NHPA)** is the basis for Native Hawaiian organization consultation in the Section 106 review process. The two amended sections of NHPA that have a direct bearing on the Section 106 review process are:

    - Section 101(d)(6)(A), which clarifies that properties of religious and cultural significance to Native Hawaiian organizations may be eligible for listing in the National Register of Historic Places; and

    - Section 101(d)(6)(B), which requires that federal agencies, in carrying out their Section 106 responsibilities, consult with any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.

  The Section 106 regulations incorporate these provisions. Section 106 requires federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP an opportunity to comment. Also known as the Section 106 review process, it seeks to avoid unnecessary harm to historic properties from such undertakings. The procedure for meeting Section 106 requirements is defined in the Section 106 regulations, 36 CFR Part 800, "Protection of Historic Properties."[2]

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[1] The NHPA defines a Native Hawaiian organization as "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. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii." 16 U.S.C. Section 470w(18). The NHPA defines Native Hawaiian as "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." 16 U.S.C. Section 470w(17).

[2] Available at http://www.achp.gov/regs-rev04.pdf

The Section 106 regulations include both general direction regarding consultation with Native Hawaiian organizations and specific requirements at each stage of the review process. (Section 106 is discussed more fully in the next section, "Consultation with Native Hawaiian organizations under Section 106 of NHPA").

For more information about the NHPA and the Section 106 regulations, visit www.achp.gov.

Other relevant laws include:

- **The American Indian Religious Freedom Act of 1978 (AIRFA)** establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." For a copy of the act, go to: http://www.nps.gov/history/local-law/FHPL_IndianRelFreAct.pdf.

- **Section 3(c) of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)** requires federal land-managing agencies to consult with Native Hawaiian organizations prior to the intentional removal or excavation of Native American human remains and other cultural items as defined in NAGPRA from federal lands. For more information, to go: http://www.nps.gov/history/nagpra.

  In instances where a proposed project that is funded or licensed by a federal agency may cross federal lands, it is the federal land managing agency that is responsible for compliance with NAGPRA. Detailed information about NAGPRA and its implementing regulations is available at the National Park Service (NPS) National NAGPRA Web site.[3]

Federal agencies should also be aware that Hawaii has state laws regarding historic preservation and the treatment of burials. For more information, go to: http://hawaii.gov/dlnr/hpd/hphrs.htm.

[3] Available at http://www.cr.nps.gov/nagpra

III. Consultation with Native Hawaiian organizations in the Section 106 Process

> *Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.*(36 CFR Section 800.16 (f)).

Consultation constitutes more than simply notifying a Native Hawaiian organization about a planned undertaking. The ACHP views consultation as a process of communication that may include written correspondence, meetings, telephone conferences, site visits, and e-mails.

The requirements to consult with Native Hawaiian organizations in the Section 106 review process are derived from the specific language of Section 101(d)(6)(B) of NHPA.

While federal agencies are required to consult with Native Hawaiian organizations at specific steps in the Section 106 review process, the ACHP suggests that agencies approach consultation with flexibility and in a spirit of cooperation. In fact, in its *Policy Statement on the ACHP's Interaction with Native Hawaiian Organizations*, the ACHP states that "the NHPA and the regulations implementing Section 106 of the NHPA, 36 C.F.R. Part 800, set the minimum standards for federal agency interaction with its preservation partners."

Carrying out the process in the spirit and intent of the NHPA can lead to less adversarial relationships and better historic preservation outcomes. In fact, many Native Hawaiians believe that it is the *kuleana* (responsibility) of federal agencies to protect historic properties. Thus, a collegial or cooperative attitude or approach to the Section 106 process builds trust and good working relationships.

Regulatory Principles and General Directions for Section 106 Native Hawaiian Consultation

The procedures for meeting Section 106 requirements are defined in the Section 106 regulations, "Protection of Historic Properties" (36 CFR Part 800).[4] Under the NHPA, "historic properties" are defined as those properties that are listed on the National Register of Historic Places, or are eligible for such listing.

The regulations provide both overall direction as well as specific requirements regarding consultation at each step of the Section 106 review process. The Section 106 regulations at 36 CFR Section 800.2(c)(2) outline the following important principles and general directions to federal agencies regarding consultation with Native Hawaiian organizations:

- The agency shall ensure that consultation provides the Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance to it; articulate its views on the undertaking's effects on such properties; and participate in the resolution of adverse effects.
- Consultation with Native Hawaiian organizations should commence early in the planning process, in order to identify and discuss relevant preservation issues and plan how to address concerns about confidentiality of information obtained during the consultation process.

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[4] Available at http://www.achp.gov/regs-rev04.pdf

- Historic properties of religious and cultural significance to a Native Hawaiian organization may be located on ancestral or ceded lands, e.g. Hawaiian Homelands. For historical reasons, members of a Native Hawaiian organization may now be located on another Hawaiian island or other distant location far away from historic properties that still hold such significance for them. Accordingly, the regulations require that agencies make a *reasonable and good-faith effort* [5]to identify Native Hawaiian organizations that may attach religious and cultural significance to historic properties that may be affected by the undertaking, even if Native Hawaiian organizations now are located a great distance away from such properties and undertakings.
- A Native Hawaiian organization may enter into an agreement with a federal agency regarding any aspect of that organization's participation in the review process. The agreement may specify a Native Hawaiian organization's geographic area of interest, types of projects about which it wishes to be consulted, or provide the Native Hawaiian organization with additional participation or concurrence in agency decisions under Section 106 provided that no modification is made to the roles of other parties without their consent.

While the Section 106 regulations are fairly prescriptive in nature, they only direct agencies on what to do and at which stages of the process to engage in consultation. They do not direct agencies on exactly how to otherwise carry out consultation. Thus, the following questions and answers are designed to clarify the most common questions and issues regarding consultation with Native Hawaiian organizations under the Section 106 review process.

[5] Tips on how to fulfill this requirement are provided under the heading "How do I identify Native Hawaiian organizations that must be invited to consult," on page 11 of this handbook.

IV. General Questions and Answers

The following list of questions is meant to address general issues that commonly arise in the Section 106 review process, typically before an agency begins the review process or very early in the process. Section V of this handbook addresses questions that might arise at each step of the Section 106 review process.

When are federal agencies required to consult with Native Hawaiian organizations?

The 1992 amendments to the NHPA require federal agencies, in carrying out the Section 106 review process, to consult with Native Hawaiian organizations when a federal undertaking may affect historic properties of traditional religious and cultural significance to them. An "undertaking" means 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; or those requiring a federal permit, license, or approval. This requirement applies to all undertakings regardless of where they are located.

The Section 106 regulations, 36 CFR Part 800, identify the steps in the Section 106 process when consultation must take place. It is important to keep in mind that consultation should take place early in project planning when the widest possible range of alternatives still exists.

It is also important to understand that Native Hawaiian organizations are not the "general public" for purposes of the NHPA and the Section 106 process. Federal agencies have a statutory, affirmative responsibility to consult with Native Hawaiian organizations, and this responsibility cannot be satisfied through public notices or public meetings. NHOs can certainly participate in public meetings but such participation is not a substitute for the consultation required under the NHPA and laid out in the Section 106 regulations.

Which Native Hawaiian organizations must be consulted?

Native Hawaiian organizations that attach religious and cultural significance to historic properties that may be affected by undertakings must be consulted. Federal agencies must make "a reasonable and good faith" effort[6] to identify each and every such Native Hawaiian organization and invite them to be consulting parties in the Section 106 review process.

This includes Native Hawaiian organizations that live nearby as well as those that no longer reside in or near the project area but that, for example, may still have ancestral ties to that area. It is also possible that a Native Hawaiian organization attaches religious and cultural significance to a historic property on another island. For example, Mauna Kea, on the island of Hawaii, is widely regarded as a place of religious and cultural significance to many individual Native Hawaiians and Native Hawaiian organizations throughout the state of Hawaii. Accordingly, a proposed undertaking that might affect Mauna Kea could necessitate consultation with Native Hawaiian organizations throughout the state.

If a Native Hawaiian organization has not been invited by the agency to consult, that organization may request in writing to be a consulting party. The NHPA and the Section 106 regulations require that the agency grant consulting party status to any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by the undertaking.

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[6] Tips on how to fulfill this requirement are provided under the heading "How do I identify Native Hawaiian organizations that must be invited to consult," on page 11 of this handbook.

Must a Native Hawaiian organization demonstrate its affiliation to an area to be considered a consulting party in the Section 106 process?

No. A Native Hawaiian organization does not have to demonstrate its cultural affiliation in order to be a consulting party in the Section 106 process. The term "cultural affiliation" is used in the Native American Graves Protection and Repatriation Act and has no relevance in the Section 106 review process. In fact, the NHPA at Section 101(d)(6)(B) states that "in carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties" that are eligible for inclusion in the National Register. Therefore, **any** Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking *must* be invited by the federal agency to participate in the Section 106 consultation process.

What should a federal agency do if one NHO will not participate in the consultation process with another NHO or demands that the agency not consult with another NHO?

It is important to remember that the NHPA requires a federal agency to consult with *any* Native Hawaiian organization that attaches religious and cultural significance to a historic property. Therefore, the views of one Native Hawaiian organization regarding the participation of another Native Hawaiian organization have no bearing on a federal agency's obligation to extend an invitation to consult.

If such conflicts arise in the Section 106 process, the federal agency should approach consultation with flexibility. For instance, it may be necessary to conduct meetings or teleconferences separately with each consulting party.

What are appropriate consultation methods for individual undertakings?

The consultation process must provide a Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of religious and cultural significance to it; articulate views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. (See 36 CFR Section 800.2(c)(2)(ii)(A)).

Appropriate consultation can take many forms or combine more than one type of interaction and should be commensurate with the nature of the undertaking and the properties which may be affected. For instance, face-to-face meetings or on-site visits may be the most practical way to conduct consultation. However, there is no specific way in which consultation must be conducted beyond the procedural specifics provided in the Section 106 regulations. In all cases, however, consultation should be approached with flexibility that respects the Native Hawaiian organization's role within the overall project planning process and facilitates its full participation.

Documentation of consultation is important because it allows consulting parties to more accurately track the stages of the Section 106 process. Federal agencies should document all efforts to initiate consultation with Native Hawaiian organizations, as well as documenting the consultation process once it has begun. Such documentation, in the form of correspondence, telephone logs, e-mails, etc., should be included in the agency's official Section 106 record. Agencies should also keep notes so that the consultation record documents the *content* of consultation meetings, site visits, and phone calls in addition to information about dates and who participated. Doing so allows agencies and consulting parties to review proceedings and correct any errors or omissions, thus facilitating better overall

communication. Keeping information confidential can present unique challenges (see Section V(B)(4) of this handbook).

Finally, a federal agency and a Native Hawaiian organization may enter into an agreement in accordance with the Section 106 regulations at 36 CFR Section 800.2(c)(2)(ii)(E) regarding how Section 106 consultation will take place. These are not project-specific agreements but, instead, are meant to address Section 106 consultation more broadly. Such agreements can cover all potential agency undertakings, or apply only to a specific undertaking. They can establish protocols for carrying out consultation, including how the agency will address concerns about confidentiality of sensitive information. Such agreements can cover all aspects of the Section 106 process, provided that no modification is made to the roles of other parties to the Section 106 process without their consent. Determining the types of undertakings and the potential geographic project areas within which a Native Hawaiian organization wants to be consulted, and how that consultation will take place can lead to tremendous efficiencies for both the federal agency and the Native Hawaiian organization. Filing such agreements with both the Hawaii SHPO and the ACHP is required per 36 CFR Section 800.2(c)(2)(ii)(E), and can eliminate questions about consultation with a Native Hawaiian organization when either the SHPO or the ACHP is reviewing a proposed undertaking. For more information about these types of agreements, see Section VI on Consultation Tools.

Can a federal agency pay for expenses that facilitate consultation with Native Hawaiian organizations?

Yes. The NHPA authorizes such expenditures, at 16 U.S.C. Section 470h-2(g), and the ACHP encourages federal agencies to take the steps necessary to facilitate Native Hawaiian organization participation at all stages of the Section 106 process. These steps may range from scheduling meetings in places and at times that are convenient for Native Hawaiian organizations, to paying travel expenses for participating Native Hawaiian organization representatives. Indeed, agencies are strongly encouraged to use available resources to help overcome financial impediments to effective Native Hawaiian organization participation in the Section 106 process. However, federal agencies should not expect to pay a fee to any consulting party to provide comments or concurrence in an agency finding or determination.

Can a federal agency pay a fee to a Native Hawaiian organization for services provided in the Section 106 process?

Yes. However, it should be noted that while the ACHP encourages agencies to utilize their resources to facilitate working with Native Hawaiian organizations, the NHPA or the ACHP's regulations do not require an agency or an applicant to pay for any form of Native Hawaiian organization involvement.

However, during the identification and evaluation phase of the Section 106 process, when the agency or applicant is carrying out its duty to identify historic properties that may be significant to a Native Hawaiian organization, it might ask a Native Hawaiian organization for specific information and documentation regarding the location, nature, and condition of individual sites, or even request that a survey be conducted by the Native Hawaiian organization. In doing so, the agency or applicant is essentially asking the Native Hawaiian organization to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the Native Hawaiian organization would be justified in requesting payment for its services, just as is appropriate for any other contractor. Since Native Hawaiian organizations are a recognized source of information regarding historic properties of religious and cultural significance to them, federal agencies should reasonably expect to pay for work carried out by Native Hawaiian organizations on behalf of the agency. The agency or applicant is free to refuse just as it may refuse to pay for an archaeological consultant, but the agency still retains the responsibility for

obtaining the necessary information for the identification of historic properties, the evaluation of their National Register eligibility, and the assessment of effects on those historic properties, through reasonable methods.

It should be noted that reimbursing any party, including Native Hawaiian organizations, for work they perform on behalf of the federal agency is not reimbursement for consultation. Consulting parties should not be expected to be reimbursed for participating in the consultation process.

What specific activities might be reimbursed?

Examples of reimbursable costs may include those costs associated with expert consultants to identify and evaluate historic properties as outlined in the immediately preceding answer. This may include field visits to provide information about specific places or sites, monitoring activities, research associated with historical investigation, documentation production costs, and related travel expenses.

Can Native Hawaiian organizations, as well as federal agencies, request ACHP involvement in the Section 106 review process?

Yes. Any party, including Native Hawaiian organizations, may request that the ACHP review the substance of any federal agency's finding, determination, or decision or the adequacy of an agency's compliance with the Section 106 regulations.

A Native Hawaiian organization may request that the ACHP enter the Section 106 review process for any number of reasons, including concerns about the identification, evaluation, or assessment of effects on historic properties of religious and cultural significance to it. It may also request ACHP involvement in the resolution of adverse effects or where there are questions about policy, interpretation, or precedent under Section 106. The ACHP has discretion in determining whether to become involved in the process whether upon request or its own initiative.

Does the ACHP have a policy on the treatment of Native American burials that are located on state or private lands (and thus not subject to the disinterment provisions of NAGPRA)?

Yes. On February 23, 2007, the members of the ACHP unanimously adopted its revised "Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects." This policy is designed to guide federal agencies in making decisions about the identification and treatment of burial sites, human remains, and funerary objects encountered in the Section 106 process in various instances including those where federal or state law does not prescribe a course of action. The policy is not exclusively directed toward Native American burials, human remains or funerary objects, but those would be included under the policy. In accordance with Section 106, the policy does not recommend a specific outcome from the consultation process, but rather focuses on issues and perspectives that federal agencies ought to consider when making their Section 106 decisions. The policy is available at http://www.achp.gov/docs/hrpolicy0207.pdf.

Federal agencies should be aware there is a state law in Hawaii regarding burials. For more information, go to http://hawaii.gov/dlnr/hpd.

V. Consultation with Native Hawaiian Organizations for Proposed Undertakings

As noted earlier in the handbook, under the NHPA, consultation with Native Hawaiian organizations is required for *all* federal undertakings, regardless of whether the undertaking's Area of Potential Effect (APE) includes federal, state, or private lands, so long as the undertaking may affect historic properties of religious and cultural significance to a Native Hawaiian organization. Consultation should begin early in project planning and continue throughout the Section 106 process when properties of religious and cultural significance to Native Hawaiian organizations may be affected.

The organization of this section of the handbook corresponds with the Section 106 review process's four steps of initiation, identification, assessment, and resolution.

A. Initiation of the Section 106 Process

1) How would I know if historic properties of traditional religious and cultural significance to Native Hawaiian organizations may be affected by the proposed undertaking?

Unless such properties have already been identified and the information is readily available, you probably will not know in advance. As with any undertaking that might affect historic properties, you must determine whether the proposed undertaking is generically the kind that might affect historic properties assuming such properties are present. Therefore, if the undertaking is the kind of action that might affect places such as archaeological sites, burial grounds, sacred landscapes or features, or ceremonial areas, then you must identify Native Hawaiian organizations that might attach significance to such places and invite them to participate in the process. Please note that this list of examples is not all-inclusive. It is through consultation with Native Hawaiian organizations themselves that such properties can be properly identified and evaluated.

2) How do I identify the Native Hawaiian organizations that must be invited to consult?

Identification of Native Hawaiian organizations that must be invited to consult could include a number of initiatives. For instance, it might be useful to check with other federal agencies and their cultural resource specialists for a list of Native Hawaiian organizations with whom they have consulted in past Section 106 reviews. The SHPO and the Office of Hawaiian Affairs (OHA)[7] might also be able to suggest which Native Hawaiian organizations to contact. Other sources for such information may include ethnographies, local histories, experts at local universities, oral accounts, and, of course, the Native Hawaiian organizations themselves. Do not hesitate to ask about others that might also be interested in participating in consultation. Finally, the Department of the Interior's Office of Hawaiian Relations maintains a list of Native Hawaiian organizations at http://www.doi.gov/ohr/nativehawaiians/nhol.cfm.

It may also be helpful to publish notices in local newspapers about the initiation of the Section 106 review process and the opportunity for Native Hawaiian organizations to participate in the consultation. For major or controversial projects, it might be advisable to work with the Office of Hawaiian Affairs to include information in its radio programs.

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[7] Founded in 1980, OHA has functioned operationally as both a government agency with a strong degree of autonomy, and as a trust, both to provide for a better life and future for all Hawaiians.

Keep in mind that identification of Native Hawaiian organizations with ancestral connections to an area is not a "one stop shopping" endeavor in which any single source can be depended upon to fulfill the agency's legal responsibilities. Agency officials should bear in mind that while Internet sources are convenient and can be useful, their informational content may be incomplete.

Once the agency has identified Native Hawaiian organizations that may attach religious and cultural significance to any historic properties that may exist in the APE, the agency must invite them to consult.

Finally, it is important to remember that documentary or other sources of information that do not appear to support a Native Hawaiian organization's assertions should not be used to deny the organization the opportunity to participate in consultation. A common misunderstanding is that a Native Hawaiian organization needs to document its ties to historic properties in the area of the undertaking. Instead, the NHPA requires agencies to consult with <u>any</u> Native Hawaiian organization that attaches religious and cultural significance to a historic property. It stands to reason that the best source for determining what historic properties have significance for a Native Hawaiian organization would be the experts designated by the Native Hawaiian organization to determine its own interest. Such experts might include elders, traditional practitioners, or Native Hawaiian historians. The Native Hawaiian organization will designate the appropriate representative(s) to represent its interests in the Section 106 consultation process.

4) Who initiates the consultation process with a Native Hawaiian organization?

Consultation with a Native Hawaiian organization should be initiated by the agency official[8] through a letter. It is helpful to follow up such correspondence with direct telephone communication to ensure the letter has been received.

If the agency official has correspondence from the Native Hawaiian organization designating a person or position within the organization to act on its behalf in the Section 106 process, the agency may initiate consultation accordingly. It is good practice, in this instance, to send a copy of all correspondence to the organization's leadership as well.

5) Can applicants for federal permits or contractors hired by the agency initiate and carry out Native Hawaiian organization consultation?

Yes. The Section 106 regulations at 36 CFR Section 800.2(c)(4) allow federal agencies to authorize an applicant or group of applicants to initiate consultation with the SHPO and other consulting parties, including Native Hawaiian organizations. However, this is a formal authorization and requires notification from the federal agency to the SHPO. The federal agency remains responsible for all findings and determinations charged to the agency in the review process.

The Section 106 regulations allow for federal agencies to use the services of consultants or designees to prepare information, analyses, and recommendations, but not to initiate and carry out consultation.

6) What are the consultation responsibilities for undertakings that involve more than one federal agency?

The Section 106 regulations at 36 CFR Section 800.2 (a)(2) provide that, if more than one federal agency is involved in an undertaking, some or all of the agencies may designate a lead federal agency who will

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[8] As defined in Section 800.2(a) of the ACHP regulations, an agency official is one who has jurisdiction over the undertaking and takes legal and financial responsibility for Section 106 compliance.

act on their behalf to fulfill their collective responsibilities under Section 106, including consultation with Native Hawaiian organizations. Those federal agencies that do not designate a lead agency remain individually responsible for their Section 106 compliance; thus, they each would need to initiate and carry out Section 106 consultation with Native Hawaiian organizations for the undertaking.

B. Identification of Historic Properties

1) Does the federal agency consult with Native Hawaiian organizations to carry out identification and evaluation of historic properties?

Yes, the agency consults with Native Hawaiian organizations to plan and carry out identification efforts and to evaluate the National Register eligibility of identified properties for proposed undertakings.

Many agencies assume that agency or contract archaeologists can identify which properties are of significance to Native Hawaiian organizations when they conduct archaeological surveys. However, unless an archaeologist has been specifically authorized by a Native Hawaiian organization to speak on its behalf on the subject, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of significance to a Native Hawaiian organization. The appropriate individual to carry out such a determination is the representative designated by the Native Hawaiian organization for this purpose. Identification efforts may include site visits to assist in identifying these types of properties.

The Section 106 regulations state that the agency official shall acknowledge that Native Hawaiian organizations possess special expertise in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them (36 CFR § 800.4(c)(1)).

The agency must provide Native Hawaiian organizations with the same information that is provided to the SHPO during consultation, including information on buildings and other standing structures that may be affected by the proposed undertaking. A federal agency should not presume to know what is of significance to a particular Native Hawaiian organization.

2) How can I identify historic properties that may possess traditional religious and cultural significance to Native Hawaiian organizations and determine their National Register eligibility?

The identification of those historic properties that are of traditional religious and cultural significance to a Native Hawaiian organization must be made by that Native Hawaiian organization's designated representative as part of the Section 106 consultation process.

The National Register eligibility of such places is determined in the same manner as any potentially eligible property, by applying the criteria of eligibility.

3) What are Traditional Cultural Properties?

The term "Traditional Cultural Property" (TCP) is used in the National Park Service's (NPS) Bulletin 38, entitled *"Guidelines for Evaluating and Documenting Traditional Cultural Properties."*[9] That bulletin explains how to identify a property "that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that a) are rooted in that community's history, and b) are important in maintaining the continuing cultural identity of the community." For a

[9] Available at http://www.cr.nps.gov/nr/publications/bulletins/nrb38/nrb38%20introduction.htm

TCP to be found eligible for the National Register, it must meet the existing National Register criteria for eligibility as a building, site, structure, object, or district. TCPs are defined only in NPS guidance and are not referenced in any statute or regulation, and **refer to places of importance to any community, not just to Native Hawaiian organizations.** Therefore, this terminology may be used when an agency is considering whether <u>any</u> property is eligible for the National Register.

Within the Section 106 process, the appropriate terminology for National Register listed or eligible sites of importance to Native Hawaiian organizations is "**historic property of religious and cultural significance to Native Hawaiian organizations.**" Unlike the term TCP, this phrase appears in the NHPA and the Section 106 regulations. **It applies (strictly) to Native Hawaiian sites, unlike the term TCP.** Furthermore, Section 101(d)(6)(A) of the NHPA reminds agencies that properties of religious and cultural significance to Native Hawaiian organizations may be eligible for the National Register. Thus, it is not necessary to use the term TCP when considering whether a site with significance to a Native Hawaiian organization is eligible for the National Register as part of the Section 106 process. The NPS Bulletin 38 guidelines are helpful, however, in providing an overview of how National Register criteria are applied.

Another issue with the term TCP is that Bulletin 38 has sometimes been interpreted as requiring a Native Hawaiian organization to demonstrate continual use of a site in order for it to be considered a TCP in accordance with Bulletin 38. This could be problematic in that Native Hawaiian use of a historic property may be dictated by cyclical religious or cultural timeframes that do not comport with mainstream conceptions of "continuous" use; while in other cases, Native Hawaiian organizations may have been denied access to historic properties of religious and cultural significance to them. This is particularly true for historic properties located within military installations or on private property. It is important to note that under the NHPA and the Section 106 regulations, the determination of a historic property's religious and cultural significance to a Native Hawaiian organization is **not** tied to continual or physical use of the property. Also, continual use is not a requirement for National Register eligibility.

4) What procedures should be followed if a Native Hawaiian organization does not want to divulge information to the federal agency regarding places of traditional religious and cultural significance?

Native Hawaiian organizations may have internal prohibitions against or cultural protocols about the disclosure of certain information about traditional religious and cultural properties. The ACHP's regulations at 36 CFR Section 800.4(b)(i) state, in part, that "[t]he agency official shall take into account any confidentiality concerns raised by … Native Hawaiian organizations during the identification process."

The NHPA and the Section 106 regulations also provide a vehicle for protecting information that a Native Hawaiian organization has disclosed for the purpose of identification and evaluation in the Section 106 process. Section 304 of the NHPA (16 U.S.C. 470w-3(a)) and the regulations at 36 CFR Section 800.11(c)(1) provide that an agency, 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 when the agency and the Secretary determine that the disclosure of such information may cause a significant invasion of privacy; risk harm to the historic property; or, impede the use of a traditional religious site by practitioners. After such a determination, the Secretary of the Interior will determine who, if anyone, may have access to the information for purposes of the NHPA.

One important caveat: the Section 304 confidentiality provisions only apply to properties that have been determined eligible for the National Register. Thus, it is possible that information disclosed prior to an eligibility determination may not be protected. Therefore, the ACHP suggests that agencies and Native Hawaiian organizations contact National Register staff for guidance regarding the amount of information and detail needed to make a determination of eligibility when such information may be at risk of disclosure. It may be possible for a Native Hawaiian organization to share just enough information for the agency to identify the existence of a site and make a determination of eligibility without compromising the site or the Native Hawaiian organization's beliefs. Such information might include general aspects of the historic property's attributes, i.e., that an important yearly ceremony takes place in a certain general location, that quiet is required in an area where spirits reside, that visual impacts will impede the ability to properly perform a required ritual, or that important ceremonial harvesting activities must occur at a particular place, time, or under certain conditions. However, if there are questions about the adequacy of such information in making determinations of eligibility, the National Register staff should be consulted.

Issues of confidentiality and sensitivity of information require flexibility and cooperation among the consulting parties. There may be situations where a Native Hawaiian organization is only willing to share information with the federal agency and not with the other non-federal consulting parties. This can challenge the traditional Section 106 process where the federal agency also consults with the SHPO to determine the National Register eligibility of properties. In such cases, it is recommended that the agency promptly talk with the ACHP or the National Register staff about how to resolve such a situation.

5) Is the federal agency required to verify a Native Hawaiian organization's determination of significance with archaeological or ethnographic evidence before making a National Register eligibility determination?

No. The agency is not required to verify a Native Hawaiian organization's determination that a historic property is of religious and cultural significance to it. However, the fact that a property may be of religious and cultural significance to a Native Hawaiian organization does not necessarily mean that the property is eligible for the National Register. The ACHP regulations at 36 CFR 800.4(c)(1) do state, in part, that "[t]he agency official shall acknowledge that Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them." Additionally, traditional knowledge and oral histories are sources of information which federal agencies should consider in assessing the National Register eligibility of properties. For additional guidance on making eligibility determinations, the agency should consult with the staff of the National Register.[10]

6) Does the federal agency need to obtain a Native Hawaiian organization's concurrence with the agency's determination of National Register eligibility?

No. The agency does not need to obtain a Native Hawaiian organization's concurrence with eligibility determinations. The agency only needs the concurrence of the SHPO for a determination and, absent such concurrence, the matter goes to the Keeper of the National Register for final resolution. The federal agency must acknowledge, however, that Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may be of significance to them, as required in the Section 106 regulations at 36 CFR Section 800.4(c)(1).

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[10] Contact information for National Register headquarters in Washington, D.C., available at http://www.cr.nps.gov/nr/about.htm

Also, if a Native Hawaiian organization disagrees with the federal agency's determination of eligibility, the Native Hawaiian organization may, per the Section 106 regulations at 36 CFR 800.4(c)(2), ask the ACHP to request that the federal agency obtain a formal eligibility determination from the Keeper of the National Register.

7) Once the required identification and evaluation efforts are completed, does the federal agency need to consult with a Native Hawaiian organization in reaching a finding that there are no historic properties that will be affected by the undertaking, or that there are historic properties present but the undertaking will have no effect on them?

Despite the requirements for Native Hawaiian organization consultation up to this point in the process, the agency does not have to consult with a Native Hawaiian organization in reaching a finding that there are no historic properties present, or that the proposed undertaking will not affect an identified historic property. However, the agency must provide notification and documentation supporting its finding on these questions to any consulting Native Hawaiian organization.

If a consulting Native Hawaiian organization disagrees with the agency's finding, it should immediately contact the ACHP and request that the ACHP object to the finding, per 36 CFR 800.4(d)(1)(iii). If, upon the review of the finding, the ACHP also objects to the finding, the ACHP may provide its opinion to the agency official, and, if the ACHP determines the issue warrants it, to the head of the agency. The regulations stipulate that if the ACHP wants to object to a no historic properties affected finding on its own initiative (as opposed to in response to a SHPO unresolved objection), it must do so within 30 days of the agency's issuance of that finding.

C. Assessment of Adverse Effects

1) Which parties does the federal agency consult with to apply the criteria of adverse effect to historic properties within the APE?

The agency consults with the SHPO and Native Hawaiian organizations in applying the criteria of adverse effect to historic properties within the APE. Again, federal agencies must recognize the special expertise of Native Hawaiian organizations in assessing the eligibility of properties of religious and cultural significance to them per 36 CFR 800.4(c)(1), and 36 CFR 800.5(a) requires that agencies apply the criteria of adverse effect in consultation with Native Hawaiian organizations. Therefore, in assessing how a proposed undertaking might affect historic properties of religious and cultural significance to Native Hawaiian organizations, federal agencies need to consider the views of those Native Hawaiian organizations.

2) When proposing a finding of "no adverse effect," does the federal agency consult with Native Hawaiian organizations?

No. The agency consults with the SHPO in proposing a finding of "no adverse effect," but notifies consulting parties such as Native Hawaiian organizations, and provides them with documentation supporting that finding. The federal agency is encouraged, but not required, to seek the concurrence of Native Hawaiian organizations that attach religious and cultural significance to the historic property subject to the finding.

3) What happens if a Native Hawaiian organization disagrees with a finding of "no adverse effect"?

If a consulting Native Hawaiian organization disagrees with a proposed agency finding of "no adverse effect," it must specify the reasons for its objection in writing within 30 days of receipt of the agency's issuance of the proposed finding. Once a timely written objection is received, the agency must either consult with the objecting party to resolve the disagreement or request ACHP review of the "no adverse effect" finding, per 36 CFR 800.5(c)(2)(i). The agency must concurrently notify all other consulting parties that it has requested ACHP review of the finding.

Consulting Native Hawaiian organizations can make a direct request to the ACHP to review the finding, specifying, in writing and within the 30 day review period, the reasons for its objection, per 36 CFR 800.5(c)(2)(iii).

After review of the objection, the ACHP may provide its opinion to the agency official, and, if the ACHP determines the issue warrants it, to the head of the agency. The regulations stipulate that if the ACHP wants to object to a finding on its own initiative (as opposed to in response to a consulting party unresolved objection), it must do so within 30 days of receipt of the agency's issuance of that finding.

D. Resolution of Adverse Effects

1) Which parties does the federal agency consult with to develop and evaluate alternatives or modifications to the undertakings to avoid, minimize, or mitigate adverse effects?

The agency consults with the SHPO, Native Hawaiian organizations, and other consulting parties at this phase of the Section 106 process. The agency must provide project documentation to all consulting parties and invite the ACHP into consultation. Any consulting party may request ACHP participation in consultation to facilitate the resolution of adverse effects.

In fact, the Section 106 regulations at 36 CFR Section 800.2(b) stipulate that the ACHP may enter into the consultation at any point in the Section 106 process without invitation when it determines that its involvement is necessary to ensure that the purposes of Section 106 are met. As specified in Appendix A to 36 CFR Part 800, the ACHP may elect to enter the consultation if, among other things, an undertaking presents issues of concern to Native Hawaiian organizations.

2) What happens if agreement is reached on how to resolve adverse effects?

If agreement is reached, the agency, SHPO and consulting parties, including Native Hawaiian organizations, develop a Section 106 Memorandum of Agreement (MOA) or Programmatic Agreement (PA) outlining how the adverse effects will be addressed.

In order to go into effect, the agreement must be signed by the agency, SHPO, and the ACHP if it is participating in the consultation.

3) Is the federal agency obligated to invite a Native Hawaiian organization to be a signatory or a concurring party to an MOA or PA?

No. The agency may, but is not required to, invite a Native Hawaiian organization to become a signatory or concurring party. A signatory to an MOA or PA possesses the same rights with regard to seeking amendments to or terminating the agreement as all other signatories, which include the agency official, the SHPO, and the ACHP, if participating. Those that sign as a concurring party do not have such rights to amend or terminate the MOA or PA. Refusal by Native Hawaiian organization to become a signatory or concurring party to an MOA or PA, however, does not invalidate it. Certainly, agencies are

encouraged to invite Native Hawaiian organizations that attach religious and cultural significance to affected historic properties to sign the agreement. If a Native Hawaiian organization is assuming review or other responsibilities under the MOA or PA, the agency should consider inviting the Native Hawaiian organization to become a signatory.

4) What happens if agreement is not reached on how to resolve adverse effects?

If agreement is not reached, the agency, the SHPO, or the ACHP (if participating), may terminate consultation. Other consulting parties, including Native Hawaiian organizations, may decline to participate, but they cannot terminate consultation. After consultation is terminated, the ACHP prepares its formal comments to the head of the agency, who must consider and respond to the ACHP's comments before reaching a final decision on the undertaking. Per the Section 106 regulations at 36 CFR Section 800.7 (c), the ACHP must provide an opportunity for the agency, all consulting parties, and the public to provide their views to the ACHP during the time in which the comments are being developed. When the ACHP issues comments, it means the ACHP membership issues the comments, not the ACHP staff. In addition to providing the comments to the head of the agency, the ACHP provides copies of those comments to each of the consulting parties. Once the head of the agency has received the ACHP's comments, he or she is required to prepare a summary of his or her final decision regarding the proposed undertaking that contains both the rationale for its decision as well as evidence that it had considered the ACHP's comments when making that decision. In addition, the agency must provide copies of this summary to all consulting parties.

VI. Consultation Tools

While the Section 106 regulations direct agencies to consult with Native Hawaiian organizations on proposed undertakings, the regulations do not offer guidance on how to carry out such consultation. The following are some examples of ways in which consultation could be achieved and improved.

Agreements

The Section 106 regulations at 36 CFR Section 800.2(c)(2)(ii)(E) provide for agreements between federal agencies and Native Hawaiian organizations that tailor how consultation will be carried out. Such agreements are not project-specific but, instead, are more general and are focused on the relationship between an agency and a Native Hawaiian organization. An agreement can cover all aspects of the consultation process and could grant a Native Hawaiian organization additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in the regulations. The only restriction on the scope of such agreements is that the role of other parties in the process may not be modified without their consent.

Such agreements can be a means not only to ensure that consultation would be carried out to the satisfaction of both parties but also as a workload management tool. Agreements can outline the geographical areas within which a Native Hawaiian organization has an interest.

The negotiation process to develop an agreement with a Native Hawaiian organization does not require participation by any other parties outside of the agency (there may be other entities within the agency, such as the agency's office of legal counsel, that must participate). The only requirements for such agreements under the ACHP's regulations are that:

- the role of other parties is not modified without their consent; and
- the agreement is filed with both the ACHP and the SHPO.

Summits, Listening Sessions, and Meetings

Some agencies have hosted summits with Indian tribes and continue to do so on a regular basis. These meetings provide a means for agencies to share information about proposed undertakings and for Indian tribes to voice their views and talk with agency personnel. They also serve to develop trust and build relationships. Federal agencies in Hawaii could certainly host summits with Native Hawaiian organizations and change the dynamic from one of consultation on specific projects to programmatic discussions.

Listening sessions are another very useful tool for improving the relationship between agencies and Native Hawaiian organizations. The ACHP has hosted listening sessions in Hawaii and based, in part, on the feedback it received, decided that a policy regarding its interaction with Native Hawaiian organizations was called for.

Some agencies also host annual or regular meetings with Indian tribes to ensure that the consultation relationships are working and to address any outstanding issues. These gatherings are separate from Section 106 consultation meetings. They provide a forum for airing more general concerns, a means for recharging the relationship, and an opportunity to meet new agency personnel and tribal representatives. Again, these kinds of meetings would be especially helpful in Hawaii.

Guidance Materials and Training

Training is extremely useful in that it ensures that both federal agencies and Native Hawaiian organizations have a common understanding of legal requirements, organizational structures, decision-making, and other important mechanics of the consultation relationship. Training can also address cultural issues to help foster greater mutual understanding. Some agencies have hosted joint training sessions, while others require new personnel to receive training specific to their new duties. For instance, the ACHP has an internal requirement to train all staff and members regarding tribal and Native Hawaiian consultation within the Section 106 process.

VII. Principles and Tips for Successful Consultation

The key to success in any consultation relationship is building trust, having common goals, and remaining flexible. There is no "one size fits all" model for consultation with Native Hawaiian organizations. This final section of the Native Hawaiian Consultation Handbook provides helpful tips on how to put them into practice.

Respect is Essential

- Become aware of and respect Native Hawaiian conventions and protocols. Understand that they may vary from island to island. Do not take photographs without obtaining permission first.

- Behavior you may perceive as normal may be insulting or offensive to others. Consider Native Hawaiian perspectives and values. When in doubt, ask respectfully.

- Members of Native Hawaiian organizations may have many other duties and obligations. In fact, unlike their tribal counterparts, Native Hawaiians may not hold paid positions in a Native Hawaiian organization. They may have full-time jobs that make it challenging to participate in meetings held during the day, for example. Look for ways to work cooperatively, because this is your undertaking, and consultation is your responsibility.

- Be sensitive to time and costs. A Native Hawaiian organization's lack of human and financial resources may impede its representatives' ability to respond quickly or to participate in meetings. Do not demand that everyone adhere to your schedule and deadlines. Instead, explain why your deadline exists, who set it, and why it is important. Make an effort to facilitate and support consultation with available agency resources. Above all, strive to be as flexible as possible.

- Do not voice your opinion on what is best for the Native Hawaiian organization; that is for its members to determine.

- Be mindful of the significance of history. The history of U.S. government relations with Native Hawaiian organizations may color current perceptions and attitudes and cause distrust or suspicion. Take the time to learn about the unique history of Hawaii and Native Hawaiians.

Communication is Key

- Communicate with Native Hawaiian organization representatives directly whenever possible—do not rely solely on letters. Follow up written correspondence by phone or in person. Create documentation of your communications, such as notes on the content of discussions, keep phone logs, etc.

- Provide project information and timelines for the project as early in consultation as possible. Clarify any constraints or additional requirements which may impact the Section 106 process.

- Do not expect quick answers. Native Hawaiian organization representatives may need time to consult with others in the organization. Make sure you understand their timelines for decision-making.

- Do not assume silence means concurrence; it could signal disagreement. Always verify views with the official Native Hawaiian organization representative.

- Always ask the representatives of Native Hawaiian organizations about their preferred way of doing business and any specific protocols for meetings. Be aware that their cultural norms may be different from yours.

- Be mindful of appropriate behaviors. Always show deference toward elders and allow them plenty of time to speak first. Do not interrupt or raise your voice. Learn by observation and by talking to others. Again, when in doubt, ask respectfully.

Consultation: Early and Often

- Make sure you identify and initiate consultation with Native Hawaiian organizations at the ***start*** of the planning process for your agency's undertaking.

- Suggest a process for consultation and discuss it with the Native Hawaiian organizations. Collaborate in a way that accommodates the protocols and schedules of Native Hawaiian organizations. The ACHP regulations at 36 CFR Section 800.2(c)(2)(ii)(E) provide for agreements with Native Hawaiian organizations that set out procedures for Section 106 consultation and can address concerns of Native Hawaiian organizations about confidentiality of information.

- Consider establishing an ongoing working group that can provide continuity for future undertakings by your agency.

- Focus on partnerships rather than on project-by-project coordination.

- Remember to document all correspondence, follow-up telephone calls, consultation meetings, and visits to project sites. Be sure to include the content of your communications in your documentation.

- Ask Native Hawaiian organizations representatives to keep you up-to-date on any changes to postal or e-mail addresses and contact information for new leadership.

Effective Meetings Are a Primary Component of Successful Consultation

- Consider requests from Native Hawaiian organizations to meet to discuss the project or address concerns. Some Native Hawaiian organizations might request individual meetings to discuss issues privately with the federal agency.

- Offer to go on-site with traditional authorities. Some people may be uncomfortable relying solely on maps, and site visits may stimulate consideration of alternatives.

- Do not create expectations or make commitments that you are unable or unwilling to fulfill. Before entering into consultation, be certain that what you are negotiating is supported by the Office of General Counsel or Solicitor of your agency, and anyone else who will need to review and approve your position.

- Do not set your own meeting agenda or logistics without consulting with Native Hawaiian organization representatives to learn what they expect the process and substance to be. Native Hawaiian organizations may have their own ways of conducting meetings, so be respectful of customs and protocols.

- Inform Native Hawaiian organization representatives in advance of the meeting's goal and what needs to be accomplished in the time you have, so that participants can stay focused. Like you, Native Hawaiian organizations representatives are there to work and accomplish results.

- Give plenty of notice beforehand so that Native Hawaiian organization representatives have adequate time to prepare. Provide participants with a list of all attendees, an agenda, and most importantly, complete project documentation.

- Speak to Native Hawaiian organization representatives by phone beforehand so that you know who will be attending the meeting. Allow Native Hawaiian organizations to send as many representatives as they wish, but explain any limitations that your agency may have with funding travel.

- Check if anyone has special needs. Some elders may need special accommodations.

- Offer the Native Hawaiian organization participants the opportunity to make an opening or welcoming statement.

- Make sure you invite Native Hawaiian organization representatives to sit at the table with you, and introduce all participants with their proper titles. Check with your Native Hawaiian organization contact beforehand so you know if certain officials or elders should be introduced and acknowledged first.

- Review your agency's mission and operations at the start of the meeting. Do not assume that everyone knows how your agency functions or is familiar with all of the programs it oversees.

- Take accurate notes during the meeting, or, ***if the Native Hawaiian organization representatives agree in advance***, arrange for meetings to be recorded (it is still advisable to take notes to avoid problems should a recording be lost or damaged). It is important to document not only that you

have consulted, but the substance of the meeting and the views and concerns expressed by the Native Hawaiian organization, as well. Be sensitive to the issue of confidentiality, which may require that you switch the recorder off, or to omit certain sensitive information from your notes if the Native Hawaiian organization representatives so request. Documenting meeting content ensures that participants can later review and correct any inaccuracies, and also provides the agency with a solid consultation record.

- Be prepared on the issues and be open to Native Hawaiian organization perspectives.

Conclusion

We hope this handbook has been helpful. If needed, you may obtain further assistance from the ACHP in understanding and interpreting the requirements of Section 106, including Native Hawaiian consultation. For general information, please visit the ACHP Web site at www.achp.gov.

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Preserving America's Heritage

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