



ADVISORY COUNCIL ON HISTORIC PRESERVATION SPRING BUSINESS MEETING

MARCH 20-21, 2024



TABLE OF CONTENTS SPRING BUSINESS MEETING

Provisional Agenda

Annotated Agenda

Army Program Comment on Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features

Analysis of National Housing Program Alternative

Implementation of *In a Spirit of Stewardship: A Report on Federal Historic Properties 2024*

Operating Procedures Amendments

Development of a Climate Heritage Office

ACHP Policy Statement on Indigenous Knowledge and Historic Preservation

Memorandum of Understanding Among Participating Agencies of the Native Hawaiian Federal Interagency Working Group

Attachments: Standard Operating Procedure for Consultation with the Native Hawaiian Community

‘Ōlelo Hawai‘i Policy

Draft Memorandum of Understanding among Participating Agencies of the Native Hawaiian Federal Interagency Working Group

Update on Major Activities (Office of Communications, Education, and Outreach)

Upcoming 2024 ACHP Meetings Flyer



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
March 21, 2024

PROVISIONAL AGENDA

Call to Order 9 a.m. EDT

- I. Chair's Welcome
 - A. Reflections on Georgetown Cemetery Tour
 - B. First Year in Review; Report on Recent Activities
 - C. Committee Assignments and Scopes
- II. Chair Report on the Application and Interpretation of Federal Historic Preservation Standards
- III. Executive Director's Report
- IV. Regulations and Governance
 - A. Program Comment for Army Pre-1919 Historic Housing
 - B. Program Comment for Communications Projects on Federal Lands and Property—
Amendment Update
 - C. Nationwide Housing Program Alternative Proposal
 - D. Update on Issuance of Housing-Related Section 106 Guidance
 - E. Outreach and Engagement on Preserve America Report on Federal Property Stewardship
- V. Policy and Legislative Affairs
 - A. Operating Procedures Amendments
 - B. Climate Heritage Office Proposal
 - C. Outreach and Engagement on Recent Policy Statements
- VI. Tribal and Indigenous Peoples
 - A. Policy Statement on Indigenous Knowledge and Historic Preservation
 - B. Native Hawaiian Interagency Working Group Memorandum of Understanding
 - C. Executive Order on Federal Funding and Tribal Nations
- VII. New Business
- VIII. Adjourn



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
March 21, 2024
Washington Hilton
1919 Connecticut Avenue NW
Washington, D.C. 20009

ANNOTATED AGENDA

Call to Order 9 a.m. EDT

- I. Chair's Welcome
 - A. Reflections on Georgetown Cemetery Tour. *Chair Sara Bronin will reflect upon the previous day's member visit to the Mount Zion Cemetery/Female Union Band Society Cemetery and Tudor Place in Georgetown, Washington, D.C.*
 - B. First Year in Review: Report on Recent Activities. *Chair Bronin will provide a summary of her activities and accomplishments during her first year as chair and update members on recent activities.*
 - C. Committee Assignments and Scopes. *Chair Bronin will update members on committee assignments and changes to committee scopes.*
- II. Chair Report on the Application and Interpretation of Federal Historic Preservation Standards. *Chair Bronin will update the members on her recently released report on the application and interpretation of federal historic preservation standards and seek input from them on implementing the report's findings and recommendations.*
- III. Executive Director's Report. *Executive Director Reid Nelson will report on the status of FY 2024 budget expenditures and the FY 2025 budget justification, staff recruitment, and ACHP operations.*
- IV. Regulations and Governance
 - A. Program Comment for Army Pre-1919 Historic Housing (*possible action*). *Regulations and Governance Committee Chairman Jordan Tannenbaum will update members on the status of the ACHP's efforts to consult with states, Indian Tribes, and others on the adoption of a Program Comment for Army Pre-1919 Historic Housing. Members will be asked to provide any views on remaining issues prior to addressing the request by unassembled vote in April.*
 - B. Program Comment for Communications Projects on Federal Lands and Property—Amendment Update. *Chair Bronin and Director of the Office of Federal Agency Programs Jaime Loichinger will update members on the issuance of the amendment.*

- C. Nationwide Housing Program Alternative Proposal (*discussion*). *Committee Chairman Tannenbaum and Director Loichinger will update members on the committee's consideration of a nationwide program alternative for housing. Members will be asked to comment on the need for, and the potential nature and extent of, such an alternative.*
 - D. Update on Issuance of Housing-Related Section 106 Guidance. *Director Loichinger will update members on efforts to develop guidance to support the implementation of the ACHP's recently adopted Housing Policy Statement.*
 - E. Outreach and Engagement on Preserve America Report on Federal Property Stewardship. *Committee Chairman Tannenbaum, Director Loichinger, and Director of the Office of Communications, Education, and Outreach Susan Glimcher will update members on outreach efforts and implementation of the report's recommendations.*
- V. Policy and Legislative Affairs
- A. Operating Procedures Amendments (*action needed*). *Policy and Legislative Affairs Committee Chairman Sonny Ward and Director of the Office of Policy and Legislative Affairs Dru Null will report on proposed updates to the ACHP's Operating Procedures regarding comments on legislative exemptions. Members will be asked to vote on the adoption of these amendments.*
 - B. Climate Heritage Office Proposal (*discussion*). *Chair Bronin, Committee Chairman Ward, and Director Null will report on discussions about the creation of a Climate Heritage Office at the ACHP. Members will be asked to provide input on the possible role and mission of such an office.*
 - C. Outreach and Engagement on Recent Policy Statements. *Committee Chairman Ward, Director Null, and Director Glimcher will update members on efforts to implement the Climate Change and Housing Policy Statements.*
- VI. Tribal and Indigenous Peoples
- A. Policy Statement on Indigenous Knowledge and Historic Preservation (*action needed*). *Tribal and Indigenous Peoples Committee Chairman Reno Franklin and Director of the Office Tribal and Indigenous Peoples Ira Matt will summarize the results of consultation on the development of the policy statement and any adjustments to the policy based on this consultation. Members will be asked to vote on its adoption.*
 - B. Native Hawaiian Interagency Working Group Memorandum of Understanding (*discussion*). *Committee Chairman Franklin will report on the issuance of a Memorandum of Understanding among the ACHP and other agencies regarding consultation with Native Hawaiians.*
 - C. Executive Order on Federal Funding and Tribal Nations (*discussion*). *Committee Chairman Franklin and Director Matt will discuss the requirements of the recently issued Executive Order on Federal Funding and Tribal Nations.*
- VII. New Business. *There is none at this time.*
- VIII. Adjourn. *The meeting will adjourn at noon EDT.*



**ARMY PROGRAM COMMENT ON PRESERVATION OF PRE-1919 HISTORIC ARMY
HOUSING, ASSOCIATED BUILDINGS AND STRUCTURES, AND LANDSCAPE FEATURES**
Office of Federal Agency Programs

Background. On September 19, 2023, the ACHP received notice that the Army intends to request a Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features pursuant to 36 CFR 800.14 (e). The Army's intent in requesting this program comment is to establish a programmatic approach for complying with Section 106 regarding repetitive management actions occurring on the Army's inventory of pre-1919 housing. The Army's best available information indicates there are 865 pre-1919 homes located on 18 installations in 14 states. Among these, there are 10 installations where pre-1919 housing has been designated as National Historic Landmarks (NHLs), primarily as contributing properties to NHL districts. The Army has excluded cessation of maintenance, demolition, and new construction as management actions from consideration under this proposed program comment.

The decision to request a program comment is also informed by the successes of the three previously approved program comments currently in effect for historic Army housing, including the Program Comment for Army Inter-War Era housing 1919-1940; the Program Comment for Army Capehart Wherry housing 1949-1962; and the Program Comment for Army Vietnam War Era housing 1963-1975.

The Army invited the ACHP, State Historic Preservation Officers, Tribal Historic Preservation Officers, federally recognized Tribes, and nongovernmental organizations (including the National Trust for Historic Preservation and the National Association of Tribal Historic Preservation Officers) to participate in a series of nationwide consultation meetings to further inform development of the program comment, which took place throughout November and December 2023.

Update. The Army submitted its formal request for a program comment, along with a copy of the comments it received and how it addressed them on March 4, 2024. Staff provided copies of this material to the members in advance of the business meeting and will provide an overview of consultation and any remaining issues during the Regulations and Governance Committee and business meetings. Staff will also update the members on the timeline for concluding the vote on the program comment including any extensions to the timeline requested by the ACHP and approved by the Army. It is currently anticipated that the ACHP will request a 29-day extension so that consultation with Indian Tribes and Native Hawaiian organizations can be accomplished in April and an unassembled meeting of the ACHP can be convened in mid-May for its adoption.

Action Needed. None at this time. Staff will update the members on the status of efforts to consult Indian Tribes and Native Hawaiian organizations, State Historic Preservation Offices, and others and seek input on any final recommendations for changes that should be submitted to the Army prior to the unassembled vote. Members should be prepared to discuss the program comment both in the Regulations and Governance Committee and business meeting in preparation for these final comments and subsequent unassembled meeting in May.

March 8, 2024



ANALYSIS OF NATIONAL HOUSING PROGRAM ALTERNATIVE Office of Federal Agency Programs

Background. Following adoption of the ACHP's Policy Statement on Housing and Historic Preservation, discussions within the Regulations and Governance Committee have focused on how Section 106 reviews should be informed by the Policy Statement and tailored to address housing needs. As noted in the January committee meeting, safety and accessibility are two areas that have been identified as areas where a programmatic solution may be useful; however, housing as a topical area is one that has benefited from multiple program alternatives, including Program Comments for the Army and statewide Programmatic Agreements for the Department of Housing and Urban Development and Rural Housing Service.

Principle 9 of the policy statement also tasked the ACHP with developing guidance on effect determinations in Section 106 reviews for housing, particularly as they relate to the interiors of historic buildings. Staff has begun drafting this guidance, which will utilize case studies and illustrative examples, with the goal of completing it within six months.

Methodology. Staff has also begun the process of assessing how successful existing Section 106 program alternatives have been in creating efficiencies for housing projects as well as affordable housing programs. Programmatic agreements for the Department of Housing and Urban Development, Community Development Block Grant program, and Rural Housing Service were reviewed for commonalities in addition to other review efficiencies. These were then compared to program comments for land managing agencies, principally the Department of Defense, to consider whether there were significant differences in efficiencies between agencies that provide assistance for housing projects versus agencies that manage housing directly. Staff also spoke with stakeholders including State Historic Preservation Officers and Federal Preservation Officers about their challenges in reviewing housing undertakings under Section 106 and where they have identified successes and opportunities. The ACHP's project database was also utilized to better quantify the number of reviews and potentially identify whether a particular point in the Section 106 process consistently presented challenges.

Discussion. Staff will share further detail on these initial findings and request input from the committee on the analysis and initial findings, which will further refine more conclusive recommendations to the chair. Members will be asked to consider whether enhanced guidance, training, new or expanded programmatic approaches, or a combination of all of these are appropriate to consider the Section 106 implications of the Housing Policy Statement.

Action Needed. None at this time, although members should be prepared to discuss the staff analysis of the issue.

March 8, 2024



**IMPLEMENTATION OF
IN A SPIRIT OF STEWARDSHIP: A REPORT ON FEDERAL HISTORIC PROPERTIES 2024
Office of Federal Agency Programs**

Background. Section 3 of Executive Order 13287, “Preserve America,” requires that federal agencies with real property management responsibilities report every three years on their progress in the identification, protection, and use of historic properties in federal ownership and make the progress reports available to the ACHP and the Secretary of the Interior. The ACHP uses these reports to summarize the state of the federal government’s stewardship of historic properties in a triennial report. [*In a Spirit of Stewardship: A Report on Federal Historic Property Management 2024*](#) was delivered to President Joe Biden on February 15, 2024. The electronically formatted report is posted on the ACHP website and has been widely distributed using the outreach plan that was shared with members in January.

The 2024 report examines timely issues that are critical to the management of federal historic properties and how they relate to important issues facing the nation, such as infrastructure, jobs, public-private partnerships, and resiliency. It reports on the significant efforts being made at the federal level to both preserve historic properties and ensure that they meaningfully contribute to the people who live and work around them. To that end, this report highlights how federal actors—including the ACHP itself—are working to strengthen local economies and communities through strategic approaches both to specific cultural resources and to broader historic preservation policy.

The ACHP developed six findings and accompanying recommendations to address current concerns in federal preservation practice and further improve federal stewardship of these important properties:

- Faced with the challenges of resiliency and preparedness to climate change, the federal government is seeking collaborative approaches to the identification and protection of historic properties that incorporate equity and the input and participation of parties with special expertise in the historic, cultural, and natural resources affected.
- Federal agencies are using program alternatives to constructively plan for property management activities and improve the efficiency of Section 106 project reviews while contributing to comprehensive historic property management strategies on federal lands.
- Partnerships can leverage limited federal resources and provide important benefits to federal agencies in the identification, protection, and use of historic properties while enabling important educational and job training opportunities and the promotion of a diverse workforce.
- Active collaboration and timely involvement with Tribes and Native Hawaiian organizations in property management activities, climate preparedness, and infrastructure planning enhances outcomes and remains critically important.
- Increases in remote work and telework as a result of the COVID-19 pandemic have led federal decision makers to evaluate their office space needs and seek opportunities for adapting underutilized space, including historic buildings and facilities.
- Virtual meeting applications, tours, education programs, and programming have assisted in expanding federal agency outreach for heritage tourism and public engagement with historic places.

The ACHP’s activities in furtherance of Section 3 of the executive order now shift to implementing these recommendations in coordination with both federal and nonfederal partners.

Update. Staff took comments regarding implementation of the report's recommendations offered by ACHP members during the January Regulations and Governance Committee meeting, and those comments will be integrated into a draft Implementation Plan. Staff will summarize the draft Implementation Plan for member feedback at the March committee meeting, which will then be finalized for staff action.

Action Needed. Members should come to the Regulations and Governance Committee meeting and business meeting prepared to offer comments on implementing the recommendations of the Section 3 report. Staff will update the members on progress implementing these recommendations at subsequent committee meetings.

March 8, 2024



OPERATING PROCEDURES AMENDMENTS
Office of General Counsel and
Office of Policy and Legislative Affairs

Introduction. The Policy and Legislative Affairs Committee had discussed the possibility of giving the chair the flexibility to oppose legislative exemptions to reviews under Section 106 of the National Historic Preservation Act after consulting an appropriate subgroup of members, without the need for a formal member vote. Such action would require amendments to the Operating Procedures.

For decades, the ACHP has consistently opposed such legislation as harmful to the purposes of the National Historic Preservation Act and unnecessary due to the availability of program alternatives that can more responsibly address the relevant issues. Regardless of the potential for such bills to become viable, it is not uncommon for various draft bills to include Section 106 exemptions. The ACHP needs to stand ready to quickly and efficiently oppose them without the need to await member votes.

Pending Exemption Bills. As the National Trust for Historic Preservation (NTHP) noted in its comments, “Legislative exemptions often arise with little or no advance notice, and they have the potential for devastating impact. In the 118th Congress alone, a number of bills are pending that seek to exempt the application of Section 106. . .” Such legislation includes the following:

- More than 15 bills are currently pending that include proposed exemptions from Section 106 for telecommunications projects. Language from many of them has been consolidated into the Broadband for Americans through Responsible Streamlining Act (H.R. 4141). The ACHP has sent correspondence to Congress on H.R. 4141 and two related bills—the American Broadband Deployment Act (H.R. 3557) and the CLOSE THE GAP Act (S. 2855)—urging removal of the provisions that would exempt projects from Section 106 review. However, ACHP concern for the proposed exemptions in all of the pending bills needs to be addressed.
- The Lower Energy Cost Act (H.R. 1), which passed the House in March 2023 and awaits action in the Senate, proposes to exempt certain federal drilling permits and subsequent oil, gas, and geothermal exploration and production activities from Section 106 review. The ACHP has written to Congress to urge removal of this proposed exemption.
- A proposed amendment to the FY 2024 National Defense Authorization Act would have exempted federally funded projects for the development and manufacture of semiconductors from Section 106 review. The ACHP advised against inclusion of this provision, and this “must pass” bill ultimately did not include this amendment. However, the exemption language is included in the Building Chips in America Act (S. 2228), which passed the Senate on December 14. ACHP correspondence to the House regarding the bill is needed.

Summary of Member Comments. On January 12, 2024, the members were given a draft of the proposed legislative exemption amendments to the Operating Procedures, which also included technical verbiage so that the two most recently adopted appendices to the Operating Procedures (regarding advice on state and local legislation and comments to Congress on site-specific legislation) would be referenced in its main body.

The members were asked to comment by January 26. Staff received comments from Expert Member Frank Matero, the Department of the Interior (DOI), and the NTHP.

Mr. Matero expressed his support for the amendments.

DOI requested that communications conveying opposition to legislative exemptions explicitly state that an ACHP vote had not taken place on them and that federal agency members would typically vote in accordance with a Statement of Administration Policy on particular legislation or abstain in the absence of such a statement. That request has not been incorporated for the following reasons:

- The current Operating Procedures do not include any requirement that the chair indicate whether the ACHP reached a decision based on the use of the already existing, expedited process or a full member vote.
- There is concern that including within such letters an indication that a full membership vote may not have occurred would both complicate and potentially weaken their effect. The complication would come from adding the detail necessary to describe the two wholly internal methods we use to establish an ACHP position (expedited vs. full member vote) as well as some sort of statement about why we took one path vs. the other in a given situation. The potential weakening might come from the reader's assumption—rightly or wrongly—that a position arrived at without the vote of the full membership was somehow less valid or forceful.
- Federal members do not always abstain on legislative votes. Also, the proposed statement may appear to diminish or qualify an ACHP position. Staff is unaware of any circumstance in at least the last 20 years where a letter to Congress has ever resulted in backlash against any of our federal members due to their membership in the ACHP or a position they have taken, nor are we aware of anyone in an Administration, Congress, industry, or the public ever inquiring about vote tallies on the matter. We conclude, therefore, that the addition of such information would be distracting and potentially diminishing, without a clear benefit or purpose.
- Lastly, in the unlikely event that someone questions federal member positions, they can point to the draft amendments language that acknowledges that “federal agency members would typically vote in accordance with a statement of administration policy on a particular legislation, or abstain in the absence of such a statement.”

The chair is willing to include general language in legislative exemption letters noting that the ACHP has adopted a procedure authorizing the chair to convey to Congress the ACHP's general opposition to legislative proposals that would provide a full or partial exemption to Section 106 compliance.

Finally, the NTHP expressed its strong support for enhancing the chair's ability to respond quickly to proposed legislative exemptions. It also suggested:

- adding a more specific definition for “an appropriate subgroup of members,” with whom the chair must consult before conveying the ACHP's opposition to Congress. It gave the example of one possible “appropriate subgroup” might be the committee chairs, plus any additional member with whom the chair wishes to consult; and
- that the term “a particular legislation” be modified to “a particular legislative proposal.”

The first suggestion has not been incorporated because, while Chair Sara Bronin anticipates using committee chairs, there are circumstances under which she and a future chair might want to pick a different subgroup depending on various factors such as specific member interest, expertise, relevance, and availability.

The second suggestion has been incorporated. The broader, suggested verbiage should more appropriately capture the different types of legislation, such as bills and various types of resolutions, and it could also include bills that have been drafted by legislative counsel but have not yet been filed. This would address the issue that, once such a bill is filed, it may be much harder to make changes either by reintroducing or amendment.

Proposed Action. The members will be asked to vote on the adoption of amendments to Section VII.A. of the Operating Procedures, so that it reads as follows (the track changes show differences from current language):

VII. LEGISLATIVE MATTERS

A. Formulation of Policy and Positions

Except as provided below for legislative exemptions to Section 106, ~~Policy-~~ policy and positions on federal, state, and local legislative proposals shall be established by action of the Membership. In those situations where the need for timely action precludes formal approval by the Membership, the Chairman and the Executive Director may establish and convey as appropriate an interim position by consulting with the Membership or an appropriate subgroup. The Chairman or the Executive Director shall notify the Membership when such action is to be taken, invite the views of members on the issue, and report to the Membership on any legislative positions taken or testimony delivered in a timely manner. The Membership shall be provided an opportunity to ratify or revise that interim position at the next meeting of the Membership. In the event a Member questions the consistency of a proposed interim legislative position with Administration policy, the Chairman will convene an unassembled meeting and take a vote of the full Membership on the proposed position or defer consideration of the position to the next meeting of the Membership.

The Chairman may, after consulting with an appropriate subgroup of members, convey to Congress the Council's opposition to a particular legislative proposal that would provide a full or partial exemption to Section 106 compliance. In a timely manner, the Chairman or the Executive Director shall notify the Membership when such action is taken. It is acknowledged that federal agency members would typically vote in accordance with a statement of administration policy on a particular legislative proposal or abstain in the absence of such a statement.

The Membership will follow its policy guidance as set forth on Appendix D of these Operating Procedures when considering whether and how to provide advice on state and local legislation.

The Membership will follow its policy guidance as set forth on Appendix E of these Operating Procedures when considering whether to provide comments to Congress on site-specific legislation.

Action Needed. Members will vote to adopt the proposed Operating Procedures amendment at the March business meeting. In order to pass, the motion to adopt needs 16 or more votes in favor.

March 8, 2024



DEVELOPMENT OF A CLIMATE HERITAGE OFFICE Office of Policy and Legislative Affairs

Background. The ACHP Climate Change and Historic Preservation Policy Statement adopted in June 2023 outlined key strategies requiring federal coordination, action, and research. Chair Sara Bronin has assessed federal government capacity to address the issues raised in the Policy Statement and determined that current efforts are scattered across many agencies, with no single agency devoting the resources to, or tasked with leading, the federal policy and research response.

In consultation with ACHP members, outside experts, staff, and others, she has begun to discuss the idea of a Climate Heritage Office. In November, she proposed the idea at the *Strengthening Historic and Cultural Preservation Roundtable*. This month, *The Hill* published an [op-ed](#) from Chair Bronin repeating her comments from the Roundtable. Members of Congress and their staffs, as well as people in the Administration, have expressed interest in understanding a more complete vision for the scope and structure of this office.

Potential Scope of the Office. A Climate Heritage Office could provide the structure through which some of the goals embedded in the ACHP Policy Statement on Climate Change and Historic Preservation might be realized. It could be tasked with covering a wide range of policy and research matters mentioned in that Policy Statement, including locating at-risk historic resources, climate disaster response, emissions mitigation, climate adaptation, renewable energy installation, and examining building and energy codes.

Congress has already given the ACHP certain powers and responsibilities relevant to the creation of a Climate Heritage Office, including the following:

- Advising the President, Congress, state governments, and local governments about all aspects of historic preservation policy
- Providing information about historic preservation to the public and evaluating federal agency actions relevant to historic preservation
- Developing strong relationships with Tribal Nations, both through consultation and through representation on the ACHP itself.

Within those existing powers and responsibilities, an ACHP Climate Heritage Office could have three key elements:

- **Statutory, Regulatory, and Policy Recommendations and Development.** A Climate Heritage Office could devote more resources to addressing the climate heritage question across all of the actions the ACHP already takes, including commenting on legislation and regulation, developing policies, and creating guidance. The office could also assemble best practices for, and help to foster exchange between, state and local governments.
- **Funding and Conducting Research.** A Climate Heritage Office could help identify and coordinate needed research and importantly have a source of funds to undertake that which is most critical. Staff could assess the potential of all types of climate risks—sea level rise, drought, wildfire, and extreme precipitation among them—to damage or destroy historic and cultural resources. They could identify the best materials, methods, and structures to adapt these resources to fire, flood, and other threats. Also, they could analyze which financial incentives and

investments would maximize retention of historic places at risk. This research, as well as analysis of current federal government practices, could ground the recommendations and guidance produced by the office.

- ***Facilitating Collaboration with Indian Tribes and Indigenous Peoples.*** Tribal and Indigenous Peoples are at some of the highest risks from climate change-related threats to heritage. Federal government collaboration with Tribal and Indigenous Peoples is essential, both to inform effective climate resilience strategies and support potential community relocation efforts. Understanding traditional cultural practices related to forest management, shoreline preservation, sustainable construction, and nature-centered solutions would benefit federal, state, and local policymakers, expanding the set of tools necessary to tackle this increasingly complex problem. Additionally, relocation efforts require a coordinated response that centers Tribal needs in its decision making.

Action Needed. Given the broader interest in this topic, ACHP members are invited to provide feedback about this idea and to engage in discussion at the Policy and Legislative Affairs Committee meeting. Some brief notes about the potential scope of the office follow, along with relevant questions to be considered by the committee.

Questions for Discussion

- Are there additional areas a Climate Heritage Office should cover, beyond those outlined above?
- Are there specific tools or strategies that would allow the Climate Heritage Office to promote more effective decision making at the state or local level?
- What existing efforts from the federal government involve state or local governments in climate change response or research? Should any of these efforts be moved into a Climate Heritage Office or cited as potential collaborations?
- How should a Climate Heritage Office be involved with international efforts?
- Are there other federal agencies that might consider devoting resources to create such an office?

Chair Bronin intends to convene a conference on U.S. historic preservation law in the international context in fall 2024 and believes that the question of a Climate Heritage Office is an important one that should be discussed at that conference.

March 8, 2024



ADVISORY COUNCIL ON HISTORIC PRESERVATION
POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND HISTORIC PRESERVATION
Office of Tribal and Indigenous Peoples

Background. In 2018, the Office of Tribal and Indigenous Peoples launched an initiative to promote an understanding of and respect for Indigenous Knowledge in the field of historic preservation. This effort was in response to ongoing requests from Indian Tribes, Native Hawaiians, and other stakeholders in the preservation community who wanted additional clarification for how Indigenous Knowledge can and should inform federal decision making.

Since that time, the ACHP has actively collaborated with Indian Tribes and Native Hawaiian organizations to elevate Indigenous Knowledge at the national and international levels by:

- Releasing the information paper [Indigenous Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#);
- Assisting the State Department in drafting the [U.S. statement on Indigenous Knowledge](#);
- [Presenting at the United Nations Headquarters](#) in New York City in conjunction with Indian Tribes, the Native American Rights Fund, and the Colorado University School of Law;
- Drafting Environmental and Social Safeguards for [Africa](#), [Asia](#), the other international bodies as part of the State Department's Cultural Heritage Expert Working Group;
- Ensuring the forthcoming statement is mentioned in many public presentations by the chair; and
- Drafting the [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) in conjunction with the White House Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ).

Throughout this process, Tribal and Native Hawaiian leaders have requested additional action from the ACHP to elevate the role Indigenous Knowledge has in historic preservation. In March 2022, the ACHP's Tribal and Indigenous Peoples (TIP) and Regulations and Governance committees identified the development of a policy statement as the most effective mechanism to advance Indigenous Knowledge. Committee members advised that this policy statement should be expansive and that its development was best facilitated through the TIP Committee, with appropriate coordination with other committees.

Scope and Content of the Policy Statement. Following extensive outreach and collaboration (see discussion below), including government-to-government consultation with Indian Tribes, the ACHP has developed a draft Policy Statement on Indigenous Knowledge and Historic Preservation that includes 12 core principles meant to establish a set of standards and guidelines regarding the role Indigenous Knowledge has in historic preservation. A central component includes the ACHP's position that Indigenous Knowledge is a valid and self-supporting source of information capable of informing federal agency decisions related to historic preservation. The policy statement includes a principle, with four subcomponents, that addresses each step of the Section 106 process and the role that Indigenous Knowledge has in it. Additionally, the ACHP recognizes the designated representatives of Indian Tribes and Native Hawaiian organizations as the appropriate personnel to advise on the identification, documentation, evaluation, assessment, and resolution of adverse effects related to historic properties of religious and cultural significance to them. The policy also seeks to inform federal agency action related to handling and disclosure of sensitive information, compensation, consultation timelines, and sacred sites, among other considerations.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

The policy includes a preamble intended to establish baseline of understanding, an authority section that outlines the ACHP's statutory authority to issue this policy statement, and a discussion on the trust responsibility the ACHP has to Indian Tribes. The policy also includes a section that identifies how the ACHP will implement the policy including through training of ACHP staff, development of guidance and informational resources, development of template language related to agreement documents and program alternatives, providing technical assistance, continuing ongoing outreach and coordination with the preservation community, and by coordinating with the White House Council on Native American Affairs and the National Science and Technology Council's Subcommittee on Indigenous Knowledge.

This policy also references a definition of Indigenous Knowledge developed by the OSTP and CEQ pursuant to the release of the [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) document released at the 2022 White House Tribal Nations Summit.

Comments and Feedback. Indian Tribes, Native Hawaiians, State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices (THPOs), and federal agency personnel all support the ACHP's efforts to establish a set of standards and guidelines meant to inform the integration and application of Indigenous Knowledge in historic preservation and the Section 106 process. Most commenters requested that the ACHP clarify Indigenous Knowledge as valid and self-supporting, and that this information is frequently confidential or sensitive in nature. Commentors requested that the policy advance the role Indigenous Knowledge has in all four steps of the Section 106 process and reinforce the need to include Indigenous Knowledge in all four steps of the Section 106 process and not just when the regulations reference "special expertise."

Commentors asked that the policy speak to the role Indigenous Knowledge has in the consideration of sacred sites and recommended language clarifying that the Section 106 process was not always an appropriate mechanism to account for sacred sites. Commenters requested the Tribal and Native Hawaiian representatives be recognized for the expertise, knowledge, and experience they hold unique to Indigenous Knowledge and that this expertise be compensated accordingly. Additional comments addressed respect and relationship building, the United Nations Declaration on the Rights of Indigenous People, the National Register, environmental justice, and the need for ongoing training.

Outreach and Early Coordination. To inform agency actions, the ACHP has facilitated listening sessions with Indian Tribes, the Native Hawaiian community, Federal Preservation Officers (FPOs), and other federal agency cultural resources personnel. The ACHP has provided updates and sought feedback with additional consulting parties, including SHPOs and THPOs, and through presentations and panel discussions at conferences and other public forums. The following list summarizes key outreach and early coordination opportunities the ACHP has participated in to inform this policy, including with ACHP leadership.

Engagement with Indian Tribes and Native Hawaiians:

- Spring 2023–4 engagement sessions to develop the proposal
- Summer 2023–2 engagement sessions to review draft outline
- Fall 2023–2 engagement sessions to review the draft policy
- Winter 2023/2024–3 meetings/consultations with individual Indian Tribes on the draft policy
- Winter 2023/2024–Consultation with Indian Tribes and Native Hawaiians

Coordination with federal and state partners:

- Recurring–Presentation/discussion at ACHP business and committee meetings
- Summer 2023–Presentation/discussion with FPOs and other cultural resources personnel
- Winter 2023–2 presentations/discussions with FPOs and other cultural resources personnel

- Winter 2023/2024–Engagement session with SHPOs
- Fall 2023–White House Tribal Nations Summit Accomplishments Report
- Recurring–Collaboration with the White House Council on Native American Affairs
- Recurring–Collaboration with the National Science and Technology Council’s Indigenous Knowledge Subcommittee

Conferences and other outreach activities (select examples):

- Public webpage-[Indigenous Knowledge and Historic Preservation](#)
- Spring 2023 – Presentation/discussion at the United Nations Permanent Forum on Indigenous Issues in New York, NY
- Spring 2023–Presentation/discussion at the Southeast SHPO/THPO Meeting (hosted by NCSHPO, NATHPO, NPS, and the Tennessee Historical Commission) in Nashville, TN
- Spring 2023–Presentation/discussion at the National Association of Tribal Historic Preservation Officer’s annual conference on the Cherokee Indian Reservation in Cherokee, NC
- Summer 2023–Presentation/discussion (virtual) at the CalTHPO/SHPO conference hosted by the Pala Band of Mission Indians
- Fall 2023–Presentation/discussion at the National Congress of American Indians Annual Convention and Marketplace in New Orleans, LA

Consultation with Indian Tribes and Native Hawaiian Organizations. Consistent with the ACHP’s [Consultation Procedures Pursuant to E.O. 13175: Consultation and Coordination with Indian Tribal Governments April 26, 2021](#), a final draft of the policy statement and other supporting documentation was shared with Tribal and Native Hawaiian leadership on January 11, 2024. This notification initiated the beginning of a comment period ending March 8, 2024, that included a nationwide consultation on February 8, 2024, and additional meetings with Indian Tribes on a case-by-case basis.

Development of the Final Draft Policy Statement. ACHP staff has developed the final draft in response to direction provided by ACHP members and in response to comments received during early coordination, listening sessions, and consultation. A final copy of the policy statement will be provided to members via email prior to the business meeting.

Action Needed. The members will be asked to vote on the adoption of the Policy Statement on Indigenous Knowledge and Historic Preservation.

March 8, 2024



**MEMORANDUM OF UNDERSTANDING AMONG PARTICIPATING AGENCIES OF THE
NATIVE HAWAIIAN FEDERAL INTERAGENCY WORKING GROUP
Office of Tribal and Indigenous Peoples**

Background. The Native Hawaiian Federal Interagency Working Group (Working Group) began its efforts in 2006 with the development of the Department of the Interior Native Hawaiian Organization List. This list (Native Hawaiian Organization List, 72 Fed. Reg. 54672 (September 26, 2007)) is now used by federal agencies seeking to consult with the Native Hawaiian community through Native Hawaiian organizations (NHOs). After other similar joint agency projects, in 2011, the Department of the Interior (DOI), the Department of Defense (DoD), and the ACHP signed a memorandum of understanding (MOU) formally establishing the Working Group. Accomplishments of the Working Group include creation of the Department of Defense Consultation Policy with Native Hawaiian Organizations; A Handbook for Consultation with Native Hawaiian Organizations in the Section 106 Review Process; and The Native Hawaiian Community Guide to Federal Programs and Services.

Memorandum of Understanding. Through the MOU, the Working Group continues to provide guidance and assist federal agencies with their compliance activities associated with (1) administration of federal programs that directly and/or uniquely affect the Native Hawaiian community and (2) consultation with NHOs regarding the potential effects of federal programs and activities on NHO resources, rights, or lands. Per this MOU, the members of the Working Group are the Office of Native Hawaiian Relations (ONHR) within DOI; the Office of the Deputy Assistant Secretary of Defense for Environment, Safety, and Occupational Health, within DoD; the ACHP; and the Small Business Administration.

ONHR has the lead in organizing the Working Group consistent with P.L. 108-199, Div. H, Sec. 148 (118 Stat. 445), which established ONHR as a focal point among federal agencies for coordination of information regarding consultation with NHOs. The Working Group anticipates additional federal agencies that administer federal programs to NHOs or have consultation responsibilities to NHOs will join the Working Group by signing the MOU in the future. This MOU also seeks to have participating agencies adopt or adhere to guidance documents meant to improve the coordination and consistency of consultation with NHOs and the Native Hawaiian community. These resources include DOI's 'Ōlelo Hawai'i Policy, DOI's Standard Operating Procedures for Consultation with the Native Hawaiian Community, and the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects.

U.S. Department of the Interior Office of Native Hawaiian Relations [Standard Operating Procedures for Consultation with the Native Hawaiian Community](#). The Standard Operating Procedures (SOP) provide basic steps for working with the Native Hawaiian community on regulatory, policy, or other administrative decision making matters. These procedures were developed in consultation with the Native Hawaiian community and under the guidance of DOI's Office of Native Hawaiian Relations. This SOP is intended to complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with the Native Hawaiian community and honors the government-to-sovereign relationship between the United States and the Native Hawaiian community and complies with the intent of the Presidential Memorandum of November 5, 2009, which affirms this relationship and obligates the United States government to meet the spirit and intent of EO 13175. This document promotes inclusion of the Native Hawaiian community in a manner that will result in more efficient and effective decision making that will help ensure that future federal action is achievable, comprehensive, long-lasting, and reflective of the Native Hawaiian community's input.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

‘Ōlelo Hawai‘i Policy. 513 DM 3, the ‘Ōlelo Hawai‘i Policy, provides direction in the respectful and proper use of the Hawaiian language, ‘Ōlelo Hawai‘i. This document was developed in consultation with the Native Hawaiian community and recognizes that, from the usage of Indigenous traditional names for places, flora, fauna, and natural phenomena; to the receipt, transcription, and translation of testimony and comments, the recognition of native languages is a vital and essential component in establishing and maintaining relationships, trust, and reconciliation with Indigenous communities. The guidance supports and enhances existing efforts to promote the use of ‘ōlelo Hawai‘i when preparing federal documents and other communications that reference people, places, plants, and animals in Hawai‘i.

Action Needed. Members will be invited to discuss how the ACHP can support the Native Hawaiian community through this MOU and application of the SOP and the ‘Ōlelo Hawai‘i Policy. Members will also discuss opportunities to include additional signatories to the MOU to improve its reach and effectiveness.

Attachments:

- Standard Operating Procedure for Consultation with the Native Hawaiian Community
- ‘Ōlelo Hawai‘i Policy
- Draft Memorandum of Understanding among Participating Agencies of the Native Hawaiian Federal Interagency Working Group

March 8, 2024



United States Department of the Interior

OFFICE OF THE SECRETARY

Office of Native Hawaiian Relations



STANDARD OPERATING PROCEDURE FOR CONSULTATION WITH THE NATIVE HAWAIIAN COMMUNITY

I. BACKGROUND

A. About the Office

Congress established the Office of Native Hawaiian Relations (Office) within the U.S. Department of the Interior (Department) in 1995 and 2004.¹ The Assistant Secretary for Policy, Management and Budget (ASPMB) is responsible for administering the United States' responsibilities under the Federal laws governing the Hawaiian Home Lands Trust. The Office discharges the ASPMB's and Secretary's responsibilities for matters related to the Native Hawaiian Community (NHC), the Hawaiian Home Lands Trust, and, when appropriate, serves as a conduit for the Department's field activities in Hawai'i. This Standard Operating Procedure (SOP) is consistent with the Congressional directive that the Office "fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by assuring timely notification of and prior consultation with the Native Hawaiian people before any Federal agency takes any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands."²

B. United States' History with the Native Hawaiian Community

Since the annexation of Hawai'i as a U.S. territory in 1898, the Department has had a continuing role in the stewardship of lands and resources in the islands as well as the political and trust relationship with the Native Hawaiian people. Congress, under its plenary authority over Indian affairs, enacted the Hawaiian Homes Commission Act, 1920

Key: Self-identification is an exercise of self-determination.

Kanaka maoli and kanaka 'ōiwi are terms by which Native Hawaiian individuals may identify themselves. Lāhui is a term by which the Native Hawaiian Community may identify the political community as a whole.

Although the Framers of the U.S. Constitution used the term "Indian tribe" to broadly reference indigenous peoples, a grouping that includes the Native Hawaiian Community, Congress also has enacted laws distinctly and expressly for the benefit of the Native Hawaiian Community.

¹ In 1995, Congress directed the Secretary to appoint an individual to administer the responsibilities of the United States under the Hawaiian Home Lands Recovery Act (109 Stat. 357, 363) and the Hawaiian Homes Commission Act (42 Stat. 108). In 2004, Congress established the Office of Native Hawaiian Relations within the Office of the Secretary of the Interior. (118 Stat. 445).

² 118 Stat. 445, 446.

(HHCA)³ to protect the welfare of and rehabilitate the Native Hawaiian people. The HHCA provides for the homestead leasing of Hawaiian home lands to beneficiaries by having placed approximately 200,000 acres of former crown lands into the Hawaiian Home Lands Trust. For nearly 100 years, the State of Hawai‘i (vested with the day-to-day administration of the Trust) and the Secretary of the Interior have provided oversight of the Trust. Congress also set aside various tracts of former crown lands for the establishment of National Parks and National Wildlife Refuges. In the enabling legislation for the Hawai‘i Parks, Congress acknowledged the importance of Native Hawaiian history and sought to assist the NHC in both preserving and perpetuating its traditional activities and culture. It did so by affording the NHC the right to continue traditional fishing, gathering, and other customary practices, and provided opportunities for preferential employment at certain Parks.⁴

Congress further recognized a special political and trust relationship with the NHC through more than 150 legislative enactments. Under laws such as the Native American Graves Protection and Repatriation Act (NAGPRA), National Historic Preservation Act (NHPA), and Native Hawaiian Health Care Improvement Act (NHHCIA), Congress charged Federal agencies to work with the NHC through Native Hawaiian organizations (NHO).⁵

Congress requires Federal Agencies to work with NHOs who are the informal representatives of the NHC. The requirement to work with NHOs is necessary because the NHC currently lacks a unified formal government. It is also respectful of the traditional way the NHC has governed itself since the 1840s when the United States and other western powers began to infiltrate the Kingdom of Hawai‘i’s central government.⁶

Resource: [*Consultation with Native Hawaiian Organizations In the Section 106 Review Process: A Handbook*](#)

The Office worked with the Advisory Council on Historic Preservation (ACHP) to create this handbook that provides tools, requirements, principles, and tips specifically geared toward helping Federal Agencies engage and reach successful outcomes when working with the NHC on actions triggering Section 106.

³ 42 Stat. 108.

⁴ See 92 Stat. 3499; 52 Stat. 784; 94 Stat. 3321, 3323.

⁵ 81 Fed. Reg. 71,278 (Oct. 14, 2016) (*And when enacting Native Hawaiian statutes, Congress expressly stated in accompanying legislative findings that it was exercising its plenary power over Indian affairs: “The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.” Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(17); see H.R. Rep. No. 66–839, at 11 (1920) (finding constitutional precedent for the HHCA “in previous enactments granting Indians . . . special privileges in obtaining and using the public lands”); see also Native Hawaiian Education Act, 20 U.S.C. 7512(12)(B)).*

⁶ Davianna Pōmaika‘i McGregor, *Nā Kua‘āina: Living Hawaiian Culture* (Honolulu: Univ of Hawai‘i Press, 2007) pp. 3, 12-14, 55-59 (July petition to Kamehameha III by 1600 commoners concerning “the independence of the kingdom,” and prohibiting foreigners to own land); see also Silva, *Aloha Betrayed*, pp. 38-9; E.S. Craighill Handy and Mary Kawena Pūku‘i, *The Polynesian Family System in Ka‘ū, Hawai‘i* (Rutland, VT: Charles E. Tuttle, 1976), pp. 5-6.

Unlike tribes in the continental United States that have government officials who are easily identifiable, the NHC's leadership can be difficult to discern. Some NHOs serve the interests of the NHC as a whole, and others are focused geographically [generally *moku* (district) based] or by subject matter. The Office maintains the Department's NHO List at www.doi.gov/hawaiian, in part, to help Federal Officials identify the most appropriate NHC leaders to work with on a particular project.

C. Requirements to Consult with the Native Hawaiian Community

Congress expressly requires Federal agencies consult with the NHC under specific statutes such as NAGPRA, Section 106 of the NHPA and the NHHCIA. Congress has also required Federal agencies to consult before taking actions that have the potential to significantly affect Native Hawaiian resources, rights, or lands by correspondingly charging the Office with fully integrating the policy and practice of meaningful consultation by such Federal agencies.

The corollary to the underlying principles for formulating or implementing policies with implications for a native community in Executive Order 13175⁷ may be stated as –

The United States:

1. respects and furthers its special political and trust relationship with the NHC;
2. must continue to work with the NHC on a government-to-sovereign basis to address concerns related to self-governance, Native Hawaiian trust resources, and other Native Hawaiian rights; and
3. recognizes the right of the NHC to self-government and supports Native Hawaiian sovereignty and self-determination.

In summary, the United States recognizes and respects that the better resolutions of challenges affecting the NHC and its resources and interests are informed and often implemented by the NHC.

D. Building Relationships and Trust

Engaging the NHC, as with any other type of engagement, is all about relationships. The building of relationships with the NHC before an action requiring consultation occurs will pay large dividends. This is especially true when the action the Office is consulting on happens during an emergency or when time is limited. Mindful of this, the Office should seek input from NHC leaders even when not required by statute and when developing internal succession plans, include a means of connecting incoming staff to those leaders. The building blocks of a

⁷ Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Nov. 6, 2000.

relationship are generally composed of small acts consistently, openly, and honestly executed by the Office.

E. Historical Context and Importance of Cultural Understanding

Each consultation occurs on the continuum of the NHC’s experiences and relationships with officials and citizens of various nations, including the United States. While the United States has a special political and trust relationship with the NHC, it has acknowledged its role in historical events that altered the NHC’s exercise of its sovereignty. The resulting historical and intergenerational trauma endured by the NHC may affect how individual members of the NHC function and relate to others, especially the United States. Thus, it is important for the consulting official to understand the NHC’s history and relationship with the United States. The official, when appropriate, should also exemplify core values shared by consultation and Native Hawaiian culture, including humility, an ongoing process of self-exploration and self-critique, and a willingness to learn from others. This means entering a relationship with the NHC with the intention of learning of things the Office may not understand or even know about, as well as honoring their beliefs, customs, and values.

Resource: [*‘Ike Hawai‘i – A Training Program for Working with Native Hawaiians*](#)

Although the context of this training is for social work, its discussion of historical and intergenerational trauma and how the NHC’s endurance can be attributed in part to its cultural resiliency informs the importance and function of consultation.

II. PURPOSE OF THE STANDARD OPERATING PROCEDURE FOR CONSULTATION WITH THE NATIVE HAWAIIAN COMMUNITY

The purpose of this SOP for Consultation with the NHC is to provide the basic steps for working with the NHC on regulatory, policy, or other administrative decision-making matters. This SOP is written by and for the Office but may be used by any office or agency seeking to engage with the NHC. This SOP is intended to complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with the NHC or Federally-recognized tribes in the continental United States.

This SOP honors the government-to-sovereign relationship between the United States and the Native Hawaiian Community and complies with the intent of the Presidential Memorandum of November 5, 2009,⁸ which affirms this relationship and obligates

Input Welcome: This SOP is a living document that is intended to reflect the collective uses and experiences of the Office, other Federal agencies, and the Native Hawaiian Community. Mahalo to all who have helped shape this SOP in countless ways. The Office continues to welcome suggestions to improve and enhance this SOP. Mahalo nui loa.

⁸ Presidential Memorandum on Tribal Consultation, November 5, 2009.

the Office to meet the spirit and intent of EO 13175.⁹ Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon the exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Office operations and governance practices. To that end, the consulting official(s) will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding an action with NHC implications. Efficiencies derived from the inclusion of the NHC in the Office's decision-making processes through consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of the NHC's input.

III. DEFINITIONS

When working with the NHC, the following definitions may prove helpful.

Actions with Native Hawaiian Community Implications (Action) generally includes any rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on the NHC on matters including, but not limited to:

- (1) Native Hawaiian cultural practices, lands, natural and cultural resources, or access to traditional areas of cultural or religious importance on Federally managed lands;
- (2) The ability of the NHC to govern or provide services to its members;
- (3) The NHC's relationship with the United States; or
- (4) The consideration of the Department's statutory trust responsibilities to the NHC. This, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

Ahupua'a (singular and plural) means a land division in Hawai'i usually extending from the uplands to the sea which traditionally was, and in some cases remains, self-sustaining or whose occupants were or are permitted a right to gather and access for subsistence, cultural, or religious

⁹ 81 Fed. Reg. 71,278 (Oct. 14, 2016) (*A government-to-government relationship encompasses the political relationship between sovereigns and a working relationship between the officials of those two sovereigns. Although the Native Hawaiian community has been without a formal government for over a century, Congress recognized the continuity of the Native Hawaiian community through over 150 separate statutes, which ensures it has a special political and trust relationship with the United States. At the same time, a working relationship between government officials is absent. This rulemaking provides the Native Hawaiian community with an opportunity to have a working relationship, referred to as the "formal government-to-government relationship." The Native Hawaiian community's current relationship with the United States has substantively all of the other attributes of a government-to-government relationship and might be described as a "sovereign to sovereign" or "government to sovereign" relationship. It is important to note that a special political and trust relationship may continue to exist even without a formal government-to-government relationship.*).

purposes. In contemporary times, ahupua‘a is also considered a cultural resource management principle.

Beneficiary or beneficiaries means “native Hawaiian(s)” as that term is defined under section 201(a) of the Hawaiian Homes Commission Act.

Comment means information, concerns, advice and suggestions that may be received orally or in writing through methods of submission specified by the Office, including during consultation meetings. *Input* refers to an aggregate of comments.

Consultation or consult generally means representatives of the government engaging in an open discussion process that allows interested parties to provide input regarding potential government issues, changes, or actions. Consultation does not transfer or cede government decision-making authority. Consultation requires dialogue which does not necessarily require, although often preferred and highly recommended, formal face-to-face meetings. Consultation may also occur through telephonic, electronic, or printed means. The complexity and geographic location of the Action along with the potential effects that the matter may have on the NHC will dictate the appropriate process and means for consultation.

Consultation Report refers to a document that reports on the consultation meetings and discussions as well as the comments received relating to an Action necessitating a consultation and lists any interim and preliminary recommendations and decisions made during the consultation process, when applicable.

Cultural affiliation or culturally affiliated means a connection between a cultural item or place and a present day NHO is established by reasonably tracing a relationship of shared group identity between the present day NHO and an identifiable prehistoric or historic earlier group connected to the cultural item or place.

Hawaiian Home Lands Trust means all trust lands given or that assumed the status of available lands or Hawaiian home lands under sections 203 and 204 of the Hawaiian Homes Commission Act, respectively, and as otherwise directed by Congress.

Hawaiian Homes Commission Act (HHCA) – A cooperative federalism statute, a compound of interdependent Federal and State law that establishes a Federal law framework but also provides for implementation through State law, the HHCA designated tracts totaling approximately 200,000 acres of available lands throughout Hawai‘i for exclusive homesteading by eligible native Hawaiians. Act of July 9, 1921, 42 Stat. 108. Introduced, revised and reported as a bill for the “Rehabilitation of Native Hawaiians,”¹⁰ the HHCA was enacted in response to the precipitous decline in the Native Hawaiian population since Western contact. By 1919, the Native Hawaiian population declined, by some estimates, from several hundred thousand in 1778 to only 22,600. 20 U.S.C. § 7512(7).

¹⁰ H. R. Rep. No. 839, 66th Cong., 2d Sess., 1-2 (1920).

HHCA Beneficiary Association means an organization controlled by beneficiaries who submitted applications to the DHHL for homesteads and are awaiting the assignment of a homestead; represents and serves the interests of those beneficiaries; has as a stated primary purpose the representation of, and provision of services to, those beneficiaries; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description.

Homestead Association means a beneficiary-controlled organization that represents and serves the interests of its homestead community; has as a stated primary purpose the representation of, and provision of services to, its homestead community; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the territory it represents.

Homestead and Beneficiary Associations (HBA) means Homestead Association(s) and HHCA Beneficiary Association(s) and *an HBA* means either a Homestead Association, an HHCA Beneficiary Association or a Homestead and HHCA Beneficiary Association.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i.

Native Hawaiian Community (NHC) means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.

Native Hawaiian organization (NHO) means any organization that:

- (1) Serves and represents the interests of Native Hawaiians;
- (2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (3) Has expertise in Native Hawaiian affairs,

and includes but is not limited to:

- a. Native Hawaiian organizations registered with the Department of the Interior’s Office of Native Hawaiian Relations; and
- b. HHCA Beneficiary Associations and Homestead Associations as defined under 43 C. F. R. §§ 47.10 and 48.6.

IV. CONSULTATION STANDARD OPERATING PROCEDURE

Depending upon the Action, the form and intensity of consultation will vary. Routine operational activities may necessitate a simplified process; whereas, rulemaking or changes in policy may require a more formal and structured process. There is no “standard” for consultation; however, all consultations should generally follow the seven procedural steps listed in this section.

Using the flow chart attached to this SOP, record each action taken under the seven steps. Creating a simple record of the findings or determinations made in each of the seven steps is a key feature of this Consultation SOP. By documenting the process, the Office:

- Assists the NHC and the general public to understand how the comments from the consultation were utilized in reaching a final decision;
- Provides an assurance of accuracy in the final decision; and
- Bolsters the defense of the final decision if litigation or controversy arises.

To assist in implementation of the seven steps, the Office also maintains a list of frequently asked questions (FAQ). Along with this SOP and its Seven Steps Flow Chart, the FAQ is a living document that the Office will revise and update as needed.

SEVEN STEPS

Step 1: Assessment – Is Consultation Needed or Advantageous?

At the outset of a proposed Federal action, it is important for the Office to assess whether consultation with the NHC is necessary or advantageous.¹¹ To conduct this assessment, it is important to consider the following:

- What is the proposed Federal action and its scope?
- Is it controversial or precedent setting?
- Is the NHC aware of the proposed Federal action and if so, what is the NHC’s level of awareness, interest, or concern in the proposed Federal action?
- What are the NHC implications, if any?

If at this stage, the proposed Federal action is neither controversial nor precedent setting, there is a low awareness or negligible interest, and/or there are no implications to the NHC; then it may

Key: Create a simple record of the findings and determinations made in each of the seven steps.

Aim to be clear and concise. A short phrase may be sufficient when documenting a bulleted action listed under a step.

¹¹ In cases where the Office is not the initiating the Action, but has agreed to partner with another Federal office, department, or bureau, the Office will seek adoption of this consultation SOP for that particular action.

be appropriate to conclude that the Action (see definition) does not require consultation with the NHC.

However, if any answers to the preceding questions is in the affirmative or there is significant awareness, interest, or implications within the NHC, then the Action warrants further assessment.

In particular, it is important to consider the following:

- How would the NHC be affected, both adversely and positively?
- How might the NHC offer unique solutions?
- Is consultation required by statute or policy (even if consultation is not required by statute or policy there may be other reasons to consult)?

Additionally, it is important to consider the Hawai‘i-wide context under which the Action is being conducted and how consultation might be conducted. For example, it is reasonable to assess the advantages or disadvantages to consulting with the NHC at a point in time, given the scope of the Action may be coinciding with other circumstances or Federal Actions. Would the NHC be confused, overwhelmed, or conflate multiple Federal Actions? Would it be advantageous to delay consultation or coordinate with other federal agencies on their consultation actions?

If, through the Office’s assessment of the Action, it is determined that consultation is necessary or advantageous to the Action, then the Office should proceed to the next step in the consultation process.

Step 2: Planning – Develop a Consultation Plan

Once it is determined that the Office will engage in consultation with the NHC for the Action, the Office needs to prepare for this process and begin the development of a Consultation Plan. There is no “one size fits all” for consultation planning as the level of depth and detail are dependent upon the scope of the Action. However, there are common principles that all planning activities should consider:

- **Goal/Purpose** – Given the scope of the Action and statutory or policy context under which consultation is to be conducted, it is important to determine the goals or purposes for the consultation. For example, is consultation on the Action to:
 - Provide information to the NHC about the Action and respond to questions;
 - Engage in a dialogue to exchange ideas or solutions about the Action;
 - Solicit and receive comments concerning the Action; or
 - All of the above?

These types of goals or purposes are a key factor in guiding the appropriate mode and forum of consultation with the NHC.

- **Mode or Forum** – In general, there are three modes of consultation: in-person or face-to-face; e-remote such as teleconferences, video calls, or webinars; and written, either through hard copy or electronic submissions (email or FAX). Each mode of consultation has its strengths and limitations, and it will be incumbent on the Office to determine which mode is most appropriate given the goals and purpose of the consultation. In order to include participants who have connectivity or mobility issues or lack transportation, consider making hard copies of background information available by mail upon request or at a local library or government office and always provide a means by which the NHC may physically submit written input.
- **Budget** – In deciding on the most effective mode of consultation, another consideration for the Office (as with any government agency) is the available budget for the Action. The cost of consultation, especially if it involves in-person meetings, can be substantial in Hawai‘i. Inter-island travel, lodging, facility rental and other expenses require thoughtful consideration given the Office’s annual budget and the scope of the Action. In some instances, while in-person meetings may be most desired by the NHC, budgetary constraints may dictate that meetings be conducted through e-remote or written means.
- **Assemble a Team** – Inasmuch as consultation is about communication and dialogue, another important consideration for the Office is the identification of personnel to conduct consultation and their respective roles in the process. Having a defined team with assigned roles allows the Office to meaningfully consult with the NHC. Team members can also be drawn as needed from the Department or other federal government agencies. When appropriate, outside consultants and NHC members may also be designated as Team members.
- **Scope** – The scope of the Action will largely guide the consultation process. Actions that are small or limited in scope and guided by policy may only require a single consultation in the form of soliciting written comments. Complex or controversial Actions that are part of a regulatory process (e.g., NEPA,¹² NHPA, etc.) are much more structured and procedural. Consultation for Actions that involve new or amended Federal rulemaking are guided by the content and complexity of the proposed rule. The Office will need to determine the most appropriate mode and number of consultation meetings that align with the Action and available budget. In this planning effort, the Office will need to consider the geographic locations for any in-person meetings, and their respective ease of access and seating capacity, support equipment, etc. For e-remote meetings it is important to consider the call-in or access capacity of any teleconference or videoconference system.

¹² “NEPA” means the National Environmental Policy Act of 1969, 42 U.S.C. §§4321 *et seq.* NEPA’s basic purpose is to assure that all branches of the Federal government give proper consideration to the environment prior to undertaking any major Federal action that significantly affects the environment.

- **NHO and HBA Engagement** – Another consideration in consultation planning is to engage an NHO or HBA for assistance. Such organizations and associations often have place-specific knowledge and long-standing relationships within the NHC and have an interest in the Action. Further, for in-person consultations, NHOs and HBAs may have facilities or other support services that can be provided to the Office to assist in consultation. Depending on the scope of the Action and purpose of the consultation, early outreach and engagement with such NHOs or HBAs can benefit the Office.
- **Information for the NHC** – To assist the Office in consultation (regardless of the mode), it is vital to provide NHC participants with sufficient information through which they can not only understand the scope and effect of the Action, but more importantly, provide the Office with meaningful comments that the Office can consider in its deliberation and decision-making. Information that will be helpful to the NHC in consultation can include, but is not limited to: FAQs, maps, graphics, prior studies or research, and regulations or policies concerning the Action. In general, more information provided to the NHC is better and demonstrates transparency of the Office. For some Actions, establishing a specific page on the Office’s website may be a convenient means of providing information and updates to the NHC.
- **Report Out** – In addition to providing the NHC information about the scope of the Action, it is also important to share with the NHC how their comments will be used and reported by the Office, and how they will inform decision-making on the Action. Additional details are provided in Steps 6 and 7 below.

As the Office considers the above-mentioned planning elements, the Office will benefit from documenting its analysis, decisions, and supporting rationale in a Consultation Plan for the Action. Again, the depth and detail of the Consultation Plan should be commensurate with the scope of the Action and the purposes and goals of consultation. At a minimum, a Consultation Plan should include:

- The basis and rationale for consultation;
- A description of how NHC input will be used and reported for the Action;
- An agenda/outline of the consultation meetings; and
- The mode, location(s), and schedule of consultation meeting(s) with key milestones.

Step 3: Notification – Invitation to Consult

Implementation of the Consultation Plan typically begins with a notification or invitation to the NHC to begin consultation on the Action. Invitations and notices can take several forms, including but not limited to notices in local newspapers or government publications, letters to NHC leaders, or electronic or telephonic communication to NHC leaders.

Regardless of the mode, notifications or invitations should contain sufficient information that:

- Describes the Action and its scope;
- Describes how the comments received from the NHC will be used by the Office;
- Provides supporting information and materials (FAQs, maps, weblinks to reports or studies, etc.);
- Provides a point-of-contact email, telephone, and mailing address for general questions and written input;
- Provides the date(s) and time(s) for the consultation meeting(s). Sufficient time should be provided to interested parties and the date of the (first, if there are several) consultation meeting should be no less than 30-days from the date of the notice or invitation. If exceptional circumstances prevent notice within 30 days of the consultation, an explanation for the abbreviated notification should be provided. The Office may contact NHC leaders to determine their availability for consultation meetings in order to increase the effectiveness of the meeting(s).
- Provides the location(s) of the consultation meeting(s) if in-person meetings will be conducted; or provides the telephonic or video call-in information if consultation will be conducted remotely; and
- Provides the deadline date and time for receipt of written comments.

At a minimum, notifications and invitations to consult shall be sent to the NHO List and HBA List posted to www.doi.gov/hawaiian.

Step 4: Dialogue – Conducting Discussion(s)

Engaging the NHC in dialogue is the most important aspect and the heart of the consultation process. As such, it is vital that it be conducted in a manner that not only informs the NHC of the Action and its implications, but also creates a suitable environment through which meaningful comments and feedback can be shared and received. Determining the mode of dialogue (written correspondence, tele- or video-conference calls, in-person discussions, etc.) is best performed during consultation planning (Step 2). However, there may be times when it is necessary to modify the means and level of dialogue with the NHC even after an initial notification has been sent out to the NHC.

Preparation is essential before engaging in a dialogue with the NHC. Even with the simplest consultations, or those that are done through written comments require the Office to be prepared before contact is made. Prior to a consultation meeting, it is important for the Office to:

- Confirm consultation leader(s) and/or facilitator(s);
- Confirm Office representatives to attend;
- Assign speaking roles for Office staff (e.g., opening, background, closing, etc.);

- Develop ground rules (including how to deal with conflicts of opinion and views during the meeting) and an agenda for the meeting;
- Print materials for distribution (FAQs, maps, graphics, prior reports or studies, etc.);
- Prepare presentation materials (slides, handouts, etc.);
- Determine mode and system for collection of input (e.g., note taking, recording, etc.); and
- Conduct practice “dry runs” of the meeting.

For in-person consultation meetings, it is also important for the Office to:

- Review logistics (travel, audio-visual needs, signage, accessibility, directions to meeting space, etc.); and
- Secure any meeting support services (recording, facilities, security, etc.)

On the day of a consultation meeting, there are additional items that the Office needs to consider. Since it may be the first time the Office is meeting with NHC leaders, making a good first impression can help the meeting and any future engagements be more productive. For in person meetings, the Office should:

- Arrive early to set up and test equipment and greet participants;
- Review agenda and double-check materials;
- Reconfirm ground rules and speaking roles;
- Confirm any cultural protocol; and
- Reconfirm meeting support services.

Similarly, on the day of an e-remote consultation where teleconferencing or videoconferencing will be utilized, the Office should:

- Email participant reminders and instructions for entry and participation (e.g., password for access to meeting, how to virtually raise hand to speak, whether there is a need to mute phone while others are speaking, etc.), if needed;
- Ensure communication systems are operating and connectivity is established;
- Conduct tests of presentations, facilitation controls, as necessary; and
- Log-on or call-in early to greet participants.

During the consultation meeting, it is important for the Office to cover various administrative, cultural, and procedural actions to help start the meeting with the right tone, allow NHC leaders to effectively contribute their comments, and end the dialogue with an understanding of next steps. The Office should:

- Have a sign-in sheet with contact information;
- Greet participants as they arrive and assist them as needed;
- Allow for cultural protocol to open the meeting and at the end to close the meeting;

- For smaller consultation meetings, allow for self-introductions and brief remarks;
- Review agenda and meeting purpose and goals;
- Provide historical context for the Action;
- Discuss the administrative process and milestones;
- Remind participants on how to submit comments;
- Remind participants about how their comments will be used by the Office;
- Remind participants to leave contact information; and
- Review schedule and next steps after consultation.

Having a successful consultation meeting with the NHC requires good facilitation to keep the meeting on-schedule and on-agenda. Without active facilitation, meetings can easily get off-subject and confuse or aggravate NHC leaders and result in difficulties for future consultation meetings and potential delays in completing the Action. Whether the Office facilitates the meeting or uses a 3rd party facilitator or moderator, it is important that they:

- Relax – Most of the hard work was done during the preparation. Take time to establish rapport with participants. If you are visibly stressed, this can be misinterpreted as being defensive;
- Be responsive to questions or create “parking lot” for issues not specific to the agenda;
- Set ground rules for the meeting;
- Ask tele- or video- conference attendees to mute their microphones when not speaking;
- Create “safe” environment for open discussion;
- Enforce speaking time limits and meeting length;
- Manage participant expectations;
- Maintain focus on agenda - minimize digressions and refer unrelated issues to the “parking lot”;
- As appropriate, afford NHC leaders an opportunity to consult with one another in exercise of their self-determination and self-governance;
- If time permits, go around the room to provide each person an opportunity to share their thoughts about the Action (this demonstrates to each participant that you value their voice and also allows introverts to participate without having to compete with extroverts);
- Thank participants for their comments and attendance; and
- Treat participants with respect and seek understanding of the message being conveyed rather than the technical application of the law. Specifically, participants may attempt to utilize terms and requirements from state laws or traditional practices. While those laws may not directly apply, the Office should be respectful of the message conveyed by the participants and consider the information conveyed in the consultation process. Be attentive to participant comments.

Step 5: Input – Receiving Comments

After information about an Action is provided, a comment period of at least 30 days (when feasible) is highly recommended. All oral and written comments shall be reviewed. Oral comments may be summarized for purposes of including in the Consultation Report for the Action. The Hawaiian language, ‘Ōlelo Hawai‘i, is an official language of the State of Hawai‘i and the Office should anticipate that comments (oral and written) may be received in ‘Ōlelo Hawai‘i. Cultural context is also important and significant to the sharing and understanding of traditional indigenous knowledge. The Office may need to contract services for accurate recordation and subsequent translation and interpretation. While a transcript of meetings may be helpful, it is not required.

When receiving comments, the Office shall:

- Secure appropriate means to record and convert oral comments into written electronic form;
- Secure ‘Ōlelo Hawai‘i translation, if needed;
- Prepare and organize written transcripts or notes;
- Establish a filing system to receive and store written comments; and
- Maintain files for the administrative record.

Key: Traditional indigenous knowledge encompasses indigenous knowledge systems, cultural understandings, beliefs, values and philosophies, and traditional practices that respect, preserve and perpetuate the relationship between and among people and the elements, processes and cycles of the natural environment.

Step 6: Consideration – Review and Deliberation of Input

During a consultation, the Office may receive a flood of comments for the Action. To effectively utilize and consider the comments, the Office must first sort through and organize the comments according to the issues and aspects of the Action they address and sometimes filter out comments that do not pertain to the Action. Whether a comment is expressed by one individual or many organizations, the number of occurrences or people represented by such expressions does not necessarily add weight to how such a comment should factor into decision-making. The basis and rationale within the comment is most instructive. However, when a comment is expressed multiple times and its basis and rationale are not clear, it may be helpful to seek clarification in order to understand the basis and rationale.

Key: The Office’s general deliberative process privilege – which considers Departmental priorities and policies, legal authorities, operational and other internal considerations and any other applicable privileges – shall not be limited by the consultation comments review process.

After organizing and reviewing the comments received, and after considering how the comments’ recommendations regarding the Action’s decision-making may inform

the corresponding issues and aspects of the Action, the Office shall prepare a Consultation Report. The Consultation Report should serve to demonstrate both internally and externally how input was considered and processed. For some Actions, the consulting parties may review and comment on a draft of the Consultation Report. However, for other Actions, the Consultation Report is strictly within the purview of the Office.

When engaging in the review and deliberation of input the Office shall:

- Review all comments received during consultation;
- Organize the comments according to the issues and aspects of the Action they address;
- Decide what to do with non-responsive comments, perhaps report as “Other Comments”;
- If necessary, seek clarification of comments received;
- If dealing with potentially sensitive information regarding human remains and associated funerary objects, list only locational information that would be required in a notice which includes the county and State where the human remains and associated funerary objects originated, if known;
- Adhere to regulatory or pre-established timeframes for completing the review of comments and provide justification if a time extension is necessary; and
- Prepare a Consultation Report that, at a minimum, includes the following summaries:
 - Federal action necessitating the consultation,
 - Comments received through consultation, and
 - Interim and preliminary recommendations and decisions made during the consultation process, when applicable.

Step 7: Reporting – Notice and Dissemination

Reporting back to the NHC is one of the most important steps in effective consultation. Regardless of whether the final decision on the Action aligns or conflicts, in whole or in part, with the input provided by the NHC, participating parties should always be afforded the opportunity to see how their input was utilized in the decision-making process. The Consultation Report may be its own stand-alone report, or it may be integrated into another document. Oftentimes when published concurrent with the notice of final decision, the Consultation Report will reference how comments were considered and affected any aspects of the decision-making.

The Office must post the Consultation Report on its website or send it to the participating parties. The Office must also include a copy of the Consultation Report in the Action’s administrative record.

Key: While reporting is listed as the seventh and final step in the consultation process, this does not preclude the Office from reporting out at any other time(s) in the process. If the Office concludes that the consultation process will be enhanced by reporting out prior to Step 7, the Office may do so.

V. DECISION-MAKING – RESOLVE, REFINE AND DOCUMENT

While the Office may retain the ultimate authority to decide whether to proceed with an Action, it is important to support that decision with solid information. To this end, informed and effective decision-making is the ultimate objective of the consultation process. In some situations, the Office makes decisions throughout the consultation process. In others, the Office makes decisions only after the consultation process has concluded. No matter at what step the decisions are reached, it is always beneficial to document how that decision was arrived at and the role the consultation played in that decision. By doing so, the Office supplements its authority with the expertise from the NHC to better inform the Office’s decision-making. Whether the final decision aligns with or differs from the positions of the NHC, documenting and sharing this information is also an important tool in building trust with the NHC and securing their future participation and assistance.

When documenting decision-making, the Office may revise the Consultation Report and administrative record to:

- Update any change in interpretation or understanding of the comments received;
- Connect the comments and rationale to the final decision; and
- Provide supporting documentation relevant to input received from the NHC.

Value Added: The notice of final decision and rationale should reflect the value added by the consultation process in order to validate the investment of time, effort and resources by the Office and the Native Hawaiian Community as well as encourage future Federal agency and Native Hawaiian Community engagement.

VI. CONCLUSION

In the more than 25 years since Congress directed the Secretary to engage in meaningful, regular, and appropriate consultation with the Native Hawaiian people, the Office has made every effort to meet this important responsibility. This SOP incorporates what we have learned about consultation with the NHC. It anticipates the need to expand and adapt our understanding of how to continue the process of reconciliation with the Native Hawaiian people and to honor the special legal relationship they share with the United States. We invite comments and recommendations on how we can better achieve these essential goals.

APPENDIX A

FREQUENTLY ASKED QUESTIONS

1. Should the Office use the terms Indian or Tribe when referring to Native Hawaiians or the Native Hawaiian Community?

Short answer: It depends on the context in which those terms are used.

Discussion: The terms Indian and Tribe as used in the context of the U.S. Constitution and the plenary authority of Congress over Indian affairs are inclusive of Native Hawaiians and the NHC. Thus, use of those terms in reference to federal law is correct, but doing so, in the context of a consultation may undermine efforts to build relationships and trust with the NHC. Like many other tribes, the traditional names and identifiers the NHC has for itself differ from those historically developed and eventually used by the United States.¹³ Many indigenous communities self-identify with words meaning “first people,” “real people,” and other variations of “people” in their own languages, while “outsiders” attributed to them names and labels sometimes associated with their linguistic or anthropological grouping or their homelands. Many indigenous communities have adapted to or adopted such historical names while continuing to self-identify using their own traditional terms. For example, the Ute Indian Tribes in Utah and Colorado are associated with the Uto-Aztecan language family and while they have adopted variations on the name “Ute Indian Tribe,” many continue to self-identify as the *núuchi-u* (“the people”). “Navajo” evolved from a Spanish adaptation of a Tewa-puebloan word referring to a “place of large planted fields” and members of the present-day Navajo Nation refer to themselves as *Diné* (“the people”). Early use of the term “Hawaiian” referred to the people of Hawai‘i and “Native Hawaiian” refers to the indigenous people of Hawai‘i, many of whom self-identify as *Kānaka ‘Ōiwi* (“native people” or literally “people of the ancestral bone”) or *Kānaka Maoli* (“real people”) or as part of the *Lāhui* (“Nation”).

When engaging in activities and correspondence with other Federal officials it is appropriate and necessary to use those terms provided by statute. However, officials should make every effort to be respectful both in those Federal-to-Federal activities and when engaged with Native American communities by utilizing the traditional names of those communities.

¹³ At the time of the Framers and in the nineteenth century, the terms “Indian,” “Indian affairs,” and “Indian tribes” were used to refer to the indigenous peoples not only of the Americas but also of the Caribbean and areas of the Pacific extending to Australia, New Zealand, and the Philippines. See, e.g., W. Dampier, *A New Voyage Around the World* (1697); Joseph Banks, *The Endeavor Journal of Sir Joseph Banks* (1770); William Bligh, *Narrative of the Mutiny on the Bounty* (1790); A.F. Gardiner, *Friend of Australia* (1830); James Cook, *A Voyage to the Pacific Ocean* (1784) (referring to Native Hawaiians).

2. What does it mean in Hawai‘i when the Office is working with a Native Hawaiian Community leader who says they represent the Kingdom of Hawai‘i?

There are multiple groups that claim they represent the Kingdom of Hawai‘i that was in place prior to the overthrow of the Monarchy. Some base their claim on genealogy, some on ideology, others based upon the need to see a wrong righted.

Much like the secessionist movements in Texas, California, and Alaska, the Kingdom or sovereignty organizations are a small but vocal segment of the NHC. As a Federal Official working with the NHC, every effort should be made to be kind and respectful of their views and to include their comments into the record. However, the Federal Government has made itself clear on multiple occasions that there are pathways to become a State, but none for seceding as a State.¹⁴

3. Why does the Office need to consult with multiple NHOs? It seems easier to consult with just the State of Hawai‘i agencies that represent the NHC – the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands – and a few of the statewide NHOs.

Short answer: Congress requires consultation with the NHOs as the informal representatives of the Native Hawaiian Community which does not currently have a unified formal government.

*A‘ohe pau ka‘ike i ka hālau ho‘okahi. All knowledge is not learned in just one school.
[One can learn from many sources.]¹⁵*

Discussion: Congress acknowledged or recognized the NHC by establishing a special political and trust relationship through over 150 enactments. This political and trust relationship exists even though there is currently no formal government. To ensure the requirements of the United States’ relationship with the NHC are met, Congress requires that Federal agencies consult with NHOs as the informal representatives of the NHC. Should a formal government-to-government relationship be reestablished with a Native Hawaiian government pursuant to 43 C. F. R. part 50,

¹⁴ 81 Fed. Reg. 71,294 (Oct. 14, 2016) (*To the extent persons claim that Hawaii is not a State within United States, the Department rejects that claim. Congress admitted Hawaii to the Union as the 50th State. The Admission Act, which was consented to by the State of Hawaii and its citizens through an election held on June 27, 1959, proclaimed that “the State of Hawaii is hereby declared to be a State of the United States of America, [and] is declared admitted into the Union on an equal footing with the other States in all respects whatever.” Act of March 18, 1959, sec. 1, 73 Stat. 4. This express determination by Congress is binding on the Department as an agency of the United States Government that is bound by Congressional enactments concerning the status of Hawaii. Under those enactments and under the United States Constitution, Hawaii is a State of the United States. Agents of the United States were involved in the overthrow of the Kingdom of Hawaii in 1893; and Congress, through a joint resolution, both acknowledged that the overthrow of Hawaii was “illegal” and expressed “its deep regret to the Native Hawaiian people” and its support for reconciliation efforts with Native Hawaiians. Apology Resolution at 1513. This Apology Resolution, however, did not effectuate any changes to existing law. See Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163, 175 (2009). Thus, the Admission Act establishing the current status of the State of Hawai‘i remains the controlling law.*)

¹⁵ Pūku‘i, Mary Kawena, ‘Ōlelo No‘eau: Hawaiian Proverbs and Poetical Sayings. Honolulu: Bishop Museum Press, 1983.

Congress and Federal agencies would evaluate whether consultation could occur under existing consultation policies, or whether such policies would require modification.

While the Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA), which are respectively charged with rehabilitating and improving the conditions of Native Hawaiians, can be effective partners when working with the NHC, and many of their employees and elected/appointed officials are leaders in the NHC, both DHHL and OHA are State agencies. In some situations, these State agencies may hold positions in opposition to those held within the NHC.

4. Is it necessary to hold meetings on each of the main Hawaiian Islands in order to meet our consultation responsibilities?

Short answer: It depends on the scope of the Action and its implications.

Discussion: The importance of the SOP assessment stage (Step 1) cannot be overstated. Once step one is complete and the scope of the Action is generally understood, only then can the Office begin consultation planning in Step 2 and determine the number of meetings and where they should be held. A good practical guide is the narrower the scope of the Action, the fewer the meetings and locations that are required.

For example, if there is a stone wall that marks the historical borders of a property in Ka‘ū on the Island of Hawai‘i and only NHOs in Ka‘ū are likely interested in this wall then the best course of action may be to hold a face-to-face meeting in Ka‘ū and to conduct an e-remote meeting with the remainder of the NHC. However, if the wall encloses a sacred site that is important to all Hawai‘i Island but not to the NHC at large, it may be necessary to conduct multiple face-to-face meetings on Hawai‘i Island. Further, if the Action has state-wide implications, such as the establishment of a new regulation governing historic properties, it may be necessary to conduct meetings on all the main Hawaiian Islands.

NHOs and HBAs are predominantly tied to a geographical area. This could be an island, a moku (a region or district of an island), or even an ahupua‘a. When filing with the Office, all NHOs and HBAs are asked to provide information regarding the geographic area their organization represents. Providing this information not only advances an NHO’s or HBA’s self-determination but allows users of the NHO and HBA lists to readily identify appropriate NHOs and HBAs that may be interested in the Action.

For a discussion about the traditional land divisions in Hawai‘i and their implication on NHC decision making and leadership structures the Department of the Interior, Bureau of Ocean Energy Management’s 2017 [Guidance Document for Characterizing Native Hawaiian Cultural Landscapes, appendix 2, sections 4-11](#), pages 33-42, provides a good overview.

5. Who does the Office listen to when there are multiple NHOs consulting on a Federal action and each has a conflicting recommendation?

When working with multiple NHOs the Office should consider each NHO's position. In situations where there are conflicting views between NHOs, the Office should, as appropriate, afford an opportunity for the NHOs to consult with each other. However, if the Office finds itself needing to choose one viewpoint, the best course of action is to weigh which NHO has the greatest cultural affiliation with the affected resource or interest.

The closest culturally affiliated NHO, in the following order, is:

- (i) An organization with a familial or kinship relationship to the earlier group connected to the cultural item if a cultural item is the subject of the consultation. If not, then move to (ii).
- (ii) An organization claiming a relationship of shared group identity only to the earlier occupants of the ahupua'a where the cultural item originated or the subject Action is primarily taking place, and not to the earlier occupants of any other ahupua'a.
- (iii) An organization claiming a relationship of shared group identity to the earlier occupants of the ahupua'a where the cultural item originated or the subject Action is primarily taking place, as well as a relationship of shared group identity to the earlier occupants of other ahupua'a on the same island, but not a relationship of shared group identity to all the earlier occupants of that island, or to the earlier occupants of any other island of the Hawaiian archipelago.
- (iv) An organization claiming a relationship of shared group identity to all the earlier occupants of the island where the cultural item originated or the subject Action is primarily taking place, but not a relationship of shared group identity to the earlier occupants of any other island of the Hawaiian archipelago.
- (v) An organization that has been in continuous existence from a date prior to 1893, and claims a relationship of shared group identity with the earlier occupants of more than one island in the Hawaiian archipelago.
- (vi) Any other culturally affiliated NHO.

6. If the Office consults with the Native Hawaiian Community, does that mean the Office turns over control to them?

No. Consultation means consideration, not control. The Official proposing to engage in actions with NHC implications is expected to be an expert in that action or a representative of those who are experts. However, if the Office finds itself in a situation where NHC leaders are expressing

opposition to the Office’s action, it is important to understand why and attempt to address the issue. Effective engagement makes for long lasting and effective policy making.

7. Are there other guidance resources available to the consulting official when consulting with the Native Hawaiian Community actions that trigger consultation under the National Historic Preservation Act?

Yes. In 2011, the Office worked with the Advisory Council on Historic Preservation (ACHP) to create the [“Consultation with Native Hawaiian Organizations In the Section 106 Review Process: A Handbook.”](#) As the title suggests, the handbook provides tools, requirements, principles, and tips specifically geared toward helping Federal Agencies engage and reach successful outcomes when working with the NHC on actions triggering Section 106.

8. When conducting a meeting with the general public, an agency typically places a panel of Department representatives along one side of a table at the front of the room and provides a sign-up sheet for people to take their turn to ask questions or make statements at a microphone in front of the panel and those in attendance. Should the Office utilize the same model with the Native Hawaiian Community?

The meeting model outlined in the question, often called the “open microphone” model, requires limited preparation and resources. This is a valid format and may be used when appropriate. However, before considering the manner or forum in which to conduct the consultation, it is important to determine the type and quality of comments desired as part of the “consultation planning” step described above.

Open microphone or public hearing settings are designed for that purpose – to “hear” or listen to the person speaking. It is not the best forum for engaging in a dialogue or conversation with an individual or an NHO. In these settings, the physical layout of a table with government officials seated on one side and NHC members on the other creates a barrier, a divide, or an “us vs. them” appearance. It could also connote to the NHC participants that the consulting official is merely checking a box and that the consulting official will not take their input seriously.

Keys to productive meetings with the NHC are in preparation and creating the appropriate setting and space. Sometimes, this may require travelling to individual communities for small gatherings instead of requiring the NHC to travel to the agency, or meeting with individuals one-on-one. In other instances, it may be appropriate to have the NHO or other NHC leaders convene and facilitate the meeting(s).

In general, when determining the appropriate form of consultation, the consulting official must seek to meet the consultation needs of the NHC while balancing the needs of the Agency. It is understood that striking a true balance is not always possible because of time or resource constraints. However, when the situation, time, and resources permit, every effort must be made

to create settings that facilitate dialogue instead of a “one-way” hearing. The benefits of doing this include:

- Encouraging a conversation or back and forth dialogue;
- Providing a “safe” environment where NHC input, concerns, or questions are more likely to be heard and responded to;
- Allowing for the building of a personal relationships and mutual respect between the member and the consulting official; and
- Being culturally appropriate to the NHC which conveys that their input is important and will be taken seriously.

9. When the Office is preparing for a consultation meeting with the NHC, what kinds of skills or staff capacities are important to have on-hand at the meeting?

When conducting consultation meetings, especially in-person meetings, there are four important roles: a leader, a facilitator, subject matter expert(s) (SME), and administrative support. It is difficult for one individual to effectively fill all these roles and have a productive meeting. As such, having a team at the meeting allows for more productive dialogues, reduces staff strain, and affords better analysis of comments received.

Facilitator – The role of an effective facilitator cannot be over emphasized. This person must be highly skilled at communication, personal interaction/engagement, time management, and emotional restraint. For Actions that are controversial with the NHC, consultation meetings will likely be confrontational or adversarial. The facilitator will be at the center of the dialogue and must have wherewithal to manage participant engagement and while maintaining an inner calm and focused mental state.

Leader/Policy Maker (leader) – When a leader is present at the meeting, especially if the Action involves a formal decision by the leader, it is important to manage the leader’s participation and engagement so as not to give the NHC participants the impression that the decision was pre-determined. In such meetings, it may be best to have the leader only make introductory and closing remarks and have a separate facilitator manage the rest of the meeting. If the leader is new to working with the NHC, they should be appraised ahead of time that there is generally a strong feeling of mistrust of any Federal official who comes to the NHC saying they are here to help (see the background section of this consultation SOP for more detail).

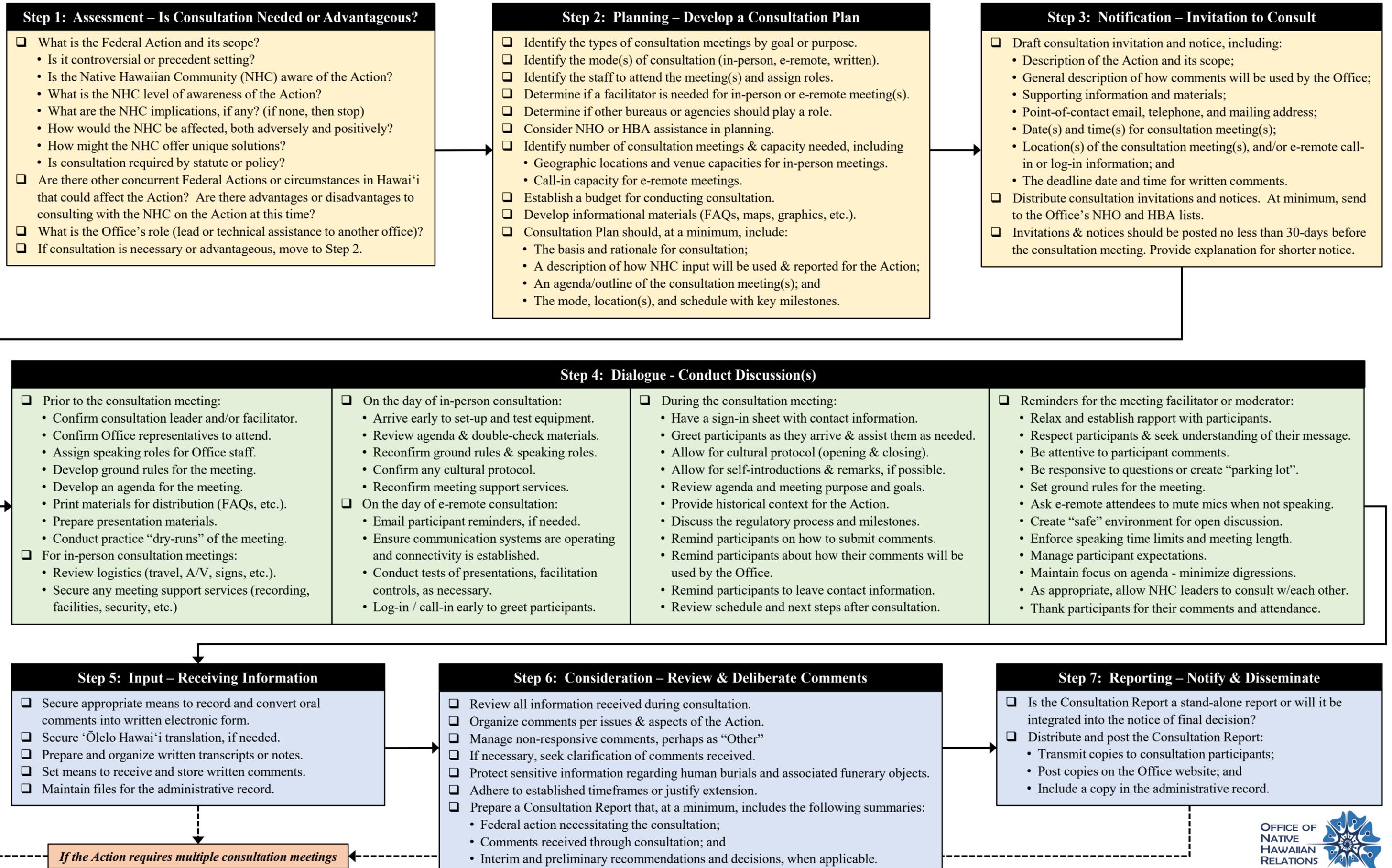
Subject Matter Expert (SME) – Persons with expertise covering the scope of the substance and administrative process pertaining to the Action should be SMEs and serve to assist the facilitator and leader to either present technical information to, or respond to questions from, the NHC. In consultation meetings where there is a separate facilitator or leader, SMEs need to be mindful of their role and avoid taking over the meeting or speaking for the leader. The most effective SMEs are those who are open and receptive to, rather than threatened by or dismissive of, the knowledge base (including traditional indigenous as well as scholarly knowledge) within the

NHC. A willingness to listen and learn while still teaching is essential for those serving in this role.

Administrative Support – The difference between successes and failures and an effective and ineffective consultation meeting most often resides with the performance of the administrative support staff. Their role is to enhance the abilities of the consultation team by ensuring the consultation meeting begins and remains organized and proper recordation of the meeting occurs. Those who have participated in a consultation meeting share that it is difficult to engage in meaningful dialogue when one of the parties must divide their attention between listening and understanding, capturing notes, and greeting and distributing information to other participants. Having a separate person provide administrative support sends a powerful message to the participating parties that what is being discussed and the input provided is important. Their work also helps ensure an accurate administrative record is kept and a defensible decision regarding the Action is reached.

Key: When engaged in a consultation where trust is an issue, the Administrative Support can help to build trust by displaying notes on an overhead screen that allows participants to review and correct notes as they are taken.

APPENDIX B -- PROCEDURE FOR CONSULTATION WITH THE NATIVE HAWAIIAN COMMUNITY



Department of the Interior Departmental Manual

Effective Date:

Series: Intergovernmental Relations

Part 513: Native Hawaiian Community

Chapter 3: Use of the Hawaiian Language, ‘Ōlelo Hawai‘i

Originating Office: Office of the Secretary

513 DM 3

3.1 **Purpose.** This chapter provides direction for all Department of the Interior (Department) Bureaus and Offices in the respectful and proper use of the Hawaiian language, ‘ōlelo Hawai‘i. This chapter also assists Bureaus and Offices with their efforts to follow chapter 5.25 of the U.S. General Printing Office Style Manual (2016), issued under the authority of section 1105 of title 44 of the U.S. Code.

3.2 **Scope.** All Department Bureaus and Offices shall follow the provisions in this chapter in their use and treatment of ‘ōlelo Hawai‘i.

3.3 **Authority.** The Native American Languages Act, 25 U.S.C. §§2901-2906 (1990), declares that it is the policy of the United States to preserve, protect, and promote the rights and freedoms of Native Americans, including the Native Hawaiian Community, to use, practice, and develop Native American languages. The special political and trust relationship established by Congress between the United States and the Native Hawaiian Community supports and promotes such exercise of self-determination by the Native Hawaiian Community. As a corollary to Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments), appropriate and meaningful engagement with the Native Hawaiian Community is furthered by the respectful and proper use and treatment of ‘ōlelo Hawai‘i.

3.4 **Importance of orthography.** How ‘ōlelo Hawai‘i is expressed in written form is especially important for those whose primary language is not ‘ōlelo Hawai‘i. In the 1820s, a Hawaiian orthography was developed for the traditional oral language and originally consisted of a twelve character alphabet – five vowels (a, e, i, o, u) and seven consonants (h, k, l, m, n, p, w) – for native or first language speakers of ‘ōlelo kanaka who primarily recognize the correct word and pronunciation from the context in which the word is used. It was modified approximately thirty years later to consist of a thirteen-character alphabet – the same five vowels and seven consonants, plus an additional consonant, the ‘okina or glottal stop – and later incorporated use of a diacritical mark, the kahakō or macron which is used only over vowels, for many whose primary language is not ‘ōlelo Hawai‘i. Certain breaks and emphases in pronunciation are significant in ‘ōlelo Hawai‘i as they distinguish the meanings of words. A commonly cited

example is a set of short words: *pau*: finished; *pa‘u*: soot; *pa‘ū*: damp; *pā‘ū*: skirt. Without the ‘okina and kahakō, the distinction between meanings may be unclear, especially to a novice speaker. There are also other orthographies associated with different Hawaiian dialects, such as the traditional and interchangeable use of t/k and r/l in ‘ōlelo kanaka on Ni‘ihau.

3.5 **Responsibilities.** Each Bureau and Office that engages in communication with the Native Hawaiian Community or produces documentation addressing places, resources, actions, or interests in Hawai‘i is directed to provide guidance and accessibility to staff for:

A. Use of modified orthography; respect for others. As discussed above in paragraph 3.4, the modified orthography is especially helpful for many whose primary language is not ‘ōlelo Hawai‘i. Thus, the Department and its Bureaus and Offices shall use the modified orthography consisting of the thirteen-character alphabet, including the ‘okina, and use of the kahakō diacritic to convey the intended word and meaning, except in those instances identified in paragraph C.

B. Usage of ‘ōlelo Hawai‘i-specific keyboard tools, forms, and templates.

C. Standards of usage. ‘Ōlelo Hawai‘i shall be used for the following, with the noted exceptions:

(1) Flora and fauna endemic or indigenous to Hawai‘i, except when the traditional name has been lost or its existence is unknown, until the species has been renamed or named.

(2) Hawaiian cultural sites and features.

(3) Geographic place names in Hawai‘i.

(4) Government units:

(a) State of Hawai‘i

(b) County of Kaua‘i, City and County of Honolulu, County of Maui, Kalawao County, County of Hawai‘i.

(5) Plural forms. Plural forms of Hawaiian nouns generally remain the same while the preceding article or numerical reference changes, thus a lei (garland), two lei, three lei. However, emphasis is placed on the first vowel when the Hawaiian word has three syllables. Thus, a kanaka (person), two kānaka, three kānaka. If a plural –s is used, see “Modified forms”.

(6) Modified forms. Hawaiian syllable structure is (C)V(V) where C is any consonant and V is any vowel, thus never ending with a consonant. With the exception of

possessives, modified forms of Hawaiian words generally do not follow Hawaiian syllable structure or Hawaiian orthography. Thus, Hawai‘i has an ‘okina while Hawaiian ends with a consonant and does not have an ‘okina. However, the possessive Hawai‘i’s properly includes the ‘okina.

D. Translations. Proper use of ‘ōlelo Hawai‘i also integrates or reflects Hawaiian culture, perspectives, and worldview, thus translations of single words, phrases, sentences, and paragraphs should be undertaken with proper guidance. Native or first language speakers or highly fluent second language speakers would be helpful resources for such translation services.

3.6 Hawaiian words and orthography. Respecting Hawaiian cultural ideology, the Department recognizes that there does not exist a single authoritative source for ‘ōlelo Hawai‘i. However, the *Hawaiian Dictionary* (Pukui & Elbert, 2003) shall serve as the Department’s baseline standard and be used for spelling and the use of spaces, diacritical marks, hyphens, etc., when using ‘ōlelo Hawai‘i for non-geographic words/place names. As with other languages, ‘ōlelo Hawai‘i continues to develop and change. Thus, Bureaus and Offices may use other standard works such as the *Māmaka Kaiāo* dictionary by ‘Aha Pūnāa Leo / Hale Kuamo‘o, but must maintain in their administrative record the reference source for the Hawaiian word(s). The *Hawaiian Dictionary* and other standard works are available on-line in a searchable database at www.wehewehe.org.

A. The Department will plan an annual meeting of ‘ōlelo Hawai‘i experts and may, in its discretion, coordinate discussions with ‘ōlelo Hawai‘i experts on an as-needed basis, for the purpose of learning about different perspectives and developments in the revitalization of ‘ōlelo Hawai‘i that may be relevant to usage of ‘ōlelo Hawai‘i by the Department and its Bureaus and Offices.

3.7 Hawaiian proper names of individuals and organizations; quotations and citations. When using the proper name of an individual or organization, use the name(s) given by that individual or organization. When quoting or citing from published works or submitted written testimony or comments, the quotation or citation shall remain as published or submitted with no insertions, deletions, or substitutions of alphabet or diacritical marks.

3.8 Hawaiian geographic names. When using a Hawaiian geographic name, the Bureau or Office shall use the Hawaiian names listed by the Hawai‘i Board on Geographic Names (HBGN) and the U.S. Board on Geographic Names (BGN). If there is a discrepancy between the HBGN and the BGN, the Bureau or Office shall use the BGN name. The U.S. Geographic Names Information System (GNIS) contains the information about the official names for places, features, and areas in the 50 states, the District of Columbia, and the territories and outlying areas of the United States, including Antarctica. GNIS is the geographic names component of The National Map.

3.9 Background on the Relationship Between the Hawai‘i Board on Geographic Names and the BGN. In the late 1990s, the U.S. Geological Survey (USGS) began updating the 1:24,000 quadrangle maps of Hawai‘i. One of the features of the updated maps was to be the addition of ‘okina and kahakō to the Hawaiian names appearing on the maps. At the request of the BGN, the HBGN, which is responsible for designating official names and spellings of geographic features in Hawai‘i, began a multi-year project to review each of the over 10,000 names that appear on the quadrangle maps and/or in the GNIS and to add the ‘okina and kahakō as appropriate. Documents available on the HBGN website list the decisions that have been rendered so far by the HBGN. As of 2022, the HBGN has reviewed all the names appearing on the USGS quadrangle maps and continues to review additional names that appear in the GNIS. It should be noted that the HBGN adopted a policy of adding ‘okina and kahakō *only* where there is solid evidence that there should be ‘okina or kahakō. Therefore, there are many instances where no decision has been rendered and the HBGN has advised USGS to leave the name without any ‘okina or kahakō until further research can be conducted. In making its decisions, the HBGN generally followed conventions developed by ‘Ahahui ‘Ōlelo Hawai‘i in 1978. *Place Names of Hawaii* (Pukui, Elbert & Mookini, 1976) was considered the primary source for determining the appropriate use of kahakō or ‘okina in individual place names. The HBGN has deviated from these sources when other experts, such as native Hawaiian speaking elders from a particular area, have provided alternative pronunciations.



Memorandum of Understanding among Participating Agencies of the Native Hawaiian Federal Interagency Working Group

I. Introduction

The Native Hawaiian Federal Interagency Working Group (Working Group) began its efforts in 2006 with the development of the Department of the Interior Native Hawaiian Organization List. This list (Native Hawaiian Organization List, 72 Fed. Reg. 54672 (September 26, 2007)) is now used by Federal Agencies seeking to consult with the Native Hawaiian Community through Native Hawaiian organizations. After other similar joint agency projects, on February 17, 2011, the U.S. Department of the Interior, the U.S. Department of Defense, and the Advisory Council on Historic Preservation signed a memorandum of understanding (MOU) formally establishing the Working Group. Accomplishments of the Working Group include: creation of the Department of Defense Consultation Policy with Native Hawaiian Organizations; A Handbook for Consultation with Native Hawaiian Organizations in the Section 106 Review Process; and The Native Hawaiian Community Guide to Federal Programs and Services.

The Working Group continues to provide guidance and assist Federal Agencies with their compliance activities associated with (1) administration of Federal Programs that directly and/or uniquely affect the Native Hawaiian community and (2) consultation with Native Hawaiian organizations regarding the potential effects of Federal Programs and activities on Native Hawaiian organizations' resources, rights, or lands. Per this MOU, the members of the Working Group are the Office of Native Hawaiian Relations (ONHR) within the Department of the Interior, the Office of the Deputy Assistant Secretary of Defense for Environment, Safety, and Occupational Health, within the Department of Defense, the Advisory Council on Historic Preservation, and the Small Business Administration.

ONHR has the lead in organizing the Working Group consistent with P.L. 108-199, Div. H, Sec. 148 (118 Stat. 445), which established ONHR as a focal point among Federal Agencies for coordination of information regarding consultation with Native Hawaiian organizations. The Working Group anticipates that additional Federal Agencies that administer Federal Programs to Native Hawaiian organizations or have consultation responsibilities to Native Hawaiian organizations will join the Working Group by signing the MOU in the future.

II. Purpose

Federal Agencies are required to consult with Native Hawaiian organizations before taking any action that may have the potential to significantly affect Native Hawaiian Community resources, rights, or lands. To that end, the first purpose of this Working Group is to establish processes to assist federal agencies with the identification of impediments to meaningful, regular, and appropriate

consultation with Native Hawaiian organizations as required by law, regulation, and policy; and to develop information and recommendations to assist Federal Agencies with their consultation with Native Hawaiian organizations. The second purpose of the Working Group is to assist Federal Agencies with their compliance activities associated with the administration of Federal Programs that directly and/or uniquely affect the Native Hawaiian Community.

III. Authorities

This MOU is established under the following authorities: U.S. Public Law 108-199, establishing the United States Office for Native Hawaiian Relations; 109 Stat. 537, The Hawaiian Home Lands Recovery Act; 54 U.S.C. § 304102, establishing the Advisory Council on Historic Preservation; and U.S. Public Law 104-201, 10 U.S.C. § 2694(c), authorizing the Secretary of Defense to negotiate and enter into agreements with public and private agencies, organizations, institutions, individuals, or other entities regarding cultural and natural resource management.

IV. Functions

The Working Group will:

- (a) Provide guidance to federal agencies regarding the appropriate methods to comply with laws and administer program(s) that directly and/or uniquely affect the Native Hawaiian Community and organizations.
- (b) Consider information and advice obtained from the Governor of Hawaii and other elected officials in the Hawaiian Islands concerning how federal agencies undertaking actions in Hawaii may more effectively consult with the Native Hawaiian Community and organizations.
- (c) Seek to consult with the Native Hawaiian Community once a year to assist in the prioritizing of the Working Groups annual agenda and goals.
- (d) Develop and implement an action plan that identifies how this working group will advance meaningful, regular, and appropriate consultation with the Native Hawaiian Community consistent with section V of this MOU.

V. Signatories commit to:

- (a) Adopting or adhering to the Department of the Interior's 'ōlelo Hawai'i (Hawaiian language) chapter listed at 513 DM 3, as their policy for use when preparing federal documents and other communications that reference people, places, plants, and animals in Hawai'i.
- (b) Adopting or adhering to , as their minimum standard for consultation with the Native Hawaiian Community, the U.S. Department of the Interior Office of Native Hawaiian Relations [Standard Operating Procedures for Consultation with the Native Hawaiian Community](#).
- (c) Adopting or adhering to the [Advisory Council on Historic Preservation's Policy Statement on Burial Sites, Human Remains, and Funerary Objects](#) to guide federal agency consideration as

their minimum standards for the treatment of burial sites, human remains, and funerary objects in situations where the Native American Graves Protection and Repatriation Act and/or State Law do not apply.

VI. Working Group Composition and Meeting Frequency:

- (a) The first meeting of this Working Group shall be facilitated by ONHR and will take place within 30 days after the effective date of this MOU.
- (b) Signatories commit to having senior staff with appropriate experience in Native Hawaiian affairs attend meetings and facilitate the terms of this MOU.
- (c) The Working Group will meet monthly until the action plan is developed and quarterly thereafter.

VII. Funding

This MOU is not a funds obligating document and nothing in it expands, limits, or alters the parties' statutory authority and responsibilities. Nor is the purpose of this MOU to establish the intention, or commitment, to fund any project on the part of the Federal Agencies. However, the Working Group may provide advice on the coordination of several Federal Programs and responsibilities. In some cases, coordination with other parties, such as a state agencies or non-governmental organizations, may also be considered.

DRAFT

VIII. Duration of Agreement

The MOU shall continue in effect for five years or until all Working Group members provide written notice of termination, whichever comes first. Any signatory may terminate its participation with 60 days written notice to the other signatories. The document may be updated and periodically amended with the written concurrence of all parties. Additional agencies may join the Working Group by signing the MOU.

DRAFT

IX. Signatures

U.S. Department of the Interior

Joan M. Mooney
Principal Deputy Assistant Secretary, Policy, Management and Budget

Date

Department of Defense

Brendan Owens
Deputy Assistant Secretary of Defense for Environment, Safety, and Occupational Health

Date

Advisory Council on Historic Preservation

Sara C. Bronin
Chairman

Date

Small Business Administration

Jackson S. Brossy
Assistant Administrator, Office of Native American Affairs

Date



UPDATE ON MAJOR ACTIVITIES
Office of Communications, Education, and Outreach
November 2023–March 2024

ACHP Awards Program. The submission periods are closed for the National Trust/ACHP Award for Federal Partnerships in Historic Preservation and the ACHP/HUD Secretary’s Award. The former brought in eight nominations and the latter five nominations.

All nominations are undergoing internal review by National Trust, HUD, and ACHP staff. The Office of Communications, Education, and Outreach (OCEO) has identified members for the award juries, both of which will meet in March/April. The jury for the joint ACHP/HUD Award will be comprised of jurors from HUD and ACHP members Monica Rhodes, Jordan Tannenbaum, and Frank Matero. The jury for the joint National Trust/ACHP Award will consist of jurors from the National Trust and ACHP members Monica Rhodes, Ramona Bartos, and Sonny Ward.

Section 3 Report to the President. On February 15, 2024, the ACHP presented President Joe Biden with [*In a Spirit of Stewardship: A Report on Federal Historic Properties*](#). It is the triennial report surveying federal government agencies on their stewardship of historic properties and leadership in promoting historic preservation priorities alongside climate change response, equity, infrastructure, and job creation.

OCEO managed editing, production, and outreach for the report. An overview of the outreach and details related to this publication will be shared at the Regulations and Governance Committee and business meetings.

Outreach for Three New Policy Statements Issued in 2023. OCEO executed a comprehensive outreach campaign to publicize the Climate Change and Historic Preservation; Burial Sites, Human Remains, and Funerary Objects; and Housing and Historic Preservation policy statements. This included issuing and disseminating press releases, pitching stories to media outlets, writing and placing op-eds, and writing social media posts. OCEO planned three Policy Chats, which garnered a total attendance of 569 people. Each chat was recorded and is available on the [ACHP’s YouTube channel](#). Among other news stories, Chair Bronin was featured in NPR Marketplace in late November, and three op-eds and a letter to the editor were published, as follows:

- Oct. 16 – [The Hill, housing](#)
- Oct. 19 – [Newsweek, burial policy](#)
- Jan. 22 – [The New York Times \(letter to the editor\), housing](#)
- Feb. 11 – [The Hill, climate change](#)

OCEO has also arranged for Chair Bronin to conduct a webinar on her report on federal historic preservation standards, drawing from flexibility-related policy principles in the climate change and housing policy statements. More details will be shared during the Policy and Legislative Affairs Committee meeting and the business meeting.

Community and Other Outreach. OCEO is moving forward with partners to broaden ACHP outreach, amplify the visibility of the agency, and share opportunities. OCEO will be working with Latinos in

Heritage Conservation on several new joint projects during 2024. Asian and Pacific Islander Americans in Historic Preservation Executive Director Huy Pham will be participating in an upcoming webinar, [*History in Danger: Community-Led Responses to Preserving AAPI Heritage Sites*](#), on March 26.

Social Media. The ACHP Preservation Perspectives podcast has had new episodes with host Monica Rhodes in 2024: an interview with Matt Vriesman, the 2023 High School History Teacher of the Year; and archaeologist Alexandra Jones. These episodes can be found on the [ACHP YouTube channel](#).

The ACHP completed its Black History Month social media campaign, including a series of five videos in partnership with Getty Images, called “HBCU History in Photos.” These videos can be found on the [ACHP YouTube channel](#). Analysis showed that from the ACHP’s social media platforms alone, the ACHP received almost 7,000 views on the campaign on HBCU historic buildings. As well, the White House Initiative’s X account showed 12,000 views on at least two of the videos.

Cultural Heritage in the Forest 2024. OCEO is happy to announce that Cultural Heritage in the Forest 2023 (CHIF) won a Chief’s Honor Award, which recognizes employees for outstanding contributions to agency mission. The award will be given by Forest Service Chief Randy Moore on March 13, 2024. Doug Stephens (FPO and Heritage Program Manager) will accept the award.

The program for summer 2024 is underway, thanks to both Mr. Stephens and Deirdre Remley (Archaeologist/Assistant National Heritage Program Manager) at the Heritage Program, Forest Service.

OCEO received 26 valid applications and has chosen 16 students to interview. If ACHP members happen to be in the vicinity of the Monongahela (WV) or Wayne (OH) National Forests in June, please let Susan Glimcher know if you are interested in meeting with the students.

Other Student Opportunities. OCEO will be working with Preservation Program Specialist/Internship Program Coordinator Judy Rodenstein on upcoming student opportunities including the following:

- Rutgers University Externship Program—OCEO is hosting students from the Reilly BOLD Program at Douglass for Advancing Women’s Professional Development Externship Program. A former intern recently wrote to say her experience with the ACHP helped her get an internship with the New Jersey Office of Historic Sites.
- Real World History High School Student Program—OCEO is working with the instructor for Real World History, an extracurricular class for Washington, D.C. high school students interested in history and preservation.
- Suffolk University Job Shadowing Program—This is a one-day experience for college students at Suffolk University in Massachusetts interested in communications and history.
- South Dakota High School outreach—OCEO is working with a history teacher from a rural South Dakota high school to create pilot projects to interest students in preservation.

Upcoming Conferences. Several ACHP staff will be attending the annual Society for American Archaeology meeting April 17-21 in New Orleans, Louisiana. Participating in sessions are Office of Tribal and Indigenous Peoples Director Ira Matt and Office of Federal Agency Programs Analyst Chris Daniel on “Contextualizing Site Evaluations Within the Cultural Landscape;” and Assistant Program Analyst Alexis Clark in a workshop with DoD-Navy and with a poster session on “Human Relationships with their Environment and Climate: Re-envisioning Zero Waste Archaeology.”

March 8, 2024



SAVE THE DATES

MARCH

Committee Meetings (Videoconference)

March 18	1 p.m.– 2:30 p.m.	R&G
	3 p.m.– 4:30 p.m.	PLA
March 19	1 p.m.– 2:30 p.m.	TIP

MARCH

Business Meeting (In-person, Washington, D.C.)

March 20	site visit, related events
March 21	business meeting, 9 a.m.–Noon (Washington Hilton)

MAY

Mid-Cycle Committee Meetings (Videoconference)

May 14	1 p.m.– 2:30 p.m.	TIP
May 15	1 p.m.– 2:30 p.m.	R&G
	3 p.m.– 4:30 p.m.	PLA

JULY

Committee Meetings (Videoconference)

July 10	1 p.m.– 2:30 p.m.	R&G
	3 p.m.– 4:30 p.m.	PLA
July 11	1 p.m.– 2:30 p.m.	TIP

JULY

Business Meeting (In-person, Washington, DC)

July 17	site visit, related events
July 18	business meeting, 9 a.m.–Noon (location to be determined)

For additional information contact Tanya at tdevonish@achp.gov

2024 UPCOMING ACHP COMMITTEE/ COUNCIL MEETINGS