

PAPA OLA LŌKAHI

Standard Operating Procedures for
Responding to Requests for Public Comment/Consultation



Prepared By:



HULIAUAPAʻA

Prepared For:



Papa Ola Lōkahi
Nānā | Ka Pono Na Mā

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EXECUTIVE SUMMARY

He Leo Mahalo

Mahalo to all the individuals involved with this project. We are grateful to Papa Ola Lōkahi (POL) for the opportunity to support the important kuleana of providing public comment and consultation. Mahalo to staff at the Office of Hawaiian Affairs (OHA) for generously sharing time, critical knowledge, and experienced guidance. Lastly, mahalo Huliauapa‘a legal fellow for contributing essential specialist knowledge.

Summary

POL’s recognition that the health and well-being of our lāhui (people) is inextricably linked to the health of our integrated biocultural systems prompted this work. POL, a Native Hawaiian Organization (NHO) registered with the United States Department of the Interior (DOI) and Office of Native Hawaiian Relations (ONHR), commissioned Huliauapa‘a to develop organizational standard operating procedures (SOPs) to support POL comment/consultation on federal and state compliance-induced environmental and historic preservation studies. This first phase included the generation of operational POL Policy, SOPs, boilerplate comments, and template public comment and consultation letter content.

As the initial phase of a potentially four phase project, these SOPs aim to streamline and facilitate POL review, comment and consultation on state and federal compliance-induced environmental and historic preservation studies by identifying possible starting point(s) for assuming and growing this important kuleana. Priorities included identifying pono (moral) approaches to POL providing public comment and consultation, working within POL’s current capacity, the integration of these SOPs into extant POL workflows, and SOP design/implementation with an eye towards gaining momentum and increasing POL’s public comment and consultation capacity in the future.

POL’s organizational focus, mission, vision, and capacity were combined with background research, the Office of Hawaiian Affairs (OHA)’s invaluable experience and subject knowledge, and Huliauapa‘a’s specialist expertise to draft policy and SOPs supporting POL’s comment/consultation on environmental and historic preservation studies stemming from proposed federal and state projects and actions.

These SOPs are intended to facilitate the operationalization of general review/comment/consultation policies, processes, baseline procedures and frameworks. Boilerplate public comments and consultation letter content are provided for POL reference and use. Specific realms of concern and areas to consider when weighing the impacts of proposed projects to Native Hawaiian physical, mental, and spiritual health and Hawaiian healing traditions are identified.

POL’s vision for growing this kuleana includes future toolkits for communities-based response to requests for public comment/consultation containing guidance videos and documents.

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I. HOW TO USE THIS MANUAL

This manual is intended as a reference and explanatory tool, and for use in implementing a step-by-step workflow process that will enable POL's response to requests for public comment and consultation stemming from environmental and historic preservation compliance review processes. Sections are stand-alone and present information in multivarious ways for accessibility, reference, and ease-of-use. This manual begins by defining acronyms (Section Ia) and providing a glossary of terms (Section Ib) used throughout the text, and proceeds with a discussion of POL's goals, priorities, and reasons for commissioning this manual (Section II) and the methods Huliauapa'a's used to compile it (Section III). The regulatory contexts and importance of public comment and consultation as well as its capacity to impact change are discussed (Section IV) as are the reasons POL is receiving requests for public comment/consultation (Section V). A POL policy statement regarding the organizational importance and value of participating in public comment and consultation (Section VI) is foundational for a workflow process of SOPs (Section VII) augmented by additional considerations and advice as well as a consultation tracker, and decision-making matrix contained in supporting documents. The manual concludes by recognizing next steps for POL in enhancing and growing this responsibility to provide public comment and consultation (Section VIII), and by providing public comment and consultation templates (Sections IX and X) and resources (Section XI) for POL's consideration and use.

1a. Acronyms

ACHP - Advisory Council on Historic Preservation - www.achp.gov

ADRP - Archaeological Data Recovery Plan

AIRFA- American Indian Religious Freedom Act
<https://www.govinfo.gov/app/details/USCODE-2020-title42/USCODE-2020-title42-chap21-subchapl-sec1996>

AISP - Archaeological Inventory Survey Plan

AIS - Archaeological Inventory Survey

AMP - Archaeological Monitoring Plan

AMR - Archaeological Monitoring Report

APE - Area of Potential Effect

BTP - Burial Treatment Plan

CIA - Cultural Impact Assessment

DHHL – Department of Hawaiian Homelands

DOI - United States Department of the Interior - www.doi.gov

EA - Environmental Assessment

EIS - Environmental Impact Statement

FONSI - Finding of No Significant Environmental Impact

HAR - Hawaii Administrative Rules

HAR §13-300 – Hawaii Administrative Rules Chapter 13-300 – “Rules of Practice and Procedure Relating to Burial Sites and Human Remains” -
files.hawaii.gov/dlnr/shpd/rules/300.pdf

HEPA - Hawai'i Environmental Policy Act -
<https://www.hawaii.edu/ohelo/statutes/HRS343/HRS343.htm>

HRS §6E - Hawaii Revised Statutes Chapter 6E - Historic Preservation - dlnr.hawaii.gov/shpd/files/2015/06/HRS-6E.pdf

NHO - Native Hawaiian Organization

NHHCIA - Native Hawaiian Health Care Improvement Act - <https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter122&edition=prelim>

NHPA - National Historic Preservation Act - <https://www.govinfo.gov/content/pkg/CFR-2021-title36-vol3/pdf/CFR-2021-title36-vol3-chapVIII.pdf>

IBC - Island Burial Council - dlnr.hawaii.gov/shpd/about/branches/ibc/burial-council-members

LRFI - Literature Review and Field Inspection

LUC - Land Use Commission - www.luc.hawaii.gov

NAGPRA - Native American Graves Protection and Repatriation Act - www.congress.gov/bill/101st-congress/house-bill/5237/text

NEPA - National Environmental Policy Act - <https://www.govinfo.gov/content/pkg/CFR-2021-title40-vol37/pdf/CFR-2021-title40-vol37-part1500.pdf>

NHPA - National Historic Preservation Act - www.achp.gov/sites/default/files/2018-06/nhpa.pdf

OHA - Office of Hawaiian Affairs - www.oha.org

ONHR - Office of Native Hawaiian Relations - <https://www.doi.gov/hawaiian>

PA - Project Area

POL - Papa Ola Lōkahi - www.papaolalokahi.org

PP - Preservation Plan

SHPD - State Historic Preservation Division – www.dlnr.hawaii.gov/shpd

SOP - Standard Operating Procedures

Ib. Glossary of Regulatory Terminology, Concepts, and Study Types

Area of Potential Effects (APE) - APE are defined as “Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds” (36 CFR Part 800 2004:15).

Archaeological Data Recovery Plan (ADRP) - ADRP are a form of mitigation that archaeologically records or recovers or both, a reasonable and adequate amount of information as determined by the department, from a significant historic property. With respect to a burial site, this plan includes the disinterment of human skeletal remains and any burial goods and may involve the recording of a reasonable amount of information from the burial site if specifically authorized by the council or department, whichever is applicable, following a determination to relocate the contents of the burial site (HAR §13-200-2).

Archaeological Inventory Survey (AIS) - AIS are studies commonly performed for historic preservation compliance review, as well as research. In historic preservation compliance, AIS are an in-depth investigation of a location for iwi kūpuna (Native Hawaiian ancestral remains) or iwi belonging to another ethnicity, general patterns of natural and human sedimentary deposits, as well as the presence of surface or subsurface historic properties that include Hawaiian cultural resources such as heiau (temples), lo’i (irrigated terraces), loko i’a (fishponds), other wahi kūpuna (ancestral places), cultural deposits, and koehana (artifacts). This is accomplished through background research, pedestrian survey, and subsurface excavations.

Archaeological Inventory Survey Plan (AISP) – An AISP details plans for an AIS.

Archaeological Inventory Survey Report (AISR) - If performed for a historic preservation compliance review, an AISR details the results of an AIS, and identifies historic preservation next steps and mitigation measures.

Archaeological Monitoring (AM) - Archaeological monitoring involves the active monitoring and documentation of all ground disturbance related to a project for the presence of iwi kūpuna (Native Hawaiian ancestral remains; these are not documented with photographs) or iwi belonging to another ethnicity, general patterns of natural and human sedimentary deposits, and surface or subsurface historic properties that include Hawaiian cultural resources such as heiau, lo’i, loko i’a, other wahi kūpuna, cultural deposits, and koehana.

Archaeological Monitoring Plan (AMP) - An AMP details plans for AM.

Archaeological Monitoring Report (AMR) - An AMR details the results of AM and identifies historic preservation next steps and recommended mitigation measures.

Biocultural (Systems, Landscapes, Resources) - “Biocultural” is used in this report to define how culture affects and interacts with our environmental and biological resources. For Native Hawaiians, because our culture is inherently tied to our environmental features and systems, the term “biocultural” encompasses the understanding that our natural and cultural resources are one and the same.

Burial Treatment Plan (BTP) - A BTP details plans for mālama iwi kūpuna in specific circumstances. The document “meets all necessary requirements as set forth in this chapter and which proposes treatment of burial sites, including preservation in place or relocation, submitted to the department or council, whichever is appropriate, for a determination,” (HAR §13-300-2).

Consultation or consult - The ACHP defines consultation as: “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process” [36 CFR § 800.16(f)] and notes: “By definition, then, consultation is an active exchange of ideas and information between a federal agency and other Section 106 participants that seeks consensus about what eligible or listed archaeological sites may be affected by an undertaking; why those properties are significant and of value, and to whom; and how any adverse effect to them might be avoided, minimized, or mitigated” (ACHP 2022b).

NAGPRA defines consultation or consult as: “[t]he exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to: (1) seek, discuss, and consider the views of all parties; (2) strive for consensus, agreement, or mutually acceptable alternatives; and (3) enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations,” (Interior Department 2023c).

Consulting Parties - NAGPRA defines consulting parties as “...any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation,” (Interior Department 2023c).

HEPA defines consultation as: “[A] require[ment] that an agency (proposing or approving) needs to consult (or direct an applicant to consult) with the respective county planning department(s) and other agencies or individuals that might have jurisdiction or expertise with respect to the proposed action.” (HAR §11-200-9)

Cultural Impact Assessment (CIA) - CIAs assess the potential impacts posed to the cultural practices, resources, and beliefs of a particular cultural or ethnic group or groups by proposed projects in specific locations. CIAs inform Environmental Assessments (EAs) which determine for proposed projects whether there is a Finding of No Significant Environmental Impact (FONSI) or if an Environmental Impact Statement (EIS) should be performed. When proposed projects will clearly have a significant environmental impact, CIAs are performed in support of EIS studies.

Environmental Assessment (EA) - An EA inventories the environmental resources present in a proposed project area and determines whether proposed projects pose significant impacts to environmental resources. EAs determine whether a proposed project does not pose significant impacts to environmental resources and determine a Finding of No Significant Environmental Impact (FONSI) or if a more in-depth and extensive study - an Environmental Impact Statement (EIS) - should be performed.

Environmental Impact Statement (EIS) - An EIS is an in-depth, extensive study performed during environmental compliance review when a proposed project has been determined to pose significant impacts to environmental resources in a specific location.

Finding of No Significant Environmental Impact (FONSI) - A FONSI is a determination reached by an EA. FONSI determinations allow proposed projects to proceed to the next phases of planning, permitting, and development.

Island Burial Council (IBC) - When iwi kūpuna are classified as “previously identified,” the appropriate IBC issues the determination for their protection in perpetuity with preference given to recommendations of lineal descendants on timelines extending past 45 days. IBCs exist for Hawai‘i, Maui/Lāna‘i, Molokai, O‘ahu, and Kaua‘i/Ni‘ihau and are comprised of Governor-appointed membership (HAR §13-300-21) “from each geographic region of the island and representatives of development and large property owner interests” (HAR §13-300-22).

Inadvertent - A designation for human skeletal remains that: “[m]eans the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity “ (HAR §13-300-2). When iwi kūpuna are classified as “inadvertent” or “inadvertent discoveries” the SHPD issues the determination for their protection in perpetuity on an accelerated timeline of 1-3 days.

Iwi Kūpuna - Native Hawaiian ancestral skeletal remains. In environmental and historic preservation compliance review contexts, “Burial Sites”, including those of iwi kūpuna, are a special class of protected historic property under state and federal law: “[A]ny specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its immediate surrounding archaeological context, deemed a unique class of historic property and not otherwise included in 6E-41, HRS,” (HRS §6E-2 1976, HAR §13-300-2); “Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains are deposited [25 USC 3001 (1)]” (NPS 2022).

For more information, see “NHO Resources” (Section Xc) and Baldauf and Akutagawa (2013) *Ho‘i Hou I Ka Ikikuamo‘o: A Legal Primer for the Protection of Iwi Kūpuna in Hawai‘i Nei* (available here: [Legal Primers – Ka Huli Ao Center for Excellence in Native Hawaiian Law](#)).

Ka Pa‘akai Analysis - An analytical framework set forth by the Hawai‘i Supreme Court to enable State protection of Native Hawaiian traditional and customary practices. Regarding environmental review, this can be invoked, for example, when affording reasonable accommodation to competing private interests and granting petitions for the reclassification of district boundaries. Ka Pa‘akai Analysis framework is: “1. Identify the scope of ‘valued cultural, historical and natural resources’ in the petition area, including the extent to which traditional and customary rights and practices are exercised in the affected area; 2. Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and 3. Identify feasible actions, if any, that should be taken by the LUC to reasonably protect Native Hawaiian rights and practices if they are found to exist” (94 Hawai‘i 31, 7 P. 3d 1068, September 11, 2000).

Literature Review and Field Inspection Study (LRFI) – An LRFI study reports results from a background research literature review and field inspection for a proposed project area or study area, and uses them to: 1) Synthesize what is known about a wahi and its natural landscape and resources, cultural-historical overview, historical landscape, and previous archaeological studies, 2) Summarize known and newly-noted wahi kūpuna/historic properties in their biocultural and greater ahupua‘a contexts, 3) Provide a predictive model for possible additional wahi kūpuna/historic properties potentially present in the wahi and vicinity and how they will be impacted by the propose project, and 4) Generate environmental and/or historic preservation compliance review recommendations for wahi kūpuna/historic properties and biocultural landscapes that play an important role in determining their stewardship.

Mitigation Commitment - the commitment to the form of mitigation to be undertaken for each significant historic property (HAR §13-275-2).

Mitigation Plan - the plan setting forth appropriate treatment of historic properties, burial sites, or human skeletal remains (HAR §13-300-2).

Native American Traditional Knowledge - NAGPRA: “Knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion,” (NPS 2024a).

Native Hawaiian Organization (NHO) - NAGPRA: “Any organization that: (1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State

of Hawai'i; (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: (i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai'i, (ii) Native Hawaiian organizations (including 'ohana) who are registered with the Secretary of the Interior's Office of Native Hawaiian Relations, and (iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10," (NPS 2024a).

NAGPRA Plan of Action (POA)

NAGPRA POAs are triggered as part of either the NAGPRA-mandated procedures for intentional archaeological excavations [43 CFR 10.4] (National Archives 2022) or for inadvertent discoveries [43 CFR 10.4] (National Archives 2022). Agencies, organizations, and/or individuals are responsible for producing and executing NAGPRA POAs with stakeholders. POA content must express how agencies, organizations, and/or individuals will satisfy all federal and state regulatory requirements applicable to their specific circumstances. POA must also define and outline the treatment of intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony for proposed projects or in other specific circumstances.

Previously Identified – Term for human skeletal remains from Hawai'i Revised Statutes HAR 13-300-2 applied to “burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony,” (HAR §13-300-2). The term defines how a burial can be identified and what it means if a burial is designated as “Previously Identified”. When iwi kūpuna are classified as “previously identified,” the appropriate Island Burial Council (IBC) issues the determination for their protection in perpetuity with preference given to recommendations of lineal descendants on timelines extending past 45 days (HAR §13-300-3, 24).

Preservation Plan (PP) – A PP details mitigation commitments made by project proponents or proactively (e.g., by community groups) to preserve significant historic properties via avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use (HAR §13-277-3).

Project Area (PA) - The bounded location within which proposed changes and developments will occur. PA locations and extents are more flexible during environmental compliance review and the initial planning/permitting/development stages of a project, and less flexible during historic preservation compliance review and its associated planning/permitting/development stages.

Public comment - Public comments are responses to publicly issued requests for general public comment from agencies/project proponents or their consultants. Requests for public comment can be proactive or triggered by regulations and are commonly associated with initial scoping and pre-consultation for projects (change(s)/development(s)) that pose impacts to biocultural resources and places. They are typically issued once, commonly in forms

including time-limited written/verbal testimony in public meetings during project scoping/pre-consultation phases, through agency-sponsored online public comment forms, on social media, posting on POL's website, etc. Public comments are usually - but not always - shorter, less formal, and less detailed than consultation letters.

Section 106 Consultation Request - According to the ACHP (2022a), "Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country. If a federal or federally assisted project has the potential to affect historic properties, a Section 106 review will take place.

Section 106 gives the ACHP, interested parties, and the public the chance to weigh in on these matters before a final decision is made. This process is an important tool for citizens to lend their voice in protecting and maintaining historic properties in their communities."

II. INTRODUCTION

Ia. Goals and Priorities

SOP goals and priorities were determined by considering POL’s mission and vision (below), and expertise/advocacy in Native Hawaiian health and Hawaiian healing traditions as they relate to the protection and preservation of natural and cultural resources.

POL’s Mission: “To improve the health status and wellbeing of Native Hawaiians and others by advocating for, initiating and maintaining culturally appropriate strategic actions aimed at improving the physical, mental and spiritual health of Native Hawaiians and their ‘ohana (families) and empowering them to determine their own destinies.”

POL’s Vision: “A thriving Native community composed of healthy individuals and families informed about their rich heritage and culture, living in a state of lōkahi (unity), and making informed choices and responsible decisions in a safe island society that is pono (in proper order).”

Wahi kūpuna, much like the term wahi pana (storied/ legendary place), refers to a physical site, area, or landscape that is significant to Kānaka ‘Ōiwi (Native Hawaiian), past and present. While every place in Hawai‘i could be considered special or significant, this term can broadly encompass ancestral landscapes where kūpuna (ancestors) repeatedly and purposefully interacted (lived, worked, played, sustained life from), but also places of purposeful nonuse (wao akua or mountain summit realms). Often, these places provide evidence of kūpuna interactions via physical manipulation of the space such as burials, heiau (places for observation and ceremony), lo‘i kalo (taro patches), loko i‘a (fishponds), ala loa (trails), kuahiwi (agricultural field systems), and ahu (shrines). Just as significantly, some wahi kūpuna contain no tangible evidence of human modification, but they are still connected to the ancestors through intangible evidence such as mo‘okū‘auhau (genealogies), inoa ‘āina (place names), mo‘olelo (stories), and mele (chants and songs). The health of our wahi kūpuna are directly linked to the health and well-being of our communities. In caring for our wahi kūpuna, we are ultimately caring for ourselves (Kali‘uokapa‘akai Collective 2021:5).

Guided by POL’s mission and vision and underscored by the recognition the health and well-being of our lāhui is inextricably linked to the health of our wahi kūpuna and integrated biocultural systems, the goal of these standard operating procedures (SOPs) is to streamline and facilitate POL review, comment, and consultation on federal and state compliance-induced environmental and historic preservation studies. Specifically, these SOPs are intended to enable POL to provide public comment and consultation regarding the impacts of proposed projects to Native Hawaiian physical, mental, and spiritual health and Hawaiian healing traditions in accordance with their organizational mission and vision. The initial phase of a potentially four phase project, these SOPs are intended to facilitate the operationalization of general review comment and consultation, as well as policies, processes, baseline

procedures, and frameworks. They also contain POL's organizational boilerplate comments and consultation letter content.

Current SOP priorities include:

- 1) Identify possible starting point(s) for assuming and growing POL's public comment and consultation capacity;
- 2) Solidify a foundation for pono approaches to fulfilling requests for public comment and consultation;
- 3) Work within POL's current capacity with an eye towards future growth and gaining momentum/growing out POL's public comment and consultation capacity;
- 4) A policy statement bridging POL's Vision and Mission with their regulatory responsibility in this arena that delineates POL's approach to providing public comment and consultation which identifies the factors they can speak to from a place of expertise;
- 5) Distillation of POL values as they relate to state and federal environmental/historic preservation compliance review, identify and focus on: specific areas/organizational values related to Hawaiian healing practices, kūpuna knowledge, and the health of the lāhui;
- 6) Develop operational within bounds of existing capacity for integration into extant POL workflows;
- 7) Streamline and facilitate review/comment/consultation on federal and state compliance-induced environmental and historic preservation studies.

Future goals are toolkits containing guidance videos and documents for communities-based response to requests for public comment/consultation.

IIb. Purpose

The purpose of these SOPs is to streamline and facilitate POL's review of and commentary on federal and state compliance-induced environmental and historic preservation studies by detailing a workflow process and supporting materials for POL to use for receiving, tracking, and responding to requests for public comment and consultation. Ideally, they will enable POL to provide public comment and consultation regarding the impacts of proposed projects to Native Hawaiian physical, mental, and spiritual health and Hawaiian healing traditions in accordance with their organizational mission and vision.

III. METHODS

Background research, POL input, subject area knowledge from OHA, and Huliauapa'a's bench of experience and expertise were utilized to develop operational general review/public comment/consultation policies, processes, baseline procedures and frameworks as well as boilerplate comments and template consultation letter content for POL to utilize as desired.

IV. REGULATORY DISCUSSION

This section is a broad overview discussion of the state and federal environmental and /historic preservation compliance regulatory processes that produce requests for public comment and consultation. It summarizes the state and federal legislation and compliance review processes involved and communicates the basics of environmental and historic preservation compliance review processes as they unfold and intersect in Hawai'i. It also explains why POL is receiving requests for public comment and consultation, and the function and potential impacts of public comment and consultation. Overall, this section is intended to provide contextual understanding of how environmental and historic preservation laws function at the federal and state levels and how POL's participation in public comment and consultation can shape project approaches, outcomes, and impacts to the environment and heritage.

IVa. Consultations Rights under Federal and State Environmental and Historic Preservation Law

Requests for public comment and /consultation to NHOs like POL often stem from environmental and historic preservation compliance review processes. Environmental compliance review processes at the federal and state levels, and federal historic preservation compliance review require public comment/consultation from project/community stakeholders and the general public. State historic preservation compliance review sometimes requires public comment/consultation from project/community stakeholders and the general public, at the discretion of the project proponent or their consultants and the SHPD. In all instances, public comment and consultation are viewed as information that must be considered, not necessarily acted upon. Public comment and consultation can impact how projects are planned, implemented, and the impacts projects have to environments and heritage - if project partners take public comment/consultation into good faith consideration. Therefore, POL's participation in public comment and consultation can shape project approaches, outcomes, and impacts to the environment and heritage. It is important to understand that any public comment/consultation provided becomes part of the public record.

IVb. State and Federal Environmental Laws and Regulations

National Environmental Policy Act [[NEPA](#)] | 42 U.S.C. §§4321-4347

The National Environmental Policy Act (NEPA; see Figure 1) is a federal environmental law geared towards protecting and enhancing the environment and its natural resources, including cultural practices and features. NEPA procedures assess the impacts a proposed project or action will have on the environment and natural resources. When a proposed project or action poses environmental impacts, including potential impacts to cultural practices and features, project proponents will prepare either an EA or EIS, and may request

an NHO to provide public comment or consultation regarding their approach, methods, and conclusions to assessment methods and conclusions.

NEPA | 40 C.F.R. § 1508

NEPA applies when a federal agency (e.g., the Department of Transportation) proposes a project or actions with potential to impact the environment, and when private individuals/companies apply for federal permits or funding.

National Environmental Policy Act (NEPA) Process

Adpated from U.S Marine Corps Website - National Environmental Policy Act
www.mcbhawaii.marines.mil.

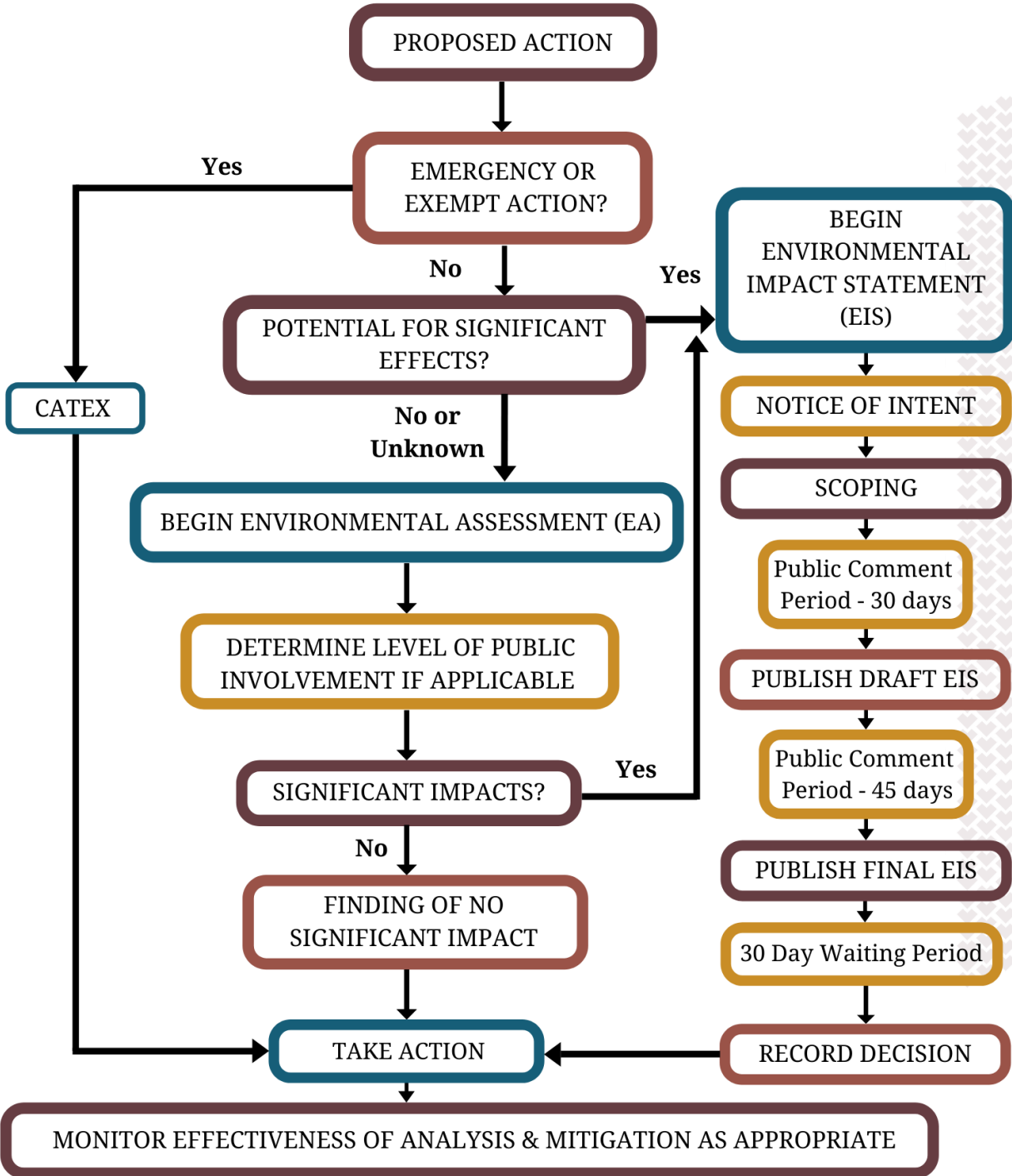


Figure 1. Flowchart of the National Environmental Policy Act (NEPA) process

Environmental Assessments - EAs and EISs

An EA inventories the environmental resources present in a proposed project area and determines whether proposed projects pose significant impacts to environmental resources. EAs determine whether a proposed project does not pose significant impacts to environmental resources and determine a FONSI or if a more in-depth and extensive study - an EIS - should be performed. Project information included in the EA should communicate the environmental impacts of the proposed action as well as alternatives and approaches used to determine them, including disclosure of agencies, organizations, stakeholders, and individuals consulted [40 C.F.R. § 1508.9(b)].

During the environmental compliance process (see Figure 2), for EA public comment and consultation, the project proponent determines the timing and level of interaction required for their actions. There are usually two rounds of EAs, the first being a draft environmental assessment and the second being the final environmental assessment. The draft is an opportunity for stakeholders to insert their own comments and concerns on the research methodology, findings, and alternatives proposed in the EA. Once comments are received, the agency/preparer of the EA shall incorporate those comments and concerns and address them in the final EA. The EA process concludes with either a FONSI or a requirement to prepare an EIS. If the determination of a FONSI is given, then the EA and FONSI shall become available to the public for review for at least 30 days in two circumstances: when the proposed project or action is proposed for the first time by an agency, and when the proposed project or action would require an EIS under the agency NEPA procedures. Without these two circumstances, the FONSI will not be required to enter public review and may only become available once the project commences. If given the opportunity to provide public comment or consultation on the FONSI and EA, POL should question what “significant” impacts may be present, and whether the conclusion of a FONSI was sound. If the FONSI is not determined, an EIS may be required, triggering the next step in the NEPA review process [40 C.F.R. § 1501.2(b)(iii)].

Environmental Impact Statements (EIS)

An EIS is required when a federal action will significantly and adversely impact the environment. An EIS is an in-depth, extensive study performed during environmental compliance review when a proposed project has been determined to pose significant impacts to environmental resources in a specific location.

Step 1: Notice of Intent

The EIS process begins (see Figure 2) with a Notice of Intent that will include: (1) The purpose and need for the proposed project or action; (2) A preliminary description of the proposed project or action and alternatives the environmental impact statement will consider; (3) A brief summary of expected impacts; (4) Anticipated permits and other authorizations; (5) A schedule for the decision-making process; (6) A description of the public scoping process, including any scoping meeting(s); (7) A request for identification of potential alternatives,

information, and analysis relevant to the proposed action (see § 1502.17 of this chapter); and (8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement [see 40 C.F.R. §§ 1501.9(d)(1)-(8)]. In addition to publishing the notice in the [Federal Register](#), “the daily journal of the United States government”, agencies may also reach out to interested parties and give them the notice of the action as well.

General Environmental Impact Assessment Process

Adapted from *The Nature Conservancy - Environmental Impact Assessment Process*
www.reefresilience.org/environmental-impact-assessments.

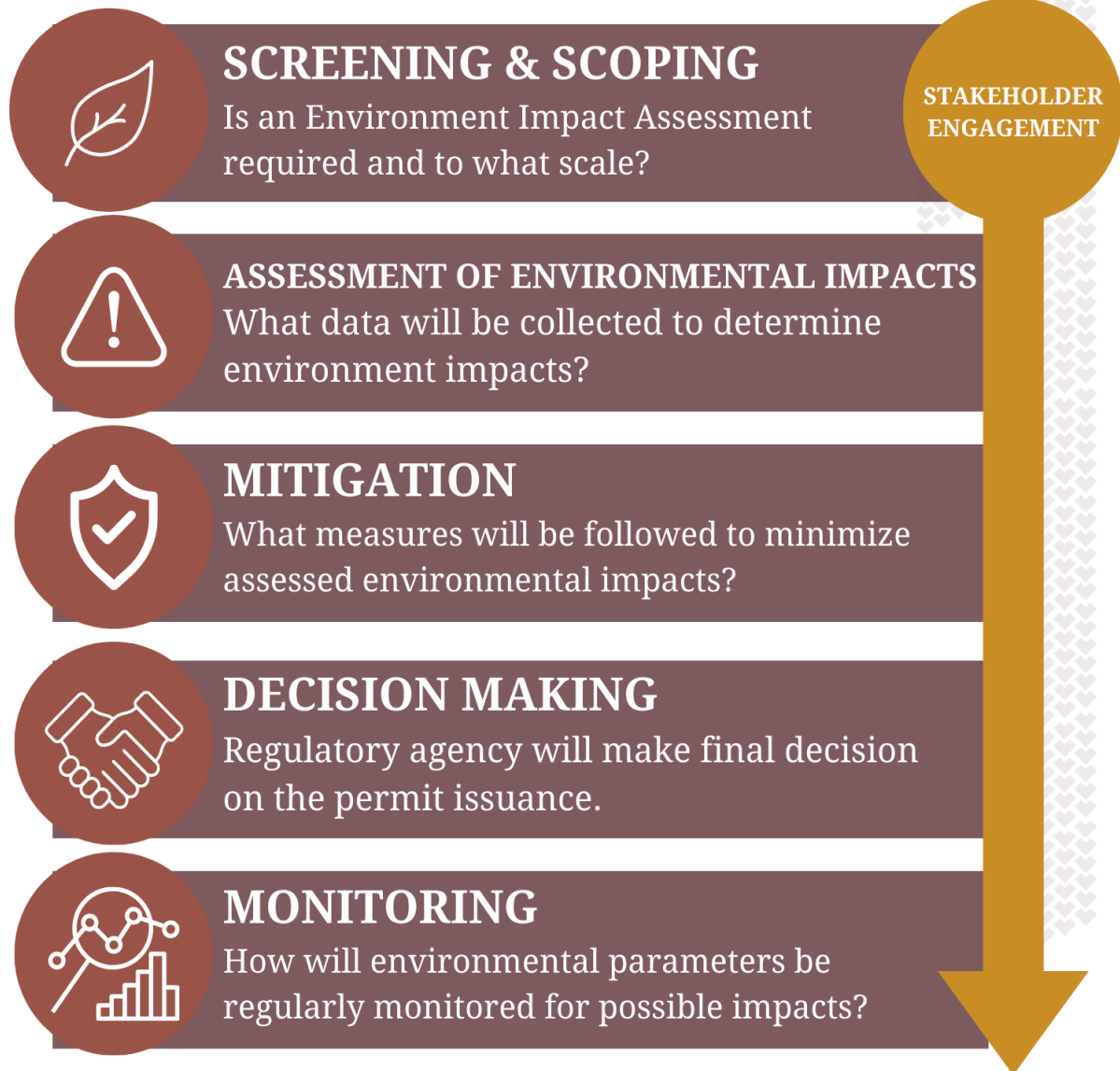


Figure 2. Illustration of the general steps involved in federal and state environmental impact assessment processes and the role of stakeholder engagement

Step 2: Draft EIS

The next step is preparation of a draft EIS. Once the draft EIS is submitted, there is a 45-day period provided for you to comment [40 C.F.R. §1506.11(d)]. The general EIS format is: (1) the purpose and need; (2) alternatives including the proposed action; (3) Affect environment and environmental consequences; (4) submitted alternatives, information, and analyses; (5) and a list of preparers [40 C.F.R. §1502.10(a)]. These five realms are important to critically review when preparing comments towards an EIS. Contained within these five factors are all the information, research, evidence, and conclusions to which resources, including cultural resources and practices, in the environment will be affected.

- 1) Purpose and Need (40 C.F.R. §1502.13) The purpose and need section should usually include a summary of the project and the project proponent's reasons for undertaking the project.
- 2) Alternatives including the proposed action (40 C.F.R. §1502.14) This section will include the evaluation of the alternatives to the proposed action. As required by the NEPA regulations, this section requires agencies to: (a) Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. (b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits. (c) Include the no action alternative. (d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. (e) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Each alternative listed should also incorporate analysis that addresses the environmental impact each option presents. Additionally, this section should include a list of benefits each alternative would have. Overall, this section could present opportunities for the community to present alternative options that may not have been considered previously. This section should be monitored for what outcome each alternative possesses and which option the agency prefers.

- 3) Affected Environment (40 C.F.R. §1502.15) This section includes a description of the area being affected and an evaluation of impacts posed by planned actions (40 C.F.R. §1502.15).

In addition to a description of the affected area, the environmental consequences of the proposed action should also be assessed (40 C.F.R. §1502.16). The environmental consequences section forms the scientific and analytic basis for the comparisons of the proposed alternatives. To differentiate, the environmental consequences should discuss topics such as, but not exclusive to:

- The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts.
- Any adverse environmental effects that cannot be avoided.
- Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned.
- Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- Means to mitigate adverse environmental impacts

These sections could be an opportunity to comment on the proposed alternatives and possibly offer additional factors to consider when considering effects of any proposed action from a Native Hawaiian health and traditional healing lens. The relationship between Hawaiian health and ‘āina (land) is often overlooked in EIS. Here is where commentary could reinforce that the health and well-being of Hawaiians and the overall lāhui is inextricably linked to the health and integrity of the biocultural landscape.

Hawai‘i Environmental Policy Act [[HEPA](#)] | Hawai‘i Revised Statutes § 343 & Hawai‘i Administrative Rules § 11-200 to 11-201

HEPA (Figure 3), Hawai‘i state law modeled after NEPA, requires individuals and/or agencies to produce an assessment or impact statement for actions that may impact the environment and natural resources. HEPA implementing legislation necessitates integrating citizen concerns into the planning process and forewarning decision makers of potential significant environmental effects (HRS § 343-3).

HEPA requires that an agency proposing or approving a proposed project or action needs to consult (or direct an applicant to consult) with the respective county planning department(s) and other agencies or individuals that might have jurisdiction or expertise with respect to the proposed action. Early consultation is the most important element of the HEPA process, and as an NHO, expert consultation may be requested from POL in regard to the effects the proposed action poses to the health and well-being of the lāhui.

Cultural Impact Assessments (CIAs)

CIAs assess the potential impacts posed to the cultural practices, resources and beliefs of a particular cultural or ethnic group or groups by proposed projects in a project area. CIAs inform Environmental Assessments (EAs) which determine for proposed projects whether there is a Finding of No Significant Environmental Impact (FONSI) or if an Environmental Impact Statements (EIS) should be performed. When proposed projects will clearly have a significant environmental impact, CIAs are performed in support of EIS studies.

The Environmental Council recommends that preparers of assessments analyzing cultural impacts adopt the following protocol:

- 1) Identify and consult with individuals and organizations with expertise concerning the types of cultural resources, practices and beliefs found within the broad geographical area, e.g. district or ahupua'a;
- 2) Identify and consult with individuals and organizations with knowledge of the area potentially affected by the proposed action;
- 3) Receive information from or conduct ethnographic interviews and oral histories with persons having knowledge of the potentially affected area;
- 4) Conduct ethnographic, historical, anthropological, sociological, and other culturally related documentary research;
- 5) Identify and describe the cultural resources, practices, and beliefs located within the potentially affected area; and
- 6) Assess the impact of the proposed action, alternatives to the proposed action, and mitigation measures, on the cultural resources, practices and beliefs identified (HAR § 11-200.1-18).

Hawai'i Environmental Policy Act (HEPA) Process

Adapted from *Office of Environmental Quality Control Hawai'i - Environmental Review Decision Making Process*
www.planning.hawaii.gov.

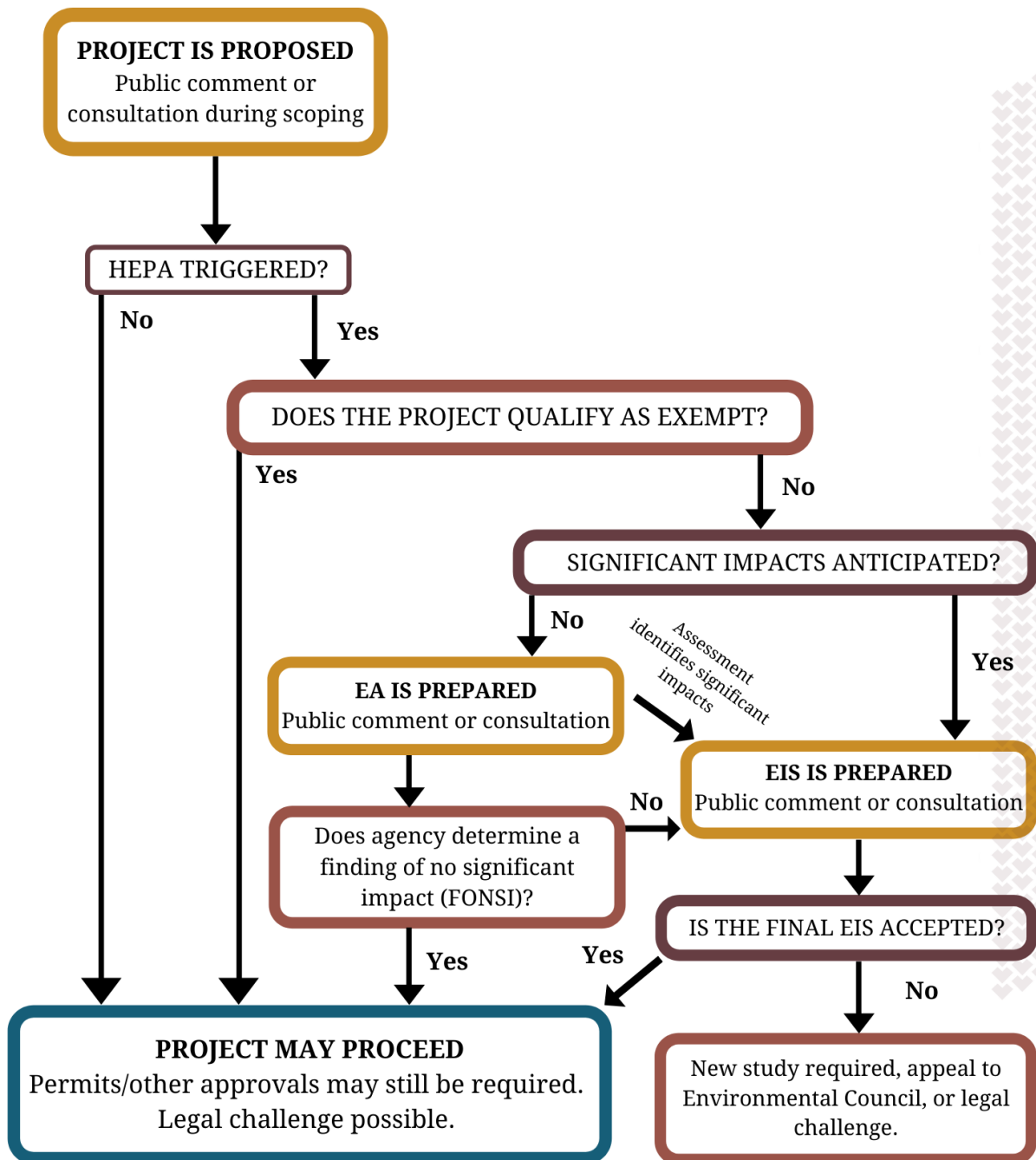


Figure 3. Flowchart of the Hawai'i Environmental Policy Act (HEPA) process

The CIA requirement applies to major development projects proposed: on land classified as conservation or within the shoreline setback area (usually forty feet from the certified shoreline); within a historic site or district; that require zoning to be changed from agriculture, conservation, or preservation; that involve the use of state or county funds (subject to limited exceptions); as well as certain other specified uses (see HRS § 343-5; HAR §§ 11-200-5 to -8).

Requests for public comment, or requests for consultation, are generally triggered by regulations and are issued as a result of an undertaking. An undertaking is essentially a proposed project or active development. Project phases that can trigger the need for consultation range in the development timeline from initial scoping and pre-consultation to in progress and even near completion. For CIAs, it is important to analyze who was included in the consultation, what data and research they collected, how the data was interpreted in the assessment, and the conclusions they reach regarding the impacts to the use and preservation of the cultural resources contained in the proposed project area.

With requests for public comment and consultation, it will be important for POL to note the other organizations and individuals who were contacted, especially other NHO, and who chose not to participate. Consultation for CIAs often follow tight timelines – another important factor for POL to be aware of.

IVc. State and Federal Historic Preservation Laws and Regulations

Native American Graves Protection and Repatriation Act ([NAGPRA](#)) | 43 C.F.R. § 10.

NAGPRA (Figure 4) was enacted in 1990, sponsored by Hawai'i Senator Daniel Inouye, Chairman of the Indian Affairs Committee at the time. NAGPRA, as recently revised, recognizes the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations regarding Native American and Native Hawaiian human remains and cultural items. NAGPRA defines **cultural items** as “[a] funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization,” (Interior Department 2023c). Under NAGPRA, cultural items include:

- **funerary objects** - “Any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. This term does not include any object returned or distributed to living persons according to traditional custom after a death rite or ceremony. Funerary objects are either associated funerary objects or unassociated funerary objects,” (Interior Department 2023c).
- **sacred objects** - “A specific ceremonial object needed by a traditional religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. While many items might be imbued with sacredness in a culture, this term is specifically limited to an object needed for the observance or renewal of a Native American religious ceremony,” (NPS 2024).

Native American Graves Protection and Repatriation Act Process for Iwi Kūpuna Encounters or Exposures

Adapted from *National Park Service-National American Graves Protection and Repatriation Act*
www.nps.gov/subjects/nagpra.

INTENTIONAL EXCAVATION OR REMOVAL = DISCOVERY WITH A PLAN

1. Prior to any planned activity, and through consultation, develop a **Plan of Action** or an agreement for disposition upon removal.

OPPORTUNITY FOR CONSULTATION

2. If items are removed, immediately put the plan or agreement into action.

3. Publish Notices of Intended Disposition (NIDs) in newspaper, twice. **OPPORTUNITY FOR CONSULTATION**
4. Transfer control 30 days after the second notice.
5. Send copy of notice to National NAGPRA
6. Submit list of any unclaimed cultural items to National NAGPRA.

INADVERTENT DISCOVERY = DISCOVERY WITHOUT A PLAN

1. Any person informs the appropriate Federal agency or tribal official of a discovery of iwi kūpuna or cultural items.

2. Stop work for 30 days, protect the site, consult, and develop a plan for disposition.

OPPORTUNITY FOR CONSULTATION

Figure 4. Illustration of the processes for iwi kūpuna encounters or exposures in contexts where the Native American Graves Protection and Repatriation Act is applicable to Native American and Native Hawaiian cultural items originating on federal or tribal lands as well as lands administered by the DHHL

- **objects of cultural patrimony** - “An object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it: (1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and (2) Must have been considered inalienable by the group at the time the object was separated from the group,” (NPS 2024).

NAGPRA sets forth systemic processes for the protection and restoration of Native American and Native Hawaiian human remains and cultural items. The regulations require consultation with lineal descendants, Indian Tribes, and Native Hawaiian organizations. They also require deference to Native American traditional knowledge, inclusive of Native Hawaiian knowledge (Interior Department 2023c).

In December 2023, the Department of the Interior extensively updated NAGPRA’s implementing regulations. Some of the major updates include the strengthened authority and role of Indigenous communities in repatriation processes, clarification of consultation goals and processes, deference to Indigenous Knowledge, and requirement of free, prior, informed consent from Indigenous descendants before cultural items can be exhibited, accessed, or researched (Interior Department 2023a). As summarized by the Interior Department (2023b), additional details regarding NAGPRA’s updates and expansion include:

- Strengthening the authority and role of Tribes and NHOs in the repatriation process by requiring deference to the Indigenous Knowledge of lineal descendants, Tribes and NHOs.
- Requiring museums and federal agencies to obtain free, prior and informed consent from lineal descendants, Tribes or NHOs before allowing any exhibition of, access to, or research on human remains or cultural items.
- Eliminating the category “culturally unidentifiable human remains” and resetting the requirements for cultural affiliation to better align the regulations with congressional intent.
- Increasing transparency and reporting of holdings or collections and shedding light on collections currently unreported under the existing regulation.
- Requiring museums and federal agencies to consult and update inventories of human remains and associated funerary objects within five years of this final rule.

A Federal Advisory Review Committee reviews and monitors the implementation of NAGPRA. According to the National Park Service (2024) Its responsibilities include:

- monitoring the NAGPRA inventory and identification process
- reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;
- facilitating the resolution of disputes;
- consulting with Indian Tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Review Committee; and
- consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA

The Secretary of the Interior appoints the membership of the committee, which is comprised of Indian Tribes, NHOs, traditional religious leaders, national museum and scientific organizations (2024c).

Regarding NAGPRA, it is important for NHOs to understand that the newly revised NAGPRA regulations:

- Strengthen the authority and role of Indigenous communities in repatriation processes;
- Mandate deference to Indigenous Knowledge, especially concerning what constitutes human remains and cultural items (funerary objects, sacred objects, objects of cultural patrimony) and which holdings and collections are subject to NAGPRA. Deferring to Indigenous Knowledge means agencies, organizations, and museums have an obligation to consult in order to determine what of their holdings and collections constitutes human remains and cultural items and is subject to NAGPRA. Again, consultation determines this, and the decision-making authority rests with consultees not agency or organization Boards, Administration, or Staff.
- Require free, prior, informed consent from Indigenous descendants before cultural items can be exhibited, access, or researched (Interior Department 2023a).

It is additionally recommended that agencies and organizations working with NHOs to implement NAGPRA should commit to policies and actions that do no harm (ethical best practices), according to metrics set forth by stakeholders (not Administrators or Board members). It is strongly recommended that agencies and organizations employ consultation best practices by securing and maintaining informed consent, and viewing consultation as a conversation and relationship. Make efforts and secure resources and staff capacity to keep lines of communication open to maintain informed consent and respect wishes to retract contributions when they arise. Decolonize policies, practices, actions, and impacts by decentering agency and organization authority, and priorities. Relatedly, center agency and authority with stakeholders, to determine purposes, goals, needs, priorities, and timelines. Agencies and organizations subject to NAGPRA should give more than they take to people and places using metrics determined by stakeholders.

Lastly, it is beneficial for non-profit organizations to have a general understanding of the some of the Department of Hawaiian Homelands' (DHHL) NAGPRA regulatory kuleana, requirements and obligations. The DHHL is a state agency whose duties and obligations are implemented at the state level. The landholdings managed by the DHHL are considered state landholdings. Under NAGPRA, DHHL landholdings are considered Tribal lands. It is important for BPBM administration and staff to note the DHHL's unique role under NAGPRA.

National Historic Preservation Act ([NHPA](#)) | 54 U.S.C. § 300101(1)

The NHPA established a federal program of historic preservation and requires Federal agencies to follow a process to consider the impact of their proposed projects and actions on historic properties.

The NHPA encourages State and local preservation programs by creating and designating a position for a State Historic Preservation Officer (SHPO) to identify and inventory historic properties of the State, prepare, and implement a statewide historic preservation plan, serve as liaison with the Federal agencies, and provide the public with information, education, and

technical assistance. The SHPO in Hawai'i is the State Historic Preservation Division (SHPD) which oversees all Hawai'i's historic preservation needs and issues. SHPD is housed under the Department of Land and Natural Resources (DLNR).

The NHPA was amended in 1992 to require consultation with Native American tribes and NHOs when their activities will affect historically and culturally significant properties. POL participation in NHPA requests for public comment and consultation can shape project approaches, outcomes, and impacts to and heritage, including its short and long-term stewardship. Mitigation efforts towards identified harms to these properties must now include consultation with Native American tribes and/or Native Hawaiian Organizations, and any interested party.

To lead preservation efforts, the NHPA establishes and sets forth duties and authorities of the independent federal agency, the ACHP. Ultimately, the Council plays a central role in administering and facilitating the preservation review process established in §106 of NHPA [54 U.S.C. § 306108]. It is important to note that the ACHP decisions are *advisory*, not authoritative. Although the Council has only *advisory* authority to comment on the impact of and mitigation for an undertaking, it plays a foundational role in NHPA compliance.

NHPA Section 106 [[§ 106](#)] | 36 C.F.R. § 800.3

Section 106 of the NHPA (Figure 5) requires Federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP with a reasonable opportunity to comment. In addition, Federal agencies are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations (NHO).

Section 106 request for public comment or consultation is an opportunity for POL to consider and communicate how impacts and mitigation measures proposed for historic properties affect the physical, emotional, and spiritual health of Hawaiians and Hawaiian healing traditions.

National Historic Preservation Act

Section 106 Process

Adapted from *Advisory Council on Historic Preservation - Section 106 Review Process*
www.achp.gov.

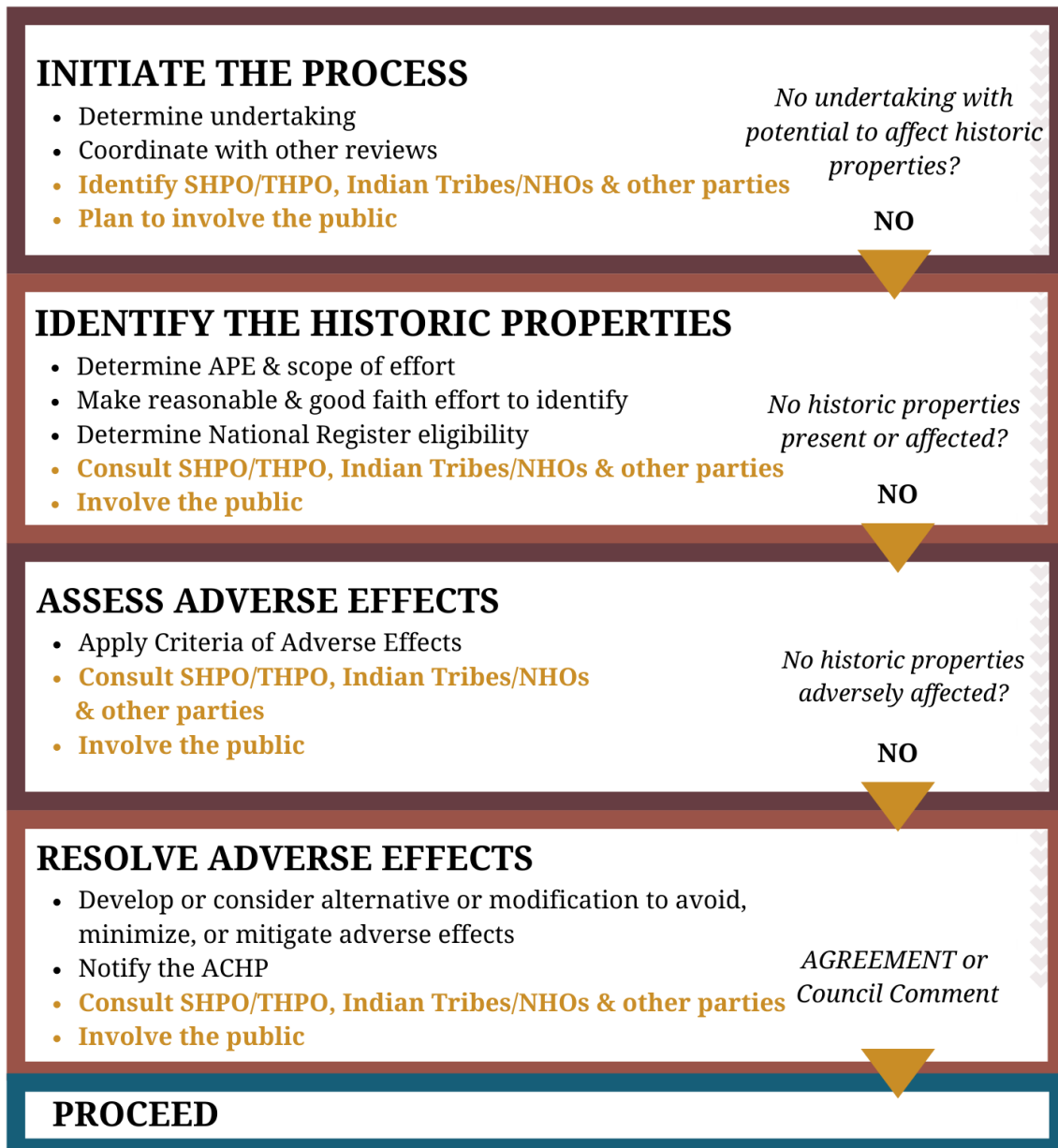


Figure 5. Steps in the National Historic Preservation Act Section 106 process, including role of public comment/consultation (in yellow)

Hawai'i Revised Statutes § 6E [[HRS §6E](#)] | Historic Preservation Regulations

HRS § 6E, passed in 1976, established historic preservation laws and a program of historic preservation in Hawai'i. The legislation upholds the recognition, set forth in the state constitution, of the value of conserving and developing historic and cultural properties for the public good, and to: “[E]ngage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens” and for future generations (HRS § 6E-1). HRS § 6E also “declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens” (HRS § 6E-1).

HRS § 6E-8 requires state and county agencies to consult with SHPD if a state or county project has the potential to effect historic properties, aviation artifacts or burial sites. HRS § 6E-8 obligates state and county agencies to provide the SHPD an opportunity to review projects with potential effects to historic properties (Figure 6). Projects that undergo historic preservation review under HRS § 6E-8 require SHPD concurrence regarding whether or not they propose potential effects to historic properties to proceed.

HRS Chapter 6E Historic Preservation Compliance Review Process

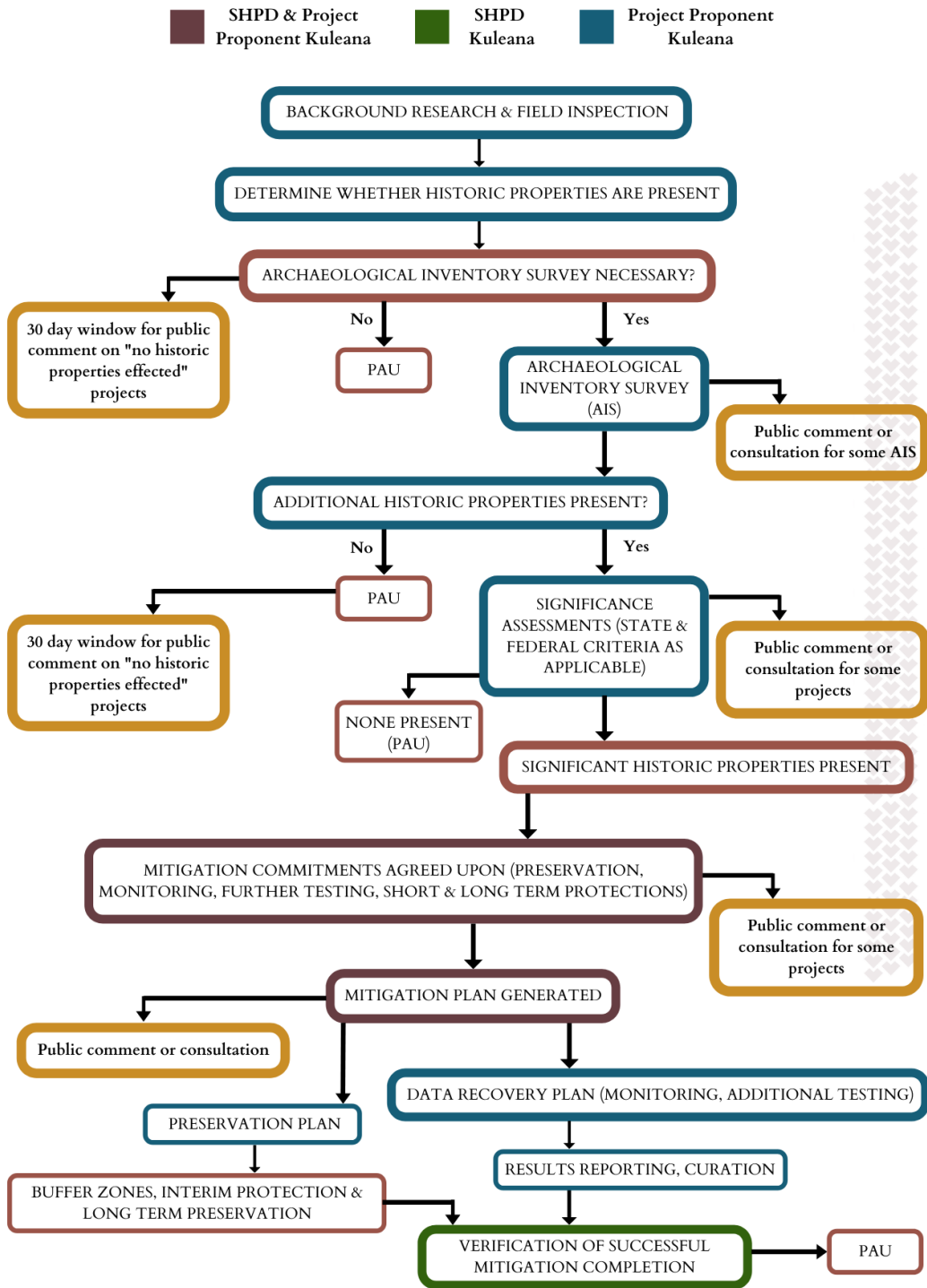


Figure 6. Illustration of the steps in the HRS § 6E historic preservation compliance review process.

Hawai'i Administrative Rules § 13-300 [HAR §13-300] | Rules of Practice and Procedure Relating to Burial Sites and Human Remains

It is appropriate to begin this discussion by acknowledging the sacred importance of iwi. The iwi, or bones of a person, have more meaning than the physical manifestation of a person's frame. The word 'ōiwi, literally means native or indigenous (Pukui & Elbert, 1986). Hawai'i, the homeland or native land, of the Hawaiian people is referred to as kulāiwi. *Kula*, literally meaning a field or open country, and *iwi*, literally, and most simply meaning bones, or bones of the dead. Therefore, in its most literal sense, *kulāiwi* (the homeland of all Hawaiian people) is the place where 'ōiwi have been buried. Hawai'i or home is defined not only by where Hawaiians live, dwell and practice culture, but as the place where their ancestors are buried. It is no wonder it is considered a desecration when Hawaiian burials are removed, disturbed, exposed or relocated.

It seems natural then, that there is a tradition of secrecy around the location of iwi kūpuna, burials, in Hawai'i. According to Pukui, "The bones of the dead, considered the most cherished possession, were hidden, and hence there are many figurative expressions with iwi meaning life, old age... (Pukui and Elbert 1986 Pukui 1983 No.s 646, 647, 648, 790). Pukui recorded many of these figurative expressions, or 'ōlelo no'eau; Hawaiian proverbs which convey the importance of iwi both metaphorically and physically; and give us insights into how one's iwi are tied to their health, character and well-being (Ibid, No.s 457, 464, 662, 808).

He iwi koko.	Blooded bones.
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A living person. [No. 646 Pukui 1983:73]

He iwi 'ole.	Bloodless bones.
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A dead person. [No. 646 Pukui 1983:73]

Hawaiian oral traditions do not often locate burial areas, as there is a kapu (a prohibition) on the exposure of bones to the sun; this is a particularly egregious desecration for Hawaiian remains (Pukui 1983: 17, 174, 194, 225).

Aohe e nalo ka iwi o ke alii ino, o ko ke alii maikai ke nalo.	The bones of an evil chief will not be concealed, but the bones of a good chief will.
--	---

When an evil chief died, the people did not take the trouble to conceal his bones. [No. 135 Pukui 1983:17]

Furthermore, there is a tradition of secrecy around the location of iwi kūpuna, in part for the protection of the mana (or power) that dwells in the bones of a deceased person. There are accounts of fishhooks made from the bones of great fisherman as being imbued with their gifts and sought after (Ibid, No.s 1346, 2403, 2514). Secrecy is also a protection for burials from desecrations such as exposure to the sun:

Kaula'i na iwi i ka lā.	<i>To bleach the bones in the sun.</i>
-------------------------	--

To talk too freely and unkindly of one's family to outsiders. [No. 1618 Pukui 1983:174]

Mai kaula'i wale i ka iwi o na kūpuna.	Do not dry out the bones of the ancestors.
--	--

Do not discuss your ancestors too freely with strangers, for it is like exposing their bones for all to see. [No. 2069 Pukui 1983:225]

Because of the deeply seated traditions of kapu arounds the topic of iwi kūpuna, even today, when the sharing of burial locations might enhance protections for iwi kūpuna, it can be difficult for families to open up about cemeteries or burial sites known to them for generations. Where in the past it was true that secrecy was the greatest protection for iwi kūpuna, today, in many cases (though not all), sharing knowledge of ancestral remains can be their greatest avenue for protection.

The state laws applicable to iwi kūpuna - HAR § 13-300 – establish a complex and varied process; the discussion of HAR § 13-300 is here limited to the information necessary to facilitate the purposes of this manual and POL's objectives - providing meaningful public comment and consultation from a position of expertise regarding Native Hawaiian Health and Hawaiian healing traditions.

HAR § 13-300 “governs practice and procedure relating to the proper care and protection of burial sites found in the State before the island burial councils and the department of land and natural resources” (HAR § 13-300-1), including iwi kūpuna. HAR § 13-300 is triggered during historic preservation compliance review, or through natural actions such as shoreline or sediment erosion, when iwi kūpuna are revealed. HAR § 13-300 is a complex and varied process whose path, outcomes, and decision makers are determined by a variety of factors such as location, regulatory context, and the point in time during the trajectory of a proposed project that iwi kūpuna are revealed (Figure 7). When there is a project undertaking, iwi kūpuna located or revealed prior to

HRS Chapter 6E Historic Preservation Process for Iwi Kūpuna Previously Identified vs. Inadvertently Discovered

Adapted from *The Kali'uokapa'akai Collective Report* www.kaliuokapaakaicollective.org/kcreport

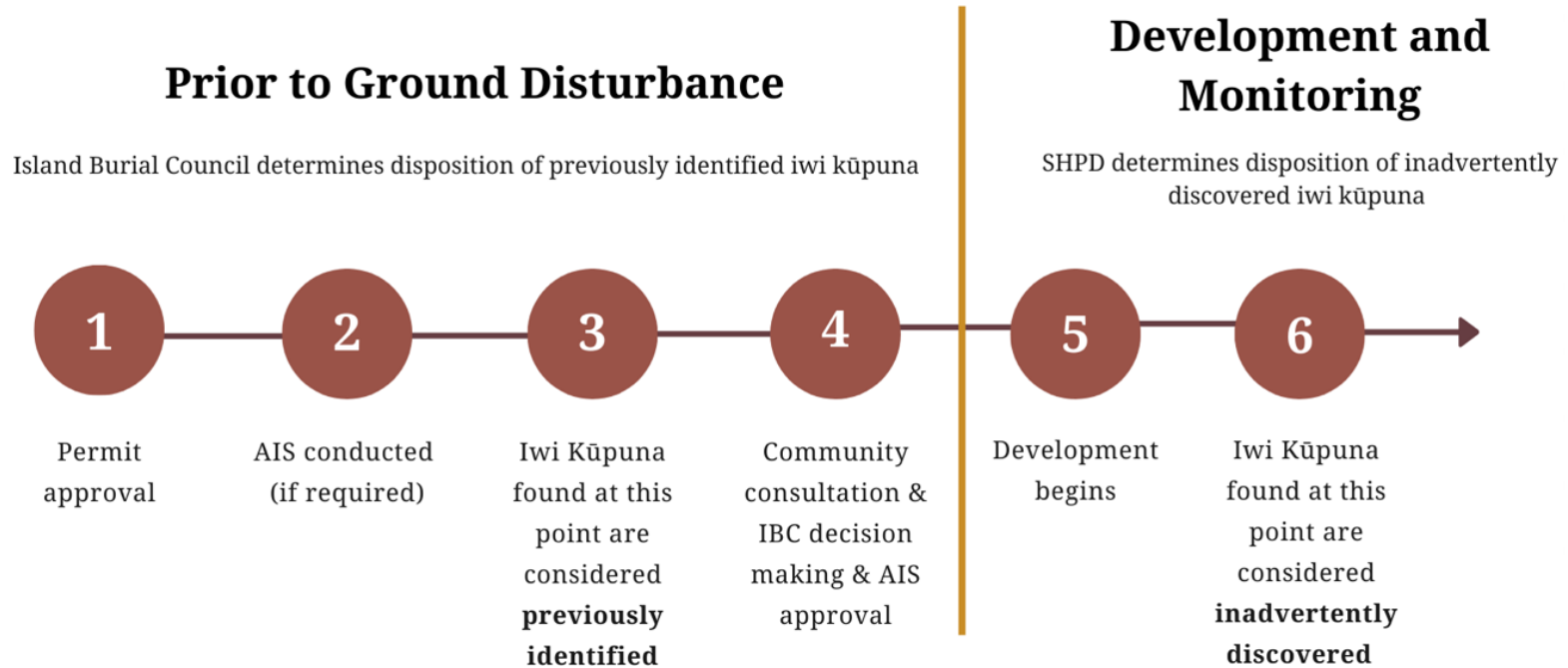


Figure 7. Illustration of when iwi kūpuna are labeled “previously identified” versus when they are termed “inadvertently discovered” in the HRS § 6E historic preservation compliance review process

ground disturbance are termed “previously identified” (Figure 8) and communities, ‘ohana, and Island Burial Councils determine the terms of their mitigation (e.g., how they are treated, if they are preserved in place or reinterred, if a burial preserve is established, etc.) through partnership and collaboration. In instances of shoreline erosion, and when there is a project undertaking, iwi kūpuna located or revealed during development and monitoring are labeled “inadvertent discoveries” and the SHPD and, in some instances, consultants, determine mitigation measures. Communities and ‘ohana may or may not be consulted regarding iwi kūpuna labeled as “inadvertent discoveries” (Figure 9).

Definition of Inadvertent/Inadvertently Discovered vs. Previously Identified

Inadvertent/Inadvertently Discovered

A designation for human skeletal remains that: “[m]eans the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity“ (HAR §13-300-2). When iwi kūpuna are classified as “inadvertent” or “inadvertent discoveries” the SHPD issues the determination for their protection in perpetuity on an accelerated timeline of 1-3 days.

NAGPRA defines “inadvertent” as: “The unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of NAGPRA (Native American Graves Protection and Repatriation Act 2022 Glossary. Department of the Interior, National Park Service).

Previously Identified

Designation for human skeletal remains that: [m]eans burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony,” (HAR §13-300-2). When iwi kūpuna are classified as “previously identified,” the appropriate Island Burial Council (IBC) issues the determination for their protection in perpetuity with preference given to recommendations of lineal descendants on timelines extending past 45 days.

Figure 8. The definitions for “Inadvertent”/ “Inadvertently Discovered” and “Previously Identified” applied to iwi kūpuna in certain context

Decision Makers & General Timeline for Determining to Preserve in Place, or Relocate Iwi Kūpuna, State of Hawai'i

PREVIOUSLY IDENTIFIED

IBC makes the decision on determination, with *preference given to recommendation of lineal descendants*

(HRS § 6E-43.5(f), (HRS § 6E-43.5(f)(1),
(HAR § 13-300-35(f).

TIMELINE



>45 days

(HRS § 6E-43(b)

INADVERTENT DISCOVERIES

SHPD makes the decision on determination.

(HAR §13-300-40(e).

TIMELINE



Single Burial:

1 Working Day (O'ahu)

2 Working Days (all other islands)

(HRS § 6E-43.6(d),

(HAR § 13-300-40(d)

Multiple Burials:

2 Working Days (O'ahu)

3 Working Days (all other islands)

(HRS § 6E-43.6(c),

(HAR § 13-300-40(d)

Figure 9. The decision makers and response timelines, in Hawai'i, for determining whether iwi kūpuna are preserved in place or relocated

IVd. Additional Relevant Legislation Regarding Traditional and Customary Rights

This section provides an overview of the additional laws and regulations relevant to public comment and consultation requests.

Hawai'i State Constitution (Haw. Const.) [[Haw. Const.](#)]

The Hawai'i State Constitution contains specific provisions which allow and regulate the traditional and customary rights and practices of Native Hawaiians. As codified in the State Constitution, it is our right to enforce and preserve these provisions and ensure that each individual, organization, and agency abides by these provisions too.

Article 11 section 1 | Haw. Const. art. XI § 1

Article 11 section 1 of the State Constitution acknowledges and protects the traditional and customary rights of Native Hawaiians. The public trust doctrine ensures that biocultural resources are preserved for public use, including traditional and customary practices. The public trust imposes “a dual mandate of (1) Protection; and (2) Maximum reasonable and beneficial use. Establishing an “affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust whenever feasible” (see *Waiāhole I*, 94 Hawai'i at 141, 9 P.3d at 453).

As stated in the section,

[T]he State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people (Haw. Const. art. XI, § 1).

Notably, although not explicitly mentioned in the Constitutional provision, courts typically include iwi kūpuna under the public trust doctrine (see *Kaleikini v. Thielen* at 31, 237 P.3d at 1097). It is imperative that Native Hawaiians serving organizations uphold this public trust doctrine within the State of Hawai'i. Through environmental review processes, the comments or consultation that is provided could incorporate these constitutional regulations and force accountability of agencies or developers in adhering to the State Constitution.

Article 12 section 7 | Haw. Const. art. XII § 7

Native Hawaiian customary and traditional rights (such as stewardship of iwi kūpuna) are entitled to protections articulated in Article XII section 7 (Haw. Const. art. XII, § 7). Article XII, section 7 of the Constitution provides that:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights (Haw. Const. art. XII, § 7).

Concurrently, both Article 12 section 7 and Article 11 section 1 maintain Native Hawaiian rights to exercise our traditional and customary practices. For review purposes, this specific section of the Constitution requires agencies and developers to consider how their actions will impact these rights.

Article 9 section 9 | Haw. Const. Art. IX § 9

Regarding burial rites, and iwi or wahi kūpuna stewardship, Hawai'i's State Constitution, Article IX, section 9, acknowledges the State of Hawai'i's "power to preserve and develop the cultural, creative, and traditional arts of its various ethnic groups." (Haw. Const. art. IX, § 9). Simply stated, Native Hawaiians living in contemporary times are still afforded the ability to practice traditional burial rites and stewardship and are enabled to do so under the State Constitution. [See generally *Public Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n*, 79 Haw. 425, 903 P.2d 1246 (1995)].

This section is important to highlight as it provides an extra opportunity to layer protective measures for iwi and wahi kūpuna. For review purposes, section 9 offers NHOs legal authority to enforce the protection and preservation of our cultural resources as it pertains to our cultural expression. As it relates to health, fostering cultural expression can be beneficial for physical, emotional, and spiritual well-being of Native Hawaiians. Overall, this section highlights an avenue for NHOs to enforce the right to a living and healthy culture.

Hawai'i Revised Statutory (HRS) Provisions

Concerning traditional and customary practices, in addition to the constitutional mandates, the State of Hawai'i also codifies traditional and customary rights in Hawai'i statutes. Similar to the provisions listed above, these statutes offer extra legal backing to assert the rights to traditional and customary practices and protect against the impacts an agency or developer action will have on these rights.

Hawai'i Revised Statutes (HRS) section 1-1 [§1-1] | Haw. Rev. Stat. § 1-1

HRS section 1-1 also safeguards the exercise of traditional and customary practices; it extends those rights to the gathering of materials that are essential to a tenants' lifestyle, such as medicinal plants, and may even protect limited upland subsistence farming as practiced by Native Hawaiians.

Hawai'i Revised Statutes (HRS) section 7-1 [§7-1] | Haw. Rev. Stat. § 7-1

HRS section 7-1 specifically protects the right to gather materials and the right to water. Regarding water, it is stated that the people “shall have a right to drinking water, and running water, and the right of way. “[S]prings of water, running water, and roads shall be free to all, on all lands...” (HRS § 7-1). As water relates to health, especially because Hawaiians rely on freshwater resources for food production (kalo cultivation), spiritual needs, and overall cultural expression. This statute assists in enforcing rights to traditional and customary practices that rely on water resources.

Hawai'i Case Law Interpretations - Ka Pa'akai Analysis

In 2000, the Hawai'i Supreme Court decided *Ka Pa'akai o Ka 'Āina v. Land Use Commission* (Ka Pa'akai), holding that article XII, section 7 of Hawai'i's Constitution "places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights, and confers upon the State and its agencies 'the power to protect these rights and to prevent any interference with the exercise of these rights.'" [*Ka Pa'akai o Ka 'Āina v. State of Hawai'i Land Use Com'n [Ka Pa'akai]*, 94 Haw. 31, 47, 7 P.3d 1068, 1084 (2000)].

Essentially, the Ka Pa'akai opinion provides a decision-making framework which courts use to determine whether state and county agencies adequately meet their duties to preserve and protect traditional and customary native Hawaiian rights.

In any decision, the State must, at a minimum, make specific findings and conclusions on:

1. (1) the identity and scope of 'valued cultural historical, or natural resources' in the petition area, including the extent to which traditional customary native Hawaiian rights are exercised in the petition area;
2. (2) the extent to which those resources-including traditional and customary native Hawaiian rights-will be affected or impaired by the proposed action;
3. and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist (*Ka Pa'akai*, 94 Haw. at 47, 7 P.3d at 1084).

In summary, the court ruled:

1. (1) the state and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible;
2. (2) agencies are obligated to make an assessment, independent of the developer or applicant, of impacts on customary and traditional practices of Native Hawaiians;

3. and (3) the independent assessment must include the three factors (A, B, and C) listed above, otherwise known as the “Ka Pa‘akai framework.”

The framework provides specific guidance to state and county agencies in considering land use and development projects. This means that agencies may not delegate this constitutional responsibility to others by, for example, directing the applicant to independently attempt to protect traditional and customary rights. Instead, agencies must actively research and consider the cultural, historical, and natural resources of a subject property as they relate to Native Hawaiian rights, when determining what restrictions should be placed on land or water use.

Additional Relevant Federal Provisions

Native Hawaiian Health Care Improvement Act (NHHCIA) | (42 USC 122)

The NHHCIA establishes “a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people.” The NHHCIA acknowledges the unmet health needs of Native Hawaiian people and affirms Papa Ola Lōkahi’s position as the health program initiated to address these needs. The NHHCIA also authorizes Papa Ola Lōkahi to receive special project funds that may be appropriated for the purpose of research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

The American Indian Religious Freedom Act (AIRFA) | (42 USC § 1996)

The AIRFA (42 U.S.C. § 1996.) protects the rights of Native Americans (and Native Hawaiians) to exercise their traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. Practices such as Makahiki and the invocation of healing deities such as Lonopuha, Hi‘iaka, Hina‘ea, Haumea, and others, are protected under AIRFA.

V. WHY IS POL RECEIVING REQUESTS FOR PUBLIC COMMENT/CONSULTATION?

Federally, POL will receive requests pursuant to either NEPA or NHPA Section 106 consultation standards. These agencies are mandated to pursue comments from stakeholding NHOs. Comments should consider the proposed environmental impacts and mitigation techniques the agency outlines in either the projects' Notice of Intent, EA, EIS, or Section 106 consultation initiation request.

At the State level, POL will receive requests pursuant to HEPA as well as HRS §6E (historic preservation law), when deemed appropriate by the project proponents, their consultants, or the SHPD.

POL's kuleana in participating in public comments and consultation is tied to the role and impacts public comments and consultation have in environmental and historic preservation compliance review, explained below. Ways in which public comments and invitations to consultation can impact proposed projects are by influencing their location, extent, design, execution, impacts to natural/cultural resources, and regulatory obligations.

POL receives requests for public comment regarding projects (proposed change(s)/development(s)) due to its listing on the federal NHO Notification List maintained by the ONHR United States DOI (www.doi.gov/hawaiian/NHOL). Public comments are responses to publicly issued requests for general public comment from agencies/project proponents or their consultants. Requests for public comment can be proactive or triggered by regulations and are commonly associated with initial scoping and pre-consultation for projects (change(s)/development(s)) that pose impacts to biocultural resources and places. They are typically issued once, commonly in forms including time-limited written/verbal testimony in public meetings during project scoping/pre-consultation phases, through agency-sponsored online public comment forms, on social media, posting on POL's website, etc. Public comments are usually - but not always - shorter, less formal, and less detailed than consultation letters. A draft public comment template and examples are featured that POL can modify as desired (see Section IX and X).

As with public comments, POL receives requests for consultation regarding projects (proposed change(s)/development(s)) due to its listing on the federal NHO Notification List maintained by the ONHR, United States DOI. Requests for consultation can be proactive or triggered by regulations and are issued during project (proposed change(s)/development(s)) phases ranging from initial scoping and pre-consultation to near completion. Common response formats include mailed letters, emails, and consultation entered through an agency or consultant website or portal. Consultation may occur once or unfold as a conversation, depending on the trajectory of the proposed change(s)/development(s), POL's level of investment, and the approaches used by agencies/project proponents/consultants.

Consultation is typically more formal and detailed than public comments, and part of a more prolonged and involved conversation regarding the impacts of a proposed project.

Reports eligible for review/comment/consultation include but are not limited to Environmental Impact Studies (EIS), Environmental Assessments (EAs), Cultural Impact Assessments (CIAs), Ethnographies, and Archaeological studies.

POL's purpose in engaging in environmental and historic preservation compliance review public comment and consultation is to speak from a place of experience and expertise regarding the proposed project's potential impacts to traditional Hawaiian healing practices, kūpuna practices, and the health of the lāhui. Section VI provides a policy statement distilling POL's mission, vision, and values relative to environmental and historic preservation compliance review public comment and consultation.

VI. POLICY STATEMENT

This section contains POL’s policy statement which concretely defines the linkages between Hawaiian healing traditions, kūpuna (traditional) practitioners, and the physical, mental, and spiritual health of the lāhui and others to the health of integrated biocultural systems and the impacts proposed to them during environmental and historic preservation compliance review processes.

POL recognizes that the health and well-being of our lāhui and others is inextricably linked to the health of our wahi kūpuna and integrated biocultural systems and their integrity (defined as existence, access, availability, conditions for abundance) in perpetuity. The spiritual, mental, and physical health and well-being of the lāhui is indivisible from the ability to continue practicing traditional rites. Collectively upholding the integrity and traditional practices surrounding the care of iwi kūpuna, ‘āina, wahi kūpuna, wahi ho‘ōla (healing places), historic properties, food, and other biocultural resources, anchors our cultural identity and maintains our spiritual and physical connection to our ‘āina. Ultimately, the ability to continue these practices empowers the lāhui and enforces our rights to a living and healthy culture. Overall, Hawaiian self-determination, and agency are vital to the health of our integrated biocultural systems for present and future generations of Native Hawaiians’, their ‘ohana, and other communities throughout Hawai‘i.

In recognition of its value and importance, POL assumes the kuleana of participating in public comment and consultation from a traditional Hawaiian healing and Native Hawaiian health perspective as a step towards realizing our vision of “a thriving Native community composed of healthy individuals and families informed about their rich heritage and culture, living in a state of lōkahi (unity), and making informed choices and responsible decisions in a safe island society that is pono (in proper order),” and living our organizational values and guiding principles:

Via. POL’s Values and Guiding Principles

(adapted from www.papaolalokahi.org)

- **Aloha:** Caring, love, compassion.
- **Mālama:** Nurturing, caring for, stewardship.
- **‘Imi ‘Ike:** Seeking knowledge.
- **Lokomaika‘i:** Sharing, generosity.
- **Na‘au Pono:** Nurturing what is right and just.
- **Olakino Maika‘i:** Maintaining a healthy person.
- **‘Onipa‘a:** We need to remain steadfast and resolute and persevere to overcome adversity.
- **Pono:** We need to be just and seek harmony in all that we do.
- **‘Oia ‘i‘o:** We need to be truthful.

- **Ha‘aha‘a:** We need to be humble.
- **Ho‘omana‘o:** We need to commemorate and be ever mindful of contributions of those who have come before us.
- **Ho‘iho‘i:** We need to give back to the community.
- **A‘o:** We need to acquire, communicate, and pass on knowledge.
- **Hana:** We need to want to work.
- **Nānā:** We need to observe with a keen eye and master the skills that we are required to perform.
- **Ho‘olohe:** We need to listen intently.
- **Pa‘a ka waha:** We need to speak only when it is beneficial to do so.
- **Ha‘ina ‘ia mai ana ka puana:** We need to be willing to revise, refine, and restate.
- **Hana ka lima:** We need to work diligently together – all share the load.
- **Laulima e kōkua:** We need to work together and help one another.
- **Hana pono:** We need to be accountable for our actions.

VII. STANDARD OPERATING PROCEDURES (SOPs)

This section outlines POL's SOPs for receiving and responding to requests for public comment and consultation generated by environmental and historic preservation compliance legislation and processes. Included are recommended considerations and tips, including a checklist of factors to consider for public comment and consultation, and overview of POL priorities and values relative to environmental and historic preservation compliance review concerns for engaging in and providing public comment and consultation.

VIIa. SOPs

Foundational to operationalizing these SOPs are the necessary first steps of establishing and implementing a filing system and identifying POL staff and defining their roles in the shared kuleana. Comprising these SOPs are a workflow augmented by a consultation tracker to record start-to-finish decision making, a matrix that will equip POL to decide whether or not to respond to requests for public comment/consultation, a checklist of considerations consisting of values and factors to consider in environmental and historic preservation compliance review requests and the studies typically associated with them, and public comment and consultation templates.

First, POL staff roles should be designated for public comment/consultation intake, possible staff leads who can share the responsibility of vetting and responding to public comment/consultation, and administrative support.

Second, the POL staff assuming the responsibility should establish a physical or electronic space to organize and retain public comment and consultation-related files. This space should be the permanent home of the consultation tracker, POL decision-making matrix, and SOPs. Requests for public comment and consultation could be organized in a variety of ways:

- By type (e.g., public comment, consultation)
- By date (e.g., date received, date of the request, date of POL response)

Below is a general process for how POL can receive and determine its response level to requests for public comment and consultation for environmental and historic preservation compliance contexts. Supplementary materials provided to POL for use with this manual appear in bold.

- 1) Receive email or letter request for consultation reviewing
 - a) File in secured physical or electronic location
 - i) As applicable/appropriate/desirable, this could involve but is not limited to: timestamp hardcopies of documents, route hardcopies to appropriate POL staff, scan documents, situate electronic documents in appropriate electronic folder.

- 2) Log request information (type, study type public comment/consultation will inform, mode, requesting party, received by, date received, due date) in **Consultation Tracker**.
- 3) Designate lead POL staff member or members - by category, island, area of expertise, etc. - to coordinate/author public comment/consultation, log in **Consultation Tracker**.
- 4) POL decides whether to respond using the **POL Decision Matrix**, log in **Consultation Tracker**.
- 5) Compare public comment/consultation request against **POL Checklist of Considerations**, log in **Consultation Tracker**.
- 6) Tracker answers to applicable **POL Checklist of Considerations**, log in **Consultation Tracker**, save answers for use in generating public comment or consultation
- 7) Determine priority level relative to POL priorities as “not a priority”, “low”, “medium”, “high,” or “urgent”, log in **Consultation Tracker**.
- 8) Determine POL level of involvement, log in **Consultation Tracker**.
- 9) Decide whether POL wants to request compensation/donation/administrative fee for specific asks (e.g., consultants), log in **Consultation Tracker**.
- 10) If responding, decide whether Kūpuna Council/individual input is warranted/ desirable, log in **Consultation Tracker**.
- 11) Coordinate Kūpuna Council/individual input, log in **Consultation Tracker**.
- 12) Determine whether additional OHA support is desired, log in **Consultation Tracker**.
- 13) **Provide public comment**, log in **Consultation Tracker**.
 - a) Stipulate as a condition of supplying public comment: any reference must use only “direct quotes that capture context” and appendicize the entire public comment each time it is utilized so future reviewers receive direct understanding and have access to POL’s full-text public comment?

-OR-

- b) **Participate in consultation** - decide level of consultation wish to engage in (letter, ongoing conversation, etc.), log in **Consultation Tracker**.
 - i) Stipulate as a condition of supplying consultation: any reference must use only “direct POL quotes that capture context” and that entire consultation letter must be appendicized each time it is utilized so future reviewers receive direct understanding and have access to POL’s full-text consultation letter?

14) When is the process done? Does POL want project updates?, log in **Consultation Tracker**.

- a) Stipulate: Updates on progress project as part of participation public comment and consultation
- b) Track who responds

15) Desirable to track progress?, log in **Consultation Tracker**.

- a) If so, how? Identify how to track it. When to stop tracking?
- b) Provide comments if consultation perspectives are not integrated into the project? If so, when and how?

16) Desirable to share POL public comment or consultation?

VIIb. Factors to Consider for Public Comment and Consultation

This section summarizes factors to keep in mind, and information POL may wish to gather in order to provide public comment or consultation. It can be utilized as outlined in the above workflow. Factors outlined in this section could also be contemplated in advance by an individual or group in preparation for composing public comment or engaging in consultation.

When engaging in public comment and consultation, POL may wish to issue a position statement regarding the proposed project from a traditional healing and Native Hawaiian health perspective.

A way to approach the development of POL's position statement is by using the following "Checklist of Factors to Consider for Public Comment and Consultation" to collectively consider what the factors below tell you regarding impact(s) to Hawaiian physical, mental, and spiritual health at the individual and community levels by the proposed project?

Checklist of Factors to Consider for Public Comment and Consultation

- What is the impact to Hawaiian physical, mental, and spiritual health and well-being to past, present, and future generations by the proposed project?
- What is the impact to traditional Hawaiian healing practices to past, present, and future generations by the proposed project?
- Is the proposed project anything that perpetuates Hawaiian displacement, severance, or impact of existing pilina (relationship) to akua (god, spirit), iwi kūpuna, 'āina, thereby negatively impacting physical, mental, and spiritual health and well-being to past, present, and future generations?
- Has relevant kūpuna expertise from oral, historical, and existing resources been located and utilized?

- Does the proposed project perpetuate additional/ongoing cultural trauma detrimental to Hawaiian physical, mental, and spiritual health and well-being?
- Does the proposed project impact the integrity (defined as existence, access, availability, conditions, or opportunity for abundance) of biocultural resources essential to all aspects of Hawaiian well-being - spiritual, cultural, mental, *genealogical*, physical?
 - Here, explicitly analyze history and socio-economic conditions in the context of cultural integrity and whether actions or decisions support and restore cultural integrity as a partial remedy for past harms or perpetuate conditions that continue to undermine cultural survival (Sproat 2016).

Overview of POL Priorities and Values Relative to Environmental and Historic Preservation Compliance Review Concerns

- Native Hawaiian physical, mental, and spiritual health and well-being
- Hawaiian healing traditions
 - Resource gathering
 - Will the proposed project impact availability, access, abundance to resources used in Hawaiian healing traditions and well-being?
 - Has the proposed project considered this aspect and assessed whether said resources are present and will be impacted?
 - Is their approach and justification to locating and understanding resource presence disclosed, pono, sensible, culturally appropriate?
 - Will the proposed project impact traditional gathering practices?
 - Has the proposed project considered this aspect and assessed whether said practices occur in the wahi and will be impacted?
 - Is their approach and justification to locating and understanding traditional gathering practices disclosed, pono, sensible, culturally appropriate?
 - Wahi-based practice
 - Resource gathering (see above)
 - Healing practices
 - Wai resources as related to resource gathering and healing practices
- Kūpuna Council input
- Avoidance of additional/ongoing cultural trauma
- Integrity (defined as existence, access, availability, conditions for abundance) of biocultural resources essential to all aspects of health and well-being - spiritual, cultural, mental, physical

VIIc. Specific Realms of Concerns to Consider when Weighing the Impacts of Proposed Projects to Native Hawaiian Physical, Mental, and Spiritual Health and Hawaiian Healing Traditions

Hawaiian Spiritual, Mental, and Physical Health and Well-Being

Factors to consider if desired/appropriate:

- 1) Are project impacts to Hawaiian spiritual, mental, and physical health and well-being at the individual and community level addressed?
 - a) If so, are they identified, discussed, and evaluated clearly, appropriately, and accurately?
- 2) From POL's position of expertise, will the proposed project impact Hawaiian mental, physical, and spiritual health and well-being, including that of people, 'āina, integrity of wahi kūpuna and/or wai?
- 3) From POL's perspective, how should impacts to Hawaiian mental, physical, and spiritual health well-being, including that of people, 'āina, integrity of wahi kūpuna, be better addressed, mitigated, or avoided?

Hawaiian Healing Traditions and Resources

Factors to consider if desired/appropriate:

- 1) Are the project impacts to traditional Hawaiian healing practices addressed?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 2) Are project impacts to the resources used in traditional Hawaiian healing practices addressed?
 - a) If so, are they identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, how should impacts from the proposed project to traditional Hawaiian healing practices and resources be better addressed, mitigated, or avoided?

Iwi Kūpuna

Factors to consider if desired/appropriate:

- 1) Is the project in a wahi known to host iwi kūpuna (e.g., a wahi recognized by oral histories/communities as a burial wahi, coastal location, located in sandy sediments, cave, lava tube)?
- 2) Have project impacts to iwi kūpuna been considered?
 - a) If so, are they identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, how should impacts from the proposed project to iwi kūpuna be better addressed, mitigated, or avoided?

Traditional Gathering and Access Rights

Factors to consider if desired/appropriate:

- 1) Does the proposed project impact traditional gathering/access rights, especially as they relate to traditional Hawaiian healing practices?
- 2) Are project impacts to traditional gathering/access rights, especially as they relate to traditional Hawaiian healing practices and resources, addressed?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, how should impacts from the proposed project to traditional gathering and access rights be better addressed, mitigated, or avoided?

'Āina

Factors to consider if desired/appropriate:

- 1) Does the proposed project state impacts on 'āina, especially as it relates to traditional Hawaiian healing practices and resources?
- 2) Are project impacts to 'āina especially as it relates to traditional Hawaiian healing practices and resources, addressed?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, and ideally, how should impacts from the proposed project to 'āina be better addressed, mitigated, or avoided?

Wahi Kūpuna/Wahi Ho'ōla/Historic Properties

Factors to consider if desired/appropriate:

- 1) Does the proposed project impact wahi kūpuna/wahi ho'ōla/historic properties especially as they relate to Hawaiian spiritual, mental, and physical health and well-being as well as traditional Hawaiian healing practices and resources?
- 2) Are project impacts to wahi kūpuna/wahi ho'ōla/historic properties addressed? Traditional Hawaiian healing practices and resources?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, and ideally, how should impacts from the proposed project to wahi kūpuna/wahi ho'ōla/historic properties be better addressed, mitigated, or avoided?

Food Resources

Factors to consider if desired/appropriate:

- 1) Will the proposed project impact food resource gathering/access rights, especially as they relate to traditional Hawaiian healing practices and resources?

- 2) Are impacts to food resources, especially as they relate to traditional Hawaiian healing practices and resources, addressed?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, and ideally, how should impacts of the proposed project to food resources be better addressed, mitigated, or avoided?

Other Biocultural Resources to Consider

Factors to consider if desired/appropriate:

- 1) Are any other biocultural resources (excluding those identified above), especially as they relate to Hawaiian health and well-being as well as healing practices and resources, impacted by this proposed project?
- 2) Are the impacts to these biocultural resources, especially as they relate to Hawaiian health and well-being as well and Hawaiian healing traditions and resources, addressed?
 - a) If so, are they explicitly identified, discussed, and evaluated clearly, appropriately, and accurately?
- 3) From POL's perspective, and ideally, how should impacts of the proposed project to biocultural resources be addressed?

VIII. RECOMMENDATIONS

This section summarizes OHA and Huliauapa‘a’s recommendations for POL to solidify the foundation and approach laid out here to increase capacity and gain momentum to assume this kuleana to provide public comment and consultation.

Consultation with OHA, a registered NHO that has been providing public comment and consultation for decades, resulted in several recommendations. OHA compliance specialists advised that POL should:

- (1) Start small and go slow;
- (2) Be selective about what you choose to provide public comment and consultation for;
- (3) Do not feel like you must do everything; and
- (4) Reach out for additional support if and when it is needed.

Notably, OHA also offered to train POL and other NHO organizational staff as part of their own compliance specialist staff training.

Based on specialist expertise drawn from organizational experience, historic preservation, regulatory compliance, and law, Huliauapa‘a’s additional recommendations for POL are to:

- (1) Audit the process in 6 months, and
- (2) Reassess and refine these processes to actualize a meaningful and efficient workflow.

POL additionally recognized pathways towards modules (videos, documents, and toolkits for communities-based response to requests for public input/consultation) as highly desired. To achieve this, Huliauapa‘a recommends POL, potentially partnered with Huliauapa‘a, participate in the training offered by OHA, and suggest toolkits for communities-based mobilization as a next phase in the partnership. If OHA is unable to participate in this effort, Huliauapa‘a could develop these modules on behalf of POL that would enable communities-based understanding of and response to requests for public input/consultation.

IX. BOILERPLATE PUBLIC COMMENT

This section discusses the purpose and characteristics of public content and provides boilerplate public comments that can be tailored to specific projects and requests for public comment by following instructions and referencing the **“Checklist of Factors to Consider for Public Comment and Consultation”** included in Section VII: Standard Operating Procedures (SOPs). It is important for POL to understand that any public comment provided becomes part of the public record.

Public comments are responses to publicly-issued requests for general public comment from agencies/project proponents or their consultants. Requests for public comment can be proactive or triggered by regulations and are commonly associated with initial scoping and pre-consultation for projects (change(s)/development(s)) that pose impacts to biocultural resources and places. They are typically issued once, commonly in forms including time-limited written/verbal testimony in public meetings during project scoping/pre-consultation phases, through agency-sponsored online public comment forms, on social media, posting on POL’s website, etc. Public comments are usually - but not always - shorter, less formal, and less detailed than consultation letters. A draft public comment template and examples are featured below and supplied in separate .docx files that POL can modify as desired. Color coding within the draft public comment template identifies content that will be specific to each request (**Yellow**), instructions to POL (**Blue**), and important things to emphasize/keep in mind (**Red**).

Aloha kākou,

Paragraph #1: Introduction. My name is **POL Staff**, a **POL Staff Position** at Papa Ola Lōkahi (POL). Mahalo for this opportunity for POL to provide public comments regarding **name of proposed project** in the **location of proposed project**. POL’s mission is to improve the health status and wellbeing of Native Hawaiians and others by advocating for, initiating, and maintaining culturally appropriate strategic actions aimed at improving the physical, mental and spiritual health of Native Hawaiians and their ‘ohana (families) and empowering them to determine their own destinies. Our vision is a thriving Native community composed of healthy individuals and families informed about their rich heritage and culture, living in a state of lōkahi (unity), and making informed choices and responsible decisions in a safe island society that is pono (in proper order). *Reference written testimony if it exists. For example: “Note, our written testimony details and expands on our public comment, contains additional recommendations, and is available on our website.”*

Paragraph #2: From POL’s perspective as a Native Hawaiian Organization with expertise in traditional health and healing practices and the health of Native Hawaiians and their ‘ohana (families) across the pae‘āina (archipelago), we assert the proposed project **will OR will not** impact biocultural resources and places relevant to traditional practices and the health of the lāhui.

If the proposed project has impacts from POL’s perspective:

- *Identify and list the concerning project impacts to biocultural resources, traditional Hawaiian healing practices, and the health of Native Hawaiians and their ‘ohana*
- *If a specific study was provided (e.g. a CIA,) identify and list/bullet out specific deficiencies in the study from POL’s perspective and POL’s proposed solutions*
- *Laud any positive contents of the study and note why they uphold/pertain to POL’s mission and vision*

OR

- *What happens when not enough information exists? Factors POL wants projects to look out for in general?*

Paragraph #3: POL’s closing statement. It is critically important to maintain the integrity of places and biocultural resources that support traditional health and healing practices as well as the health of Native Hawaiians and their ‘ohana and therefore the health of the lāhui. *Summarize or reiterate considerations mentioned above or identify additional points POL desires to make.*

X. TEMPLATE CONSULTATION LETTER

This section discusses the purpose and characteristics of consultation and provides an outline and example of a draft consultation letter POL can utilize when engaging in the consultation process. It is important to understand that frequently, consultation provided becomes part of the public record.

Consultation is Papa Ola Lōkahi receives requests for consultation regarding projects (proposed change(s)/development(s)) due to its listing on the federal Native Hawaiian Organization Notification List maintained by the Office of Native Hawaiian Relations, United States Department of the Interior (www.doi.gov/hawaiian/NHOL). Requests for consultation can be proactive or triggered by regulations and are issued during project (proposed change(s)/development(s)) phases ranging from initial scoping and pre-consultation to near completion. Common response formats include mailed letters, emails, and consultation entered through an agency or consultant website or portal. Consultation may occur once or unfold as a conversation, depending on the trajectory of the proposed change(s)/development(s)), POL's level of investment, and the approaches used by agencies/project proponents/consultants. Consultation is typically more formal and detailed than public comments, and part of a longer, more involved feedback process. A paragraph-by-paragraph discussion of the draft consultation letter, as well as a letter template are featured below that POL can modify as desired. Color coding within the draft consultation letter template identifies content that will be specific to each request (**Yellow**), instructions to POL (**Blue**), and important things to emphasize/keep in mind (**Red**).

Consultation letter components include:

Paragraph #1: Introduction Components. Purpose of letter - project POL is providing consultation regarding. Who POL is, what they do. Mission/Value Statements. POL kuleana as an NOH concerned with traditional health and healing practices and Hawaiian health. POL statement re: interconnected nature, traditional health and healing practices, Hawaiian health, integrity (wholeness, pono stewardship, protection) of biocultural landscapes.

Paragraph #2 Components: Emphasize any positive aspects of the study/request for consultation. Mention any areas of concurrence between POL mission, values, and studies' findings. Do any of the studies' content/conclusions articulate with POL's kuleana?

Paragraph #3 Components: From POL's perspective as an NHO with expertise in traditional health and healing practices and Hawaiian health, general comment re: contents letter. Identify broad themes pertaining to Hawaiian health relevant to the study. Identify specific deficiencies, positive contents study.

Paragraph #4 Components: Detail specific factors that are absent from study but should be considered/included from POL's traditional healing/Hawaiian health perspective using

checklists provided, expanding as desired. Was due diligence performed? Is everything considered/included that should be from a Hawaiian health perspective?

Paragraph #5: Comments re: overall finding of the studies submitted for POL review/comment. Were methods for evaluating cultural and environmental impacts clearly disclosed? Is the evaluation framework appropriate for culture(s) and location(s)? Does it make sense? Does POL agree? Why or why not?

Paragraph #6: Summary of POL assertions from above.

Recipient - Name and Address of Contact Person, Agency/Project Proponent/Consultant Requesting Consultation

Papa Ola Lōkahi
894 Queen Street
Honolulu, Hawai'i 96813

Date

Subject: Papa Ola Lōkahi's Consultation Regarding the Name and Location of Project

Aloha **Name of Recipient,**

Paragraph #1: Introduction Example. Mahalo for this opportunity for Papa Ola Lōkahi (POL) to provide public comment regarding **name of proposed project** in **location of proposed project** as a Native Hawaiian Organization (NHO). POL's mission is to improve the health status and wellbeing of Native Hawaiians and others by advocating for, initiating, and maintaining culturally appropriate strategic actions aimed at improving the physical, mental and spiritual health of Native Hawaiians and their 'ohana (families) and empowering them to determine their own destinies. Our vision is a thriving Native community composed of healthy individuals and families informed about their rich heritage and culture, living in a state of lōkahi (unity), and making informed choices and responsible decisions in a safe island society that is pono (in proper order).

Paragraph #2 Example As a Native Hawaiian Organization with expertise in traditional health and healing practices and the health of Native Hawaiians and their 'ohana (families) across the pae'āina (archipelago), POL wishes to underscore the positive aspects of the **name of proposed project**. POL concurs with **blank insert theme, concept, etc. from the study or proposed project**, which articulates with our organizational mission, values, and kuleana (responsibility). *Identify and discuss specific positive aspects of the study as recognized through POL's lens of traditional health and healing practices and the health of Native Hawaiians and their 'ohana (families) across the pae'āina (archipelago).*

Paragraph #3 Example: From POL's perspective as a Native Hawaiian Organization with expertise in traditional health and healing practices and the health of Native Hawaiians and

their ‘ohana (families) across the pae‘āina (archipelago), we assert the proposed project **will OR will not** impact biocultural resources and places relevant to traditional practices and the health of the lāhui.

If the proposed project has impacts from POL’s perspective:

- *Identify and list the concerning project impacts to biocultural resources, traditional Hawaiian healing practices, and the health of Native Hawaiians and their ‘ohana*
- *If a specific study was provided (e.g. a CIA,) identify and list/bullet out specific deficiencies in the study from POL’s perspective and POL’s proposed solutions*
- *Laud any positive contents of the study and note why they uphold/pertain to POL’s mission and vision*

OR

- *What happens when not enough information exists? Components POL wants projects to look out for in general?*

Paragraph #4 Example: From POL’s place of expertise as an NHO specializing in traditional healing and Hawaiian health, the following deficiencies are present in the **study/project** that should be **included/considered**. *Detail specific elements from the checklists provided and explain why they need to be taken into consideration from a traditional healing/Hawaiian health perspective.*

Paragraph #5 Example: Overall, POL concurs with the study’s impact assessments and has no further comments **OR** POL recommends methods for evaluating cultural and environmental impacts be revisited and revised to include **name specific recommendations** **OR** As an NHO, POL disagrees with the **appropriateness/methods/approaches/scope/premise** of the evaluation framework implemented and encourages its expansion to include **name specific recommendations**.

Paragraph #6 Example: **POL’s closing statement.** It is critically important to maintain the integrity of places and biocultural resources that support traditional health and healing practices as well as the health of Native Hawaiians and their ‘ohana and therefore the health of the lāhui. *Summarize or reiterate examples mentioned above or identify additional points POL desires to make.*

Sincerely,
Insert signature

Name of Letter Writer
Position at POL
Contact Information (optional)

XI. RESOURCES

This section identifies additional resources for POL’s consideration and consultation.

XIa. Environmental Compliance Review

- 1) “Hawai‘i Environmental Policy Act: A Citizen’s Guide.” Office of Environmental Quality Control: oeqc2.doh.hawaii.gov/OEQC_Guidance/2014-GUIDE-HEPA-Citizen's-Guide.pdf
- 2) “A Citizen’s Guide to NEPA”. Council of Environmental Quality, Executive Office of the President: ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf
- 3) “Library of EA and EIS”. State of Hawaii, Office of Planning and Sustainable Development. Environmental Review Program: planning.hawaii.gov/erp/library-of-ea-and-eis/

XIb. Historic Preservation Compliance Review

- 1) Advisory Council on Historic Preservation
 - a) *Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook*. www.achp.gov/sites/default/files/guidance/2020-01/ConsultationwithNHOshandbookupdate29Jan2020final.pdf
 - b) “National Historic Preservation Act”. www.achp.gov/digital-library-section-106-landing/national-historic-preservation-act
 - c) “Protecting Historic Properties: A Citizen’s Guide to Section 106 Review”. www.achp.gov/citizensguide.html
- 2) Administrative Rules Pertaining to Historic Preservation in Hawai‘i: dlnr.hawaii.gov/shpd/rules/
- 3) NAGPRA Glossary: www.nps.gov/subjects/nagpra/glossary.htm

XIc. NHO Resources

- 1) Legal Primers in Native Hawaiian Law. Ka Huli Ao Center for Excellence in Native Hawaiian Law: blog.hawaii.edu/kahuliao/scholarship-and-legal-resources/legal-primers/
- 2) NHO Association: www.nhoassociation.org/resources.html
- 3) U.S. Department of the Interior Office of Native Hawaiian Relations: www.doi.gov/hawaiian/NHOL
- 4) *The Kali‘uokapa‘akai Collective Report*: www.kaliuokapaakai.org/kcreport

XII. REFERENCES

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36 Code of Federal Regulations (CFR) Part 800

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40 Code of Federal Regulations (CFR) Chapter 5 Subchapter A.

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43 Code of Federal Regulations (CFR)

2011 Title 43 - Public Lands: Interior, Part 10 - Native American Graves Protection and Repatriation Regulations. Online resource. www.govinfo.gov/app/details/CFR-2011-title43-vol1/CFR-2011-title43-vol1-sec10-2. Accessed 4-14-22.

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