



# **National Register Bulletin 38 Revisions Overview**

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# History of Revisions

- Bulletin 38 first published in 1990
- The Obama Administration began updating Bulletin 38 in 2012
- The Trump Administration stopped the updates in 2017
- The Biden Administration restarted the process
- The current draft version was published in October 2022
- The draft can be found here:

<https://parkplanning.nps.gov/document.cfm?parkID=442&projectID=107663&documentID=124454>

# Traditional Cultural Place



“A traditional cultural place (TCP) is a building, structure, object, site, or district that may be eligible for inclusion in the National Register for its significance to a living community because of its association with cultural beliefs, customs, or practices that are rooted in the community’s history and that are important in maintaining the community’s cultural identity.”

- This definition is largely unchanged from the current definition



## Place v. Property

- Bulletin 38 changes the term Traditional Cultural **Property** to Traditional Cultural **Place**
- In doing so, the NPS states that “property” implied to some communities a commodification of their heritage

# Landscapes



Examples of TCPs include: “a landscape or geographic feature—with or without evidence of human modification or other activity—whose existence is important to a community because of its place in the community’s knowledge about its origins, its cultural history, or the natural world” at \*11

- The use of the term “with or without **evidence** of human modification” implies that at TCL/cultural landscape must have been modified by humans, even if it no longer can be seen. This should clarify that entirely natural landscapes may be TCPs and that humans do not have to have modified the landscape (visibly or not) for it to be eligible

# Continued Use



“This is not to say that a place must have been in continuous use by that group; it does not. This nation’s long history of displacement of Indigenous Peoples and minority communities may have resulted in physical dislocation from a place, but the place may continue to be of significance to a group.” at \*12

- This is welcomed clarification. The ACHP has published guidance that states under the current Bulletin 38, it can be inferred that TCPs must be continuously used by the community that ascribes significance to them to be eligible properties. The ACHP has contrasted this with properties of traditional religious and cultural significance which do not require continuous use to be eligible

# Community Expertise



“The existence and significance of culturally significance places can be understood first and foremost by learning from the people who live in, use, or value the area. This traditional knowledge is an independent line of evidence provided by the people—**the experts**—who are the authorities in their culture and the connection that culture has to a place.” at \*12

- This is welcomed. It expands upon the current version which is not as explicit that the community is the expert. However, this could be clearer and explicitly state that the community’s views must be deferred to



## Places v. Intangible Heritage

“The National Register of Historic Places, being by definition a list of *places*, is not the appropriate tool for recognizing cultural resources that are *only* intangible” at \*15

- While the National Register’s name includes the word “Places,” nothing in the regulations or statute require listed properties to be strictly places.
- Indeed, this draft notes that trees and rocks can be TCPs, and such properties are not necessarily “places”
- Moreover, consider the definition of “object”



# Ethnocentrism



“For example, an Indigenous community’s position that its ancestors emerged from the earth at the beginning of time may contradict European American science’s position that the group’s ancestors migrated to North America from Asia. But this position does not diminish the significance of the locations to those who value them.” at \*18

- While we understand what the NPS is attempting to say here, it comes across as particularly tone-deaf
- Moreover, it is not appropriate for Bulletin 38 to be espousing the Bering Land Bridge migration theory, which is deeply rooted in colonialist and racist archaeology and is facing a growing body of “Western” science that is discrediting it

# Reasonable Efforts



“What constitutes a ‘reasonable’ effort depends in part on the likelihood that such places may be present.” at \*20

- This is not always correct. TCPs may be present in an area, but an outsider would have no idea because it may be culturally prohibited or taboo to speak about them, or other circumstances have made the community unwilling to disclose them

“Need for community participation is critical” at \*21

- Community participation should be mandatory. Outsiders should not be coming into community to research/identify TCPs without express permission from the community and their full participation (if desired) in the process

# Reasonable Efforts



“In some cases, a community’s current political leadership may be resistant to discussing traditional matters. As a result, it may be necessary to adjust the scope of the research to ask only for enough information to confirm a place meets the criteria . . . , and noting more. . . . When working with Tribal governments, this may only be done with the full knowledge and cooperation of the Tribe’s officials.” at \*22

- The draft needs to more explicitly acknowledge that some communities may not share any information about TCPs under any circumstances. If this is the case, the researcher must respect this and stop. This becomes more difficult when there is an on-going Section 106 process, but that is not the NPS’s problem.
- Additionally, Tribal approval must be required, knowledge and cooperation are not sufficient. No one should be interviewing tribal members without approval from the appropriate tribal officials

# Criterion A



“Sometimes, though, just when a traditional even took place may be unclear; in such cases, it may be impossible, and to some extent irrelevant, to document with certainty that the place in question existed when the traditional even occurred.” at \*31

- This should be expanded. I have often seen pushback from developers, landowners, and SHPOs to the use of the term “since time immemorial” to describe the period of significance.

# Criterion C



“A TCP may be a district if it possesses a significant collection of buildings, structures, sites , or objects united historically by intentional plan, physical development, or traditional beliefs, customs, and practice.” at \*33

- This needs to clarify that the contributing resources to a district **do not** need to be themselves (listed or eligible) historic properties, as this implies



# Criterion D

“Places that have traditional cultural significance often have already yielded, or have the potential to yield, important information through archaeological investigations.” at \*34

- I have serious concerns with Criterion D applying to TCPs as a general matter. That said, eligibility under Criterion D should not be limited to only potential archaeological value

# General NRHP Comments



## Districts

- This draft, as well as the rest of the National Register guidance needs to better clarify that a district does not need to contain **any** built structures of evidence of human occupation to be eligible; that entirely natural landscapes may be eligible districts. Moreover, built structures/evidence of human occupation located within a district's boundaries **do not** need to be identified as contributing resources

## Boundaries

- Nothing in the NHPA or the regulations require a boundary to be drawn on a historic property to be listed on the National Register. Indeed, the NPS has repeatedly eschewed defining boundaries on TCPs for DOEs in the Section 106 process. The NPS needs to update its nomination process to allow for nominations without boundaries. It already does for multi-property nominations.

## Tribal/NHO-specific regulations/guidance

- The NPS needs to undertake rulemaking to allow Tribes, THPOs, and NHOs to directly nominate historic properties to the National Register, including properties located on tribal lands as well as properties of traditional religious and cultural importance off tribal lands
- The NPS should develop a Tribal/NHO-specific National Register bulletin for identifying properties of traditional religious and cultural importance that can only be used by Tribes, THPOs, and NHOs

# Next Steps



Comments are due:

- **Sunday, April 30, 2023 at 11:59 PM Mountain Time**
- Comments can be submitted to:
- <https://parkplanning.nps.gov/commentForm.cfm?documentID=124454>
- [nr\\_tcp@nps.gov](mailto:nr_tcp@nps.gov); or
- National Register of Historic Places  
National Park Service  
1849 C Street, NW, Mail Stop 7228  
Washington, D.C. 20240  
ATTN: Draft TCP Bulletin