

The Legal Basis for the Recognition and Protection of Cultural Landscapes within the National Historic Preservation Act

WESLEY JAMES FURLONG, STAFF ATTORNEY

NATIVE AMERICAN RIGHTS FUND

WFURLONG@NARF.ORG | WWW.NARF.ORG

JANUARY 28, 2021



Statutory Basis

National Historic Preservation Act

- 54 U.S.C. § 302706(a) – “Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.”
- 54 U.S.C. § 302706(b) – “In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).”

NPS Guidance

Bulletin 38 – *Guidelines for Evaluating and Documenting Traditional Cultural Properties*,
<https://www.nps.gov/subjects/nationalregister/upload/NRB38-Completenessweb.pdf>

- “A culturally significant natural landscape may be classified as a site, as may be the specific location where significant traditional events, activities, or cultural observations have taken place.” at *11

Bulletin 30 -- *Guidelines for Evaluating and Documenting Rural Historic Landscapes*,
<https://www.nps.gov/subjects/nationalregister/upload/NRB30-Complete.pdf>

- “A geographical area that historically has been used by people, or shaped or modified by human activity, and that possesses a significant concentration, linkage, or continuity or areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.” at *1-2
- Characterized by “the natural and cultural forces that have shaped it.” at *3

NPS Guidance (cont.)

Preservation Brief 36 – *Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes*, <https://www.nps.gov/tps/how-to-preserve/preservedocs/preservation-briefs/36Preserve-Brief-Landscapes.pdf>

- Cultural landscapes: “A geographic area, including both cultural and natural resources and wildlife or domestic animals therein, associated with a historic event, activity, or person exhibiting other cultural or aesthetic values.” at *1
- Ethnographic landscape: “a landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, religious and sacred sites and massive geological features. Small plant communities, animals, subsistence and ceremonial grounds are often components.” at *2

ACHP Guidance

Information Paper on Cultural Landscapes: Understanding and Interpreting Indigenous Places and Landscapes, <https://www.achp.gov/sites/default/files/whitepapers/2018-06/InformationPaperonCulturalLandscapes.pdf>

- “Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies engaged in undertakings to identify and assess effects of their actions on historic properties, including indigenous landscapes considered eligible for the National Register of Historic Place.” at *1

Native American Traditional Cultural Landscapes and the Section 106 Review Process: Questions and Answers, <https://www.achp.gov/sites/default/files/guidance/2018-06/NativeAmericanTCLsintheSection106ReviewProcessQandAs.pdf>

Traditional Cultural Landscapes, <https://www.achp.gov/indian-tribes-and-native-hawaiians/traditional-cultural-landscapes>