



April 28, 2023

Joy Beasley
Associate Director
Cultural Resources, Partnerships, and Science
Keeper of the National Register
National Park Service
Department of the Interior

Re: Update to National Register Bulletin 38

Dear Ms. Beasley,

The Coalition for American Heritage (“Coalition”) appreciates the opportunity to comment on the Department of the Interior’s proposed Update to *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Places* (“Bulletin 38”). The Coalition strongly supports the proposed revisions, and our comments here suggest important changes for the Department of Interior (“Department”) to consider as it finalizes these changes.

The Coalition is an advocacy group that protects and advances our nation’s commitment to heritage preservation. Supported primarily by the Society for Historical Archaeology and the American Anthropological Association, the Coalition collectively represents 350,000 cultural resource management professionals, academic archaeologists and anthropologists, and subject matter experts with an interest in the anthropology and archaeology of North America. Many of our members record, document, manage, evaluate, or advocate for the protection of traditional cultural places (“TCPs”) associated with communities across the nation. Our members serve federal government agencies in positions that address TCP issues, work in collaboration with tribal communities on research projects, are faculty at universities focused on research that relates to TCPs, or otherwise engage with questions related to how we best record, protect, and manage historic properties associated 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.”¹

The Coalition greatly appreciates and commends the Department for its revisions to Bulletin 38 to address common challenges regarding how TCPs are identified and evaluated for the National Register. Numerous changes represented in the update address critical challenges to the effective

¹ National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Place. National Park Service, National Register of Historic Places. Beasley et al. October 27, 2022. Page 10, lines 15-18.

identification and evaluation of TCPs, and the revisions significantly help to resolve uncertainty and to clarify the Department's intent when it created this historic property designation.

The Coalition specifically supports:

- Clarifications regarding essential TCP characteristics, definitions and examples of property types included within TCP eligibility, explanations regarding the flexibility of Bulletin 38 to consider elements such as intangible qualities or aspects, and a characterization of how to evaluate places as TCPs;
- Affirmation that a landscape or geographic feature, “with or without evidence of human modification or other activity,” important to a community because it relates to an origin story for the community, its cultural history, or the nature of the world, can be considered eligible for the National Register as a TCP²;
- Substantial expansion of case studies within the update, particularly for newer nominations and non-tribal communities, that help to ensure that all American communities can see their important customs and beliefs fully recognized and considered through TCP nominations and determinations of eligibility;
- Transition away from using the term “traditional cultural property” and towards “traditional cultural place,” as the latter terminology connotes less commodification and also ensures that places not generally thought of as buildings, structures, or objects are still included in the resource description;
- Transition away from using the term “prehistoric” towards using the work “pre-colonial” for sites and places predating European colonization of the North American continent. This shift acknowledges that indigenous groups in North America have a history and have ways of passing that history down; and
- Acknowledgement that communities are the experts on their own traditional cultural places. These communities are acknowledged as the experts “who are the authorities in their culture and the connection that culture has to a place.”³

The Coalition particularly supports revisions to the guidelines that improve the possibilities for underrepresented communities to record TCPs. One specific improvement is the clarification that, while TCPs must have ongoing significance to the community and that a TCP's value must relate to beliefs, customs, or practices that continue to the present day, *a place can be National Register-eligible even if it has not been in continuous use by the community with which they are associated*. This clarification provides long overdue acknowledgement that, while the patterns of dispossession, which have particularly affected Indigenous and minority communities, often result in physical dislocation from a place, the place can continue to have cultural significance in a way that retains its eligibility related to a group's beliefs or practices. Our Coalition members have experience identifying historic properties that have ongoing significance to their traditional communities but that have not yet been fully recognized and acknowledged through the National Register. This is often because the sites, buildings, structures, objects, or districts have ended up in private or governmental hands in a way that excludes the community from continuing to interact

² See National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Place. National Park Service, National Register of Historic Places. Beasley et al. October 27, 2022. Page 11, lines 18-20.

³ National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Place. National Park Service, National Register of Historic Places. Beasley et al. October 27, 2022. Page 12, lines 25-30.

with the resource. The clarification that continuous use is not required for eligibility is an important element of this update.

Another significant improvement is the strong affirmation that TCPs can be associated with any community for whom a site, building, structure, object or district has ongoing significance to their lifeways, customs, cultural beliefs, or practices. Case studies within the update include TCPs with significance for communities including Indian tribes and Native Hawaiian organizations; church organizations; ranching communities; communities in American territories such as Micronesia and American Samoa; and Chinese, Greek, Czech, and other ethnic minority communities. The case studies also include a range of resource types, including marine TCPs.

REQUESTS FOR REVISIONS

The Coalition has a few recommendations for further clarifying this update to ensure that Bulletin 38 includes all the types of places that should be recognized as TCPs.

We recommend that the Department:

- 1) Add specific case studies related to Black/African American and Latinx resources nominated or determined eligible as TCPs;
- 2) Clarify that, for districts recorded as TCPs, where there is a “significant collection of buildings, structures, sites, or objects united historically by intentional plan, physical development, or traditional beliefs, customs, and practice,” these contributing resources to a district do not need to be themselves listed or eligible historic properties; and
- 3) Explicitly refer readers of Bulletin 38 to external recommendations regarding how to comply with TCP identification and evaluation with the Section 106 process.

Our partner organizations’ research and evaluation of preservation practices related to underrepresented groups suggests that TCPs are particularly needed to record places of Black heritage, cultural beliefs, and practices. The Black Heritage Resources Task Force of the Society of Black Archaeologists, the American Cultural Resources Association, the Society for Historical Archaeology, and the Society of American Archaeology recently published several reports studying and providing recommendations on Black heritage preservation and documentation, encouraging the use of traditional cultural place designations for properties that contain important cultural values.⁴ Black and African American cultural sites are still significantly underrepresented on the National Register as eligible and nominated properties, and the National Register nominations for properties associated with Black history—such as Black enslavement, tenant farming, or construction by Black communities—often do not acknowledge the Black contributions to the histories of these places.

⁴ See Documenting U.S. State and Territorial Approaches to Black Heritage, Diversity, and Inclusion in Preservation Practices 2022. Maria Franklin, Anna Agbe-Davies, Kimball Banks, Jodi A. Barnes, Thomas Cuthbertson, Sarah Herr, J.W. Joseph, Edward Morin, Burr Neely, Holly Norton, Tsim Schneider, William White. 2022: page 39. <https://bit.ly/3LxWz1I>. See also Recommendations for Raising the Visibility of Black Heritage Resources and Engaging with Black Stakeholders: Results from a Survey of State and Territorial Historic Preservation Offices and State Archaeologists. Maria Franklin, Anna Agbe-Davies, Kimball Banks, Jodi A. Barnes, Thomas Cuthbertson, Sarah Herr, J.W. Joseph, Edward Morin, Burr Neely, Holly Norton, Tsim Schneider, William White. 2022: page 6. <https://bit.ly/448dH5s>.

The Department should seek out specific case studies examples of Black or African American TCP eligibility determinations and nominations and ensure that these properties are robustly represented as case studies in the update. TCPs associated with the Gullah Geechee communities in South Carolina (such as Sweetgrass Basket Masters Row in Mount Pleasant and the Stoney Community in Hilton Head) have been listed as TCPs, as has the St Augustine Catholic Church and Cemetery associated with the Cane River Creole in Louisiana. Additionally, TCP nominations associated with Latinx communities, such as the Tortugas Pueblo Fiesta of Our Lady of Guadalupe and El Cerro Tome Site, both in New Mexico, should also be represented within the updated Bulletin.⁵

Relatedly, the Department should clarify that districts made up of resources that may not be individually eligible can still be eligible as a TCP due to enduring significance to community beliefs or customs. Given the clarification that natural and geographic features without observable⁶ modification can be nominated as TCPs, buildings that may have experienced alterations that have damaged their eligibility as architectural resources, as part of or during a community's ongoing practice of traditional customs, should still be eligible as parts of TCPs. This clarification is essential because buildings associated with Black, Latinx, tribal, or other underrepresented communities may be more likely to have undergone modifications that have removed or altered architectural elements that would have made the building eligible as an architectural property. However, those modifications will not have eradicated the place's eligibility as a TCP because these modifications may have been implemented as part of the community's ongoing use of such buildings (or other resources) for the community's traditional customs or beliefs.

Finally, this update should be revised to more explicitly refer to the Advisory Council on Historic Preservation ("ACHP") guidelines on TCPs within the compliance process for Section 106 of the National Historic Preservation Act ("NHPA"). However, Section 106 of the NHPA does not use the term "traditional cultural property." TCP is a term of practice used by historic preservation practitioners and communities. Section 106 does refer to properties of "religious and cultural significance," which may be determined to be eligible for inclusion on the National Register, and are the focus of federal agency consultation with Indian tribes and Native Hawaiian organizations. We therefore recommend that the updated Bulletin 38 makes this distinction so there is an understanding of legal Section 106 compliance terminology versus terminology of practice. Further, clarifying federal agency obligations to identify and assess impacts to TCPs within the Section 106 process is essential because many of the most contentious and challenging situations related to TCPs involve conflicts over the level of effort agencies and project proponents must undertake in order to identify and mitigate impacts to TCPs. The Coalition understands that this current update has intentionally removed a Section 106 compliance section in the current version of Bulletin 38 because this update will be immediately followed by revisions to the ACHP

⁵ See Documenting U.S. State and Territorial Approaches to Black Heritage, Diversity, and Inclusion in Preservation Practices 2022. Maria Franklin, Anna Agbe-Davies, Kimball Banks, Jodi A. Barnes, Thomas Cuthbertson, Sarah Herr, J.W. Joseph, Edward Morin, Burr Neely, Holly Norton, Tsim Schneider, William White. 2022: page 39. <https://bit.ly/3LxWz1I>. See also Charleston County Historic Resources Survey Update. PO #P61611. New South Associates. Report submitted to Charleston County Zoning and Planning Department. 2016. p7. [https://scdah.sc.gov/sites/scdah/files/Documents/Historic%20Preservation%20\(SHPO\)/Research/CharlestonCounty2016.pdf](https://scdah.sc.gov/sites/scdah/files/Documents/Historic%20Preservation%20(SHPO)/Research/CharlestonCounty2016.pdf) See also Crossroads of Development: Considering Gullah Geechee Communities as Traditional Cultural Properties. Darcy Elizabeth Neufeld Masters thesis submitted to Clemson University Historic Preservation Program. p61-63. https://tigerprints.clemson.edu/all_theses/3553

guidance regarding how to incorporate TCPs in the Section 106 process. However, ACHP guidance should be explicitly pointed out in the Department's Bulletin 38 to prevent agency representatives from failing to understand their obligations towards TCPs. Furthermore, since this update does characterize what a reasonable level of effort might be for identifying potentially National Register-eligible TCPs (and states that what level of effort is "reasonable" depends in part on the likelihood that such places may be present), the Department should ensure that readers are aware that more fulsome guidance related to this topic will be available through the ACHP shortly after the guidelines are updated.

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In conclusion, the Coalition recognizes that this update is very much needed and is long overdue, and thanks the Department for their efforts in revising Bulletin 38. We urge the Department to consider our recommendations to further clarify this guidance.

Thank you for the opportunity to comment on this proposed rule.

Best regards,



Marion Werkheiser
Policy Director
Coalition for American Heritage
Phone: 703.489.6059
www.heritagecoalition.org
info@heritagecoalition.org