



SOCIETY FOR AMERICAN ARCHAEOLOGY

September 21, 2012

Mr. Paul Loether  
Chief, National Register Of Historic Places  
And National Historic Landmark Programs  
National Park Service  
1849 C Street NW 2280  
Washington, D.C. 20240

RE: FR 2012-19594

Dear Mr. Loether,

The Society for American Archaeology (SAA) is pleased to respond to the National Park Service's (NPS) request for comments on updating the *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Bulletin 38).

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

TCPs constitute a very important category of cultural resource, the preservation of which furthers the nation's goal of conserving and protecting for future generations the history and knowledge of all the peoples of the land, both past and present. Bulletin 38 is a key component in the identification and evaluation of historic properties for inclusion in the Register as TCPs, and for consideration under Section 106 and Section 110 of the National Historic Preservation Act. While the existing Bulletin is helpful, given the growth in recent years in the interest in TCPs, and the complex issues that have arisen concerning TCPs in many Section 106 undertakings, SAA agrees that a revision is advisable, and would result in a more thorough and effective consideration process.

In the Federal Register Notice of August 10, 2012, NPS outlined seven areas as needing updated guidance. SAA believes that three of the seven are not addressed in current guidance or need further clarification. These are "continuity of use by a traditional community," "broad ethnographic landscapes," and the establishment of "resource integrity". Our suggestions are as follows:

1. "Continuity of use by a traditional community": the closest approximations of such phrasing are the statements in Bulletin 38 that (1) note that a TCP must be at least 50 years

old and (2) that there must be contemporary use of the property. On p. 18, Bulletin 38 states: “The fact that a property may have gone unused for a lengthy period of time, with use beginning again only recently, does not make the property ineligible for the Register.” Bulletin 38 thus clearly states that continuous use from the past to the present, without any perceivable break, is NOT required for a property to be granted TCP status. We are concerned that requiring "continuity of use" in such a manner would set a new standard and place an unfair burden on tribes and other petitioners. We recommend that it not be adopted.

2. "Broad ethnographic landscapes": this terminology is used in Bulletin 18 and Preservation Brief 36 to describe one of four kinds of cultural landscapes, as delineated by NPS. It is unclear to us why this language needs to be included in Bulletin 38. We believe it would be far more consistent and accurate to use "traditional cultural landscape" instead. The latter occurs with far greater frequency, and has more valid meaning among stakeholders, than the former.

3. "Resource integrity": many TCPs being identified in the West are landscapes comprising hundreds or even thousands of square miles. Guidance needs to specify how the integrity of such a property is to be evaluated, how the conceptualization of the kinds of effects that would or would not diminish the integrity of a property of this scale be realized. Further, Bulletin #38 includes two aspects of integrity for TCPs (relationship and condition) beyond the seven that are used in assessing the integrity of all other types of historic properties. The relationship between the two sets of standards is unclear. Do the TCP aspects replace the standard seven aspects of integrity, or supplement them? Additional discussion about determining integrity in general and applying the nine or two (as the case may be) aspects would be very helpful.

The Notice also invites comments on other “user-identified” issues regarding TCPs. There are three areas that SAA believes need to be discussed:

1. Bulletin 38, like all Register Bulletins, is written for users who are identifying and evaluating properties for the purpose of listing them on the National Register. The vast majority of the people who are using this Bulletin, however, are using it in the context of Section 106 activities. There are substantial differences between how the guidance documents are applied in Register listings and Section 106 reviews – the issues of how to define appropriate Areas of Potential Effects and determining whether an undertaking will diminish the integrity of a TCP, for example, are critical to Section 106 but not a consideration in the registration process. It would be very valuable if Register staff would, in addition to revising Bulletin 38, work with their colleagues at the ACHP to produce additional guidance for considering TCPs in the Section 106 process.
2. On a related issue, Bulletin 38 describes identification of TCPs as an ethnographic process, supplemented by field visits as needed. It assumes that knowledge about important places is maintained within the traditional knowledge base of the community, and that the way to identify these places is through discussions with knowledgeable people. Since access to some of these places may have been interrupted for generations, knowledge of their specific locations may have been lost over time, which is one of the reasons for taking knowledgeable people into the field to try to locate these places. But the significance of the place and its role in “maintaining the continuing cultural identity

of the community” are known, even if its exact location is not. In the section 106 process tribal requests to carry out systematic pedestrian surveys to find currently unknown TCPs are becoming increasingly common. If this is a valid way of identifying TCPs, the Bulletin needs to provide guidance as to what constitutes a “reasonable effort” for this approach, and not just describe the ethnographic approach.

3. In general, SAA believes that while clearer and more precise guidance is always helpful, many of the problems encountered today arise not from a lack of guidance, but rather a lack of application. We find three areas of concern:

*a) Ineffective Consultation:* Early and frequent consultation is essential to the identification and stewardship of traditional cultural landscapes. Consultation, however, seldom occurs during the earliest phases of project scoping and planning when the widest range of alternatives are available. Furthermore, despite unprecedented recent focus on the part of the executive branch to this very issue, federal efforts often miss the mark in practice, due in large part to the inadequate frameworks and skill sets discussed below.

*b) Inadequate Frameworks:* Section 106- and NEPA-based cultural resources identifications and assessments are most often reactionary, cursory and piecemeal. The continuing disconnect between NEPA and Section 106, as well as agencies' enduring struggle with the concepts of indirect effects and cumulative effects, also pose significant issues with regard to TCPs—especially those that constitute landscapes. Such project- and Area of Proposed Effect-specific endeavors rarely arrive at the creation of historic contexts, heritage plans, broad regional syntheses, or landscape management plans that are necessary to create (and to which we need to consistently refer) when attempting to work with TCPs. Furthermore, agencies' grossly inadequate Section 110 surveys add to the lack of proper frameworks.

*c) Inadequate Skills:* All the guidance in the world cannot overcome the inadequate skill sets of the practitioners charged with identifying, assessing, and managing TCPs. Improperly-staffed projects have led to a situation where shoddy background research, complete lack of research on local history, and incompetent or non-existent ethnographic fieldwork are the rule, not the exception. The majority of professionals attempting to work with TCPs have little to no training in oral history techniques, qualitative analysis, folklore and folk life, sociology, or landscape planning and management.

Revision of Bulletin 38, though necessary, will not in itself resolve these two long-standing concerns. SAA recommends that NPS convene a group of stakeholders, including tribes, agencies, and CRM professionals, who work with TCPs for a variety of clients, for a multi-day work session. The goal will be to develop a best-practices document, with relevant case studies, that addresses such issues as TCP property boundaries, historic contexts, cumulative effects, mitigation strategies, and confidentiality of information. Further, NPS should, in concert with the ACHP, DOI, CEQ and other federal agencies, (i) do more to promote the early consideration of, and community-based consultation about, traditional cultural properties in project planning and scoping; (ii) work diligently to address the ongoing disconnects between the Section 106 process and NEPA review that bring specific challenges to resources such as TCPs and cultural

landscapes, and (iii) provide substantially more training for agency staff and their contractors in those skill areas needed to successfully complete TCP studies and National Register nominations of TCPs.

Again, SAA appreciates the opportunity to provide its views on the revision of Bulletin #38, and looks forward to working with NPS in the future on this important matter.

Regards,

A handwritten signature in blue ink, appearing to read "William F. Limp". The signature is written in a cursive style with a large, stylized initial "W".

William F. Limp  
President