



## SOCIETY FOR AMERICAN ARCHAEOLOGY

April 28, 2023

National Register of Historic Places  
National Park Service  
1849 C Street NW  
Mail Stop 7228  
Washington, DC 20240  
ATTN: Draft TCP Bulletin

VIA Email: [nr\\_tcp@nps.gov](mailto:nr_tcp@nps.gov)

The Society for American Archaeology (SAA) is pleased to submit the following comments to the National Register of Historic Places (NRHP) on the latter's revised draft "National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties" (TCP Bulletin). The SAA appreciates the efforts of the Register and National Park Service (NPS) to update this important guidance document, which plays a critical role in "identifying, evaluating, and documenting" the traditional cultural places (TCPs) that are significant to American history and culture.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Our comments are divided into two sections. The first will deal with how the draft revised TCP Bulletin would not result in any kind of improved process for recognizing TCPs important to Native American and Native Hawaiian peoples. The second consists of specific suggestions pertaining to the text of the draft document.

### **Bulletin 38 and Tribal TCPs:**

The SAA and descendant communities, specifically sovereign tribal nations, share an interest in a proper and respectful stewardship of the finite and irreplaceable archaeological record. Our understandings, perspectives, and values regarding this finite resource are often very different. Native Americans in academia; federal, state, and tribal employment; and the cultural resource management community are an important voice in the SAA, and we are concerned that the draft revisions to the TCP Bulletin may have the effect of limiting and subsuming Criterion D

significance. The current (1998) iteration of the TCP Bulletin identifies that the information potential of a traditional cultural property can be derived from “ethnographic, sociological, folkloric, or other studies” in addition to archaeological significance. Many of the places that are covered by the TCP Bulletin may not possess archaeological or other material evidence of past human activity but play important and central roles in the continuing identity of communities with their connections to the past, present, and future. In such cases, the question is the applicability of Criterion D, as such sites probably would not “have yielded, or may be likely to yield, information important in prehistory or history” in the archaeological sense.

This oversight may be an unintended consequence of not having active Native American perspectives and co-authorship in the generation of these draft revisions. The 1992 amendments to the NHPA and its implementing regulations at 36 CFR 800.16(1)(1) refer to “properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” The problem is that such properties do not fit squarely within the four eligibility criteria the way an archaeological or historic property would; it’s like trying to force a square peg into a round hole. In doing so, the NPS tied TCP recognition to the NRHP criteria because of the term “property.” It was a matter of convenience for the NPS but resulted in a skewed process that places an unfair burden on tribal efforts to achieve recognition—and greater preservation of—their TCPs. In recent years, however, there is a greater awareness of tribal preservation needs, and generally in practice if a tribe tells a State Historic Preservation Officer or cultural resource management firm that a place or object is a TCP, that designation is accepted and recognized. In that sense, both the existing Bulletin and the draft revised version are out of date and are actually of no use to tribal communities. We strongly recommend that tribal TCPs not be included in the final revision of Bulletin 38, and an entirely new process be created for them that is separate from other descendant communities. Having separate processes would be an acknowledgment that tribes have a separate government-to-government relationship with federal agencies, one that is unique and that other descendant communities do not have.

### **Specific Text Recommendations:**

Page 7 Lines 3–5—according to 36 CFR 800.16(1)(1), *Historic property* also includes “properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria,” and this should be reflected in the Bulletin;

Page 7 Line 9—the use of “traditional cultural places” in lieu of “traditional cultural properties” is a welcome change in terminology as the use of “properties” implies ownership;

Page 7 Line 25—“precontact” is gaining preference over “prehistoric” in professional circles, though this still maintains a Western-focused dualism;

Page 10 Lines 15–18—this is a very workable definition of TCP;

Page 11 Lines 5–7—we suggest clarifying that a TCP that meets the 50-year threshold but is still in use today can still be eligible to the NRHP;

Page 13 Line 13—“must be associated with a tangible place.” Will moveable objects that are critical to a ceremony that occurs in a specific and tangible place be included?

Page 15 Lines 8–9—we agree that the NRHP focuses on physical resources that can be defined by their physical location, but can the qualities of integrity associated with a location also be used as arguments for inclusion in the NRHP, provided that one or more of the eligibility criteria are also met?

Page 17—“Prehistoric vs Historic”—we suggest using “precontact” instead of the term “pre-historic.” The latter may be considered a loaded term, as it relates to the issue of decolonization and can be viewed as Euro-American-centric and ethnocentric, as discussed on Page 19. “Precontact” is becoming more widely accepted in professional circles as it does not imply that those who were here before Euro-American incursions had no history, nor does it bring up the issue of decolonization, though as noted above, “precontact” may still maintain a Western worldview inapplicable to TCPs;

Page 19—Key Concept—this is a good point and is central to the identification of TCPs;

Page 20 Lines 14–15—we argue that ethnographers or cultural anthropologists are more appropriate for identifying and evaluating TCPs than professional historians;

Line 28—please see above comment about ethnographers and cultural anthropologists;

Page 21 Line 16—we believe that ethnographers and ethnohistorians should be added to this list, as they may have intimate knowledge similar to other anthropologists;

Page 22 Lines 8–9—the list includes historians, ethnographers, and others in reaching out to communities, but the draft fails to mention other local means of outreach, such as community action programs, churches, community assistance programs, local historical societies, and more. We suggest the inclusion of a section that goes into detail on importance of local organizations in identifying TCPs and getting community support and input. Reaching out to local organizations that consist of community members is critical to identifying TCPs;

Page 25—Reconciling Sources—in recording a TCP in which sources may disagree about significance, we agree that those who ascribe cultural value to a place should be prioritized. We also suggest that disagreements be formally noted in evaluating the TCP;

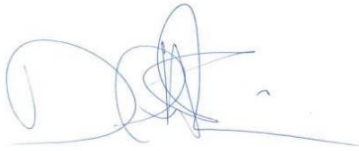
Page 28—Evaluate the Significance According to the Criteria—please see the comment above on documenting disagreements;

Page 39—Criterion Consideration G: Places that have achieved significance within the past 50 years—we do not consider the example of Old Fields to be a good illustration, as it never lost its significance to the Muscogee, even though the tribe was forced to abandon the place; it did not achieve significance to the tribe only within the last 50 years;

Page 43—Is the relationship essential?—we are unclear what the draft is trying to convey here. Does it state that to be considered a TCP, the relationship between place and practices is essential to determining whether a TCP qualifies for inclusion in the NRHP? If so, how does this differ from the quality of integrity? The same applies to the question “does the relationship endure?” How does that differ from feeling and association? How do these qualities factor into eligibility? The linkage is missing, as the revised draft seems to be placing two additional requirements for eligibility consideration for TCPs.

We thank you for your consideration of these important issues and look forward to working with you in the weeks ahead on a final revision.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sandweiss', with a horizontal line underneath.

Daniel H. Sandweiss, PhD, RPA  
President