

Staff of the California Department of Transportation offer the following comments on the revision of *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

- Traditional Cultural Properties (TCPs) are a thorny issue in that those of Native Americans or other groups that place religious or sacred values on places and properties are very different from TCPs for other cultural values that mesh more easily with the National Register eligibility criteria. Please consider splitting the guidance into two National Register Bulletins: one for Native American (and possibly other religious or sacred values) and another for TCPs that are not Native American or sacred values. This would enable more focused discussion on each type. As it is Bulletin 38 contains very little guidance on TCPs that are associated with non-Native American/Hawaiian groups. This splitting into two guidance documents has been done before with landscapes, i.e. Bulletin 18 for designed historic landscapes, and Bulletin 30 for rural historic landscapes.
- It would be very useful to have an overview and discussion of TCPs that have been listed or determined eligible, a range that includes historic period properties – ethnic communities, landscapes, post offices as community-gathering places-and Native American TCPs. More guidance on level of documentation also is needed.
- For non-Native American/Hawaiian TCPs that encompass cultural enclaves of historic neighborhoods vs. the "traditional" tool of nominating or determining National Register eligibility of those neighborhoods for their cultural significance, what is the benefit of making those enclaves (neighborhoods) a TCP when a process is already in place that has a proven track record of calling out "significance" based upon cultural-traditional association? This is the same concern brought up years ago about the danger in "broadening" the original intent of what the TCP should entail.
- There seems to be too much ambiguity with TCPs as described in Bulletin 38 that makes the process by which one considers or evaluates a property as a TCP easily susceptible to abuse. When does an interest group become a traditional cultural group? For instance, are the Hell's Angels an interest group or a cultural group? On the other hand, an interest group vs. a tradition does not necessarily run counter to each other. A participatory interest group can be spontaneous or traditional depending upon the circumstances. In essence, tradition is formed or created through participation in an event, whether singular (individual) or as a collective (group), such as attending a baseball game for 50 years, or attending the Burning Man festival for the past decade. The question is whether that tradition garners significance through evidence. Therefore, the big question is how evidence is created through principles of science such as ethnography and historiography and how that information is treated once it is acquired. If there is no litmus test for establishing significance, any event, whether individual or participatory, can be construed as important just so it is documented through scientific or historical inquiry. Bulletin 38 does not address this issue, more guidance is needed.
- The 1992 amendment to the National Historic Preservation Act (NHPA) that states properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion in the National Register has not served either the Indian tribes or Native Hawaiian organizations well by trying to shoehorn, in particular, religious values into the National Register system and revising Bulletin 38 Guidance will not change this situation. It is like trying to fit a square peg in a round hole. Perhaps other federal laws regarding Native American and Native Hawaiian sites should be strengthened to provide more protection. As it stands, Bulletin 38 states:  
  
"One more point that should be remembered in evaluating traditional cultural properties...is that establishing that a property is eligible for inclusion in the National Register does not

necessarily mean that the property must be protected from disturbance or damage. Establishing that a property is eligible means that it must be considered in planning Federal, federally assisted, and federally licensed undertakings, but it does not mean that such an undertaking cannot be allowed to damage or destroy it.”

But one still has to follow the process of identification, evaluation, and, for Section 106 purposes, effect determination, and possible development of a possible Memorandum of Agreement and mitigation measures. And, for transportation agencies, TCPs eligible under National Register criteria other than D presents issues for compliance with Section 4(f) of the U.S. Transportation Act.

- When one pursues details both directly and indirectly to help understand why a person would consider a place important, one is given, at most, vagaries with little direct and helpful information. It is not certain whether the information is really coming from Tribal perspective or whether it is nothing more than terminology that someone garnered at a conference or workshop and this terminology is being misused (and this can be done purposefully or just in error). If one accepts that a property (TCP) is National Register eligible with little other than the assurance that a place is important, those tasked with addressing the effects of undertakings on historic properties under Section 106 are then unable to effectively determine whether an eligible TCP would be adversely affected. No pertinent information equals inability to determine effect. It is not useful to hear that many of these concerns would be addressed through more consultation to seek out pertinent information without guidance being presented in the Bulletin about how one obtains information that certain groups, for their own reason, just will not share.
- Ethnography and historiography are forms of scientific inquiry and should be treated in that manner. Judgments about the value of the data collected should be based upon the quality and quantity of the evidence and how that evidence is applied to determining a relative value, as it regards traditional cultural practices.
- The politics of a TCP need to be carefully considered particularly if the TCP covers a huge swath of the landscape. How will those properties or the broader cultural landscape be treated? Cultural landscapes do not necessarily directly correspond to historic properties. TCPs should not be a political tool for managing lands, and for private parties or land managing agencies. There may be other forms of treatment options that perpetuate traditions without a formal TCP. Clearly, the Jeepers’ Jamboree along the Rubicon Trail in northern California will continue its tradition whether or not it is a TCP, that is unless the U.S. Forest Service decides its use should be restricted due to concerns about watershed damage, etc.
- TCP boundaries are a concern because they can be ambiguous. How does one deal with situations where a proposed eligible TCP landscape extends over many private properties that for Section 106 purposes do not even touch a highway project area?
- The level of documentation appropriate to demonstrate that a TCP exists is problematic. Is there a different documentation expectation for a TCP associated with a tribal group versus an immigrant community? How much does one need to know in a situation where folks are protective of their information?