

TRADITIONAL CULTURAL PROPERTIES: PUTTING CONCEPT INTO PRACTICE

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The National Register Framework for Protecting Cultural Heritage Places

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NEARLY 20 YEARS AGO, the National Park Service (NPS) published National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, which spoke broadly to the area of cultural significance relating to all properties that may be found eligible for inclusion in the National Register of Historic Places, and explicitly defined a type of significance, *traditional cultural significance*, founded in the cultural traditions and ongoing practices of the community or group for which the property is important (Parker and King 1990). What distinguishes this type of significance is the historical and ongoing relationship between the property and the cultural practices, values, and beliefs of the people for whom the property has importance. In this collection of papers, we begin to take a look back at the concept of the traditional cultural property (TCP) and how it has worked as a means to identify and preserve properties of historical and cultural importance to communities in this country. Has the implementation of the guidelines been successful in identifying and protecting historic properties of traditional cultural importance? Have any elements worked better than others, or are there issues that need to be adjusted? Do we need to incorporate greater flexibility in the guidelines' application? Has the process been of value to local communities seeking to preserve their cultural resources? *The George Wright Forum* provides an opportunity to review the lessons learned from applying the guidelines and to present discussions about issues that have arisen for a wide audience. These essays are the first of what will hopefully be two sets of commentaries on and responses to the concept and process of finding properties eligible for inclusion in the National Register for their traditional cultural significance since the appearance of Bulletin 38.

NHPA: The legal framework for traditional cultural significance

The National Historic Preservation Act of 1966 (NHPA), as amended, formulated the responsibilities of federal agencies to preserve and protect historic and cultural properties important to the American people through the vehicle of the National Register of Historic

Places. NHPA authorized the secretary of the interior to expand and maintain a National Register of Historic Places composed of historic properties significant in American history, architecture, archaeology, engineering and culture. The act defines the responsibilities of federal agencies to protect and preserve historic properties found eligible for or listed in the National Register. Sections 106 and 110 include specific provisions for the identification and evaluation of these properties for inclusion in the National Register.

Section 106 requires that for any federal undertaking (a project funded or licensed by a federal agency) the agency must consult with the public and consider the effects of the undertaking on historic properties prior to the start of the project. To begin with, the agency identifies, evaluates, and determines whether any properties involved meet National Register criteria. This process includes consulting with (as appropriate) the state historic preservation officer (SHPO), tribal historic preservation officer (THPO), local governments, Indian tribes, Native Hawaiians, and members of the public who may be knowledgeable about and associated with any properties. The agency must consult with parties that have an interest in the properties as part of the identification procedure, and seek the concurrence of the SHPO/THPO in the determination. If the agency official determines that any of the National Register criteria are met, and the SHPO/THPO agrees, the property shall be considered Register-eligible for Section 106 purposes. An agency's determination that a property meets eligibility criteria means that the agency must treat it as if it were already listed, even though the property has not been formally nominated to or included in the National Register. Further, if it is determined that such properties may be affected by the proposed undertaking, the agency must consider the effects of the undertaking on them, make a determination of effect, and consult about ways to "resolve" adverse effects with interested parties, including the SHPO/THPO. If adverse effects are expected, the process will involve the development of a memorandum of agreement in consultation with the SHPO/THPO, local governments, Indian tribes, Native Hawaiians, and members of the interested public, regarding the means that will be employed to consider and to resolve them. However, the agency is not required to mitigate adverse effects, and it may simply seek comments from the Advisory Council on Historic Preservation and proceed with the action.

Under Section 110, federal agencies are responsible for preserving and protecting historic properties owned or controlled by them by means of historic preservation programs. Each program shall include a process for the identification, evaluation, and nomination to the National Register of properties under the agency's jurisdiction, although proceeding with actual nominations is subject to each agency's priorities related to its mission and mandates. Further, Section 110 reinforces that the properties listed or eligible for the National Register are to be managed and maintained in a way that considers the preservation of their historical, architectural, archaeological, and cultural values in compliance with Section 106, including a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with SHPOs, local governments, Indian tribes, Native Hawaiian organizations and the interested public, regarding the means by which adverse effects on such properties will be considered.

Through amendments made to the NHPA in 1992, along with their implementing reg-

ulations, federal responsibilities for consultations with interested parties, and especially Indian tribes, during the Section 106 process were expanded. Detailed guidance developed by the Advisory Council on Historic Preservation has been another positive influence in this direction. The result has been a more focused effort by federal agencies to involve SHPOs and THPOs, local governments, Indian tribes, Native Hawaiian organizations, and interested members of the public in identifying historic properties of cultural significance and, if warranted, in considering effects that may result from a federal undertaking. While the process does not mean that potential adverse effects on a property will necessarily cause the agency to stop, relocate, or otherwise modify a project, it does ensure that such effects must be taken into consideration by the agency before the project is initiated. As Paul Lusignan discusses in his paper in this volume, an obligation to identify potentially affected properties as part of the 106 process has resulted in an increased level of identification and evaluation of TCPs in relation to specific development projects, which would not have occurred otherwise. The 106 process is not an alternative approach to the programmatic process carried out under Section 110, however, and whether a project-specific framework works better than a more comprehensive program to identify and evaluate TCPs within the agency's historic preservation program is a topic for more discussion. How many agencies have in place an effective, proactive program for identifying and evaluating historic properties (including TCPs) on lands within their jurisdiction, and for managing Register-eligible or listed properties for purposes of preservation and protection? Perhaps TCPs, which by definition are important to known communities and cultural groups, can provide a useful means for monitoring the efficacy of agency preservation programs on a local or regional level by involving the associated people in such assessments.

Traditional cultural properties

In 1990, National Register Bulletin 38 presented guidelines for evaluating traditional cultural significance as a kind of cultural significance for which historic properties can be found eligible for inclusion in the National Register using established criteria (Parker and King 1990; revised in 1992 and 1998). These TCP guidelines were developed in response to narrow interpretations of the NHPA by federal and state agencies, which put a primary emphasis on the "built" environment and did not adequately meet the need for documenting and considering the cultural significance of places in planning documents and administrative manuals. The need to prepare the guidelines was first articulated in a 1983 Department of the Interior (DOI) report entitled *Cultural Conservation*, which in turn was developed in response to 1980 amendments to the NHPA directing the DOI to study and recommend ways to "preserve, conserve and encourage the continuation of the diverse traditional prehistoric, historic, ethnic and folk cultural traditions that underlie and are a living expression of our American heritage" (Parker and King 1990:2, also see King 2003:21-44). The guidelines did not focus on the preservation of intangible cultural customs and traditions themselves, but instead situated the process within the framework of the National Register as the preservation of tangible cultural properties that have historical and ongoing significance to living

communities, as evidenced in their traditional cultural practices, values, beliefs, and identity. In this way, a more inclusive and localized procedure to protect the diverse cultural resources of the country, extending beyond the nationally significant Euroamerican historic structures and landscapes that had been the focus of the National Register, was integrated into the process.

The guidelines describe a type of cultural significance for which properties may be eligible for inclusion in the National Register. A property with *traditional cultural significance* will be found eligible for the National Register because it is associated with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuity of the cultural identity of the community. This type of significance is grounded in the cultural patterns of thought and behavior of a living community, and refers specifically to the association between their cultural traditions and a historic property.

Bulletin 38 utilizes an abbreviated definition of culture as "the traditions, beliefs, practices, lifeways, arts, crafts and social institutions of any community." Although readers are cautioned that this is a "shorthand" definition, and are referred to a more in-depth definition provided in Appendix I, the bulletin unintentionally and through continued use gives the impression that culture can be equated to a list of traits (customs, practices, beliefs, etc.). Culture is more than this, however. As presented in Appendix I,

Culture [is] a system of behavior, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help human interpret their universe as well as deal with features of their environments, natural and social. Culture is learned, transmitted in a social context, and modifiable.

This more complex definition is important to understand and apply in relation to TCPs, since the people themselves, the community members, determine the cultural significance of the property in their own terms; they are the "definers" of significance. Furthermore, their expert knowledge about the site is the reason they are, by definition, consulting parties in relation to the identification and consideration of potential effects on the property. To identify whether a property may have traditional cultural significance, the agency will most likely need to conduct a detailed field study. A cultural anthropologist or other specialist with expertise in conducting ethnographic and ethnohistorical research, and preferably with knowledge of and experience with the cultural community or ethnic group for which the property is significant, would in most cases be the best qualified expert to carry out documentation research for TCPs.

Traditional cultural significance is simultaneously historical and contemporary, and continuing significance is critical, whether or not the place has gone unused for a period of time. Bulletin 38 provides additional guidance on the meaning of the term:

"Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through

practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in the community's historically rooted beliefs, customs and practices.

The concept of tradition refers to aspects of culture—values, beliefs, customs, and practices—that have been passed down from previous generations, and thus are grounded in past (historical) patterns of thought and behavior of the community. These traditions are also evident in current behavior patterns of a living community—there is continuity between earlier and contemporary beliefs, customs, and practices of the living community. Anthropologists refer to this quality of cultural systems as “cultural continuity.” Tradition encompasses both the past and the present: cultural patterns of thought and behavior, inherited from earlier generations and transmitted largely informally (“orally and through practice”) to living generations, continue to shape the contemporary community's lifeways, values, and beliefs and to have importance in the ongoing cultural identity of the community.

Bulletin 38, the guidance for evaluating TCPs, frequently speaks of a “community” or “group” without providing a definition for these terms. It introduces the following examples as illustrative of the intended meaning: “an Indian Tribe,” “a local ethnic group,” “a living community,” “a Native American group,” “a rural community,” “an urban neighborhood,” “Native American religious practitioners,” “ethnic minority groups,” “a social group,” and even “the people of the nation as a whole.” With the exception of the last, these terms describe traditional communities and groups that may be characterized as cohesive sociocultural groups sharing cultural patterns of behavior, values and beliefs, and a unique sense of history and identity that distinguishes them from other communities and groups. The community or group will have maintained traditional cultural practices and beliefs through time, over multiple generations, and thus its membership will display historical continuity. This description of community as a traditional community seems particularly well-suited for some kinds of social groupings, including Indian tribes and ethnic neighborhood groups, while other people and groups may not be characterized in this way although they may feel important associations with certain cultural resources.

Another topic that has arisen is the nature of “boundary” around sacred spaces. In order to be identified and listed in the National Register, a property has to have a specified boundary. This has posed difficulties for Indian tribes, in particular, for which boundary lines around domains of thought and behavior, particularly with regard to spiritual matters (sacred sites), are not defined in Euroamerican terms. As Rosita Worl describes in her paper in this volume, it was curious to her how the notion of a fence (a tangible boundary) conveys a belief that spirits can be enclosed or confined to a certain area, the designation of which somehow provides protection from those who are doing things outside this boundary (and vice versa). In the case of Mount Graham (*Dzil nchaá si'an*) in Arizona, Western Apache elders accepted the U.S. Forest Service administrative boundary for the Pinaleno Mountains unit as the boundary of their sacred site, even though in actuality there is a larger area which they consider to be associated with the religious beliefs and practices. In this case, it is the entire mountain, not just isolated places on the mountain, that holds special significance to the tribes.

As groups such as Indian tribes seek the protections afforded through the National Register, the issue of making public what they regard as culturally privileged knowledge is a crucial one. Quite often the religious and spiritual practices of a tribe are maintained through the activities of specialists who hold, sustain, and preserve extensive and specialized information about the tribe's religious practices and beliefs. Documentation of such cultural domains requires the release of confidential and culturally sensitive information to outsiders, and also might mean that the information is subject to the Freedom of Information Act. While there are certain protections available to the National Register, this topic continues to be a concern to tribal groups.

Another fundamental question has to do with the actual benefits of including a site in the National Register—are the protections that result from being found eligible for, or listed in, the National Register actually beneficial to the group seeking to preserve their cultural properties, particularly when considered in relation to the issues discussed in the previous paragraph? Under Section 106, the benefits to a living community arise only when there is a proposed federal undertaking that may affect a property, and are associated with the privileges of consultation as a consulting party (as contrasted with the role that is available to members of the public). Consulting-party status means that the group has an enhanced opportunity to consult with the federal agency, and to be a party to an agreement regarding the resolution of adverse effects on the property. Since a federal agency is only required to take such concerns into consideration, this process may or may not ultimately result in adequate site protection, from the perspective of the community. Properties not on federal land or subject to a federal license will not be eligible for such consideration under the NHPA, so communities must weigh the actual benefits to cultural sites that may ensue through the National Register process. On the other hand, for a community that is associated with sites of traditional cultural importance that are under the jurisdiction of federal agencies, there could be substantive benefits.

Recent guidance

In a case decided in 2007, the National Register provided a summary of the elements of a TCP that were taken into consideration during an evaluation of eligibility. The formal evaluation was made in response to a request from the Northeast Region of the National Park Service (NPS) to make a determination of whether a property met the National Register criteria for recognition as a TCP. The case generated a statement about what factors are taken into consideration by the National Register during a TCP evaluation. Although this is not formal guidance such as given in National Register technical bulletins, it is instructive since it is a recent statement about the elements that are evaluated in determining a property is a TCP. These characteristics of a TCP, derived from Bulletin 38, represent the decision-making process by which National Register conducts evaluations.

In the formal opinion, the National Register notes that Bulletin 38 provides flexible guidance for evaluation and documentation of TCPs, and that the issues are discussed more fully in that document. The opinion goes on to state that a TCP has the following characteristics:

- A living, traditional group or community;
- The group/community must have existed historically and the same group/community continues to the present;
- The group/community must share cultural practices, customs, or beliefs that are rooted in the group/community's history;
- These shared cultural practices, customs, or beliefs must continue to be held or practiced today;
- These shared cultural practices, customs, or beliefs must be important in maintaining the continuing cultural identity and values of the group/community;
- The group must transmit or pass down these shared cultural practices, customs, or beliefs through the generations, usually orally or through practice; and
- These shared cultural practices, customs, or beliefs must be associated with a tangible place, and the place must be directly associated with the identified cultural practices.

This discussion appears in a memorandum dated May 24, 2007, presenting the keeper of the National Register's conclusion regarding whether the Dune Shacks of the Peaked Hill Bars Historic District in Cape Cod National Seashore meets National Register criteria as a TCP (Figure 1).

Figure 1 One of the cottages in the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod, Massachusetts. Photo courtesy of the author.



This case, what I here refer to as the “dune shacks case,” was my first foray into the realm of TCPs. I was familiar with the concept but had never been intimately involved with documentation and evaluation efforts and the details of considering the factors that make sites of traditional cultural importance eligible for the National Register. Besides the standard criteria for National Register eligibility (see text box), there are certain additional hurdles that are encountered with TCPs. One of these is the nature of the boundary around such sites, and how to fit a culturally constituted sense of place into the box established by the National Register. Another critical element of TCPs is the nature of “the community” and how to draw a boundary, if you will, around the entity which ascribes traditional cultural significance to a place. The dune shacks case represents an atypical example, and merits a brief discussion to illustrate the complexities that may be encountered in TCP evaluations, particularly as more diverse kinds of communities become aware of and interested in the National Register process.

The nature of the associated community was the crucial issue in this case, which included long- and short-term users of small cottages, known locally as dune shacks, located on the sand dunes of Cape Cod National Seashore outside of Provincetown, Massachusetts. These shacks and the associated landscape were incorporated into Cape Cod National Seashore after it was established in 1961, and the occupants were given reservations of use for various terms (some lasted 40 years, while others were for the lifetime of the user). The case emerged after 2000 as increasing numbers of these reservations were expiring, and the occupants, in association with the town of Provincetown, wondered whether the shacks were TCPs and, if so, if this status would assist them to maintain their patterns of use beyond the expiration of their reservations. After consulting with a range of experts, including the SHPO, park management decided that an ethnographic study needed to be conducted to develop adequate information about traditional patterns of use and occupancy, so that consideration of the district’s traditional cultural significance could be accomplished prior to developing a management plan. The National Register had already determined the historical significance of the property in 1989, at which time the cottages and the surrounding landscape were determined Register-eligible as a historic district (the Dune Shacks of the Peaked Hill Bars Historic District). They were recognized for their significance in American art, association with the poet Harry Kemp, and design, which, in the opinion of the National Register, represents a historic cultural landscape used as a summer retreat for the Provincetown colony of artists, writers, poets, actors, and others, and for the shacks’ collective use by the artistic community during the early and mid-twentieth century (the “period of significance” ended with the establishment of the park).

In 2004, a consultant hired by the Northeast Region of the NPS conducted ethnographic research into the cultural traditions and patterns of the occupants of 19 shacks, 15 of which were occupied by “long-term dune dwellers” and four others by more transient, short-term users whose occupancy was made possible through lottery or juried selection procedures under historic property leases (see Wolfe 2005). After the study was completed, he and another consultant assessed the eligibility of the district as a TCP under the guidelines in Bulletin 38. The consultants reported that, in their opinion, the district was eligible as a TCP because there is a dune shack “society”—comprising a set of extended families, each linked

Standard criteria for National Register eligibility

As with any historic property that is considered eligible for or listed in the National Register, TCPs must be classified as a historic property which possesses integrity and is historically or culturally significant according to at least one of four criteria of significance set forth in the National Register regulations (36 CFR Part 60). These requirements are summarized below.

Property type A TCP must be a tangible property—a district, site, building, structure or object—that is related to traditional cultural values, beliefs, and practices of the community. Bulletin 38 provides specific guidance on this issue: “[T]he beliefs or practices associated with a TCP are of central importance in defining its significance. However, it should be clearly recognized at the outset that the National Register does not include intangible resources themselves.” Furthermore, eligible TCPs do not have to show, or contain, physical attributes of human activity or construction such as buildings, structures or their remains. A culturally significant “natural” landscape or a “natural” object such as a rock outcrop may be eligible if it is associated with a significant tradition or use. However, in considering the eligibility of properties that contain no observable evidence of human activity, “the documentary or oral evidence for the association of the property with traditional events must be carefully weighed and assessed.”

Integrity Eligible properties must also have “integrity of location, design, setting, materials workmanship, feeling, and association” (36 CFR Part 60). For TCPs, the integrity of association with the community’s cultural practices and beliefs is a critical consideration. Does the property have an integral relationship to the traditional cultural practices or beliefs that give it its significance? Bulletin 38 provides a very useful example of this criterion in the form of baptism. Consider that two groups practice baptism in a body of water for the same purpose: to mark a person’s integration into the group. For one group, it is immersion in water that is the critical feature of this practice, while for the other it is immersion in a particular lake that is essential for its acceptance of a new member. “Clearly the lake is integrally related to the second group’s practice, but not to that of the first.” Consideration of a TCP’s integrity involves developing an appropriate degree of culture-specific information (knowledge and understanding) about how the group that holds the beliefs and carries out the associated practices views the property.

National Register criteria of significance Aside from being classified as a historic property that has integrity, the TCP must also be historically and culturally significant according to at least one of four criteria of significance set forth in the National Register regulations (36 CFR Part 60). Significance is present in properties that:

1. Are associated with events that have made a significant contribution to the broad patterns of our history; or
2. Are associated with the lives of persons significant in our past; or
3. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
4. Have yielded, or may be likely to yield, information important in prehistory or history.

In considering which of these criteria may apply to a TCP, it is crucial to interpret them from the cultural perspective and point of view of the group to which the property may have traditional cultural significance. That is, the phrases “our history” and “our past” must be understood to refer to the group’s own view of themselves, their history, and their culture, which provides the context within which the traditional cultural significance will be evaluated. Bulletin 38 provides additional discussion of each of these criteria.

to a particular shack, along with their networks of friends (called “coteries”) who visited occasionally—that carries on cultural practices and customs associated with living in the historic district (Figure 2). Moreover, these traditions are embedded in a wider community. The consultants reported that three traditions associated with subgroups in the local communities of Provincetown, Truro, and Orleans find expression in the cultural patterns of various dune dwellers, and that therefore the community with traditional cultural practices associated with the district is the Provincetown–Lower Cape Community. One set of practices relates to traditional uses of the sand dunes associated with long-time residents with connections to “Old Provincetown,” another relates to uses of the dunes and the shacks by artists and writers associated with the Provincetown art colony, and the third is an association with a broad tradition of environmentalism and “living close to Nature” as represented in the dune dweller lifestyle (Wolfe 2005). According to the research, these different traditions are not associated uniformly with all the shacks (and shack occupants) in the district, but represent general associations with the district.

In the review by the NPS Northeast Region, and later by the keeper of the National Register, the issue of the community was problematic. The Northeast Region found that, due to patterns of dispersal during the off season when the majority of the long-term dune dwellers and their coteries left Cape Cod, it could not be claimed that they, the people who maintained the shack traditions, were a segment of the associated community and the historic context. It was also reasoned that the associated families and their individualized networks,

Figure 2 Two families and three generations of seasonal dune residents at the Champlin dune shack, Cape Cod, 2004. Source: Wolfe 2005.



which customarily did not associate with each other, were more properly described as a collectivity of self-selected people sharing a similar lifestyle while in the district, rather than a community that maintains a group identity across generations through regular social interaction. The Northeast Region of the NPS, after consulting with the SHPO (who disagreed with this finding), submitted a request to the keeper of the National Register to consider whether the district had traditional cultural significance and qualified as a TCP according to Bulletin 38.

The keeper opened the review process to a 45-day public comment period, during which a substantial number of letters were received including material from a local non-profit organization that leases some of the shacks from the Cape Cod National Seashore. After considering this information, the keeper found that the district does not meet one of the most important characteristics of a TCP: that “the group/community must have existed historically and the same group/community continues to the present.” The keeper noted that groups which claim traditional associations with the district include long-term occupants of the shacks, transient visitors and tenants, residents of the Provincetown–Lower Cape Community, and likely other groups beyond the immediate locality. “The groups that are culturally identified with the District were historically (and continue to be) fluid, evolving, and different from one year to the next.” The determination acknowledged that the comments received during the public comment period called attention to a significant number of transient users that constitute an important component of shack culture. In the opinion of the National Register, the consultants’ studies, while encompassing all user groups, were focused primarily on the long-term shack residents and did not adequately take into account the other, more transient users of the shacks.

After the determination was made public, there was widespread and vocal protest from long term-residents and others, including the town of Provincetown, the SHPO, and even US Senator John Kerry. Tom King (see his paper in this volume) also objected strongly. This case highlights issues related to the definition of community for purposes of determining the eligibility of TCPs for inclusion in the National Register. In its discussion of community, Bulletin 38 describes a traditional community, that is, a living community that maintains traditional cultural practices, customs, beliefs, and patterns of thought that are important to its continuing cultural identity. It is ironic that an approach to preserving heritage that was developed to be more inclusive is now seen by some to be exclusionary and a problem perpetuated by heritage institutions and professionals. To the extent that TCPs have been listed or found eligible for inclusion, the process has succeeded in the preservation of heritage significant to local communities, and contributed to greater diversity and inclusiveness within the National Register. If we look closely at Bulletin 38, an expansion of National Register criteria with regard to the nature of tradition, community, and identity would be needed for consideration of places significant to self-selected groups such as seasonal residents of Stiltsville and the Dune Shacks of the Peaked Hill Bars Historic District, or to other kinds of groupings of people who identify themselves with certain practices, such as living historians and re-enactors, that feel a strong relationship to places important to them (for a description of living historians at a national historic site, see Stanton 2007). If the definition of a community was such that any group that identifies itself as a community would be so defined for

National Register purposes, that would bring a different concept of community to the National Register. Indeed, for the long-term dune shack occupants, the potential for new and interested individuals from outside their community to become accepted members of the community was itself seen as a tradition. What may be needed is another framework, outside of NHPA, for encouraging expressions of localized, community-based heritage and heritage-making, based on increased ethnographic knowledge of the community's "personal inheritances" (for example, see Chambers 2006). This approach would acknowledge that there are important expressions of self- and group-identity that do not rise to the level of national significance appropriate for inclusion in the National Register.

Returning for a moment to the consideration of National Register eligibility of the dune shacks district as a TCP, the Cape Cod case held the potential for exploring a Section 106 issue specific to TCPs relating to potential adverse effects to the property resulting from a reduction of access. The park would presumably manage the district as a historic property to preserve its significance, and would be interested in making the shacks available to the public under federal provisions for leasing historic properties to accomplish these objectives. Indeed, several of the shacks are already made available to the public through this mechanism. As historic properties, individual users, in this case the long-term occupants, do not have private property claims to the shacks and would only be able to acquire leases through a competitive public process. If the district had been found to be eligible for the National Register as a TCP, and historic property leasing is a component of a proposed management plan, an unanswered question is whether it would constitute an adverse effect on the property if the long-term occupants—the people most directly maintaining the traditional cultural practices associated with the shacks—no longer had access in the manner they had in the past. In this instance, it might be argued that the proposed management plan reduces an aspect of the integrity of association, which is an important criterion in the property's traditional cultural significance (see text box).

The definition of a living community will continue to be an issue with applying the guidelines in Bulletin 38. The concept of a traditional community, a component of which is having continuity of membership over time, may come into conflict with the manner in which certain contemporary communities define themselves, particularly as they may be more fluid in recruitment and membership, in who identifies themselves with the community. Such considerations are a critical element in the evaluations of traditional cultural significance as presently structured under the National Register. This is one of several topics that emerge in a retrospective consideration of the guidelines for documenting and evaluating TCPs over the past 19 years. It is hoped that these essays will contribute to a broad dialogue about the strengths and weaknesses of the guidelines and of their continuing value to the National Register process, as well as about more fundamental questions such as the extent to which traditional cultural practices in America have been protected and preserved through their connection to tangible properties under the rubric of the National Register.

A note on the articles in this volume

We are fortunate to have a lead-off essay by Tom King, co-author of Bulletin 38 and veteran

of many TCP documentation efforts. He has written extensively on many aspects of the NHPA, including Section 106, Section 110, and TCPs, and other cultural resource laws and management regimes. In 1994, he proposed that the entire Klamath River drainage should be Register-eligible as a TCP, which he termed a “cultural riverscape.” King’s description of the deep feelings of significance that people have for their places cannot be overstated.

Paul Lusignan, historian, is the technical expert most directly involved with TCP evaluations at the National Register of Historic Places. He provides a national perspective on recent trends in TCP evaluations, including both Register listings and determinations of eligibility, and speaks to areas of the country where TCP identification and documentation has progressed the most. Lusignan discusses efforts of Indian tribes to identify and document TCPs in their own programs, which is welcome, and in a subsequent set of essays I hope to have more discussion of this topic.

Sherry Hutt brings her extensive knowledge and experience with legal analysis of cultural resource and property laws to this issue with her discussion of the federal laws, policies, and court cases relating to TCPs and Indian sacred sites. She clarifies what preservation means for TCPs and what is protected under the NHPA in relation to private property interests, cultural practices, and access. The tortured history of Indian sacred sites protection and the fallibility of the same in the courts receive a detailed and informed exegesis.

The final two papers document the experiences of two professionals with one TCP documentation and evaluation effort, that of Indian Point/Auke Cape in Juneau, Alaska. Rosita Worl describes her active involvement in the protection of this site which, for her, started in the 1960s. She begins her story with a description in memory of her Tlingit mother, who not only was foundational to Worl’s activism but is associated with the site because, after her death, Worl went there to burn some of her effects (the spiritual essence of which is believed to transfer to the spirit of the deceased). I asked Worl to write this essay as a personal reflection, in an Indian voice, and expressing the local perspective for which the property has extremely high significance.

Tom Thornton, formerly of the University of Alaska–Juneau and now at Portland State University, writes about this case from the perspective of a heritage professional who conducted the site documentation and evaluation on behalf of the federal agency. This case is an example of the trend identified by Lusignan that more TCPs are identified through the NHPA Section 106 process than are brought as nominations to the National Register. This case stands out because it was held up for many years by the Alaska State Historic Preservation Office, and it was only as of March 3, 2009, that we learned the state has approved the nomination to be sent to the National Register for consideration, although it is not yet known when this will occur.

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References

- Chambers, Erve. 2006. *Heritage Matters: Heritage, Culture, History and Chesapeake Bay*. College Park, Md.: Maryland Sea Grant College.
- King, Thomas F. 1998. *Cultural Resources Laws & Practice*. Walnut Creek, Calif.: AltaMira Press.
- . 2003. *Places That Count: Traditional Cultural Properties in Cultural Resource Management*. Walnut Creek, Calif.: AltaMira Press.
- Parker, Patricia L., and Thomas F. King. 1990. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. National Register Bulletin 38. Washington, D.C.: National Park Service.
- Stanton, Cathy. 2007. *Cultures in Flux: New Approaches to 'Traditional Association' at Hopewell Furnace National Historic Site*. Boston: National Park Service, Northeast Region Ethnography Program.
- Wolfe, Robert J. 2005. *Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod*. Wellfleet, Mass.: Cape Cod National Seashore.
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