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**“That Chuitt River is Ours”: Traditional Cultural Landscapes and  
the National Historic Preservation Act**

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**Abstract**

Since the first publication of National Register Bulletin 38, traditional cultural properties (TCP) have gained acceptance within the cultural resource management and historic preservation professions. Nevertheless, there remains resistance to the recognition that places of traditional religious and cultural significance can encompass entire natural landscapes—traditional cultural landscapes (TCLs). This resistance is rooted in a fundamental misunderstanding of the existing legal framework of heritage preservation. This paper demonstrates that the National Historic Preservation Act (NHPA), its regulations, and its guidance not only recognize TCLs, but encourage their identification and protection. TCLs reflect intimate relationships between culture and nature, where each is influenced by and dependent upon the other. Recognizing TCLs and understanding how they fit with the NHPA provides tribes with a powerful tool to advocate for holistic approaches to cultural and environmental protection, consistent with their experiences, expressions, and understandings of the significance of place.

***Keywords***

traditional cultural landscape, TCL, cultural landscape, NHPA, Section 106, traditional cultural property, TCP

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## “That Chuitt River is Ours”: Traditional Cultural Landscapes and the National Historic Preservation Act



**Figure 1.** The Ch'u'itnu watershed looking north, upriver.” Photograph by Wesley James Furlong, 2017.

### I. Introduction

In Alaska, along the north shore of Cook Inlet, the Ch'u'itnu (Chuitna River) watershed encompasses over 170 square miles of rocky beach, glacial moraine riverbeds, boreal forest bogs, and tundra. Largely untouched by modern human development, it is one of the last undeveloped rivers in Cook Inlet. All five species of salmon spawn in its tributaries. Since time immemorial, the Tubughna (“People of the Beach” in Dena’ina Athabaskan)<sup>2</sup> have occupied this landscape, thriving on its resources—particularly salmon. The continued abundance of salmon has provided the cultural, social, spiritual, and nutritional resources necessary to empower

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<sup>2</sup> Alan S. Boraas, Ronald T. Stanek, Douglas R. Reger and Thomas F. King, *The Ch'u'itnu Traditional Cultural Landscape: A District Eligible for Inclusion on the National Register of Historic Places* (Anchorage, AK, 2015), 14 n.5 (hereinafter cited as Boraas et al., *The Ch'u'itnu Traditional Cultural Landscape*).

Tubughna survivance,<sup>3</sup> through the continuation of their subsistence culture and lifeways from pre-contact to today. Without the Ch'u'itnu and the salmon, the Tubughna would not exist.

In recognition of this relationship, the Native Village of Tyonek (NVT), the federally recognized Indian tribe of the Tubughna, nominated the entire Ch'u'itnu watershed to the National Register of Historic Places (NRHP) in February 2017 as a TCL. Despite resistance from the State of Alaska and the mining industry, the Alaska Historical Commission (Commission) officially determined the Ch'u'itnu watershed eligible for inclusion on the NRHP in April 2018.

Although TCPs have gained acceptance within the preservation profession, there remains resistance to recognizing that places of traditional religious and cultural significance can encompass entire natural landscapes. TCLs, such as the Ch'u'itnu watershed, reflect the interconnectedness of culture and nature; that culture is fundamentally influenced by and dependent upon natural landscapes and the resources they contain. TCLs are often large, contain numerous, intangible resources, and lack definitive boundaries. The reluctance to recognize TCLs, as demonstrated by the Ch'u'itnu, is rooted in a fundamental misunderstanding of the existing legal framework for heritage preservation. By examining existing preservation law, this paper demonstrates that the NHPA, its regulations, and its guidance not only recognize TCLs, but encourage their identification and protection. Recognizing TCLs and understanding how they fit with the NHPA provides tribes with a powerful tool to advocate for holistic approaches to cultural and environmental protection, consistent with their experiences, expressions, and understandings of the significance of place.

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<sup>3</sup> Gerald Vizenor, *Manifest Manners: Narratives on Postindian Survivance* (Lincoln: University of Nebraska Press, 1994).

## **II. The Existing Preservation Framework**

Enacted in 1966, the NHPA established a number of programs, including the NRHP, which is administered by the National Park Service (NPS),<sup>4</sup> and the Section 106 process,<sup>5</sup> whose implementation is overseen by the Advisory Council on Historic Preservation (ACHP).<sup>6</sup> In 1992, the NHPA was amended, explicitly recognizing that properties of “traditional religious and cultural significance” are eligible for inclusion on the NRHP.<sup>7</sup> These amendments have provided tribes unprecedented agency and authority within these preservation programs to advocate for protection more consistent with their experience, expression, and understand of the significance of place. While the NHPA does not provide outright protection for historic properties, it does provide tribes with a meaningful opportunity to engage in and advocate for the holistic management and protection of such places.

### ***A. The National Register of Historic Places***

The NRHP catalogs the “districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.”<sup>8</sup> The Keeper of the NRHP has the ultimate authority to list or determine a property eligible for inclusion on the NRHP.<sup>9</sup> To be included on the NRHP, a historic property must be categorized as a recognized property type: either a district, site, building, structure, or object. Although formulaic and anachronistic, these categories do not preclude the recognition of TCPs and TCLs.

[A] property may be defined as a “site” as long as it was the location of a significant event or activity, regardless of whether the event or activity left any evidence of its occurrence. A culturally significant natural landscape may be classified as a site, as may be the specific location where significant traditional

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<sup>4</sup> 36 C.F.R. pt. 60.

<sup>5</sup> 54 U.S.C. § 306108; 36 C.F.R. pt. 800.

<sup>6</sup> 54 U.S.C. § 304108(a).

<sup>7</sup> Pub. L. No. 102-575, § 4006(a)(2), 106 Stat. 4600 (Oct. 30, 1992).

<sup>8</sup> 54 U.S.C. § 302101.

<sup>9</sup> 36 C.F.R. § 60.3(f).

events, activities, or cultural observances have taken place. A natural object such as a tree or rock outcrop may be an eligible object if it is associated with a significant tradition or use. A concentration, linkage, or continuity of such sites or objects . . . comprising a culturally significant entity, may be classified as a district.<sup>10</sup>

Districts, sites, and objects “do not have to be the products of, or contain, the work of human beings.”<sup>11</sup>

A historic property must also meet one of four criteria to be eligible for inclusion on the NRHP. Most relevant to TCPs and TCLs are Criteria A and D. Properties eligible under Criterion A “are associated with events that made a significant contribution to the broad patterns of our history.”<sup>12</sup> In the context of TCPs and TCLs, “our” refers to the community that ascribes the place with traditional cultural significance, while “history” can include traditional oral history.<sup>13</sup> Properties eligible for inclusion under Criterion D “have yielded, or may be likely to yield, information important in prehistory or history.”<sup>14</sup> This information can be gained from archaeological, anthropological, sociological, ethnographic, or other studies.<sup>15</sup> Typically, places associated with Indigenous communities are only evaluated under Criterion D for their archaeological research potential.

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<sup>10</sup> U.S. Department of the Interior, National Park Service, *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties*, by Patricia L. Parker and Thomas F. King (Washington, D.C. 1998), 11 (hereafter cited as Parker and King, *Bulletin 38*).

<sup>11</sup> *Ibid.*

<sup>12</sup> 36 C.F.R. § 60.4.

<sup>13</sup> Parker and King, *Bulletin 38*, 12.

<sup>14</sup> 36 C.F.R. § 60.4.

<sup>15</sup> Parker and King, *Bulletin 38*, 14.

Historic properties are most often included on the NRHP through nominations from State Historic Preservation Officers (SHPO) and Federal Preservation Officers (FPO),<sup>16</sup> or from individuals and organizations nominating properties by submitting a “request for nomination” to SHPOs or FPOs.<sup>17</sup> Including places of traditional cultural significance on the NRHP acknowledges the importance of Indigenous culture, history, and identity, as well as the contributions Indigenous cultures have made to the fabric of American heritage.<sup>18</sup> Nominations by tribes provide them with the opportunity to present their understandings, expressions, and experiences of the significance of place in a manner consistent with their culture. Additionally, listing such places on the NRHP ensures that they receive the protections afforded by the Section 106 process.

### ***B. The Section 106 Process***

Section 106 of the NHPA requires all federal agencies to “take into account the effect[s] of [an] undertaking on any historic property.”<sup>19</sup> Agencies satisfy this obligation by identifying historic properties within the undertaking’s area of potential effect;<sup>20</sup> assessing the undertaking’s adverse effects on those historic properties;<sup>21</sup> and seeking to resolve those effects through avoidance, minimization, or mitigation.<sup>22</sup> The ACHP defines historic properties as any properties “included in, or eligible for inclusion in, the National Register[,] . . . *includ[ing]* properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization.”<sup>23</sup>

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<sup>16</sup> 36 C.F.R. §§ 60.6, 60.9, 60.10.

<sup>17</sup> 36 C.F.R. § 60.11.

<sup>18</sup> Advisory Council on Historic Preservation, *Information Paper on Cultural Landscapes: Understanding and Interpreting Indigenous Places and Landscapes* (Washington, D.C., 2016), 2 (hereafter cited as ACHP, *Understanding Indigenous Landscapes*).

<sup>19</sup> 54 U.S.C. § 306108.

<sup>20</sup> 36 C.F.R. § 800.4.

<sup>21</sup> 36 C.F.R. § 800.5.

<sup>22</sup> 36 C.F.R. § 800.6.

<sup>23</sup> 36 C.F.R. § 800.16(l)(1) (emphasis added); 54 U.S.C. §§ 300308, 302706(a). Eligible for inclusion “includes both properties formally determined as such in accordance with regulations . . . and all those other properties that meet the National Register criteria.” 36 C.F.R. § 800.16(l)(2).

Central to the Section 106 process is consultation.<sup>24</sup> Agencies must “consult with *any* Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.”<sup>25</sup> This consultation must provide tribes “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.”<sup>26</sup>

During consultation, agencies must “acknowledge that Indian tribes . . . possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.”<sup>27</sup> If the agency and the tribe disagree about whether a property is eligible for the NRHP, the Keeper can make an official determination of eligibility.<sup>28</sup>

The Section 106 process does not prohibit agencies from adversely affecting historic properties; rather, it is a “stop, look, and listen” provision meant to inform agency decision making.<sup>29</sup> Nevertheless, the Section 106 process provides tribes with a critical role in ensuring protections for places of traditional religious and cultural significance. The Section 106 process is flexible, and can be utilized by tribes to develop creative and meaningful solutions to ensure that such places are adequately protected. The federal government’s consultations obligation is a powerful mandate for tribes, creating space for them to help advocate for holistic and culturally appropriate protections.

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<sup>24</sup> 36 C.F.R. § 800.1(a).

<sup>25</sup> 36 C.F.R. § 800.2(c)(2)(ii) (emphasis added); 54 U.S.C. § 302706(b).

<sup>26</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>27</sup> 36 C.F.R. § 800.4(c)(1).

<sup>28</sup> 36 C.F.R. § 800.4(c)(2).

<sup>29</sup> *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999).

### ***C. Bulletin 38 and TCPs***

Bulletin 38 provides guidance for applying the NRHP criteria to places that reflect traditional cultural significance to a community.<sup>30</sup> Properties included on the NRHP reflect significance in America’s history and culture.<sup>31</sup> The NPS defines culture as “the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community.”<sup>32</sup> One type of cultural significance is “traditional cultural significance.”<sup>33</sup> In this context, traditional means “those beliefs, customs, and practices of a living community . . . that have been passed down through the generations.”<sup>34</sup> Thus, the traditional cultural significance of a place is “derived from the role the [place] plays in a community’s historically rooted beliefs, customs, and practices.”<sup>35</sup> These places are called TCPs.

A TCP is “eligible for inclusion on the National Register because of its association with cultural practices and beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.”<sup>36</sup> Examples of TCPs include locations associated with traditional beliefs and practices; where religious, traditional, and ceremonial activities occur; and where economic, artistic, and other cultural practices occur.<sup>37</sup> A TCP’s significance is “based on its value in the eyes of the traditional community.”<sup>38</sup> These values are “often vital to maintaining the [community]’s sense of identity and self respect.”<sup>39</sup>

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<sup>30</sup> Parker and King, *Bulletin 38*, 2-3.

<sup>31</sup> *Ibid.*, 1.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Thomas F. King, *Places that Count: Traditional Cultural Properties in Cultural Resource Management* (Walnut Creek: AltaMira Press, 2003), 34.

<sup>39</sup> Parker and King, *Bulletin 38*, 2.

TCPs must still be a recognized NRHP property type—districts, sites, buildings, structures, or objects—and must meet one of the four NRHP criteria.<sup>40</sup> Most TCPs are districts, sites, or objects.<sup>41</sup> Unlike most NRHP-eligible properties, TCPs “do not have to be the products of, or contain, the work of humans.”<sup>42</sup>

Bulletin 38 provides one framework for applying the NHPA criteria to places of traditional cultural significance, ensuring them the recognition and protection afforded by the NHPA.

### **III. Beyond TCPs: Traditional Cultural Landscapes**

#### ***A. Defining TCLs***

A TCL is a natural landscape that shapes and defines a community’s cultural identity, practices, and beliefs, where that culture has, in turn, shaped the characteristics of that landscape, and which is essential in maintaining the continuation of that community’s culture. TCLs reflect intimate relationships between culture and nature, where each is influenced by and dependent upon the other. TCLs recognize the inextricable character of culture and nature.

Despite Bulletin 38’s publication nearly thirty years ago, and the NHPA’s 1992 amendments, there remains resistance to recognizing that places of traditional religious and cultural significance encompasses entire natural landscapes. Nevertheless, the existing historic preservation laws, regulations, and guidance both provide for and encourage this understanding. TCLs recognize the indistinction between cultural and natural values, and provide a means for tribes to advance holistic cultural and natural protection.

#### ***B. Recognizing TCLs with the Existing Guidance***

Bulletin 38 explicitly recognizes that TCPs can encompass entire landscapes: “Buildings, structures, and sites; groups of buildings, structures or sites forming historic districts;

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<sup>40</sup> Ibid., 11.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

*landscapes*; and individual objects are all included in the [NRHP] if they meet the criteria.”<sup>43</sup> Additionally, Bulletin 38 notes that “[a] *culturally significant natural landscape*, may be classified as a site, as may the specific location where significant traditional events, activities, or cultural observations have taken place.”<sup>44</sup>

National Register Preservation Brief 36 describes “cultural landscapes” as “geographical area[s], including both cultural and natural resources and wildlife or domestic animals therein, associated with a historic event, activity, or person exhibiting other cultural or aesthetic values.”<sup>45</sup> One type of cultural landscape is an “ethnographic landscape.”

[An] ethnographic landscape [is] a landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, religious and sacred sites and massive geological features. Small plant communities, animals, subsistence and ceremonial grounds are often components.<sup>46</sup>

Preservation Brief 36 states: “Most historic properties have a cultural landscape component that is integral to the significance of the resource.”<sup>47</sup> Mirroring Bulletin 38, it notes that “[i]n some cultural landscapes, there may be a total lack of buildings.”<sup>48</sup>

The NPS describes other historic properties that encompass landscapes. For example, National Register Bulletin 30 describes a rural historic landscape as “a geographical area that historically

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<sup>43</sup> Parker and King, *Bulletin 38*, 1 (emphasis added).

<sup>44</sup> *Ibid.*, 11 (emphasis added).

<sup>45</sup> U.S. Department of the Interior, National Park Service, *Preservation Briefs: Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes*, by Charles A. Birnbaum (Washington, D.C., 1994), 1.

<sup>46</sup> *Ibid.*, 2.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

has been used by people, or shaped or modified by human activity, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.”<sup>49</sup> Like TCLs, rural historic landscapes are characterized by “the nature and cultural forces that have shaped [them].”<sup>50</sup>

Without using the precise term “TCL,” the NPS’s guidance clearly recognizes that places of traditional religious and cultural significance can encompass entire landscapes, including the natural resources therein. The ACHP, on the other hand, explicitly recognizes TCLs and requires their consideration in the Section 106 process.

The ACHP acknowledges that “large scale properties are often comprised of multiple, linked features that form a cohesive ‘landscape.’”<sup>51</sup> The ACHP notes that TCLs “have cultural and historic meanings attached to them by the peoples who traveled, used, and interwoven these places into generations of practice.”<sup>52</sup> Accordingly, TCLs are not composed of a “single defining feature or set of features.”<sup>53</sup> Instead, TCLs may comprise natural features, water courses and bodies, views and viewscapes, vegetation, man-made features, circulation features, land use patterns, evidence of cultural traditions, and markers or monuments.<sup>54</sup> TCLs can be defined by continued “indigenous understandings, meanings, and uses.”<sup>55</sup>

Despite being administered by different agencies, the NRHP and the Section 106 process inform each other. The ACHP notes that its work on the recognition of TCLs “is closely related” to

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<sup>49</sup> U.S. Department of the Interior, National Park Service, *National Register Bulletin: Guidelines for Evaluating and Documenting Rural Historic Landscapes*, by Linda Flint McClelland, J. Timothy Keller, Genevive P. Keller and Robert Z. Melnick (Washington, D.C., 1999), 1-2 (emphasis removed).

<sup>50</sup> *Ibid.*, 4.

<sup>51</sup> *Ibid.*

<sup>52</sup> ACHP, *Understanding Indigenous Landscapes*, 1.

<sup>53</sup> ACHP, *TCLs: Q and A*, 4.

<sup>54</sup> *Ibid.*; Parker and King, *Bulletin 38*, 11.

<sup>55</sup> ACHP, *Understanding Indigenous Landscapes*, 3.

Bulletin 38.<sup>56</sup> The ACHP fully embraces the understanding that TCPs can encompass landscapes. Recognizing TCLs within these programs realizes the capacity of the NHPA to begin to reflect the significance of place experienced, expressed, and understood by Indigenous communities and encourages holistic protection of cultural and natural resources.

### *C. Examples of TCLs*

There are numerous examples of TCLs identified and documented through the NHPA, either listed on the NRHP or determined eligible through the Section 106 process. While not all of these places are explicitly described as TCLs, they exhibit all of the characteristics.

In 2010, the Keeper determined Nantucket Sound, off the coast of Massachusetts, eligible for inclusion on the NRHP, recognizing the “traditional cultural landscape that comprises and encompasses the Sound and its surrounding area.”<sup>57</sup>

The Sound is part of a larger culturally significant landscape treasured by the Wampanoag tribes and inseparably associated with their history and traditional cultural practices and beliefs, as well as with the Native American exploration and settlement of Cape Cod and [Martha’s Vineyard and Nantucket] Islands.<sup>58</sup>

The Keeper recognized that the entire landscape continues to retain significance to the Wampanoag tribes: “Both tribes have lived on, valued, and used the area in and around the Sound for traditional cultural purposes for what they believe to be time immemorial. The Sound is a key definer in the Wampanoag tribes’ place on and relationship with the earth.”<sup>59</sup>

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<sup>56</sup> “Traditional Cultural Landscapes,” Advisory Council on Historic Preservation, accessed September 18, 2018, <https://www.achp.gov/indian-tribes-and-native-hawaiians/traditional-cultural-landscapes>.

<sup>57</sup> U.S. Department of the Interior, National Park Service, *Determination of Eligibility Notification: Nantucket Sound* (Washington, D.C., 2010), 4.

<sup>58</sup> *Ibid.*, 3.

<sup>59</sup> *Ibid.*

The Badger-Two Medicine Blackfoot Traditional Cultural District (Badger-Two Medicine) in Montana was first determined eligible for inclusion on the NRHP in 2002. The Badger-Two Medicine is “a culturally meaningful landscape containing peaks associated with particular effects and sacred beings connected with the creation of the world as well as plant and water sources critical for vision questing.”<sup>60</sup> The Blackfeet have used the Badger-Two Medicine “for traditional purposes for generations and continue to value the area as important to maintaining their community’s continuing cultural identity.”<sup>61</sup> The ACHP notes that the Badger-Two Medicine “is a landscape virtually unmarred by modern development and intrusions.”<sup>62</sup> For the Blackfeet, “there is no distinction between the natural and cultural values of the [Badger-Two Medicine].”<sup>63</sup>

More recently, the Chi’chil Bildagoteel Historic District, Traditional Cultural Property in Arizona was listed on the NRHP in 2017. Its nomination describes it as “a culturally and geographically defined landscape within the Tonto National Forest whose physical and spiritual integrity is vital to the continuation of fully effective Western Apache cultural practices.”<sup>64</sup> The nomination continues: “To many Apache, *Chi’chil Bildagoteel* is a geocultural landscape of place names and holy sites.”<sup>65</sup>

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<sup>60</sup> U.S. Department of Agriculture, U.S. Forest Service, *Multiple Property Documentation Form: Badger-Two Medicine Blackfoot Traditional Cultural District*, by Sandra French, Richard Newton, Blain Frandrich and Sherri Deaver (Great Falls, MT, 2001), 6.

<sup>61</sup> U.S. Department of the Interior, National Park Service, *Determination of Eligibility Notification: Badger-Two Medicine Blackfoot Traditional Cultural District* (Washington, D.C., 2002), 1.

<sup>62</sup> Advisory Council on Historic Preservation, *Comments of the Advisory Council on Historic Preservation Regarding the Release from Suspension of the Permit to Drill by Solenex LLC in Lewis and Clark National Forest, Montana* (Washington, D.C., 2015), 6.

<sup>63</sup> *Ibid.*, 6.

<sup>64</sup> U.S. Department of Agriculture, U.S. Forest Service, *National Register of Historic Places Registration Form: Chi’chil Bildagoteel Historic District, Traditional Cultural Property*, by Nanebah Nez (Phoenix, AZ, 2014), 4.

<sup>65</sup> *Ibid.*, 30 (emphasis in original).

These are just a few examples that demonstrate the capacity of the NRHP to reflect Indigenous experiences, expressions, and understandings of the cultural significance of place by recognize that such places can encompass entire landscapes.<sup>66</sup>

#### **IV. The Ch'u'itnu TCL**

In 2011, the Army Corps of Engineers (USACE) began reviewing the environmental impacts of a proposed open-pit coal mine within the Ch'u'itnu watershed.<sup>67</sup> The mine would have removed thirteen linear-miles of salmon spawning habitat within the watershed, and would have been only seven miles from the Native Village of Tyonek (NVT).

The mine's potential effects posed an existential threat to the Tubughna. If the mine destroyed the river and the salmon failed to return, Tubughna culture and identity would die. In order to preserve the Ch'u'itnu and their culture from the adverse effects of the mine, NVT engaged a proactive and progressive Section 106 strategy.

NVT documented the Ch'u'itnu watershed as a TCL, describing how Tubughna cultural, social, and spiritual practices and beliefs were, and are still, fundamentally shaped by and dependent upon the Ch'u'itnu watershed and its subsistence resources, particularly salmon. In March 2015, NVT produced an extensive report documenting the NRHP-eligibility of the Ch'u'itnu Traditional Cultural Landscape.<sup>68</sup> The report concluded: "The [Tubughna] relationship with salmon has defined the culture's use of the land and its plants and animals . . . . The relationship between the people, the land, and the salmon has been imprinted on the landscape through centuries of subsistence use, and is fundamental to people's sense of freedom, identity, and self-worth."<sup>69</sup>

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<sup>66</sup> ACHP, *TCLs in Section 106*, 1.

<sup>67</sup> 76 Fed. Reg. 336 (Jan. 4, 2011).

<sup>68</sup> See Boraas et al., *The Ch'u'itnu Traditional Cultural Landscape*.

<sup>69</sup> *Ibid.*, 112.

This work expanded NVT’s earlier work documenting the Ch’u’itnu Archaeological District’s (CAD) NRHP-eligibility under Criterion A. In 2014, the Keeper determined that the CAD was eligible under Criterion A because it clearly conveyed the “uninterrupted use . . . of salmon subsistence as a key and central theme in a sharing/economic system that defines community membership, a spiritual system of sacred water, and gave rise to social and political complexity.”<sup>70</sup> The Keeper also noted: “[T]he district may be eligible as part of a larger landscape.”<sup>71</sup>

For over a year, the USACE refused to either determine whether the Ch’u’itnu TCL was eligible for inclusion on the NRHP or to seek an official determination from the Keeper. In May 2016, the ACHP directed the USACE to seek a formal determination of eligibility, stating that the Ch’u’itnu “is a living cultural landscape that continues to be utilized by and is of great significance to the members of [NVT].”<sup>72</sup> In July 2016, the USACE determined that only a portion of the watershed was eligible, excluding the mine site from the proposed TCL, and requested the Alaska SHPO’s concurrence.

The Alaska SHPO “cho[se] not to comment” and “defer[ed] to the Keeper’s final decision.”<sup>73</sup> The Alaska SHPO stated that Bulletin 38 “ha[d] generated some uncertainty and fluctuating opinions on how to define” TCPs, and argued that “[t]he lack of resolution around the definition of TCPs/TCLs is a challenge for cultural resources management professionals nationwide.”<sup>74</sup> Ultimately, the project proponent withdrew its permit application and the USACE never sought a formal determination of eligibility from the Keeper.<sup>75</sup>

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<sup>70</sup> U.S. Department of the Interior, National Park Service, *Determination of Eligibility Notification: Ch’u’itnu Archaeological District* (Washington, D.C., 2014), 2.

<sup>71</sup> *Ibid.*

<sup>72</sup> Charlene Dwin Vaughn to Colonel Michael Brooks, May 25, 2016.

<sup>73</sup> Judith E. Bittner to Sheila Newman, August 8, 2016.

<sup>74</sup> *Ibid.*

<sup>75</sup> 82 Fed. Reg. 29,285 (June 28, 2017).

In response, NVT decided to nominate the Ch'u'itnu TCL to the NRHP in February 2017. In April 2018, after fourteen months and three public hearings, the Commission finally determined that the Ch'u'itnu is eligible for inclusion on the NRHP and recommended its listing. The Alaska SHPO refused to concur with the Commission, stating that the nomination did not sufficiently document non-Native history in Cook Inlet and enough archaeological sites and buildings to justify its boundaries. NVT was also forced to change the name of the nomination to the "Ch'u'itnu Historic District, Traditional Cultural Property" because of concerns that it was inventing a new NRHP property type by describing the Ch'u'itnu as a "landscape."

As of publication, the nomination has yet to be listed on the NRHP.

## **V. Conclusion**

The ACHP observes: "Thinking about places on the landscape level is fundamental to preservation; part of this knowledge base must include indigenous perspectives."<sup>76</sup> TCLs reflect the intimate relationship between cultural and nature, where each is influenced by and dependent upon the other. Understanding and recognizing this relationship provides tribes with a powerful tool within the NHPA to advocate for holistic approaches to cultural and environmental protection. Indeed, as exemplified by the Ch'u'itnu, TCLs begin to realize the NHPA's capacity to reflect how Indigenous communities experience, express, and understand the significance of place.

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<sup>76</sup> ACHP, *Understanding Indigenous Landscapes*, 4.

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