

MEMORANDUM OF AGREEMENT
AMONG THE NATIONAL PARK SERVICE, STATUE OF LIBERTY NATIONAL
MONUMENT;
NEW YORK STATE HISTORIC PRESERVATION OFFICER;
NEW JERSEY STATE HISTORIC PRESERVATION OFFICER;
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM
IN NEW YORK

WHEREAS the National Park Service (NPS), Statue of Liberty National Monument (Park) proposes to permit the Statue of Liberty-Ellis Island Foundation, Inc., to design and construct a new Liberty Island Museum (undertaking) pursuant to the 1916 National Park Service Organic Act, the NPS Management Policies (2006), and applicable NPS Directors Orders; and

WHEREAS, the Statue of Liberty-Ellis Island Foundation will also endorse the continued operation and maintenance of the proposed new museum by the NPS; and

WHEREAS, the undertaking consists of the design and construction of the new museum and associated landscape features, relocation of the historic torch from the Monument lobby and certain exhibits from the Statue Museum on level 1P of the Monument (the former American Museum of Immigration), reprogramming of the existing level 1P space to improve access to the Statue elevators, and the construction and removal of a temporary dock to facilitate materials access during construction; and

WHEREAS, the Park has defined the undertaking's area of potential effect (APE) as the entire Liberty Island and its viewshed extending to New York City, New York and to New Jersey; and

WHEREAS, the Park Superintendent has determined that the undertaking may have an adverse effect on the Statue of Liberty Enlightening the World (#66000058), which is listed in the National Register of Historic Places (NRHP), and the associated cultural landscape and support buildings and structures, which are eligible for listing in the NRHP as part of a pending NRHP nomination update, and has consulted with the New York and New Jersey Historic Preservation Officers (SHPOs) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the Park has notified and invited the Delaware Nation, the Delaware Tribe of Indians, and Stockbridge-Munsee Community, for which archaeological sites in the APE, which may be eligible for the NRHP, have religious and cultural significance, to participate in the

Section 106 consultation; the Delaware Tribe and Stockbridge-Munsee Community have participated; and the Superintendent of the Park has invited them to sign this Memorandum of Agreement (MOA) as invited signatories; and

WHEREAS, the Park has consulted with the New York City Landmarks Preservation Commission, which has designated the Statue as a New York City Landmark, and the Statue of Liberty-Ellis Island Foundation, Inc., regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as concurring parties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Park has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS collectively, the New York SHPO, New Jersey SHPO, ACHP, Delaware Tribe, Stockbridge-Munsee Community, New York City Landmarks Preservation Commission, and Statue of Liberty-Ellis Island Foundation, Inc. will be referred to as consulting parties in this document; and

WHEREAS, the Park has coordinated the Section 106 review of the undertaking with the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA), and made its finding of adverse effect and proposed resolution of adverse effects available for public comment concurrently with the Environmental Assessment; and

WHEREAS, the 100% Design Development documents for the undertaking dated July 22, 2016, incorporates numerous modifications to minimize and avoid adverse effects to historic properties, including:

- Site selection for the museum to minimize encroachment on the historic designed landscape of the Statue and Fort Wood,
- Site selection of the temporary pier to avoid archaeological sites,
- A minimal footprint for the museum building,
- The museum roof at the approximate height of the Fort Wood walls,
- A green roof on the museum to minimize visibility from the Statue and Fort Wood, and
- Specification of materials and techniques intended to reduce reflectivity and improve visual compatibility with the historic setting of the Statue and Fort Wood such as low-reflective or other compatible glass, non-reflective materials in subdued colors in the cladding of the museum to reduce reflectivity and improve visual compatibility, and shading glass with overhangs, which will be further refined during the production of construction documents; and

WHEREAS, the Park has undertaken and commits to following through over the next two (2) years on improving the cultural landscape of Liberty Island by repairing damage caused by

Hurricane Sandy through the following projects: Repave the Approach and Main Malls Damaged by Hurricane Sandy and Recovery Activities and Replace Salt Damaged and Dying Trees with More Salt-Tolerant Species; and

WHEREAS, the *Programmatic Agreement Among the National Park Service, ACHP, and National Conference of Historic Preservation Officers (NCSHPO) for Compliance with Section 106 of the NHPA* (Nationwide PA) was executed in 2008; and the 2008 Nationwide PA defines responsibilities and qualifications of NPS staff contributing to Park's compliance with Section 106 for this undertaking; and the operation and maintenance of the new museum and associated landscape will be subject to compliance with the 2008 Nationwide PA; and

WHEREAS, the NPS prepared and submitted to the US Committee of the International Council on Monuments and Sites (ICOMOS), pursuant to the World Heritage Convention, a *Heritage Impact Report*, which considered the substance of the Section 106 consultation regarding the undertaking in its findings that the Outstanding Universal Values (OUVs) of the Statue of Liberty World Heritage Site would be minimally impacted by the undertaking, that such impacts have been minimized, and that the amenity of the museum would promote a better appreciation of the Statue, its history, and its meaning to the 4 million visitors to Liberty Island each year; and

NOW, THEREFORE, the Park, New York SHPO, New Jersey SHPO, and ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The Park Superintendent shall ensure that the following measures are carried out:

I. DESIGN REVIEW

- A. The Park will ensure that "environmentally sensitive areas," are clearly designated in the construction drawings to prevent unwanted construction activities in archaeological sites and, that construction specifications outline other protective measures, which will be monitored and enforceable by the construction manager.
- B. The Park shall provide the consulting parties with the construction drawings for the new museum and associated landscape improvements.
 - i. Within thirty (30) days of receipt, the consulting parties may provide comments to the Park on the construction drawings.
 - ii. The Park will consult with the consulting parties to resolve any identified concerns regarding the effective avoidance and minimization of adverse effects to historic properties.
- C. Once identified concerns are resolved, the Park Superintendent may approve the construction drawings and proceed with permitting the construction of the undertaking.
- D. Should design changes become necessary during construction, the Park Superintendent may approve minor changes determined by Park's Section 106 NHPA Advisors, as defined in the 2008 Nationwide PA, to meet the Secretary of Interior's (SOI's) Standards and Guidelines for Archaeology and Historic

Preservation (36 CFR Part 68). Changes approved in this manner will be reported in the Annual Report to the SHPOs and the annual report on the MOA (See stipulation VII).

- E. If the Section 106 NHPA Advisors determine that the proposed design changes are neither minor nor meet the SOI's Standards, the Park shall notify and provide documentation (including drawings, renderings, or specifications, as needed) to the consulting parties and an assessment of whether the proposed changes alter the adverse effect finding for the undertaking.
 - i. The Park may convene a meeting(s) on site, in person, or otherwise to discuss the proposed design changes with the consulting parties.
 - ii. Within thirty (30) days of receipt, or other mutually agreeable timeframe, the consulting parties may provide comments to the Park on the proposed design changes and assessment of any change to the adverse effect finding for the undertaking.
 - iii. The Park Superintendent will consult with the consulting parties to resolve any identified concerns before approving the design changes.
 - iv. Should the parties determine that additional mitigation measures are necessary to resolve increased adverse effects as a result of the design changes, the parties may amend this MOA in accordance with Stipulation IX.
- F. The Park will propose and initiate Section 106 review pursuant to the 2008 Nationwide PA or the process in 36 CFR §§ 800.3-7, within two (2) years of the completed construction of the new museum, to reprogram the use of the pedestal lobby and the former AMI addition to the pedestal. The Park will complete the Section 106 review prior to approval of the undertaking.

II. CULTURAL LANDSCAPE DOCUMENTATION AND PRESERVATION

- A. The NPS shall revise the existing final review draft (1999) *Cultural Landscape Report, Liberty Island Statue of Liberty National Monument: History, Analysis & Treatment Recommendations* to be in keeping with the National Register nomination. The revised draft will address the use of Liberty Island by Native Americans prior to European settlement through its present use as the National Monument, including the construction of the undertaking. The NPS shall provide the report to the consulting parties within two (2) years of the completed construction of the new museum.
 - i. Within thirty (30) days of receipt, or other mutually agreeable timeframe, the consulting parties may provide comments to the Park on the Cultural Landscape Report.
 - ii. The Park will consult with the consulting parties to resolve any identified concerns before approving the Cultural Landscape Report.
 - iii. The NPS will use the approved Cultural Landscape Report and its recommendations as a basis for, and consulting parties may reference it in their Section 106 review of, any subsequent proposals for landscape improvements or restoration on Liberty Island.

- B. The Park shall continue to work with Keeper of the National Register of Historic Places to update the existing NRHP listing for the National Monument to include the designed landscape and associated buildings and structures.

III. INTERPRETATION PLAN

- A. The NPS will prepare an Interpretive Plan for the Monument that will address the history of the cultural landscape from its use by Native Americans prior to European settlement through its present use as the National Monument including the construction of the undertaking. It may use on-line, in museum, landscape features, and signage to implement the Interpretive Plan. If any such proposed implementation strategies are undertakings, the Park will initiate and complete Section 106 review pursuant to the 2008 Nationwide PA or the process in 36 CFR §§ 800.3-7 prior to the approval of the undertaking(s).

IV. ARCHAEOLOGICAL MONITORING AND DOCUMENTATION

- A. The NPS will conduct archaeological monitoring for any construction activities reaching depths deeper than 6.5 feet.
- B. Should new archaeological sites be identified or new effects to a known archaeological site occur, the Park will implement the Discovery Plan in stipulation VI below.
- C. The NPS will assemble all field records, including field notes compiled by the archaeologists, site sketches, and reports and accession them into the Park's museum collection. Final reports will be added to the NPS' Technical Information Center.
- D. The NPS will provide copies of all documentation of archaeological sites in the APE to the New York SHPO, New Jersey SHPO, and New York Landmarks Preservation Commission, the Stockbridge-Munsee Community, and the Delaware Tribe within two (2) years of the completed construction of the undertaking.

V. DURATION

This MOA will expire if its terms are not carried out within eight (8) years from the date of its execution. Prior to such time, Park may consult with the other signatories to reconsider the terms of the MOA and to amend it in accordance with Stipulation IX below.

VI. POST-REVIEW DISCOVERIES

If a potential historic property is discovered or an unanticipated effect on a historic property is found during the implementation of this MOA, the Park shall implement the following Discovery Plan:

- A. The Park will provide documentation of the discovery including an account of how it happened; drawings, map, and photographs, as appropriate; and proposed avoidance, minimization, investigation, and/or recordation to the consulting parties within two (2) days of discovery.
- B. Should the discovery involve human remains or other artifacts protected by the Native American Graves Protection and Repatriation Act (NAGPRA), the Park

will coordinate its responsibilities under this MOA with applicable law enforcement policies and/or NAGPRA compliance and commit to following the procedures outlined in the Delaware Tribe of Indians' and the Stockbridge-Munsee Community's Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities, which have been uploaded to NPS website Planning, Environment and Public Comment, under project 53236 for staff reference.

- C. The Park may convene a meeting(s) on site, in person, or otherwise to discuss the discovery and proposed avoidance, minimization, investigation, and/or recordation with the consulting parties.
- D. Within seven (7) days of receipt, or other mutually agreeable timeframe, the consulting parties may provide comments to the Park on the proposed design changes and assessment of any change to the adverse effect finding for the undertaking.
- E. The Park Superintendent will consult with the consulting parties to resolve any identified concerns prior to approving avoidance, minimization, investigation, and/or recordation.
- F. Should the parties determine that additional mitigation measures are necessary to resolve an increased adverse effect as a result of the discovery, the parties may amend this MOA in accordance with Stipulation IX.

VII. PERFORMANCE OF THE MOA

Each one (1) year following the execution of this MOA until it expires or is terminated, the Park shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Park's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Park shall consult with such party to resolve the objection. If the Park determines that such objection cannot be resolved, the Park will:

- A. Forward all documentation relevant to the dispute, including the Park's proposed resolution, to the ACHP. The ACHP shall provide the Park with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Park shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Park will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Park may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Park shall prepare a written response that takes into account any timely comments regarding the

dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

- C. The Park's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IX. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation IX, above. If within thirty (30) days or another time period agreed to by all signatories an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the Park must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Park shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the Park, New York SHPO, New Jersey SHPO, and the ACHP and implementation of its terms evidence that the NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

[Signatures begin on next page.]

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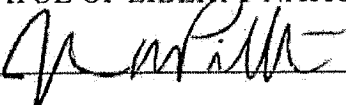
REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM

IN NEW YORK

SIGNATORY:

NATIONAL PARK SERVICE

STATUE OF LIBERTY NATIONAL MONUMENT



Date 10/12/16

John Piltzecker, Superintendent

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM

IN NEW YORK

SIGNATORY:

NEW YORK STATE HISTORIC PRESERVATION OFFICER

Ruth Pierpont

Date *10/7/16*

Ruth Pierpont, Deputy SHPO

New York State Historic Preservation Office

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REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM

IN NEW YORK

SIGNATORY:

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

Katherine J. Marcopul _____

Date

10/13/2016 _____

Katherine J. Marcopul, Deputy SHPO and Administrator

New Jersey Historic Preservation Office

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REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM
IN NEW YORK

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler

Date 10/27/16

John M. Fowler, Executive Director

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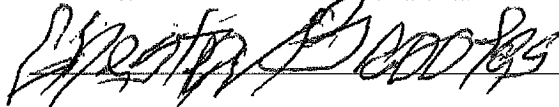
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM

IN NEW YORK

INVITED SIGNATORY:

DELAWARE TRIBE OF INDIANS

 _____

Chester Brooks, Chief

Date

10-14-2016

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INVITED SIGNATORY:

STOCKBRIDGE-MUNSEE COMMUNITY

Shannon Holsey, President

Date _____

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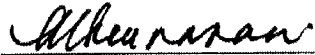
AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

**REGARDING THE PROPOSED CONSTRUCTION OF LIBERTY ISLAND MUSEUM
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CONCURRING PARTY:

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION



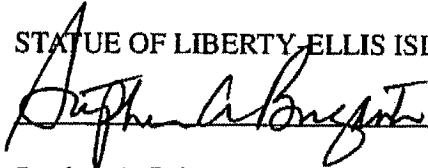
Date 10/5/16

Meenakshi Srinivasan, Chair

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IN NEW YORK

CONCURRING PARTY:

STATUE OF LIBERTY ELLIS ISLAND FOUNDATION, INC.



Stephen A. Briganti, President and Chief Executive Officer

Date

10/14/16