

**U.S. Department of the Interior
National Park Service, Northeast Region**

**FINDING OF NO SIGNIFICANT IMPACT
NEW MUSEUM CONSTRUCTION**

**Statue of Liberty National Monument
New York**

INTRODUCTION

The National Park Service (NPS) in cooperation with its partner, The Statue of Liberty – Ellis Island Foundation,¹ proposes to construct a 20,000-square-foot Statue of Liberty Museum within the Statue of Liberty National Monument on Liberty Island (the park). The project will move the Liberty Island Museum out of the Statue's Pedestal into the new facility. This project is needed because recent life-safety upgrades at the Statue of Liberty have led to revised and reduced occupancy levels inside the monument. Currently, only about 20% of visitors to Liberty Island are able to explore the museum inside the Statue of Liberty; the remainder visit only the grounds of Liberty Island. Additionally, limited space is available for visitors to sit or take shelter in foul weather. The project will provide a richer interpretive experience available to all visitors to Liberty Island and indoor space for visitors during inclement weather.

The National Park Service prepared an environmental assessment that evaluated two alternatives: a no-action alternative (alternative 1) and the proposed action to construct a new museum located in the northwest portion of Liberty Island (alternative 2). The *Statue of Liberty National Monument New Museum Construction Environmental Assessment* (2016) was prepared in accordance with the National Environmental Policy Act; the regulations of the Council on Environmental Quality (40 Code of Federal Regulations [CFR] 1500–1508); and NPS Director's Order 12: *Conservation Planning, Environmental Impact Analysis, and Decision-making* (2011) and its accompanying handbook (2015).

During preparation of the environmental assessment, the National Park Service consulted with federal and state agencies, tribes, interested and affected parties, and the general public. The environmental assessment was made available for a 30-day review period. As a result of the comments, a General Conformity Applicability Analysis was conducted, and the results are incorporated into the environmental assessment. This change is documented in the errata (attachment D). The Applicability Analysis was also submitted to the US Environmental Protection Agency.

DECISION (SELECTED ACTION)

The selected action is Alternative 2: Proposed Action – New Museum Construction and consists of constructing an approximately 20,000-square-foot museum in the northwest portion of Liberty Island adjacent to the Administration Building that will be able to accommodate up to 500 visitors at any one time. The new museum will include the following plan elements:

- gallery space and exhibits
- immersive theater

¹ The design and construction of the new museum is being paid for solely by The Statue of Liberty – Ellis Island Foundation. No government funds will be used.

- bookstore and restrooms
- administration space, including storage, locker rooms, staff restrooms, break room, and offices
- mechanical/support space, including a mechanical room and an audiovisual/information technology room
- a green roof
- exterior stairs edging the Flag Plaza

The exhibit space will include exhibits on the history of the Statue, as well as exhibits exploring the ideas of liberty as inspired and represented by the Statue. Vegetated roof terraces and landscaping will provide a green area to reduce rain water runoff and improve energy performance of the building, and the steps of the building will serve as a seating area to view the Statue or activities that may occur in the Flag Plaza. The building will be constructed to comply with the Architectural Barriers Act Accessibility Standard and access to the museum will be provided by a ramp designed with a 1:20 slope. The museum will be constructed on a raised concrete foundation so that the first floor will be above the base flood elevation. The roofline of the museum will remain entirely below the top of the Fort Wood wall at an elevation of 47 feet, 6 inches above sea level. The museum is being designed to achieve, at a minimum, the NPS' requirement for a Leadership in Energy and Environmental Design (LEED) Silver certification.

To facilitate the movement of construction materials for the museum to and from Liberty Island, a temporary construction pier will be constructed on the northern side of the island. The pier will be approximately 20 feet wide and 180 feet long, and the piles for the pier will be installed using a vibratory hammer and proofed with an impact hammer to verify capacity. When construction of the museum is complete, the temporary pier will be dismantled and removed.

Once the museum is moved out of the Statue's Pedestal, a portion of the existing museum space in the Pedestal will be repurposed to house interpretive exhibits for the public, while the main museum exhibit area will be converted back into administrative space.

Permits needed for the implementation of the selected alternative include:

- US Army Corps of Engineers – Nationwide Permit No. 33 Temporary Construction, Access, and Dewatering (includes section 401 and section 10 regulations)
- US Coast Guard – Notice to Mariners
- New Jersey Department of Environmental Protection – Section 401 Certification/Waterfront Development Permit/Coastal Wetlands Permit
- New Jersey Department of Environmental Protection – Tidelands License

MITIGATION MEASURES

The selected action incorporates the mitigation measures and best management practices listed in attachment A of this document. The National Park Service can add additional mitigation measures and best management practices to this list in the future at its discretion.

FINDING OF NO SIGNIFICANT IMPACT

As described in the environmental assessment, both adverse and beneficial impacts on park resources will occur as a result of implementing the selected action. However, no significant, adverse impacts were identified that would require analysis in an environmental impact statement.

Constructing a new museum on the northwest portion of Liberty Island will introduce a new structure into the pending Statue of Liberty National Monument – Liberty Island Historic District (hereafter referred to as the pending Historic District).² The steps of the museum will slightly encroach on the Flag Plaza, which, as a part of the primary circulation system, is a contributing resource (historic associated feature) to the pending Historic District. As a result, the new museum will have a direct, adverse impact on the landscape and character of the site, altering the setting and feel of the overall pending Historic District and contributing an adverse increment to cumulative impacts that are otherwise largely beneficial. While it is not possible to avoid an adverse impact, the National Park Service has engaged in extensive consultation with the New York and New Jersey State Historic Preservation Offices, the Advisory Council on Historic Preservation, the New York City Landmarks Preservation Commission, the Delaware Nation and Stockbridge-Munsee Tribe, and The Statue of Liberty – Ellis Island Foundation and made a conscious effort to minimize the impact of the museum structure. The museum's location is not in an area that is key to the comprehension of the significance of the pending Historic District or the monument, reducing potential impacts and making it the best site for the building. The building's design will also minimize its visual impact through its low-sloping massing, green roof, low-reflective glass, and the subdued color and tone of its exterior.

Liberty Island will not be closed during construction of the new museum, but the selected action may disrupt visitors and will require the temporary closure of some smaller areas of Liberty Island during construction activities and the movement of artifacts, including the original torch, from the existing museum to the new museum. These impacts will be minimal and temporary because (1) information about the construction will be made available to the public on the park website and on signs in the park, (2) the affected areas are not high visitation areas, and (3) the construction area has experienced closures in the past and is currently closed because of other ongoing construction. There will be no long-term, adverse impacts on visitor use and experience; impacts will be beneficial.

In summary, the selected action will not have a significant effect on the human environment and no significant adverse impacts on the pending Historic District or on visitor use and experience. No highly uncertain or controversial impacts, unique or unknown risks, significant adverse cumulative effects, or elements of precedence were identified. Implementation of the selected action will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an environmental impact statement is not required for this action and thus will not be prepared.

DECISION REACHED AND RATIONALE

In reaching a decision, the National Park Service acknowledged that the new museum will allow all visitors, not just those with access tickets to the Pedestal, to experience a richer interpretive history of the monument through new exhibits, opportunities, and user comforts. The new museum will increase the amount of public space on Liberty Island by 15,000 square feet, allowing more of the items currently in storage to be made available for viewing and allowing more of the public to experience the museum pieces. Artifacts will be moved out of the existing museum in the Pedestal, which is currently only available to visitors with Pedestal access tickets, into the new museum, thereby increasing the number of visitors who will be able to interact with the historical aspects of the monument. The design of the new museum will minimize waiting lines and enable more visitors to walk through and experience the exhibits. The new museum will also provide more shelter on the island during inclement weather and improve the visitor experience during such periods. These changes will be a substantial improvement to

² The proposed Statue of Liberty National Monument – Liberty Island Historic District is pending final approval/signature by the Keeper of the National Register.

the visitor experience over the existing condition. Although the museum will slightly alter the setting and feel of the overall pending Historic District by introducing a new structure into it, the northwest portion of the island is the best site for the building because the area is not key to the comprehension of the significance of the pending Historic District or the monument. Ultimately, alternative 2 best balances the competing interests of maintenance of the pending Historic District and visitor use and experience.

For these reasons and in consideration of the likely environmental impacts described in this Finding of no Significant Impact, I have decided to select alternative 2 for implementation.

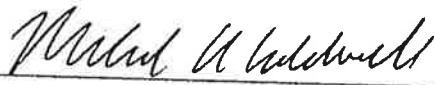
Recommended:


John Piltzecker
Superintendent
Statue of Liberty National Monument

Date

11-08-16

Approved:


Michael A. Caldwell, Regional Director
Northeast Region, National Park Service

Date

11-08-16

- Attachment A Mitigation Measures
- Attachment B Agency and Tribal Consultation
- Attachment C Public Involvement and Comments Received
- Attachment D Errata Sheet
- Attachment E Non-Impairment Determination

ATTACHMENT A MITIGATION MEASURES

MITIGATION MEASURES

To prevent and minimize potential adverse impacts associated with the selected action, best management practices and mitigation measures will be implemented during the construction and post-construction phases of the project. Specific mitigation measures that will be applied are described below. Mitigation measures will be refined as the design of the project develops and as regulatory agencies define permit conditions.

Biological Resources

To avoid or minimize impacts on migratory birds and aquatic resources the following mitigation measures will be employed:

- The removal of any trees that may provide nesting habitat for migratory birds will not occur between April 1 and July 31.
- To protect essential fish habitat, in-water work for constructing and dismantling the temporary pier will not occur between January 15 and May 31, and any other mitigation measures identified during the permitting process for the temporary pier will also be followed.
- To minimize potential impacts from underwater noise caused by pile driving that could affect aquatic species, nylon cushion blocks will be used during impact hammering of the piles.
- Pile installation will begin with a reduced blow energy soft start to minimize the initial effects of noise and give any potentially affected species time to vacate the area before higher energies are used.

Cultural Resources

The National Park Service has entered into a memorandum of agreement (MOA) with the New York and New Jersey State Historic Preservation Offices, the New York Landmarks Preservation Commission, Stockbridge-Munsee Community, Delaware Tribe, Statue of Liberty Ellis Island Foundation, and the Advisory Council on Historic Preservation. The MOA outlines mitigation measures to offset the adverse effects on the pending Statue of Liberty National Monument — Liberty Island Historic District. The memorandum of agreement can be found on the park's website at <https://parkplanning.nps.gov/document.cfm?parkID=277&projectID=53236&documentID=75696>.

Floodplains

The selected action will construct the new museum in the 100-year floodplain; however, there is no other practicable alternative because most of Liberty Island is located within the floodplain. To comply with Executive Order 11988, "Floodplain Management," the National Park Service will construct the museum in accordance with standards of the National Flood Insurance Program, including elevating the structure above flood elevation and using flood proofing and other flood protection measures. To further mitigate potential impacts on floodplain functions and values best management practices such as silt fencing and revegetation will be implemented.

Visitor Use and Experience

Liberty Island will not be closed during construction of the new museum, but construction activities may disrupt visitors and require the temporary closure of some smaller areas of the island. To minimize

potential impacts on visitor use and experience during construction activities the following mitigation measures will be implemented:

- Public information will be made available on the park website and on signs in the park to inform visitors about the construction.

ATTACHMENT B AGENCY AND TRIBAL CONSULTATION

SECTION 7 OF THE ENDANGERED SPECIES ACT

In a letter dated February 23, 2016, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) concurred with the National Park Service's (NPS) determination that the project *may affect, but is not likely to adversely affect* any aquatic species under NOAA Fisheries jurisdiction.

No federally listed or proposed species or critical habitat under the jurisdiction of the US Fish and Wildlife Service occur in the area that will be affected by the project.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

The National Park Service submitted an essential fish habitat assessment to NOAA Fisheries because the selected action would include in-water work to construct and dismantle a temporary construction pier. On April 4, 2016, NOAA Fisheries concurred with the determination that the effects on essential fish habitat are not substantial, and as a result, no additional conservation recommendations are needed beyond the National Park Service's stated intention to avoid installing or removing the piles of the temporary construction pier between January 15 and May 31 of each year.

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

The National Park Service engaged the New York and New Jersey State Historic Preservation Offices early in this project to review and comment on initial concept designs. This engagement was essential for siting the museum in its proposed location. The National Park Service asked the public to comment on the effects that the project may have on historic properties during scoping, and after determining that the project would have an *adverse effect* on the pending Statue of Liberty National Monument – Liberty Island Historic District (hereafter referred to as the pending Historic District), the National Park Service consulted with the New York and New Jersey State Historic Preservation Offices, the Advisory Council on Historic Preservation, the New York City Landmarks Preservation Commission, the Stockbridge-Munsee Community, the Delaware Tribe, and the Delaware Nation with a series of correspondences and through on-site and electronic meetings. This consultation helped the National Park Service to minimize the adverse effect and develop a memorandum of agreement (MOA) to mitigate the adverse effect. The National Park Service, the New York and New Jersey State Historic Preservation Offices, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, the New York City Landmarks Preservation Commission, the Advisory Council on Historic Preservation, and The Statue of Liberty – Ellis Island Foundation signed this MOA that went into effect on October 26, 2016. The MOA can be found on the park's website at <https://parkplanning.nps.gov/document.cfm?parkID=277&projectID=53236&documentID=75696>.

COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972, the National Park Service determined that the selected action will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the New York State Department of State Coastal Policies as set forth in the Coastal Management Program. The New York State Department of State concurred with the findings in a letter dated April 5, 2016.

Because all in-water work associated with the construction of the temporary pier will be conducted in waters regulated by the New Jersey Department of Environmental Protection, a coastal zone consistency determination for that aspect of the project will be coordinated through the New Jersey Department of Environmental Protection and the US Army Corps of Engineers permitting process required for in-water work.

WORLD HERITAGE

The Statue of Liberty National Monument is a World Heritage site, and in accordance with the 1972 World Heritage Convention, the National Park Service first notified the World Heritage Committee of the project on December 16, 2015, and submitted a Heritage Impact Assessment to the World Heritage Committee for review on June 8, 2016. In the assessment, the National Park Service concluded that because the building will be properly sited in the administrative area of Liberty Island behind the Statue, and because the building will not interfere with important sight lines, the selected action will only have neutral to slight impacts on the Outstanding Universal Values of the Statue of Liberty. The assessment also noted that the selected action will allow the 80% of visitors to the island, who are currently not able to access the current museum, to see the original Statue torch and the tools and molds used to build the Statue and her skin. The selected action will also allow a larger number of visitors to better appreciate the art and engineering of the Statue as well as her symbolic value, and to do so in greater safety and comfort.

ATTACHMENT C

PUBLIC INVOLVEMENT AND COMMENTS RECEIVED

During preparation of the environmental assessment, the National Park Service (NPS) consulted with federal and state agencies, tribes, interested and affected parties, and the general public.

Public Involvement

Interested public and agencies were provided an opportunity to review and comment on the environmental assessment during a 30-day review period from May 26, 2016, through June 25, 2016. Availability of the environmental assessment was announced on the NPS Planning, Environment and Public Comment (PEPC) website and through a press release that was published on May 26, 2016.

A total of 13 correspondences were received during the public comment period, including 5 correspondences from agencies and 8 public correspondences.

Public Comments

Several comments received through the public comment process expressed support for the new museum. Responses to concerns raised through the public comment process are provided below. One comment resulted in a text change to the environmental assessment, which is reflected below and in the errata in attachment D.

Concern: One commenter expressed concern that the proposed new museum does not meet NPS requirements that new buildings follow the 2015 International Building Code. The commenter requested that the environmental assessment and floodplains statement of findings be revised to reflect the 2015 International Building Code.

Response: The new museum will be constructed according to NPS requirements and will be built to meet the following codes: National Flood Insurance Program, International Code Series, and American Society of Civil Engineers 24, Flood Resistant Design and Construction.

Concern: The same commenter expressed concern that the proposed museum does not adequately respond to the high risk of flooding in the area and suggested the museum footprint be reduced in order to reduce the risk and potential costs to restore the museum after the next flood.

Response: Reducing the size of the museum would not meet the need for the proposed project, which is to provide a richer interpretive experience for all visitors to Liberty Island. Currently, only about 20% of the approximately 4 million annual visitors to Liberty Island can visit the museum in the Pedestal of the monument. The remaining visitors visit only the grounds of the island. The new building is designed to accommodate approximately 500 visitors at any one time with a throughput sufficient to provide all visitors to Liberty Island the opportunity to visit the museum. If the footprint of the museum were smaller, there would not be enough room or throughput to accommodate all of the visitors.

In light of Hurricane Sandy, the National Park Service recognizes the potential flood risk on Liberty Island, and that risk is being considered during the design of the new museum. The new museum will be built on an elevated open foundation and will meet building codes as stipulated by the National Flood Insurance Program, International Code Series, and American Society of Civil Engineers 24, Flood Resistant Design and Construction. As noted in the Statement of Findings for Floodplain Management, Appendix A of the environmental assessment, the museum's first floor elevation will be at 19 feet North American Vertical Datum of 1988 (NAVD 88) to account for the recently revised Federal Emergency Management Agency 100-year base flood elevation, 3 feet of additional sea level rise and a 2-foot floor structure.

Concern: Two commenters noted that the National Park Service should consider placing the new museum complex on the mainland at the embarkation point to the monument.

Response: The National Park Service does not own land on the mainland on which to build a museum. Additionally, there are two embarkation points for Liberty Island, one in New Jersey and one in New York, and constructing a museum at one of those locations for the Statue of Liberty would complicate the logistics for the approximately 4 million people who visit Liberty Island.

Concern: One commenter expressed concerns for potential security issues resulting from the new museum and noted that several important agencies, such as the US Department of Homeland Security, Federal Bureau of Investigation, US Coast Guard, New York Police Department, and New York Police Department Harbor Patrol Unit were not consulted during the development of the environmental assessment.

Response: The new museum would not bring additional visitors to Liberty Island and would not increase the security risk that already exists on the island. All visitors to Liberty Island, including those who will visit the new museum, go through airport-type security screening prior to boarding the ferries to the island. The main target on the island would remain the Statue itself, and additional security screening is already in place for those with tickets to enter the Statue. To further help minimize security risks, Liberty Island is manned by park law enforcement officers. While the noted agencies were not directly consulted, each agency has the opportunity to comment on the environmental assessment during the 30-day public review period. No comments were received from these agencies during the review period.

Concern: A commenter expressed concern for the preservation of the Historic District.

Response: The National Park Service acknowledged the adverse effect on the pending Statue of Liberty National Monument – Liberty Island Historic District (pending Historic District) in the environmental assessment. While it is not possible to avoid an adverse impact, the National Park Service has engaged in extensive consultation with the New York and New Jersey State Historic Preservation Offices, the Advisory Council on Historic Preservation, the New York City Landmarks Preservation Commission, the Delaware Nation and Stockbridge-Munsee Tribe, and The Statue of Liberty – Ellis Island Foundation and made a conscious effort to minimize the impact of the museum structure. The National Park Service has also entered into a memorandum of agreement with the New York and New Jersey State Historic Preservation Offices, interested tribes, and other consulting parties. The memorandum of agreement outlines mitigation measures to offset the adverse effects on the pending Historic District.

Concern: One commenter expressed concern for the construction and operation of the proposed temporary pier, citing potential impacts on marine and archeological resources.

Response: To address potential impacts on marine resources from the proposed temporary construction pier, the National Park Service consulted with NOAA Fisheries. NOAA Fisheries concurred with the National Park Service's determination that the project *may affect, but is not likely to adversely affect* federally listed threatened and endangered species. It also concurred with National Park Service's determination that the effects on essential fish habitat would not be substantial, and as a result, no additional conservation recommendations are needed beyond the National Park Service's stated intention to avoid installing or removing the piles of the temporary construction pier between January 15 and May 31 of each year.

As noted in the environmental assessment on page 3, previous marine remote sensing investigations found several magnetic anomalies immediately offshore along the northern portion of Liberty Island near the proposed temporary construction pier that may be indicative of, among other things, significant submerged cultural resources. To avoid affecting any unknown submerged archeological resources, the temporary construction pier will be sited to avoid the magnetic anomalies by at least 20 feet. The National Park Service has also entered into a memorandum of agreement with the New York and New Jersey State Historic Preservation Offices, interested tribes, and other consulting parties, covering both the

construction of the new museum and the construction of the temporary pier. Additionally, the National Park Service is obtaining necessary permits from the US Army Corps of Engineers and the State of New Jersey to construct and dismantle the temporary construction pier and will follow any additional requirements imposed by the agencies to avoid or minimize potential impacts on marine and submerged archeological resources.

Concern: The US Environmental Protection Agency recommended including a discussion of how climate change may affect the area and alter flood risk. It also recommended that the National Park Service discuss how future climate scenarios may affect Liberty Island and the proposed museum.

Response: The National Park Service considered the potential impacts of climate change during the planning stages of the project when it looked at potential alternative locations on Liberty Island for the new museum. Climate change is also being considered during the design phase of the new museum and is the primary reason for constructing the museum on an elevated open foundation with the first floor at an elevation of 19 feet NAVD 88. The environmental assessment specifically addresses climate change on page 5 and in Appendix A – Statement of Findings for Floodplain Management.

Concern: The US Environmental Protection Agency noted that a general conformity determination is required for this project because it is within an 8-hour ozone nonattainment area and will result in mobile source emissions.

Response: The National Park Service conducted a general conformity applicability analysis for the project and determined that emissions for criteria pollutants associated with the project would be below *de minimis* thresholds.

Concern: The US Environmental Protection Agency recommended clarification regarding the occupancy increases expected to result from the project and noted that the current presentation of occupancy values implies that although the new museum will be significantly larger in size than the current museum, it will in fact accommodate fewer visitors per day.

Response: The new museum is not expected to increase the total number of visitors to Liberty Island from current levels because the primary reason that people visit the island is to see the Statue of Liberty, not to visit the museum. Additionally, as noted on page 26 of the environmental assessment, moving the museum out of the Pedestal will make it available to all of the visitors to the island (i.e., 100% of the daily visitors). The museum will accommodate up to 500 people (one boat load) at any one time, and design features will encourage constant movement through the museum to maximize the number of visitors.

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ATTACHMENT D

ERRATA

INTRODUCTION

This errata sheet documents changes to the text of the environmental assessment as a result of comments received on the environmental assessment during the public review process.

For ease of reference, changes to the text of the environmental assessment are noted by chapter and page number. Text within a paragraph that has been deleted is shown by ~~strikeout~~ and added text is underlined. Typographical, spelling, and punctuation errors are not changed unless necessary to make the passage understandable.

ERRATA

Chapter 1 Purpose and Need, Page 6: add the following bullet to Issues Considered but Dismissed from Further Analysis:

- The Clean Air Act General Conformity regulations serve to implement the Clean Air Act requirement of consistency between federal decision making and air quality plans. General Conformity potentially applies to all federal actions other than those subject to transportation conformity (e.g., Federal Highway Administration/Federal Transit Administration highway/transit projects and transportation plans). The General Conformity rule (40 CFR Part 93, Subpart B) requires a conformity determination for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed certain *de minimis* thresholds. If the action will cause emissions above the *de minimis* rates and the action is not otherwise exempt, "presumed to conform," or included in the existing emissions budget of the State Implementation Plan, the agency must conduct a conformity determination before it takes the action. The purpose of such a determination is to prevent the air quality impacts of the action from causing or contributing to a violation of the National Ambient Air Quality Standards or interfering with the purpose of a State Implementation Plan. The proposed new museum would have three new boilers that would be new permanent sources of emissions, and the construction and dismantling of the temporary construction pier and the transportation of materials to and from Liberty Island to construct the new museum would result in mobile source air emissions. Liberty Island, New York, is part of New York County, which the US Environmental Protection Agency has designated as a nonattainment area for 8-hour ozone and particulate matter 10 microns or less in diameter (PM₁₀), and as a maintenance area for carbon monoxide and particulate matter 2.5 micrometers or less in diameter (PM_{2.5}). Therefore, a general conformity applicability analysis is required and was conducted for the following pollutants: volatile organic compounds (an ozone precursor pollutant), nitrogen oxide (a precursor pollutant for both ozone and PM_{2.5}), PM₁₀, carbon monoxide, PM_{2.5} and sulfur dioxide (a PM_{2.5} precursor pollutant). The results of the applicability analysis indicate that the resulting annual construction and operation emissions for the applicable pollutants and precursor pollutants are well below the General Conformity *de minimis* thresholds. Therefore a General Conformity determination is not required.

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ATTACHMENT E

NON-IMPAIRMENT DETERMINATION

By enacting the National Park Service (NPS) Organic Act of 1916 (Organic Act), Congress directed the US Department of Interior and the National Park Service to manage units “to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations” (54 United States Code [USC] § 100101). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that the National Park Service must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress” (54 USC 100101).

NPS Management Policies 2006, section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the Nation Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The National Park Service has discretion to allow impacts on park resources and values when necessary and appropriate to fulfill the purposes of a park (*NPS Management Policies* 2006, section 1.4.3). However, the National Park Service cannot allow an adverse impact that would constitute impairment of the affected resources and values (section 1.4.3). An action constitutes an impairment when its impacts “harm the integrity of Park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values” (section 1.4.5). To determine impairment, the National Park Service must evaluate “the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts” (section 1.4.5).

This determination on impairment has been prepared for the selected action described in this Finding of No Significant Impact. An impairment determination is made for the resource topic of pending Historic District. An impairment determination is not made for visitor use and experience because impairment findings relate back to park resources and values, and this impact area is not generally considered to be park resource or value according to the Organic Act and cannot be impaired in the same way that an action can impair park resources and values.

PENDING HISTORIC DISTRICT

Constructing a new museum on the northwest portion of Liberty Island under the selected action will have an adverse impact on the pending Historic District by introducing a new structure into the pending Historic District and because the steps of the museum will slightly encroach on the Flag Plaza, which, as a part of the primary circulation system, is a contributing resource (historic associated feature) to the pending Historic District. The new museum will slightly alter the setting and feel of the overall pending Historic District, and while it is not possible to avoid an adverse impact, the National Park Service has engaged in extensive consultation with the New York and New Jersey State Historic Preservation Offices, the Advisory Council on Historic Preservation, the New York City Landmarks Preservation Commission, the Delaware Nation and Stockbridge-Munsee Tribe, and The Statue of Liberty – Ellis Island Foundation

and made a conscious effort to minimize the impact of the new museum. The adverse impacts of the new museum will be minimized by locating it in the northwest portion of Liberty Island, an area that is not key to the comprehension of the significance of the pending Historic District or the monument. The building's visual impacts will also be minimized by its low-sloping massing, green roof, low-reflective glass, and the subdued color and tone of its exterior. Construction of the new museum will not diminish the integrity of the pending Historic District to the point of making it not eligible for listing on the National Register. Therefore, the pending Historic District will not be impaired because the adverse impacts on the pending Historic District will be limited in nature and will not preclude it from being eligible to be listed on the National Register.