

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;

REGARDING THE PROPOSED CONSTRUCTION OF A SECONDARY SCREENING
FACILITY ON LIBERTY ISLAND IN NEW YORK

WHEREAS the National Park Service (NPS), Statue of Liberty National Monument (Park) proposes to construct a new secondary screening facility on Liberty Island (undertaking) pursuant to the 1916 National Park Service Organic Act, the NPS Management Policies (2006), and applicable NPS Directors Orders; and

WHEREAS, the undertaking consists of the removal of a temporary screening tent, the design and construction of a four-lane screening building and 400 lockers as described as the proposed action in the *Statue of Liberty Screening Facility Environmental Assessment* (February 2017); and

WHEREAS, the Park has defined the undertaking's area of potential effect (APE) as the entire Liberty Island with a smaller direct impact area as shown on the map in appendix A; and

WHEREAS the NPS has conducted an archeological survey to determine the likelihood of there being archeological sites within the direct impact area and has determined that there are none, but that there are two archeological sites adjacent to the direct impact area including a Native American shell midden dating to A.D. 1000 and a military era midden site dating to c.1794-1811; 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 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) ; and the Delaware Tribe has agreed to sign whereas the Stockbridge-Munsee has decided not to participate further; 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 regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; 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 not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS collectively, the New York SHPO, New Jersey SHPO, Delaware Tribe, and New York City Landmarks Preservation Commission will be referred to as consulting parties (The 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, construction of the secondary screening facility will allow the removal of the temporary screening facility that has been a visual and physical intrusion on the landscape of main mall for the past 15 years; 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 (CRM Team); and the operation and maintenance of the new screening facility 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 Analysis, 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 or improved by the undertaking; and

NOW, THEREFORE, the Park, New York SHPO and New Jersey SHPO 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 regular updates on design progress on the new facility and engage the The Parties in discussion to identify ways to minimize the adverse effect prior to producing construction drawings.
- C. The Park shall provide the New York SHPO, the New Jersey SHPO and The Parties with the 50% drawings and draft construction drawings for the new facility.
 - i. Within thirty (30) days of receipt of updates or drawing, The Parties may provide comments to the Park.
 - ii. The Park will consult with The Parties to resolve any identified concerns regarding the effective avoidance and minimization of adverse effects to historic properties.
- D. Once identified concerns are resolved, the Park Superintendent may approve the construction drawings and proceed with permitting the construction of the undertaking.
- E. Should design changes become necessary during construction, the Park Superintendent may consult with the Park’s CRM Team to determine if the proposed design changes are minor in nature. If the changes are considered minor in nature by the CRM Team, the Superintendent may approve such minor changes. If the CRM Team determines 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 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 Parties.
 - ii. Within thirty (30) days of receipt, or other mutually agreeable timeframe, The 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 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 VIII.

II. MINIMIZATION & MITIGATION MEASURES

- A. The following measures have been identified as ways to minimize the effect of the new facility and will be incorporated into the design for review by The Parties:
 - i. Minimize the scale of the building as much as possible, including roof overhangs

- ii. Camouflage lockers from Fort Wood parapet views through the use of appropriate material, colors, and vegetative screening
 - iii. Provide landscaping to minimize the visibility of the new screening facility
- B. The following measures have been identified as ways to mitigate the impacts of the project and will be carried out by NPS with review by The Parties:
 - i. Removal of the temporary screening facility on the main mall.
 - ii. Repair of the main mall pavers after the removal of the existing screening tent so that they match other recent main mall repairs
 - iii. Design and replace the security fence enclosure to blend better with Fort Wood and the setting.

III. ARCHAEOLOGICAL MONITORING AND DOCUMENTATION

- A. The NPS will conduct archaeological monitoring for any construction activities reaching depths more than 120 cm within the west yard in areas that have not been substantially disturbed by the previous removal of tanks to prevent the disturbance of archaeological sites.
- 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 V 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 monitoring in relation to this project to the New York SHPO, New Jersey SHPO, and New York Landmarks Preservation Commission, the Stockbridge-Munsee Community, and the Delaware Tribe within one (1) year of the completed construction of the undertaking.

IV. DURATION

This MOA will expire if its terms are not carried out within five (5) 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 VIII below.

V. 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 64375 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 VIII.

VI. PERFORMANCE OF THE MOA

Each one (1) year following the execution of this MOA until it expires or is terminated or the project is completed (including all aspects of this MOA), 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.

VII. 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.

VIII. 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 is signed by all of the signatories is filed with the ACHP.

IX. 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 VIII, 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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NEW YORK STATE HISTORIC PRESERVATION OFFICER;

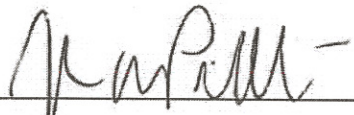
NEW JERSEY STATE HISTORIC PRESERVATION OFFICER;

**REGARDING THE PROPOSED CONSTRUCTION OF A SECONDARY SCREENING
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SIGNATORY:

NATIONAL PARK SERVICE

STATUE OF LIBERTY NATIONAL MONUMENT




John Piltzecker, Superintendent

Date 3-28-17

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SIGNATORY:

NEW YORK STATE HISTORIC PRESERVATION OFFICER



Date 4 APRIL 2017

Michael F. Lynch, P.E., AIA, Deputy SHPO

New York State Historic Preservation Office

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SIGNATORY:

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

Katherine J. Marcopul

Date 4/25/2017

Katherine J. Marcopul, Deputy SHPO and Administrator

New Jersey Historic Preservation Office

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SIGNATORY:

DELAWARE TRIBE OF INDIANS



Chester Brooks, Chief

Date _____

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CONCURRING PARTY:

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION



Date 3/29/17

Meenakshi Srinivasan, Chair

APPENDIX A: AREA OF POTENTIAL EFFECT

