

APPENDIX B: FEDERAL CONSISTENCY DETERMINATION

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PROJECT DESCRIPTION

The National Park Service (NPS) has prepared this Environmental Assessment (EA) and Assessment of Effect (AoE) to evaluate a range of alternatives to improve the public safety and accessibility of the Statue of Liberty National Monument. Improvements are currently proposed because certain other sections of the monument are currently not compliant with life safety and accessibility codes. Upgrades to infrastructure, circulation, and emergency egress within the monument would allow compliance with applicable codes to the maximum extent possible without compromising the historic fabric of the monument.

This EA/AoE evaluates two alternatives, the preferred alternative and the no action alternative, and analyzes and documents potential environmental effects associated with the proposed actions. The preferred alternative involves both the renovation of existing elements and the construction of new features contained almost exclusively within the monument to improve its fire safety, accessibility, and circulation. The preferred alternative also includes the removal of and replacement of existing vertical circulation elements (such as stairs and elevators) and upgrades to the fire safety, ventilation, and lighting systems. The only aspect of the proposed actions that would occur outside the monument, involves the installation of an additional water storage tank immediately adjacent to the existing two underground tanks located in the NPS administrative area of Liberty Island (see Project Area delineated in Enclosure A).

This EA/AoE This document addresses compliance with both the National Environmental Policy Act (NEPA) of 1969, as amended, and Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and was prepared in accordance with the Council on Environmental Quality (CEQ) "Regulations for Implementing the Procedural Provisions of NEPA" (40 Code of Federal Regulations [CFR] 1500-1508) and Department of the Interior Director's Order # 12 (DO-12): Conservation Planning, Environmental Impact Analysis, and Decision Making (NPS 2001).

The Statue of Liberty National Monument is Federal property and is therefore excluded from the state coastal zone as required by Section 304 of the Federal Coastal Zone Management Act of 1972 (CZMA). However, Federal actions on excluded Federal lands that affect any land or water use, or natural resource of the coastal zone shall be consistent with the Coastal Zone Management rules to the maximum extent practicable. Therefore, the NPS is initiating this consultation in accordance with the CZMA and New York State's Waterfront Revitalization and Coastal Resource Act of 1981. The NPS has completed a New York State Department of State Coastal Management Program Federal Consistency Assessment Form for the project and attached it as Enclosure B with supporting information addressing "Yes" responses to the Policy Questions attached as Enclosure C.

The NPS has determined that the proposed project to Implement Life Safety Upgrades at the Statue of Liberty National Monument is consistent with the New York State Department of State Coastal Policies.

FEDERAL CONSISTENCY ASSESSMENT FORM

NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM

Federal Consistency Assessment Form

An applicant, seeking a permit, license, waiver, certification or similar type of approval from a federal agency which is subject to the New York State Coastal Management Program (CMP), shall complete this assessment form for any proposed activity that will occur within and/or directly affect the State's Coastal Area. This form is intended to assist an applicant in certifying that the proposed activity is consistent with New York State's CMP as required by U.S. Department of Commerce regulations (15 CFR 930.57). It should be completed at the time when the federal application is prepared. The Department of State will use the completed form and accompanying information in its review of the applicant's certification of consistency.

A. APPLICANT (please print)

1. Name: National Park Service, Statue of Liberty National Monument
2. Address: Liberty Island, New York NY 10004
3. Telephone: Area Code (212) 363-3206

B. PROPOSED ACTIVITY

1. Brief description of activity:

~~. The preferred alternative involves both the renovation of existing elements and the construction of new features contained almost exclusively within the monument to improve its fire safety, accessibility, and circulation. The preferred alternative also includes the removal of and replacement of existing vertical circulation elements (such as stairs and elevators) and upgrades to the fire safety, ventilation, and lighting systems.~~

2. Purpose of activity:

Improvements are currently proposed because certain sections of the monument are currently not compliant with life safety and accessibility codes. Upgrades to infrastructure, circulation, and emergency egress within the monument would allow compliance with applicable codes to the maximum extent possible without compromising the historic fabric of the monument.

3. Location of activity:

<u>New York</u>	<u>New York</u>	<u>Liberty Island</u>
County	City, Town, or Village	Street or Site Description

4. Type of federal permit/license required: N/A

5. Federal application number, if known: _____

6. If a state permit/license was issued or is required for the proposed activity, identify the state agency and provide the application or permit number, if known:

N/A

C. **COASTAL ASSESSMENT** Check either "YES" or "NO" for each of these questions. The numbers following each question refer to the policies described in the CMP document (see footnote on page 2) which may be affected by the proposed activity.

1. Will the proposed activity result in any of the following: YES / NO
- a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 22, 25, 32, 37, 38, 41, 43)
 - b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal waters? (2, 11, 12, 20, 28, 35, 44)
 - c. Revitalization/redevelopment of a deteriorated or underutilized waterfront site? (1)
 - d. Reduction of existing or potential public access to or along coastal waters? (19, 20)
 - e. Adverse effect upon the commercial or recreational use of coastal fish resources? (9,10)
 - f. Siting of a facility essential to the exploration, development and production of energy resources in coastal waters or on the Outer Continental Shelf? (29)
 - g. Siting of a facility essential to the generation or transmission of energy? (27)
 - h. Mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters? (15, 35)
 - i. Discharge of toxics, hazardous substances or other pollutants into coastal waters? (8, 15, 35)
 - j. Draining of stormwater runoff or sewer overflows into coastal waters? (33)
 - k. Transport, storage, treatment, or disposal of solid wastes or hazardous materials? (36, 39)
 - l. Adverse effect upon land or water uses within the State's small harbors? (4)

2. Will the proposed activity affect or be located in, on, or adjacent to any of the following: YES / NO
- a. State designated freshwater or tidal wetland? (44)
 - b. Federally designated flood and/or state designated erosion hazard area? (11, 12, 17,)
 - c. State designated significant fish and/or wildlife habitat? (7)
 - d. State designated significant scenic resource or area? (24)
 - e. State designated important agricultural lands? (26)
 - f. Beach, dune or barrier island? (12)
 - g. Major ports of Albany, Buffalo, Ogdensburg, Oswego or New York? (3)
 - h. State, county, or local park? (19, 20)
 - i. Historic resource listed on the National or State Register of Historic Places? (23)

3. Will the proposed activity require any of the following: YES / NO
- a. Waterfront site? (2, 21, 22)
 - b. Provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (5)
 - c. Construction or reconstruction of a flood or erosion control structure? (13, 14, 16)
 - d. State water quality permit or certification? (30, 38, 40)
 - e. State air quality permit or certification? (41, 43)

4. Will the proposed activity occur within and/or affect an area covered by a State approved local waterfront revitalization program? (see policies in local program document)

D. ADDITIONAL STEPS

1. If all of the questions in Section C are answered "NO", then the applicant or agency shall complete Section E and submit the documentation required by Section F.
2. If any of the questions in Section C are answered "YES", then the applicant or agent is advised to consult the CMP, or where appropriate, the local waterfront revitalization program document*. The proposed activity must be analyzed in more detail with respect to the applicable state or local coastal policies. On a separate page(s), the applicant or agent shall: (a) identify, by their policy numbers, which coastal policies are affected by the activity, (b) briefly assess the effects of the activity upon the policy; and, (c) state how the activity is consistent with each policy. Following the completion of this written assessment, the applicant or agency shall complete Section E and submit the documentation required by Section F.

E. CERTIFICATION

The applicant or agent must certify that the proposed activity is consistent with the State's CMP or the approved local waterfront revitalization program, as appropriate. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program, or with the applicable approved local waterfront revitalization program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: David Luchsinger, Superintendent

Address: Statue of Liberty National Monument, Liberty Island, New York, NY 10004

Telephone: Area Code (212) 363-3206

Applicant/Agent's Signature: _____ Date: _____

F. SUBMISSION REQUIREMENTS

1. The applicant or agent shall submit the following documents to the **New York State Department of State, Office of Coastal, Local Government and Community Sustainability, Attn: Consistency Review Unit, 1 Commerce Plaza, 99 Washington Avenue - Suite 1010, Albany, New York 12231.**

- a. Copy of original signed form.
- b. Copy of the completed federal agency application.
- c. Other available information which would support the certification of consistency.

2. The applicant or agent shall also submit a copy of this completed form along with his/her application to the federal agency.

3. If there are any questions regarding the submission of this form, contact the Department of State at (518) 474-6000.

*These state and local documents are available for inspection at the offices of many federal agencies, Department of environmental Conservation and Department of State regional offices, and the appropriate regional and county planning agencies. Local program documents are also available for inspection at the offices of the appropriate local government.

FEDERAL CONSISTENCY DETERMINATION

Based on the nature and location of the project and construction techniques which would be utilized, relevant coastal policies include those which address flooding, erosion, and historic resources. The coastal policies of New York have been addressed in detail for the proposed action and are included in the enclosure. The Environmental Consequences section below provides a summary of the coastal consistency for the project based on the defined impact intensities for this resource.

The New York State CMP contains eleven policy areas, with 44 detailed policies for each resource area. Four of the 44 policies are applicable, or partially applicable to the project. These include flooding and erosion policies and historic resources protection policies. The project would be consistent with all four of the applicable policies. Applicable policies of the New York State CMP are addressed in detail in the federal Consistency Statement provided in the enclosure. Mitigation would be incorporated to promote consistency with some policies, such as protection of historic resources.

The project would be consistent, or consistent to the maximum extent practicable with all applicable policies of New York.

Liberty Island is located in the Upper Bay of New York Harbor, between New York and New Jersey. The Coastal Zone Management Act of 1972, as amended, requires federal actions to be consistent to the maximum extent practicable with the enforceable policies of a coastal state's federally approved Coastal management Plan. Because of its location, the federal action associated with the implementation of life safety upgrades at the Statue of Liberty on Liberty Island has the potential to affect the coastal zone of both states. This federal consistency determination has been prepared to demonstrate compliance with New York State's Coastal Management Program.

Coastal policies for the State of New York have been established by the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, which establish direction for the appropriate use and protection of the nation's and the State's coasts and waterways. The New York State Coastal Policies are excerpted from the New York State Coastal Management Program (CMP). The policies reflect changes that were made in 1983 and 2001. The applicable policy, or a policy summary, is provided, followed by an explanation (in italicized text) of how the project is consistent with the policy. For all policies not identified, it was determined that they were not applicable to this project.

POLICY 11: BUILDINGS AND OTHER STRUCTURES WILL BE SITED IN THE COASTAL AREA SO AS TO MINIMIZE DAMAGE TO PROPERTY AND THE ENDANGERING OF HUMAN LIVES CAUSED BY FLOODING AND EROSION.

This policy dictates that buildings and structures sited on coastal lands identified as coastal erosion hazard areas shall be set back from the shoreline a distance sufficient to minimize damage from erosion. Furthermore, existing, non-conforming structures located in coastal erosion hazard areas may only be minimally enlarged.

Based on strict interpretation of the policy questions on the NYC WRP CAF, this policy is relevant since the project area is within a federally designated flood and/or state designated erosion hazard area. However, the proposed implementation of life and safety upgrades would be limited to the Statue of Liberty National Monument and would not involve re-siting or enlargement of existing structures. Therefore, this policy is essentially not applicable to the project.

POLICY 12: ACTIVITIES OR DEVELOPMENT IN THE COASTAL AREA WILL BE UNDERTAKEN AS TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION BY PROTECTING NATURAL PROTECTIVE FEATURES INCLUDING BEACHES, DUNES, BARRIER ISLANDS AND BLUFFS.

This policy protects natural protective features such as beaches, dunes, barrier islands, and bluffs from damage and destruction resulting from excavation of coastal features, improperly designed structures, inadequate site planning, or other similar actions. Activities or development in, or in proximity to, natural protective features must ensure that all such adverse actions are minimized.

There are no natural protective features present on Liberty Island. Furthermore, all proposed actions will be confined to the monument and will not impact the shoreline. Since the project area does not have natural protective features and the proposed actions do not directly involved the shoreline, this policy is not applicable for this project.

POLICY 17: NON-STRUCTURAL MEASURES TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION SHALL BE USED WHENEVER POSSIBLE.

This policy considered the potential impacts of flooding and erosion upon development and upon natural protective features in the coastal area, as well as the costs of protection against those hazards which structural measures entail. This policy applies to the planning, siting, and design of proposed activities and development. To ascertain consistency with this policy, it must be determined if any one, or a combination of non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development, and to the hazard.

This policy is relevant since the project area is within a federally designated flood and/or state designated erosion hazard area. However, the proposed implementation of life and safety upgrades would be limited to the monument, would not alter the degree of flood protection, and would not require additional flood protection measures. Therefore, this policy is essentially not applicable to the project.

POLICY 23: PROTECT, ENHANCE AND RESTORE STRUCTURES, DISTRICTS, AREAS OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHAEOLOGY OR CULTURE OF THE STATE, ITS COMMUNITIES, OR THE NATION.

This policy seeks to protect the most valuable of the State's man-made resources including structures or areas which are of historic, archeological, or cultural significance. The protection of these structures must involve recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites, but with area of significance, and with the area around specific sites. The policy is not to be construed as a passive mandate, but must include active efforts, when appropriate to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the coastal boundary, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities or the Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthworks, or component thereof of a recognized historic, cultural or archaeological resource which has been officially certified as being imminently dangerous to life or

public health. Nor shall the policy be construed to prevent the ordinary maintenance, repair, or proper restoration according to the U.S. Department of Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" of any building, structure, site or earthwork, or component thereof of a recognized historic, cultural or archaeological resource which does not involve a significant adverse change to the resource.

This policy is relevant since the project involves actions within the Statue of Liberty National Monument, which was designated as a national monument in 1924, listed on the National Register of Historic Places in 1966, and nominated as a World Heritage Site in 1984.

The project is consistent with Policy 23 since the NPS has prepared an Environmental Assessment that recognized the historical significance of the Statue of Liberty National Monument, analyzes the potential impacts to the monument resulting from the proposed actions, and suggests mitigation measures to ensure no significant adverse impact.

The project would not involve a significant adverse change to the monument. The implementation of life and safety upgrades will result in long-term beneficial impacts to historical and cultural resources within the project area including the Statue of Liberty National Monument.

Mitigation measures will be followed throughout the project to reduce potential adverse impacts to the historical and cultural resources, including, but not limited to:

- Consult with the SHPO on a process for mitigating the adverse effects,
- if it is determined that Native American archeological resources will be adversely affected, consult with the aforementioned Indian tribes on a process for mitigating the adverse effects,
- complete standard documentation of construction activities and data recovery as necessary, and
- commit to continued exploration of long-term and comprehensive possibilities for future interpretation.

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APPENDIX C: DRAFT PROGRAMMATIC AGREEMENT

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**DRAFT PROGRAMMATIC AGREEMENT
AMONG**

THE NATIONAL PARK SERVICE, STATUE OF LIBERTY NATIONAL MONUMENT,

**NEW YORK STATE HISTORIC PRESERVATION OFFICER,
AND**

***THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING***

LIFE AND SAFETY UPGRADES TO THE STATUE OF LIBERTY

(03/01/10)

WHEREAS, the Statue of Liberty Enlightening the World (the Statue) and Fort Wood, on which it is situated, is managed by the National Park Service (NPS) as part of the Statue of Liberty National Monument (Park), and listed on the National Register of Historic Places (1981); and

WHEREAS, the Superintendent is the responsible agency official for purposes of compliance with Section 106 of the National Historic Preservation Act as defined in 36 CFR 800.2 and is accountable to the Regional Director for full performance of Section 106 compliance through the NPS Management Policies, and procedures for performance and program evaluation; and

WHEREAS, public access to the Statue of Liberty was closed following the events of September 11, 2001; and

WHEREAS, the NPS has conducted an independent life safety and emergency management study (Hughes Report) of the Statue as mandated by Congress in order to determine if: (1) there was any way to satisfy code requirements with respect to access to the Statue's Crown; (2) what physical changes to the structure would be required to bring the facility to code compliance; (3) if access to the Crown cannot be made code compliant, how the NPS could minimize the life and safety risks to staff, visitors, and emergency management personnel in order to allow access; (4) how many people could be safely accommodated and under what conditions; and (5) what operational procedures would need to be in place to allow access; and

WHEREAS, the Hughes Report provided a series of recommendations that the NPS is proposing to implement along with additional NPS management recommendations (the Undertaking) (see attachment A for a list of actions); and

WHEREAS, the NPS has determined that the Area of Potential Effect (APE) includes the entire Liberty Island, although construction activity will be limited to the immediate vicinity of the Statue and Fort Wood; and

WHEREAS, the NPS has determined that (1) several of the Hughes Report and NPS management recommendations are stand-alone projects that meet criteria for streamlined review as described in the 2008 Programmatic Agreement Among the NPS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (Nationwide PA), (2) the SHPO has been briefed on which actions these are, and (3) Section 106 compliance on these actions will be done separately in compliance with the Nationwide PA (see attachment A); and

WHEREAS, the NPS has determined that the remaining actions that constitute the Undertaking may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places, and that Section 106 compliance for these actions will be covered under this Programmatic Agreement (see attachment A); and

WHEREAS, the NPS has notified the New York State Historic Preservation Officer (NYSHPO), and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.8(c), *Coordination With the National Environmental Policy Act*, that an Environmental Assessment would be completed and represent a combined process for implementation of the National Environmental Policy Act and Section 106 of the National Historic Preservation Act (16 USC 470(f)); and

WHEREAS, the NPS has informed the ACHP of the Undertaking and invited the ACHP to consult on this Programmatic Agreement, and the NPS has contacted the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community to inform them of the project and determine their level of interest; and

WHEREAS, the NPS has contracted for cultural resource investigations at the Statue, including a Historic Structure Report for the Fort Wood, which is completed, and a Historic Structure Report for the Statue, which is underway; and

WHEREAS, the NPS has determined that a terrestrial archaeological survey may be necessary to locate any significant terrestrial archaeological resources within the APE and to determine the effect of the Undertaking on these resources if they exist; and

WHEREAS, in lieu of the standard process pursuant to 36 CFR 800 the NPS has instead elected to execute a Programmatic Agreement (Agreement) in order to enhance NYSHPO and ACHP consultation because the effects of this project on historic properties are not fully known, and to better outline the process and schedule for this project's consultation and any required mitigation;

NOW, THEREFORE, the NPS, NYSHPO and the ACHP agree that the project shall be implemented in accordance with the following stipulations:

STIPULATIONS

The NPS will ensure that the following measures are carried out:

1. The NPS will consult with the SHPO in carrying out the terms of this Agreement. Such consultation may include but not be limited to:
 - Written Correspondence
 - Conference Calls
 - Face-to-face meetings
 - Field visits
2. The SHPO agrees to respond to requests for review within thirty (30) days of receipt of complete documentation. If no response is received within thirty (30) days of receipt, NPS may assume concurrence with its findings, conclusions and/or recommendations.
3. Rehabilitation of the Statue will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
4. The NPS will determine, in consultation with the SHPO, the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community, if terrestrial archeological investigations are necessary, and will develop an agreed-upon scope of work if they determine that such investigations are needed. All archeological investigations will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation, and the scope of work, research design, end-of-fieldwork

memorandum, and archaeological reports will be provided to the SHPO and, to the extent Native American archeological resources are involved, the three aforementioned tribes, for review and comment. In the event that the NPS, the SHPO and, as appropriate, the tribes agree that significant archaeological resources have been discovered by the excavations additional consultation will occur to determine the effect the Undertaking will have on these resources and to resolve any Adverse Effects in accordance with 36 CFR 800.

5. The NPS has and will submit construction drawings for the Statue rehabilitation to the SHPO for review and comment prior to finalizing the documents and before construction is implemented.
6. The NPS will invite the SHPO to participate in Value Analysis and Choosing-By-Advantages workshops in order to elicit early input on design directions.
7. NPS will ensure that all recordation/documentation activities are performed or directly supervised by architects, historians, archeologists or other professionals meeting the qualification standards in the Secretary of Interior's Professional Qualification Standards (36 CFR 61, Appendix A).
8. The NPS will ensure that all field records are assembled, including field notes compiled by the archeologists, site sketches, superintendent reports, and construction reports. These records will be accessioned into the Park's museum collection.
9. The NPS will provide copies of all documents resulting from the documentation/recordation to the SHPO, as they are received by NPS.
10. The NPS will ensure that copies of all documents resulting from the documentation/recordation are deposited with Statue of Liberty National Monument and the NPS Technical Information Center.

Mitigation of Adverse Effects

The NPS, as mitigation for any adverse effects to historic properties realized during the project,

1. will at a minimum:
 - a. consult with the SHPO on a process for mitigating the adverse effects,
 - b. if it is determined that Native American archeological resources will be adversely affected, consult with the aforementioned Indian tribes on a process for mitigating the adverse effects,
 - c. complete standard documentation of construction activities and data recovery as necessary,
 - d. commit to continued exploration of long-term and comprehensive possibilities for future interpretation.

Inadvertent Resource Discoveries

If during construction activities previously unknown archeological resources or are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 36 CFR Part 800.13[c] followed. In the event that Native American human remains, funerary objects, sacred objects and objects of cultural patrimony are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 43 CFR § 10.3 will be carried out including taking immediate steps to protect the discoveries in situ, notification of the three aforementioned tribes, tribal consultation and the development and execution of a Plan of Action.

Public Participation

The NPS will ensure that the public is provided adequate information about the project and opportunity to comment as the project proceeds through the NEPA process. Comments may be submitted to the NPS through the Superintendent at any time during the course of the project, including the scoping and formal public comment period for the Environmental Assessment (including a draft of this Agreement).

Interpretive Strategy

NPS shall develop an interpretive strategy to educate the public about the proposed work and statue's history and structure while construction is ongoing. The NPS will ensure that all existing

information from previous studies and appropriate information gained from the HSR will be integrated into the improved interpretive programs.

Monitoring of Construction Activities

The NPS will monitor construction activities pursuant to this Agreement, and allow the SHPO to participate in any construction monitoring after the SHPO provides the NPS at least 24-hours notification beforehand. The Park will cooperate with the SHPO in carrying out any monitoring and review responsibilities.

Dispute Resolution

Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the NPS or SHPO may request the participation of ACHP to assist in resolving the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NPS's responsibility to carry out all actions under this Agreement that are not the subjects of dispute will remain unchanged.

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure be raised by a member of the public, the NPS shall take the objection into account and consult as needed with the objecting party and the SHPO.

Amendment of Agreement

The Agreement may be modified by amendment at any time by mutual concurrence of all parties. Amendment of the Agreement as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official.

Termination of Agreement

Either party to this Agreement may terminate it by providing thirty (30) calendar days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination by the SHPO, the NPS will request the comments of the ACHP, in accordance with 36 CFR Part 800.7[a].

Reporting

Within ninety (90) days after carrying out the terms of this Agreement, the NPS shall provide a written report to the SHPO as to the actions taken to fulfill the terms of the Agreement.

Term of Agreement

This Agreement shall become effective after the date of the last signatory. The Agreement shall be null and void if its terms are not carried out within five (5) years from the date of its approval by the Park and SHPO, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this Agreement shall become null and void when the project is complete, all of the above stipulations are fulfilled, and the SHPO has been provided with the aforementioned written report as to the actions taken to fulfill the terms of the Agreement. The Agreement and any amendments shall be binding upon the parties, their successors, and assigns.

Execution of this Agreement by the NPS, SHPO and ACHP, and implementation of its terms, evidences that the NPS afforded the SHPO and ACHP an opportunity to comment on the project and its effects on the Statue of Liberty and Fort Wood, that the NPS has taken into the account the effect of the project on historic properties, and that the NPS has satisfied its Section 106 responsibilities for the project referenced in this Agreement.

**PROGRAMMATIC AGREEMENT
LIFE AND SAFETY UPGRADES TO THE STATUE OF LIBERTY**

AUTHORIZING SIGNATURES

National Park Service

By: _____ Date: _____
David Luchsinger

Superintendent, Statue of Liberty National Monument

New York State Historic Preservation Office

By: _____ Date: _____
Carol Ash
New York State Historic Preservation Officer

Advisory Council on Historic Preservation

By: _____ Date: _____
John Fowler
Executive Director

CONCURRING SIGNATURES

Delaware Nation

By: _____ Date: _____

Delaware Tribe of Indians

By: _____ Date: _____

Stockbridge-Munsee Community

By: _____

Date: _____

Attachment A. Statue of Liberty National Monument Life & Safety Upgrades Actions and S106 Pathway

NPS PIMS #	NPS PEPC #	S106 Pathway	Work Order	Synthesized January 29, 2010
1550068A	27989	Nationwide Streamlined Activity	3074332	Install magnetic door holders at doors entering / exiting museum.
1550068A	27989	Nationwide Streamlined Activity	3074374	Provide Various Fire Alarm and Emergency Lighting repairs and / or modifications to existing facilities in the Pedestal.
1550068A	27989	Nationwide Streamlined Activity	3074411	Provide Various Automatic Sprinkler repairs and / or modifications to existing facilities in the Pedestal.
1550068A	27989	Nationwide Streamlined Activity	3106740	Provide Life safety Modifications to Existing Fire Separations
1550068A	27989	Nationwide Streamlined Activity	3147810	Provide code-compliant exit signage within all levels of Statue. modify to indicate exits at 3P and 0P.
1550068B	27989	Nationwide Streamlined Activity	3106829	Install handrails on exterior masonry stairs leading from 3P to top of Fort Wood(level 2P).
1550068B	29121	Project Programmatic Agreement	3147895	Modify ramp to Sally Port exit to meet code dimensional requirements.
1550068B	29121	Project Programmatic Agreement	3110107	Provide ceiling level smoke exhaust from 2P sufficient to keep lobby at a negative 0.1 in w.g. pressure when doors to core are closed. Provide high level smoke exhaust from museum space sufficient to keep museum at a negative 0.1 in w.g. pressure when doors are closed.
1550068B	29121	Project Programmatic Agreement	3110107	Replace / Upgrade Domestic Water Holding Utility.
1550068B	29121	Project Programmatic Agreement	3149564	Replace Mechanical Utilities at 7P to Support Crown Opening
1550068B	29121	Project Programmatic Agreement	3149553	Provide men's and women's ADA compliant restrooms on level 2P for Statue visitors
155567	29121	Project Programmatic Agreement	3110192	Provide Code-Compliant Visitor Access to Statue of Liberty/ During Construction at Statue of Liberty
155567	29121	Project Programmatic Agreement	3111596	Provide 2 remote enclosed code-compliant exit stairs in Pedestal (min. 2 hr construction); discharging directly outside on 3P, 2P or 0P. Provide access to both enclosed stairs from 4P, 5P, and 6P. Direct entry into one enclosed exit stair at 7P.
155567	29121	Project Programmatic Agreement	3118595	Modify stair between 6P and 7P to provide minimum 36 in. code-compliant stair dimensions.
155567	29121	Project Programmatic Agreement	3149566	Replace Emergency Elevator (Amilak) in the Statue of Liberty.
155567	29121	Project Programmatic Agreement	3126535	Provide smoke separation between 6P and 7P. Remove emergency lift above 6P if necessary to provide smoke separation.
155567	29121	Project Programmatic Agreement	3132521	Provide pressurization systems sufficient to pressurize 2 enclosed stairs at a positive 0.1 in w.g. pressure with doors closed
160644	29121	Project Programmatic Agreement	4811819	Replace Main Elevator in the Statue of Liberty National Monument
1550068A	On Hold	Project Programmatic Agreement	3106912	Separate west lobby stair at 2P from below with minimum 1 hour rated construction.
1550068A	On Hold On Hold	Project Programmatic Agreement	3106912/3106912	Separate east lobby stair at 0P and 1 P with minimum 1 hour rated construction. Separate east lobby stair at 0P and 1 P with minimum 1 hour rated construction.
1550068A	On Hold	Project Programmatic Agreement	3106912	Enclose east stairs at 1P going up. Modify door at 2P -remove crash bars on door at 2P, install locks. Create landing; add locking door and wall at 1P to separate stairs going up. Relocate alarm and other appurtenances as required.
1550068A	On Hold	Project Programmatic Agreement	3106912	Create landing; add locking door and wall at west stair at 1P to separate stairs going up. Move existing door. Relocate alarm and other appurtenances as required.
1550068A	On Hold	Project Programmatic Agreement	3149560	Provide Museum Security Separation from Pedestal in up to 4 locations.

APPENDIX D: DRAFT IMPAIRMENT DETERMINATION

THE PROHIBITION ON IMPAIRMENT OF PARK RESOURCES AND VALUES

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 National 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.

WHAT IS IMPAIRMENT?

NPS *Management Policies 2006*, Section 1.4.5, *What Constitutes Impairment of Park Resources and Values*, and Section 1.4.6, *What Constitutes Park Resources and Values*, provide an explanation of impairment.

Impairment is an impact that, in the professional judgment of the responsible National Park Service manager, would 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 of *Management Policies 2006* states:

An impact to any park resource or value may, but does not necessarily, constitute impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- Identified as a goal in the park's general management plan or other relevant NPS planning documents as being of significance.

An impact would be less likely to constitute an impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Per Section 1.4.6 of *Management Policies 2006*, park resources and values that may be impaired include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and condition that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structure, and objects; museum collections; and native plants and animals;

- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

Impairment may result from NPS activities in managing the park, visitor activities, or activities undertaken by concessionaires, contractors, and others operating in the park. Impairment may also result from sources or activities outside the park, but this would not be a violation of the Organic Act unless the NPS was in some way responsible for the action.

HOW IS AN IMPAIRMENT DETERMINATION MADE?

Section 1.4.7 of *Management Policies 2006* states, "[i]n making a determination of whether there would be an impairment, an NPS decision maker must use his or her professional judgement. This means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); consultations required under Section 106 of the National Historic Preservation Act (NHPA); relevant scientific and scholarly studies; advice or insights offered by subject matter experts and others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision.

NPS Management Policies 2006 further define "professional judgment" as "a decision or opinion that is shaped by study and analysis and full consideration of all the relevant facts, and that takes into account the decision-maker's education, training, and experience; advice or insights offered by subject matter experts and others who have relevant knowledge and experience; good science and scholarship; and, whenever appropriate, the results of civic engagement and public involvement activities relation to the decision

IMPAIRMENT DETERMINATION FOR THE PREFERRED ALTERNATIVE

This determination on impairment has been prepared for the preferred alternative described in Chapter 2 of this EA/AoE. An impairment determination is made for all resource impact topics analyzed for the preferred alternative. An impairment determination is not made for visitor use and experience or public safety because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired in the same way that an action can impair park resources and values.

The NPS has determined that implementation of the action alternative will not result in impairment of park resources and values at Statue of Liberty National Monument. In reaching this determination, the life safety upgrades EA/AoE was reviewed to reaffirm the monument's purpose and significance, resource values, and resource management goals and desired future conditions. Based on a thorough analysis of the environmental impacts described in the life safety upgrades EA/AoE, the public comments received, and the application of the provisions of the NPS Management Policies 2006, the NPS concluded that the implementation of the action alternative will not result in impairment of any of the resources and values of Statue of Liberty National Monument. Although the action alternative entails physical changes within the Monument, the proposed action would not alter historic fabric and would be in keeping with NPS management policies and goals.

The action alternative would not result in impairment of historic structures or districts because the alternative includes only limited physical disturbance to the non-historic fabric of the monument. All improvements would be both respectful of the existing historic features and in keeping with the *Secretary of the Interior's Standard for the Treatment of Historic Properties*. The action alternative would not change any character-defining feature(s) of the structure(s) and would not diminish the integrity of the historic property or compromise the eligibility of the structure(s).

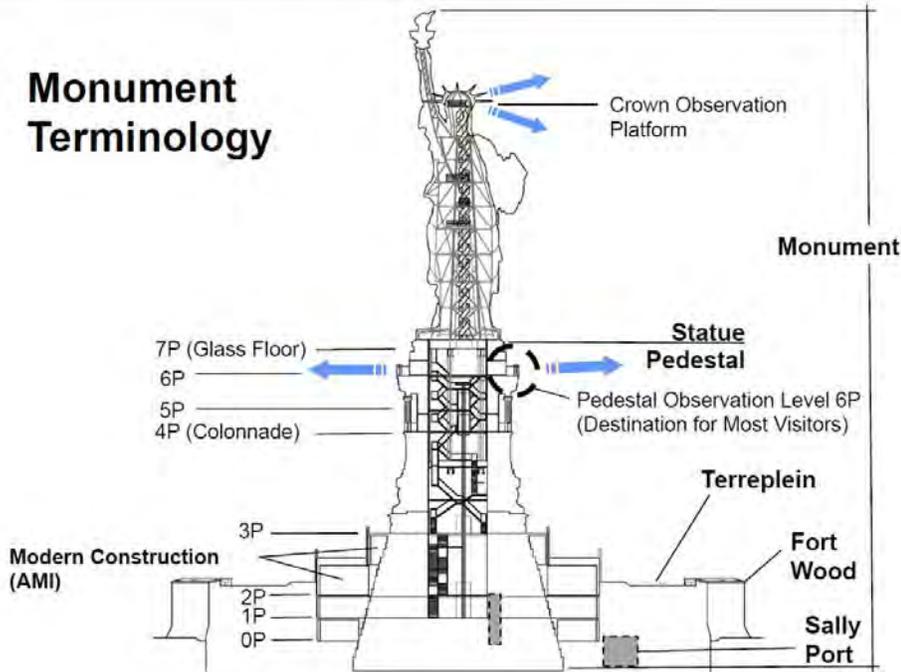
APPENDIX E: SUPPLEMENTAL DESIGN INFORMATION

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Monument Terminology

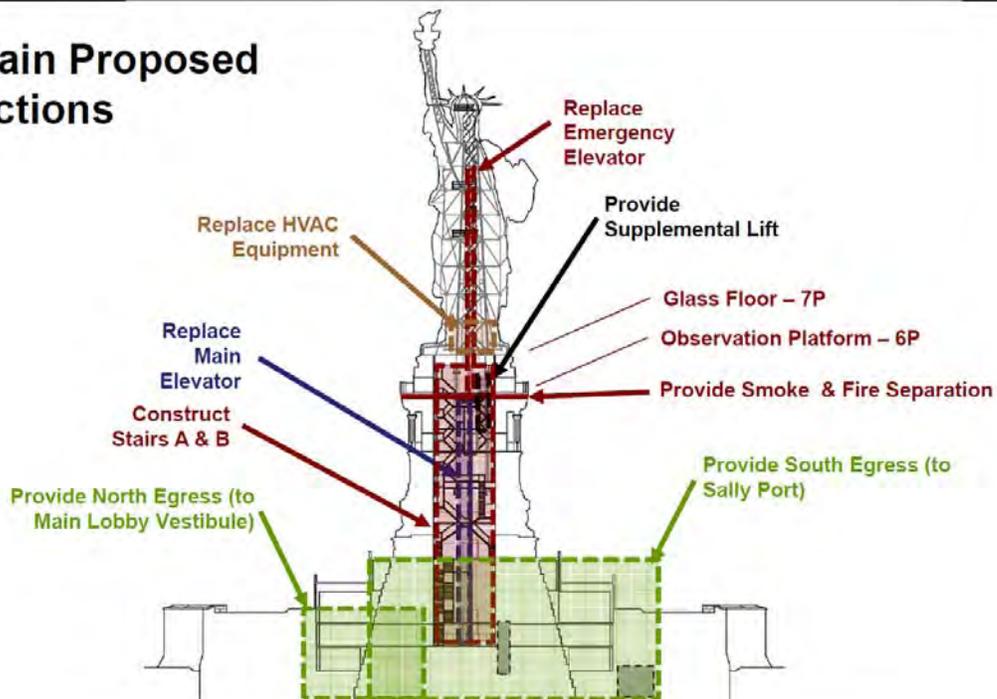


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Main Proposed Actions



National Park Service



Vertical Circulation

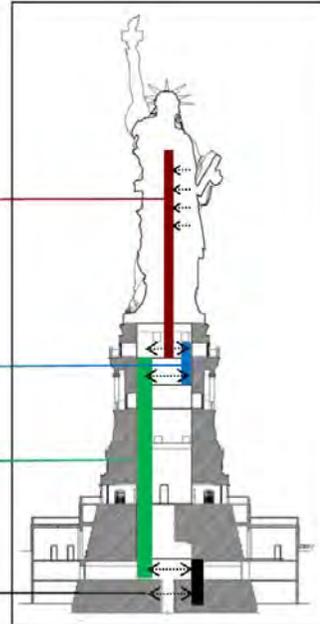
Elevator Continuity

Replace Emergency Elevator 6P – 7S

Provide Supplemental Lift 5P – 6P

Replace Main Elevator (MRL) 1P – 5P

Existing Hydraulic Elevator (to Remain) 0P – 1P (In Lobby on North Side)



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Terreplein Egress Configuration

EXPERIENCE YOUR AMERICA



North Egress through Terreplein – Stair Location



New Opening in Interior Vestibule Wall

North Egress at Vestibule @ Level 0P



As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering wise use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historic places, and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people. The department also promotes the goals of the Take Pride in America campaign by encouraging stewardship and citizen responsibility for the public lands and promoting citizen participation in their care. The department also has major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.