



# United States Department of the Interior



IN REPLY REFER TO:

C3827

NATIONAL PARK SERVICE  
Southeast Regional Office  
Atlanta Federal Center  
1924 Building  
100 Alabama St., SW.

November 11, 2015

Mr. Kevin R. Garden  
The Garden Law Firm, P.C.  
901 North Pitt Street, Suite 325  
Alexandria, VA 22314

Dear Mr. Garden:

This is in response to your letter regarding Leasehold Surrender Interest (LSI) for the fire suppression systems and railings at [redacted] on behalf of your client [redacted]. Fire suppression systems and railings are not eligible for LSI except as part of a major rehabilitation in which the construction cost exceeds 50 percent of the pre-rehabilitation value of the structure.

The National Park Service does not follow state law in its definition of fixtures for LSI purposes. To be considered LSI-eligible for NPS, an element of the proposed fixture or non-removable equipment must satisfy every part of the definition in 36 CFR §51.51. Because the preamble to the final version of this regulation deleted specific examples of fixtures and stated that this deletion “should not be considered as indicating that NPS necessarily considers any of the examples to be incorrect,” the final regulations explicitly declined to take a position on whether fire suppression systems qualified as fixtures for LSI purposes. 65 FR 20630 (April 17, 2000).

In fact, the October 2015 Draft Leasehold Surrender Interest Guide (Guide) states that fire protection systems are disqualified from LSI because they are not personal property of independent form and utility (Guide p. 30). The Guide explains that “independent form and utility” means that “the object has utility in more than one place and does not require significant modifications to the Structure in order to install (Guide p. 4). Unlike “off the shelf” fixtures such as toilets and sinks, fire suppression systems must be uniquely designed and customized for the building in which they are to be installed. Therefore, a fire suppression system designed for a specific building does not have “utility in more than one place.” Further, installation of fire suppression systems requires significant modification of a structure’s plumbing and electrical systems, and may require significant dismantling of the structure to complete. Fire suppression systems therefore lack the independent form and utility required for LSI eligibility. Your own letter acknowledges as much with its references to fire suppression systems as “intricate ‘systems’ which are very carefully designed and manufactured by professionals who then bring them to a site and install the system in a structure”, such that the system could not be independently used in another structure.

Regarding other matters, the Repair and Maintenance Reserve (RMR) funds may be used for replacing an existing fire suppression system, but not for the initial installation. The proposed railings are not eligible for LSI, because, based on photos, they appear to be standard building materials. Keep in mind that the cost of completing these projects without the potential for LSI was reflected in the NPS's determination of the minimum franchise fee for the contract.

I trust this letter will put the matter to rest and look forward to working together with \_\_\_\_\_, to resolve any future issues.

Sincerely,

\_\_\_\_\_  
Chief of Commercial Services  
Southeast Region