

# **FINDING OF NO SIGNIFICANT IMPACT REGARDING THE REMOVAL OF THE CONFEDERATE MEMORIAL FROM ARLINGTON NATIONAL CEMETERY, ARLINGTON, VIRGINIA**

## **Introduction**

Army National Military Cemeteries (ANMC) has prepared an Environmental Assessment (EA) to evaluate the potential environmental impacts of removing the bronze elements of the Confederate Memorial from Arlington National Cemetery (ANC) in Arlington, Virginia. This EA is incorporated by reference. Congress directed the establishment of the Commission on the Naming of Items of the Department of Defense (DoD) that Commemorate the Confederate States of America or Any Person Who Served Voluntarily with the Confederate States of America (the Naming Commission) in section 370 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA). The Naming Commission recommended that the statue and bronze elements of the Confederate Memorial be removed. The FY21 NDAA, section 370(a), requires this action to be taken by January 1, 2024.

The EA provides an overview of the environmental resources that may be affected, the interrelationship of these resources, and potential impacts on the human environment. The EA was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 United States Code (USC) 4321 *et seq.*), Council on Environmental Quality (CEQ) regulations at Title 40 of the Code of Federal Regulations (CFR) Parts 1500-1508, and the Army NEPA regulation at 32 CFR Part 651 (Environmental Analysis of Army Actions). This Finding of No Significant Impact (FONSI) briefly states why the discretionary aspects of the proposed action will not significantly affect the human environment and that an Environmental Impact Statement (EIS) will not be prepared.

## **Description of the Proposed Action**

The proposed action, required by section 370 of the FY21 NDAA, would remove the bronze elements of the Confederate Memorial, which currently sit on a granite base in the center of Section 16 of ANC. The granite base will be left in place.

## **Alternatives Considered**

The EA analyzes the effects of removal (Alternative A). The EA also analyzes a no-action alternative, under which the Memorial would not be removed. Although Congress required removal of the Memorial, the no-action alternative provides an environmental baseline against which impacts of the action alternatives could be measured. In addition, six other alternatives were identified and eliminated from detailed analysis during the planning process, since they did not meet the purpose and need.

Notwithstanding the fact that the removal action is non-discretionary, impacts of the

removal itself have been disclosed as a matter of public comity due to the magnitude of public interest in the issue. The EA analyzes only the actual removal process, including disassembly of the bronze elements of the memorial.

### **Anticipated Environmental Effects**

Overall, Alternative A would result in beneficial effects, potential minor short-term direct adverse impacts, and significant long-term direct adverse impacts to cultural resources. These significant impacts, however, entirely result from the removal of the Memorial, an action directed by Congress and over which the Army has no discretion. Adverse impacts from implementing the proposed action will be negligible to all other environmental resource areas. Specifically, there will be no significant impacts to air resources, greenhouse gases, and climate change; water resources; noise; or traffic and transportation.

Any significant impacts on cultural resources from the implementation of Removal Alternative A result from an action directed by Congress. The Army has no discretion to keep the Memorial at ANC. Impacts from non-discretionary actions are not subject to NEPA analysis and therefore do not affect the overall finding of no significant impact. Consequently, the overall environmental effect of implementing the proposed action is anticipated to be less than significant.

### **15-Day Public and Agency Review Period**

The EA and a draft copy of this Finding of No Significant Impact were made available to the public and to appropriate government agencies for review and comment during a 15-day period that began on November 17, 2023, with the publication of a Notice of Availability on the ANC website and in local newspapers. The EA, along with other relevant documents and instructions for submitting comments, have been available at <https://www.arlingtoncemetery.mil/About/Confederate-Memorial-Removal/NEPA>. Additionally, a hardcopy of the EA was made available at ANC for review. An overview of the removal process can be found at <https://www.arlingtoncemetery.mil/About/Confederate-Memorial-Removal>.

The EA public comment period closed on December 2, 2023. The Army received 171 comments in total.

- 165 comments recommended that the Memorial not be removed, citing various reasons. These included concerns about desecrating a cemetery and/or grave, destroying history, and the physical impact of its removal. Other comments indicated a belief that the Memorial's removal is political in nature and disrespectful to veterans and/or Confederate descendants. Commenters also pointed out that the Memorial is an excellent work of art by a renowned artist and should therefore not be removed. Some comments expressed disagreement with the Army's position on its lack of discretion regarding the removal of the Memorial.

- Any significant impacts on cultural resources from the implementation of Removal Alternative A result from an action directed by Congress. The Army has no discretion to keep the Memorial at ANC. Impacts from non-discretionary actions are not subject to NEPA analysis and therefore do not affect the overall finding of no significant impact. The Army looked at the impacts of removal as a matter of public comity because of the high level of public interest in Congress' direction to remove the Memorial from ANC. The EA also looked at the discretionary elements of the action and found that they would not result in significant impacts.
- ANMC completed the National Historic Preservation Act, Section 106 process and entered into a Programmatic Agreement (PA) with the Virginia SHPO and the ACHP. That PA sets forth agreed-upon mitigations for adverse effects identified in the Section 106 process. Under NEPA, significant impacts may be reduced through mitigation measures reached under NHPA processes.
- Some comments objected to the discontinuation of the EIS process for the action, stating that an EIS is necessary to discuss significant impacts. The EIS withdrawal notice, however, explained that the EIS scoping period revealed no significant impacts expected from the discretionary portions of the action. Therefore, preparation of the environmental assessment was the appropriate action for the Army to take to comply with NEPA.
- Some comments expressed concern that the graves that surround the memorial would be damaged or even relocated. The EA makes clear that the graves would not be impacted, noting that no other work is proposed to the surrounding landscape and graves—all of which would be protected during the removal process. The headstones, circulation patterns, and horticultural elements of Section 16 will be protected and preserved and will remain unchanged.
- Another comment stated that the action would be harmful to the Jewish community, specifically to the Jewish artistic community. Other comments added that the removal of this work by the Jewish sculptor Moses Ezekiel would constitute an act of anti-Semitism. The EA noted that a comment during the EIS scoping period stated that the removal of the Memorial would dishonor Ezekiel. The Naming Commission's report made clear its reasoning for its recommendation in its report. There is no evidence of anti-Semitism in the Naming Commission process or in the decision made by Congress to approve removal of the bronze elements of the Memorial.
- One comment stated that viewshed and noise analyses were insufficient because the analyses did not take into account that tree leaves will likely have fallen at the time the bronze elements are removed. The EA makes clear that the disassembly process will occur over only a few days, and the noise levels from equipment will not exceed levels from ANC maintenance operations and overhead air traffic. The effects on viewshed result from the non-discretionary

removal of the bronze elements.

- Two comments expressed support for the removal of the Memorial. The Army considered these comments and understands the controversial nature of the Congressional determination to remove the bronze elements of the Memorial. The EA states at several points that the decision to remove the Confederate Memorial from ANC was made by Congress, and the Army has no discretion on whether to remove the Memorial. The EA analyzes only the actual removal process, including disassembly of the bronze elements of the memorial.
- Several commenters suggested locations for the monument, or organizations or government entities to which the Memorial elements could be donated. The EA makes clear, however, that it does not cover the final disposition of the Memorial. Subsequent and appropriate analysis will be developed supporting a decision on final disposition. The final disposition of the Memorial will also be covered by provisions of the Section 106 PA executed for this action, as discussed below.
- Some commenters said that the alternative of keeping the Memorial in place was not considered. This course of action was fully analyzed in the No Action alternative.
- In response to comments received, the Army provided links to supporting documentation for the historic properties potentially affected by the proposed action. Links to National Register nominations and cultural landscape inventories have been provided on the ANC website (<https://www.arlingtoncemetery.mil/About/Confederate-Memorial-Removal/Documents>) and in the EA, Appendix B, 2 November 2023 Section 106 Submission.
- In response to comments regarding the Army allowing access to the construction site so that a non-Department of Defense entity and/or the public can be on site to witness the removal process: the cemetery will remain open to the public throughout the removal process. To ensure the safety of both visitors and workers, however, members of the public will not be allowed within the limits of the construction site, As is typical during any construction project at ANC. The PA permits a representative from the Virginia SHPO to monitor the entirety of the removal process.

All comments were considered in making this finding. The comments did not identify any significant impacts that would preclude reaching a Finding of No Significant Impact for the action. The comments did not identify significant new circumstances or information relevant to environmental concerns, or bearing on the proposed action or its impacts, that would require supplementation of the EA.

### **Adherence to Programmatic Agreement**

Army National Military Cemeteries completed the Section 106 process and entered

into a programmatic agreement (PA) with the Virginia State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP). That PA sets forth agreed-upon mitigations for adverse effects identified in the Section 106 consultation process. Under NEPA, impacts of the proposed federal action to historic properties may be reduced or mitigated through the implementation of mitigation measures agreed to in the NHPA Section 106 consultation process.

The adverse effects on National Register-listed and eligible historic properties are acknowledged and addressed in the Section 106 PA.

The EA states that, as a result of the NHPA compliance process, a PA was developed between the Army, the Virginia DHR, and the ACHP. The PA has now been signed, and the Army commits to following its requirements. The PA is incorporated by reference into this FONSI. These requirements include development of a plan regarding the disposition of the Confederate Memorial. This plan may provide stipulations regarding potential continued storage, transfer from the storage facility to the final disposition site, potential reassembly, and any potential interpretation at that site. The requirements also include documentation of the Confederate Memorial according to Level II Historic American Buildings Survey (HABS) Standards.

### **Findings**

Based on the analysis contained in this EA and taking into consideration comments received from the public and from appropriate government agencies, I have concluded that implementation of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. Any impacts to historic properties/cultural resources associated with Removal Alternative A are the result of an action directed by Congress. The Army has no discretion to decide against removal. Consequently, implementation of the proposed action does not require the preparation of an EIS.

Approved by:

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