



U.S. Department of Justice

Environment and Natural Resources Division

*Appellate Section
P.O. Box 7415
Washington, DC 20044*

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September 19, 2024

Kirk D. Lyons
Southern Legal Resource Center, Inc.
P.O. Box 1235
Black Mountain, NC, 28711

Re: Demand for Suspension of Further Dispositive Actions Until Final Adjudication of
Case No. 24-5026; Defend Arlington, et al., Plaintiffs-Appellants vs. United States
Department of Defense, et al., Defendants-Appellees

Dear Mr. Lyons:

We are in receipt of your September 11, 2024 letter concerning the Department of the Army's disposition of the Confederate Memorial formerly displayed in Arlington National Cemetery. In December 2023, the Army disassembled the Memorial and moved it into storage at a Defense Logistics Agency (DLA) facility in Richmond, Virginia. On August 3, 2024, the Army and the Commonwealth of Virginia executed a Deed of Gift transferring legal title of the Memorial from the Army to Virginia. Before executing the Deed of Gift, the Army and Virginia consummated a Memorandum of Understanding that governed the gift of the Memorial to Virginia. In that Memorandum of Understanding, Virginia agreed that upon taking title to the Memorial it would not, now or in the future, do any of the following:

- a. Donate, sell, trade, lease, lend, bail, encumber, or cannibalize the Memorial, or dismantle the Memorial for parts;
- b. Remove the Memorial for use or display outside of Virginia;
- c. Transfer title to the Memorial directly or indirectly; or
- d. Do or allow anything to be done that would contribute to the Memorial being seized, attached, lost, stolen, damaged, or destroyed.

The Memorandum of Understanding also requires Virginia to retain the services of experts regarding the treatment of the Memorial and to prepare a relocation plan that provides for appropriate siting and reassembly of the Memorial. Further, Virginia entered into a Host-Tenant Agreement with DLA that provides for temporary storage of the Memorial for no more than 26 months. Thus, although legal title of the Memorial has been transferred to Virginia, the

Memorial has not been moved from the DLA facility in Richmond. We have provided courtesy copies of the Memorandum of Understanding and the Deed of Gift as attachments to this letter.

Although the Department of the Army no longer has legal ownership of the Memorial, we have spoken to representatives from the Virginia Department of Historic Resources about the concerns expressed in your September 11, 2024 letter. The Commonwealth has agreed that while your current appeal, *Defend Arlington v. U.S. Dep't of Defense*, No. 24-5026 (D.C. Cir.) is still pending, it will provide 30-days' notice to the Department of the Army before moving the Memorial from the DLA facility. Also, while this appeal is pending, if Virginia informs us that it plans to move the Memorial out of storage, we will promptly notify you of Virginia's plans. These commitments do not apply to any further proceedings after the D.C. Circuit has decided this current appeal, No. 24-5026.

Please reach out to me with any questions.

Respectfully,

/s/ Ezekiel A. Peterson

Ezekiel A. Peterson

U.S. Department of Justice

Environment & Natural Resources Division

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Attachments:

Attachment 1: Memorandum of Understanding Regarding Donation of the Confederate Memorial Previously on Display in Arlington National Cemetery

Attachment 2: Deed of Gift

**MEMORANDUM OF UNDERSTANDING
REGARDING
DONATION OF THE CONFEDERATE MEMORIAL
PREVIOUSLY ON DISPLAY IN
ARLINGTON NATIONAL CEMETERY**

THIS DOCUMENT memorializes the understanding reached between the **DEPARTMENT OF THE ARMY** (hereinafter referred to as "the Army") and the **COMMONWEALTH OF VIRGINIA** (hereinafter referred to as "the Commonwealth").

WITNESSETH:

WHEREAS, pursuant to section 370 of NDAA 2021, and Secretary of Defense Memorandum "Implementation of the Naming Commission's Recommendations," dated October 6, 2022, the Army is authorized by section 2572 of Title 10, U.S. Code, to transfer by gift or loan, without expense to the United States and on terms prescribed by the Secretary of the Army, works of art and historical artifacts not needed by the Army.

WHEREAS, the Commonwealth is eligible to receive a donation under the terms of section 2572 of Title 10, U.S. Code.;

WHEREAS, the Army is to release the donated property, consisting of multiple bronze elements (hereinafter referred to as "the Confederate Memorial"), which property was previously located in Section 16 of Arlington National Cemetery ("ANC") in Arlington, Virginia.

WHEREAS, in furtherance of this agreement, the Army is to execute a Deed of Gift that transfers and conveys all rights to, title to, and interest in the Confederate Memorial to the Commonwealth.

WHEREAS, the Commonwealth is accepting the Confederate Memorial on an "as is / where is" basis and is responsible for all arrangements and costs involved in taking possession of the property, which is currently located in Richmond, Virginia.

WHEREAS, the Army has provided to the Commonwealth the documentation of the disassembly of the Confederate Memorial prepared pursuant to Stipulation III of the Programmatic Agreement (PA) executed for its removal and has afforded the Commonwealth an opportunity to inspect the property prior to execution of this agreement.

WHEREAS, the Commonwealth is to indemnify, save harmless, and defend the Army from and against all claims, demands, action, liabilities, judgments, costs, and attorney's fees arising out of claims on account of, or in any manner predicated upon, personal injury, death, or property

damage caused by or resulting from the Commonwealth's possession or use of the Confederate Memorial.

WHEREAS, the Commonwealth will determine, in a manner consistent with this document, where within the Commonwealth of Virginia to display the Confederate Memorial.

NOW, THEREFORE, all rights to, title to, and interest in the Confederate Memorial are transferred by Deed of Gift, contingent upon the following terms:

1. The Army expressly commits that it will:

a. in consideration for the Commonwealth taking immediate title to the Confederate Memorial, arrange for the temporary storage of the Confederate Memorial in accordance with the PA for a term not to exceed 26 months via a Host-Tenant Support Agreement between the Commonwealth and the Defense Logistics Agency authorizing up to 2000 sq. ft. of storage space at the Defense Supply Center Richmond (DSCR) for the sum to be paid in accordance with the terms and conditions of the Host-Tenant Support Agreement;

b. provide to the Commonwealth virtual access to an ANC qualified preservation professional familiar with the disassembly of the Confederate Memorial to consult remotely on the relocation and reassembly of the property as appropriate;

c. provide appropriate technical requirements for the vehicles required for transportation of the property and support the physical loading of the bronze elements to assist the Commonwealth; and

d. share with the Commonwealth all materials related to the interpretation and contextualization of the Confederate Memorial that may include research, documentation, photographs, and interpretative design content developed by the Army in accordance with Stipulation V.D of the PA to ensure consistent contextualization at both ANC and at the new site within the Commonwealth.

2. The Commonwealth expressly commits that it will not now or in the future:

a. donate, sell, trade, lease, lend, bail, encumber, or cannibalize the property, or dismantle the property for parts;

b. remove the property for use or display outside the Commonwealth;

c. transfer title to the property directly or indirectly;

d. do or allow anything to be done that would contribute to the Confederate Memorial being seized, attached, lost, stolen, damaged, or destroyed; or

e. allow continued display of the Confederate Memorial in a manner that violates this document, including by effectuating removal of the Confederate Memorial from a given display location.

3. The Commonwealth expressly commits that it will:

- a. retain the services of an Historical Architect, Architectural Historian, or Conservator who meets the Secretary of the Interior's Historic Preservation Professional Qualification Standards in their respective discipline who will assist in decision making on the treatment of the Confederate Memorial and consult additional outside experts as needed to ensure appropriate contextualization of the Confederate Memorial;
- b. take physical custody of the Confederate Memorial within 26 months of the execution of this agreement and ensure its appropriate storage until relocated to its new site;
- c. prepare a relocation plan that presents appropriate siting and reassembly of the Confederate Memorial to ensure its continued public access, display, study, and eligibility for listing in the National Register of Historic Places;
- d. implement the relocation plan utilizing qualified contractors with demonstrated experience in the transportation and reassembly of historical structures and monuments;
- e. require locations being considered as possible display sites to have the capacity to meet the following conditions:
 - i. ensure appropriate access control measures and security measures—in order to deter disruptive activities at the Confederate Memorial, and activities that may limit the ability of the public, academia, military researchers, and government historians to view or study the Confederate Memorial;
 - ii. establish appropriate conditions—including visible signage and regular educational programming—to ensure the Confederate Memorial is displayed in a manner compatible with the materials provided in 1d above to ensure consistent contextualization at both ANC and at the new site within the Commonwealth, and
 - iii. ensure the perpetual maintenance and preservation of the relocated and reassembled Confederate Memorial through covenant or easement.

The Commonwealth of Virginia acknowledges that not all risks can be foreseen, and some risks associated with the storage and movement of the Confederate Memorial are unpredictable. The Commonwealth of Virginia expressly assumes all risk of, and responsibility for, physical damage to the Confederate Memorial while the Confederate Memorial remains in temporary storage (as provided for in paragraph 1.a. above) or moved there from following execution of this Agreement. Similarly, the Commonwealth of Virginia expressly assumes all risk of, and responsibility for, liability related to personal injury of Commonwealth employees, contractors, and agents thereof following execution of this Agreement.5. Subject to the terms set forth above, title to the property will be transferred to the Commonwealth upon execution of this document and execution of the Deed of Gift by the Army.

6. Should any one or more of the terms or provisions of this Agreement be deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

7. Nothing in this Agreement is to be deemed (i) a waiver, either express or implied, of the sovereign immunity of the Commonwealth; or (ii) an agreement or consent of the Commonwealth or its officers or employees to any obligation, duty, or requirement that would be *ultra vires*.

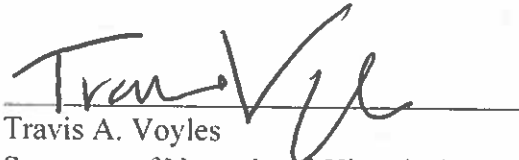
Executed on behalf of the Department of Army, this 30th day of July, 2024



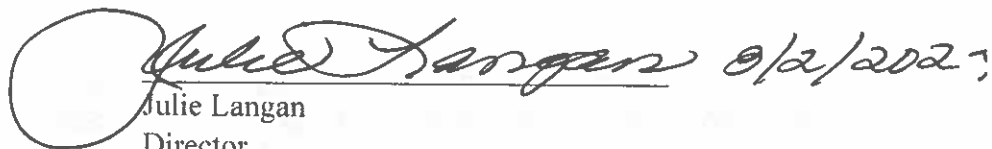
Karen Durham-Aguilera
Executive Director
Army National Military Cemeteries

The Commonwealth of Virginia, through its authorized representative, hereby accepts the Confederate Memorial as agreed upon herein.

Executed on behalf of the Commonwealth of Virginia, this 2nd day of August, 2024.



Travis A. Voyles
Secretary of Natural and Historic Resources
Commonwealth of Virginia



Julie Langan
Director
Virginia Department of Historic Resources
Virginia State Historic Preservation Office

DEED OF GIFT

THIS DEED OF GIFT is made and executed by the Department of the Army ("Army"), represented by the Executive Director, Army National Military Cemeteries

-in favor of-

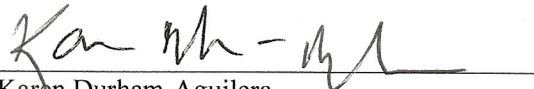
The Commonwealth of Virginia ("Commonwealth"), represented by the Secretary of Natural and Historic Resources.

WITNESSETH:

That in consideration of fulfilling the Army's responsibilities set forth in section 370 of the National Defense Authorization Act of 2021 (establishing the Naming Commission), and in the National Historic Preservation Act of 1966, Title 16, U.S. Code, section 470 *et seq.*, as amended, the Army, pursuant to Title 10, U.S. Code, section 2572, does hereby quitclaim and convey by gift unto the Commonwealth all rights, title, and interest in and to the following described property:

The Confederate Memorial, consisting of various bronze elements, as specifically described in the Naming Commission Final Report to Congress, Part III - Remaining Department of Defense Assets, 2022, which property was previously situated in Arlington National Cemetery in Arlington County, Commonwealth of Virginia.

The Executive Director, Army National Military Cemeteries, Karen Durham-Aguilera, has hereto subscribed herself this 3 day of August, 2024.



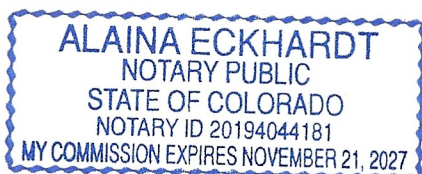
Karen Durham-Aguilera
Executive Director, Army National Military Cemeteries

ACKNOWLEDGMENT

^{Colorado}
Commonwealth of ~~Virginia~~
County of ~~Arlington~~ ^{Pueblo}

^{Colorado} I, Alaina Eckhardt, a Notary Public for the Commonwealth of ~~Virginia~~, do hereby certify that Karen Durham-Aguilera personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 3 day of August, 2024.





Notary Public

My commission expires: November 21, 2027