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Monuments and Memorials in the District of Columbia: Analysis and Options for Proposed Exemptions to the Commemorative Works Act

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Summary

Each Congress, numerous proposals to create new commemorative works (i.e., monuments and memorials) in the District of Columbia are introduced. In evaluating each proposal, Congress considers the subject of the proposed work; whether existing monuments and memorials commemorate similar subjects; and whether the sponsor group has requested an exemption from existing laws that might limit monument and memorial subjects and location within the District of Columbia. This report focuses on options for Congress for three types of exemptions to the Commemorative Works Act (CWA, 40 U.S.C. §§8901-8909): siting works, donor recognition, and the placement and status of museums, which are generally not considered commemorative works.

The CWA was enacted in 1986 to govern all monuments and memorials to be located on federal land in the District of Columbia under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA). Further, the CWA sought to preserve the L'Enfant and McMillian plans for the Capital; ensure continued public use and enjoyment of open spaces; and preserve, protect, and maintain the open space. Pursuant to the CWA, Congress statutorily authorizes a sponsor group to design and build a monument or memorial with the approval of regulatory bodies: the National Capital Planning Commission (NCPC) and the U.S. Commission of Fine Arts (CFA). Additionally, the National Capital Memorial Advisory Commission (NCMAC) was created to advise Congress, the Secretary of the Interior, and the Administrator of General Services on the commemorative works process. Unless otherwise stated in law, the sponsor group is responsible for funding the memorial without the use of federal funds.

Since CWA's enactment, 28 commemorative works have been authorized, and numerous others have been proposed. Among the authorized and proposed works, several sponsor groups have sought—and some have received—exemptions from certain CWA provisions.

The CWA divides the District of Columbia into three areas for the siting of monuments and memorials: an area where new commemorative works are prohibited (the Reserve), an area that requires congressional authorization (Area I), and all other NPS or GSA land (Area II). Some sponsor groups have been granted exemptions for siting monuments and memorials, and others have been approved to add new elements to existing commemorative works.

With limited exceptions, legislation authorizing new monuments and memorials prohibits the use of federal funds to design and build them. Therefore, sponsor groups must raise the necessary funds from donors. Sponsor groups, however, are also statutorily prohibited from recognizing their donors at the commemorative works' sites. Sponsor groups have sought individual exemptions from these provisions (P.L. 113-21 granted an exemption for the Vietnam Veterans Memorial Visitor Center) and have proposed to amend the CWA to allow recognition at all memorials (see H.R. 2395, 113th Congress).

The CWA also prohibits the siting of museums on NPS- or GSA-administered land in the District of Columbia. In 2003, however, Congress provided an exemption to the National Museum of African American History and Culture. The granting of this exemption arguably suggests that Congress believes the CWA applies to museums at any District location, if they are located on NPS- or GSA-administered land. This application of the CWA to a museum would be in contrast to the specific CWA prohibition against the placement of a museum in Area I or East Potomac Park.

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Introduction

In 1986, the Commemorative Works Act (CWA) was enacted to guide the memorial and monument creation and siting process in the District of Columbia on land under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA).¹ As the statute specifies, the CWA was enacted

(1) to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital;

(2) to ensure the continued public use and enjoyment of open space in the District of Columbia and its environs, and to encourage the location of commemorative works within the urban fabric of the District of Columbia;

(3) to preserve, protect and maintain the limited amount of open space available to residents of, and visitors to, the Nation's Capital; and

(4) to ensure that future commemorative works in areas administered by the National Park Service and the Administrator of General Services in the District of Columbia and its environs-

(A) are appropriately designed, constructed, and located; and

(B) reflect a consensus of the lasting national significance of the subjects involved.²

Pursuant to the CWA, Congress authorizes a sponsor group (i.e., an organization, often a tax-exempt organization, advocating for the creation of the new work) to design and build a monument or memorial in the District of Columbia, without the use of federal funds. Congress contemplates issues of CWA interpretation, enforcement, and the possible setting of precedent when considering potential new commemorative works.

This report addresses three types of exemptions from the CWA that have been previously granted or proposed. These are memorial siting, including the addition of new elements to existing commemorative works; allowing donor recognition at commemorative works sites; and the siting of new museums within the statutorily defined commemorative works areas—where they would otherwise be prohibited pursuant to the CWA. Each exemption has been discussed in legislative proposals, at congressional hearings, or by one of the federal agencies charged with review and approval of commemorative works: the National Capital Planning Commission (NCPC) and the U.S. Commission of Fine Arts (CFA). Additionally, the National Capital Memorial Advisory Commission (NCMAC) provides Congress, the Secretary of the Interior, and the Administrator of General Services with policy and procedures advice for establishing monuments and memorials.³ For each exemption, this report discusses the exemption and discusses policy considerations.

¹ 40 U.S.C. §§8901-8909. For more information on the Commemorative Works Act, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

² 40 U.S.C. §8901.

³ The National Capital Memorial Advisory Commission (NCMAC) was authorized by the CWA to provide Congress and the Secretary of the Interior and the Administrator of General Services, as appropriate, with advice on “policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its (continued...)”

Since the CWA's enactment, 28 commemorative works have been authorized, and numerous others have been proposed.⁴ For the authorized and proposed monuments and memorials, several sponsor groups have sought—and some have received—exemptions from certain provisions of the CWA. The most common exemption requests are from provisions involving the siting of new memorials and the prohibition against donor recognition at commemorative works sites. The status and placement of museums under the CWA has also been discussed after the National Museum of African American History and Culture was granted an exemption from the CWA.

Since its enactment, the CWA has been substantively amended twice. First, during the 103rd Congress (1993-1994), the CWA was amended to extend the time for monument and memorial completion from five to seven years and to make technical corrections to the act.⁵ Second, the CWA was amended during the 108th Congress (2003-2004), to limit the placement of monuments and memorials on the National Mall and designate three distinct areas within the District of Columbia for monument and memorial construction.⁶ They and their boundaries are noted below.

- The Reserve is “the great cross-axis of the Mall, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial.”⁷
- Area I is reserved for commemorative works of “preeminent historical and lasting significance to the United States,”⁸ and roughly bounded by the West Front of the Capitol; Pennsylvania Avenue, N.W. (between 1st and 15th Streets, N.W.); Lafayette Square; 17th Street, N.W. (between H Street and Constitution Avenue); Constitution Avenue, N.W. (between 17th and 23rd Streets); the John F. Kennedy Center for the Performing Arts waterfront area; Theodore Roosevelt Island; National Park Service land in Virginia surrounding the George Washington Memorial Parkway; the 14th Street Bridge area; and Maryland Avenue, S.W., from Maine Avenue, S.W., to Independence Avenue S.W., at the United States Botanic Garden. An act of Congress is required for Area I placement.⁹

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environs....” 40 U.S.C. §8904(c).

⁴ For a complete list of authorized commemorative works and their status, see CRS Report R42128, *Monuments and Memorials Authorized Under the Commemorative Works Act in the District of Columbia: Background and Current Developments*, by Jacob R. Straus.

⁵ P.L. 103-321, 108 Stat. 1793, August 26, 1994. The technical corrections provided changes to the National Capital Memorial Commission, including restoring a previously deleted provision that “directed the Secretary of the Interior and the Administrator of the General Services Administration to develop fundraising standards and to suspend a group’s fundraising authority if the Secretary or Administrator ...determined that the group’s fundraising activities were not in compliance with those standards.” For more information, see U.S. Congress, Senate Committee on Energy and Natural Resources, *Commemorative Works Act Amendments*, report to accompany H.R. 2947, 103rd Cong., 2nd sess., April 5, 1994, S.Rept. 103-247 (Washington: GPO, 1994), p. 3.

⁶ “Authorizing Design and Construction of Visitor Center for the Vietnam Veterans Memorial,” *Congressional Record*, daily edition, vol. 149 (November 5, 2003), p. S14075.

⁷ 40 U.S.C. §8902.

⁸ 40 U.S.C. §8908(b)(1).

⁹ 40 U.S.C. §8908(b)(1). For more information see, CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

- Area II is reserved for “subjects of lasting historical significance to the American people,”¹⁰ and encompassing all sections of the District of Columbia and its environs not part of the Reserve or Area I.

The area of the Reserve is considered “a substantially completed work of civic art,”¹¹ and within the Reserve, “to preserve the integrity of the Mall ... the siting of new commemorative works is prohibited.”¹² Additionally, the placement of museums and visitors centers in the Reserve is also prohibited under the CWA.¹³

Since the creation of the Reserve in 2003, the CWA has only been amended to make technical changes.¹⁴

Siting Commemorative Works

All commemorative works legislation must authorize a sponsor group to raise funds to design and build a monument or memorial. Many sponsor groups would like to place their proposed commemorative works on unoccupied land on or near the National Mall or add an element to an existing monument or memorial.

The CWA, however, contains provisions that prohibit the siting of new monuments and memorials around the National Mall; considers monuments and memorials, once dedicated, to be completed; and protects existing works from further additions or intrusions by other memorials.¹⁵

A commemorative work shall be located so that - (A) it does not interfere with, or encroach on, an existing commemorative work; and (B) to the maximum extent practicable, it protects open space, existing public use, and cultural and natural resources.¹⁶

Regardless of the CWA provisions against siting new commemorative works in the Reserve and prohibiting the placement of new elements at existing monuments and memorials, sponsor groups continue to request exemptions from these requirements.

Current Site Location Process

To guide the site selection process, the CWA created a two-step approach. First, following congressional authorization of a monument or memorial, the sponsor group works with the NPS, NCMAC, NCPC, and CFA to determine which area of Washington, DC, would be the most appropriate location for the monument or memorial.¹⁷

¹⁰ 40 U.S.C. §8908(b)(2).

¹¹ P.L. 108-126, §202(a), 117 Stat. 1348, November 17, 2003.

¹² P.L. 108-126, §202(a); and 40 U.S.C. §8908(c).

¹³ 40 U.S.C. §8905(b)(5); and 40 U.S.C. §8908(c).

¹⁴ P.L. 111-11, §7116(e), 123 Stat. 1203, March 30, 2009.

¹⁵ 40 U.S.C. §8906(a).

¹⁶ *Ibid.*

¹⁷ 40 U.S.C. §8905(a). This section states that “The National Capital Planning Commission and the Commission of Fine Arts may develop such criteria or guidelines specific to each site that are mutually agreed upon to ensure that the (continued...)”

As part of this initial site selection process, the sponsor group may request, of the Secretary of the Interior or the Administrator of General Services, that the monument or memorial be placed in Area I. Following this request, the Secretary or Administrator determines whether the memorial is of “preeminent historical and lasting significance to the United States.”¹⁸ If the Secretary or Administrator determines that an Area I site location is warranted, he or she notifies, in writing, the National Memorial Advisory Committee, the House Committee on Natural Resources, and the Senate Committee on Energy and Natural Resources.¹⁹

Second, to place a memorial within Area I, an act of Congress approving the Secretary or Administrator’s recommendation is required within 150 calendar days. Should the Secretary or Administrator not recommend placement in Area I or Congress not act upon the recommendation, the memorial can be placed in Area II without further action.²⁰

Some commemorative works legislation has included provisions that would potentially bypass the current commemorative works process and directly designate a site, providing an exemption from the building prohibition within the Reserve. For example, H.R. 222 (113th Congress), as introduced, would authorize a World War I Memorial in the District of Columbia. In addition to authorizing the World War I Memorial Foundation to establish a commemorative work, the bill would exempt the memorial from the CWA prohibition against placement in the Reserve.²¹

Further, other legislation would authorize the placement of a new element at the site of an existing commemorative works. For example, H.R. 2175 and S. 1044 (113th Congress), as introduced, would authorize the placement of a plaque with the text of President Franklin D. Roosevelt’s D-Day prayer within the area of the World War II Memorial.²²

Encroachment on Existing Works

Congressional intent on what constitutes interference with or encroachment on existing commemorative works is not clear. Between the passage of the CWA in 1986 and the 105th

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design of the commemorative work carries out the purposes of this chapter.” Also, see 40 U.S.C. §8905(b)(6).

¹⁸ 40 USC §8908(b)(1). Adopted in 1987, and updated in 2006, the National Park Service’s 24-step outline of the commemorative work process outlines the site selection process. For more information, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus; and National Capital Planning Commission, “Steps for Establishing a Memorial in the Nation’s Capital,” *Memorials and Museums Master Plan*, September 2001, updated 2006, at http://www.npc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan_PartThree.pdf, pp. 167-168.

¹⁹ Ibid.

²⁰ 40 U.S.C. §8908(b)(2).

²¹ H.R. 222 (113th Congress), introduced January 14, 2013.

²² H.R. 2175 (113th Congress), introduced May 23, 2013; and S. 1044 (113th Congress), introduced May 23, 2013. Additionally, in the 112th Congress, H.R. 2070 passed the House, and the Senate Committee on Energy and Natural Resources held a hearing on S. 3078. For more information on H.R. 2070, see “World War II Memorial Prayer Act of 2011,” House debate, *Congressional Record*, vol. 158 (January 24, 2012), pp. H131-H132; and U.S. Congress, House Committee on Natural Resources, *World War II Memorial Prayer Act of 2013*, report to accompany H.R. 2070, 112th Cong., 2nd sess., H.Rept. 112-368, (Washington: GPO, 2012). For more information on S. 3078, see U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, *National Parks Legislation*, hearing on S. 1897, S. 2158, S. 2229, S. 2267, S. 2272, S. 2273, S. 2286, S. 2316, S. 2372, S. 3078, and S. 3300, 112th Cong., 2nd sess., S. Hrg. 112-578 (Washington: GPO, 2012).

Congress (1997-1998), Congress did not authorize the addition of any new elements at existing commemorative works sites. Since the 106th Congress (1999-2000), Congress has authorized three new elements to be added at existing monuments and memorials:

- a plaque to veterans who died as a result of service during the Vietnam War at the Vietnam Veterans Memorial;²³
- a plaque commemorating Reverend Dr. Martin Luther King Jr.'s "I Have a Dream" speech at the Lincoln Memorial;²⁴ and
- a plaque to honor Senator Robert J. Dole's leadership "in making the [World War II] Memorial a reality on the National Mall...."²⁵

Additionally, in previous Congresses, legislation to add supplementary elements to existing commemorative works was introduced, but not enacted. For example, in the 111th Congress (2009-2010), House and Senate companion proposals were introduced to rededicate and rename the District of Columbia War Memorial as the "National and District World War I Memorial,"²⁶ and add "an appropriate sculptural or other commemorative element, which shall complement and preserve the existing memorial and its landscape...."²⁷ Neither bill was voted on by the House or Senate.

Analysis and Options for Congress

Pursuant to the site selection process, most legislation authorizing commemorative works neither includes specific location references nor authorizes the addition of new elements to existing monuments or memorials. Instead, site selection is generally left to the sponsor group in consultation with the NPS, NCMAC, NCPC, and CFA—followed by an act of Congress, when necessary.

Further, because the CWA requires that new monuments and memorials be sited to avoid interference with or encroachment on existing works,²⁸ allowing the placement of additional elements at existing works generally requires an exemption from Congress. CWA provisions prohibiting encroachment are intended not only to protect existing commemorative works, but also to ensure that newly authorized works can be considered as "stand-alone" commemorations. Congress, however, has authorized new elements to existing monuments and memorials, and additional legislation has been introduced that would further that practice.

²³ P.L. 106-214, 114 Stat. 335, June 15, 2000.

²⁴ P.L. 106-365, 114 Stat. 1409, October 27, 2000.

²⁵ P.L. 111-88, §128, 123 Stat. 2933, October 30, 2009. While the Dole plaque was an addition to a completed commemorative work, it was authorized outside the Commemorative Works Act process.

²⁶ H.R. 482, §3 (111th Congress), introduced January 1, 2009; and S. 2097 (111th Congress), introduced October 29, 2009. The Senate Committee on Energy and Natural Resources, Subcommittee on National Parks held a hearing on S. 2097 on December 3, 2009. U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, *National Parks Legislation*, Hearing on S. 760, S. 1838, S. 2097, S. 2722, S. 2726, S. 2738, H.R. 1849, and H.R. 2689, 111th Cong., 1st sess., December 3, 2009, S.Hrg. 111-318 (Washington: GPO, 2010).

²⁷ H.R. 482, §3(2) (111th Congress) and S. 2097, §3(2) (111th Congress).

²⁸ 40 U.S.C. §8905(b)(2).

Should Congress decide to become more involved in the site selection process or provide supplementary guidance on the addition of new elements to existing monuments or memorials, several options exist.²⁹ These include amending the CWA, granting individual exemptions, or retaining the existing commemorative works process.

Commemorative Works Act Amendment

If Congress desires more statutory involvement in the monument and memorial site selection process, or if Congress wants to allow the addition of new elements to existing commemorative works, the CWA could be amended to require an act of Congress for the siting of all commemorative works—not just in Area I—or to remove the statutory prohibition against adding new elements or features to existing commemorative works.

Siting Commemorative Works

Currently, the CWA contemplates formal congressional intervention only if the Secretary of the Interior or Administrator of General Services recommends a monument or memorial be sited in Area I. Congress could amend the CWA to require congressional action for siting in Area II. Such an amendment could serve to involve Congress further in the approval of all monument and memorial sites, not just ones to be placed in Area I.

Additionally, in instances where Congress has accepted the Secretary or Administrator's recommendation for monument or memorial placement in Area I, the accompanying legislation has specified the placement in Area I. However, it has not provided for a specific site location within the broader area.³⁰ Future site authorizations could contain more specific information about the monument's or memorial's location, thus granting statutory approval for a specific (instead of general) site location. Historically, the exact site location has been left up to the sponsor group in consultation with the federal planning agencies in the District of Columbia.

Adding New Elements to Existing Commemorative Works

Removing the statutory prohibition against adding new elements to existing commemorative works would potentially allow sponsor groups to commemorate an event or group further in a manner not contemplated by the original memorial design. For instance, the addition of the plaque to the Vietnam Veterans Memorial site was seen as an opportunity to memorialize a group that was not contemplated when the Vietnam Veterans Memorial was first authorized.³¹

²⁹ For more information on the legislative history of the Commemorative Works Act, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

³⁰ For example, the joint resolution approving the location of the Vietnam Women's Memorial stated: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the location of a commemorative work to honor women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era, authorized by the Act approved November 15, 1988 (102 Stat. 3922), in the area described in the Act approved November 14, 1986 (100 Stat. 3650), as area I, is hereby approved." P.L. 101-187, 103 Stat. 1350, November 28, 1989.

³¹ P.L. 106-214, 114 Stat. 335, June 15, 2000 added a plaque to Vietnam Veterans Memorial (P.L. 96-297, 94 Stat. 827, July 1, 1980). For more information and a picture of the Veterans Who Died as a Result of Service in the Vietnam War Plaque, see CRS Report R42128, *Monuments and Memorials Authorized Under the Commemorative Works Act in the District of Columbia: Background and Current Developments*, by Jacob R. Straus; or Vietnam Veterans Memorial (continued...)

Amending the CWA to allow additional elements to be placed at existing commemorative works could change the nature of commemoration in the District of Columbia. Instead of each monument or memorial being considered a completed work of art upon dedication, potential additions could be included on an individual basis. Adding such elements after the original work is completed, however, could change the intended nature or scope of the monument or memorial. Additionally, NCPC and CFA might have to place limitations on the design of future additions to ensure that the new element complements the original design.

Individual Exemptions

Should Congress choose to be involved in the site selection process for some—but not all—commemorative works, or allow additions to specific monuments or memorials, it may recall that past individual authorization statutes have contained exemptions from the CWA.

Siting Commemorative Works

Congress has previously granted exemptions from the CWA to site monuments or memorials at specific locations.³² Should Congress decide that direct site designation is appropriate for future commemorative works, it could include that designation in the authorization legislation. This specific site location information could be included in either the original statutory language or subsequent legislation authorizing an Area I site location.

Providing an individual exemption to the siting clause of the CWA allows Congress to be involved, when necessary, in siting a monument or memorial. For all other authorized monuments and memorials, the current site selection process would continue to operate. Granting individual exemptions to some groups and not others, however, would likely require Congress to continue to decide when an exemption is appropriate.

Adding New Elements to Existing Commemorative Works

When Congress determines that additions to existing commemorative works are desirable, individual exemptions can continue to be granted on a case-by-case basis. Separate examination of each proposed additional element would continue the past practice of congressional review of such proposals. Moreover, the original sponsor group could be consulted to determine if such additions are consistent with the monument's or memorial's original purpose.

Creating individual exemptions to 40 U.S.C. Section 8905(b)(2) could undermine the commemorative works planning processes that ensure a monument or memorial is reviewed for site location, design, fundraising, construction, and perpetual maintenance. Additionally, since the

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Fund, "In Memory Plaque," at <http://www.vvmf.org/InMemoryPlaque>. The Vietnam Veterans Memorial was originally conceived as a memorial "... to American men and women who served and died in the Vietnam War. For more information, see U.S. Congress, Senate Committee on Energy and Natural Resources, *Vietnam Veterans Memorial*, report to accompany S.J.Res. 119, 96th Cong., 2nd sess., April 24, 1980, S.Rept. 96-663 (Washington: GPO, 1980), p. 2.

³² For example, when Congress authorized the plaque to commemorate the Reverend Dr. Martin Luther King Jr.'s "I Have a Dream Speech," it specified that the plaque be placed "in the area of the Lincoln Memorial." P.L. 106-365, 114 Stat. 1409, October 27, 2000.

design of completed commemorative works has been approved by the NCPC and CFA, adding more elements could compromise the original monument or memorial's design and could require renewed review of the work's design.

Continue Current Site Selection Process

Instead of amending the CWA or providing individual exemptions for certain monuments or memorials, Congress could stop allowing new monuments and memorials to be sited in Area I and deny requests to add new elements to existing commemorative works.

Siting Commemorative Works

Continuing the current site selection process would allow the federal planning agencies to guide sponsor groups through this process. Additionally, since the NCPC approves of planning throughout the National Capital Region³³ and the CFA approves of public art work design and location,³⁴ these entities can provide a holistic view of monument and memorial placement.

Maintaining the status quo for site selection, however, might not stop individual memorial sponsor groups from requesting that Congress provide exemptions to locate monuments or memorials on specific sites. Such requests could still be considered on an individual basis. Alternately, chamber or committee rules could be written to prohibit the consideration of monument or memorial legislation that includes a specific site location.³⁵

Adding New Elements to Existing Commemorative Works

Instead of providing individual exemptions for additions to existing commemorative works, Congress could choose to prohibit these additions. Since commemorative works are considered to be complete upon dedication, a new element added to a completed monument or memorial has been interpreted by some as a new commemorative work. As an example of a congressional prohibition, the House Committee on Interior and Insular Affairs, in its report to accompany the

³³ The National Capital Region includes the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities in Maryland and Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed above [40 U.S.C. §8702].

³⁴ 40 U.S.C. §8711; and 40 U.S.C. §§9101-9104.

³⁵ A comparable prohibition exists in the House of Representatives for commemorative legislation that includes a specific period of time. House Rule XII, clause 5 states: "(a) A bill or resolution, or amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration. (b) In this clause the term 'commemoration' means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time." U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Twelfth Congress*, 111th Cong., 2nd sess., H.Doc. 111-157 (Washington: GPO, 2011), §823, pp. 616-617. Similarly, the Senate Committee on Environment and Public Works rule prohibits the consideration of legislation naming a public facility after living and most former Members of Congress. Committee Rule 7(d) states: "(d) NAMING PUBLIC FACILITIES: The committee may not name a building, structure or facility for any living person, except former Presidents or former Vice Presidents of the United States, former Members of Congress over 70 years of age, former Justices of the United States Supreme Court over 70 years of age, or Federal judges who are fully retired and over 75 years of age or have taken senior status and are over 75 years of age." U.S. Congress, Senate, Committee on Environment and Public Works, *Committee Rules*, 113th Cong., 1st sess., at <http://www.epw.senate.gov/public/index.cfm?FuseAction=CommitteeResources.CommitteeRules&CFID=49269558&CFTOKEN=20594227>.

CWA in 1986, specifically discussed its intention that new commemorative works not encroach on open space or other monuments and memorials.

The Committee intends that consideration of site alternatives shall be inclusive of the following: possible conflicts with other activities at that site, the visual impact of the commemorative work on adjacent commemorative works, and the effect on the adjacent parking, transportation, and existing open space.³⁶

Further, the committee reiterated that the “commemorative work shall be located to prevent interference with or encroachment upon any existing commemorative work and to protect open space in a manner compatible with existing public use.”³⁷

Continuing to prohibit the addition of elements to existing commemorative works, however, would probably not stop interested groups from proposing memorial additions in restricted areas. Should Congress continue to prohibit additions, proposals to add elements would likely be treated as proposals for new commemorative works and would, if authorized, require new site locations. Additionally, authorizing new commemorative works with related or substantially similar topics could create confusion as to the status of each memorial. Under this scenario, more than one monument or memorial to a war, event, or individual could be authorized. Duplicative monuments or memorials could detract from existing commemorative works.

Donor Recognition

Historically, commemorative works can be expensive.³⁸ Additionally, sponsor groups are often statutorily prohibited from using federal funds to design, construct, or dedicate the monuments or memorials.³⁹ Consequently, to raise the necessary funds, groups sometimes turn not only to the general public for donations, but also to corporations and foundations. Occasionally, contributors—especially corporate and foundation donors—request recognition for donation.

³⁶ U.S. Congress, House Committee on Interior and Insular Affairs, *Governing the Establishment of Commemorative Works within the National Capital Region of the National Park System, and for Other Purposes*, report to accompany H.R. 4378, 99th Cong., 2nd sess., May 5, 1986, H.Rept. 99-574 (Washington: GPO, 1986), p. 6. The Senate Committee on Energy and Natural Resources expressed similar sentiments in its report on H.R. 4378. See, U.S. Congress, Senate Committee on Energy and Natural Resources, *The Placement of Commemorative Works on Federal Lands in the District of Columbia and Its Environs*, report to accompany H.R. 4378, 99th Cong., 2nd sess., August 15, 1986, S.Rept. 99-421 (Washington: GPO, 1986), p. 9.

³⁷ Ibid.

³⁸ Two recent memorials had construction costs in excess of \$50 million. The World War II Memorial (P.L. 103-32) had total construction costs of \$66.4 million. According to the sponsor group, the American Battle Monuments Commission (ABMC), the total cost for the World War II Memorial project, including site selection, memorial design, fundraising, administration, and dedication, was approximately \$182 million. Similarly, the National Park Service reports, based on the 10% of memorial construction costs collected pursuant to 40 U.S.C. §8906(b)(1), that the Martin Luther King Jr., Memorial Project Foundation spent approximately \$55.2 million on construction of the Reverend Dr. Martin Luther King Jr. Memorial (P.L. 104-333). Further, The Martin Luther King, Jr., Memorial Project Foundation, Inc., has a goal to raise \$120 million for the memorial (Martin Luther King, Jr., Memorial Project Foundation Inc., “Washington, D.C. Martin Luther King, Jr., National Memorial,” <http://www.mlkmemorial.org>).

³⁹ For example, P.L. 112-239 §2859, 126 Stat. 2164, January 2, 2013, authorizes the Gold Star Mothers National Monument Foundation to establish a commemorative work in the District of Columbia. Pursuant to this law, the Gold Star Mothers National Monument Foundation is explicitly prohibited from using federal funds to design or build the memorial. Therefore, the foundation is required to raise all money necessary to “establish” the commemorative work.

Whether groups sponsoring monuments and memorials are allowed to recognize donations could affect the sponsor groups' ability to raise the necessary funds.⁴⁰

Donor recognition for monuments and memorials can generally be divided into two categories: on-site and off-site donor recognition. On-site donor recognition is the acknowledgment of contributions—either permanent or temporary—at the location of a monument or memorial. Off-site donor recognition is the acknowledgement of contributions in a manner that does not involve the monument or memorial location. This recognition can include, but is not limited to, thank you letters, awards, publicity, press conferences, mementos, and online acknowledgment.⁴¹ Additionally, policies on recognizing donations differ for works authorized under the Commemorative Works Act (CWA) and for non-CWA monuments and memorials.

Donor Recognition for Commemorative Works in the District of Columbia

The CWA prohibits the recognition of donations for monuments and memorials in the District of Columbia. Pursuant to the CWA,

Donor contributions to commemorative works shall not be acknowledged in any manner as part of the commemorative work or its site.⁴²

Consequently, money donated to assist in the design, construction, or dedication of a monument or memorial in the District of Columbia cannot be recognized at the work's site. Off-site donor recognition has generally been interpreted as acceptable.

The prohibition against the recognition or acknowledgement of donors was statutorily established in 2003, with the passage of P.L. 108-126, the Vietnam Veterans Memorial Visitor Center Act, which also amended the Commemorative Works Act.⁴³ Prior to the enactment of P.L. 108-126, the restrictions on donor recognition had long been a policy of the National Capital Planning Commission (NCPC). The NCPC policy, approved on December 1, 1988, provides that the commission “will not approve donor or sponsor acknowledgements which intrude on the integrity

⁴⁰ In his testimony before the House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, Jan Scruggs, president and founder of the Vietnam Veterans Memorial Fund, articulated why donor recognition is essential to raising sufficient money toward building the Vietnam Veterans Memorial Visitor Center. See Testimony of Jan D. Scruggs, president, Vietnam Veterans Memorial Fund, U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulations, *Hearing on H.R. 588, H.R. 716, and H.R. 819*, 113th Cong., 1st sess., p. 2, at <http://naturalresources.house.gov/uploadedfiles/scruggstestimony03-14-13.pdf>.

⁴¹ U.S. Department of the Interior, National Park Service, *Director's Order #21: Donations and Fundraising*, July 11, 2008, pp. 20-21, at <http://www.nps.gov/policy/Dorders/DO21-reissue.pdf>.

⁴² 40 U.S.C. §8905(b)(7).

⁴³ P.L. 108-126, 117 Stat. 1353, November 17, 2003.

of the particular project or its environs.”⁴⁴ The NCPD policy emphasizes that donor recognition might be necessary, but should not be a permanent part of a memorial site.⁴⁵

Donor Recognition for Non-Commemorative Works

The National Park Service also has several policies in place for donor recognition in units outside the National Capital Region and for non-CWA monuments and memorials in the District of Columbia. The National Park Service *Director’s Order #21: Donations and Fundraising*, Section 10.2, “In-Park Recognition,” contemplates the inclusion of a “credit line or statement of appreciation.” A credit line is defined as “a short, discrete, unobtrusive statement expressing appreciation typically found at the end of the material or item, or on a donor recognition plaque.”⁴⁶ Further, the *Director’s Order* requires “that parks be free of commercialism, advertising and marketing slogans and taglines may not appear under any circumstances.”⁴⁷

Similarly, the National Mall and Memorials Parks Donor Recognition Plan, adopted in 2011, provides “that donor recognition must be located on the interior of a facility, must be temporary and non-structural, must not detract from the visitor experience, and must not be affixed to historic structures or museum collections, benches, park furnishings, bricks or plantings.”⁴⁸ Additionally, the plan requires that donor recognition may take place only for gifts over \$1 million.⁴⁹

Analysis and Options for Congress

Generally, the CWA prohibition against donor recognition has been interpreted as a complete ban against acknowledging donors in a monument’s or memorial’s outdoor space⁵⁰ to protect memorial sites from recognition that could “detract from the memorial’s design, historic setting, and narrative.”⁵¹ Should Congress decide to address donor recognition for commemorative works

⁴⁴ National Capital Planning Commission, “Policies Relating to the Recognition of Private Contributions to Memorials, Museums, and Other Cultural Facilities on Public Lands in the National Capital,” NCPD File No. 2904, at <http://www.ncpc.gov/ncpc/Main%28T2%29/ProjectReview%28Tr2%29/ProjectReview%28Tr3%29/ProjectReview%28Tr4%29/LDoc/RecPvtContPolicy.pdf>.

⁴⁵ Ibid.

⁴⁶ U.S. Department of the Interior, National Park Service, *Director’s Order #21: Donations and Fundraising*, July 11, 2008, p. 21, at <http://www.nps.gov/policy/Dorders/DO21-reissue.pdf>.

⁴⁷ Ibid.

⁴⁸ Testimony of Associate Director, National Resource Stewardship and Science, National Park Service, Department of the Interior Herbert C. Frost, in U.S. Congress, House, Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Legislative Hearing on H.R. 588, H.R. 716, and H.R. 819*, 113th Cong., 1st sess., March 14, 2013, p. 2, at <http://www.nps.gov/legal/testimony/113th/HR%20588%20VVMC%20Donor%20Recognition%203-14-2013%20DOI%20Final.pdf>.

⁴⁹ Ibid., See also, U.S. Department of the Interior, National Park Service, *National Mall and Memorial Parks Donor Recognition Plan*, May 25, 2011.

⁵⁰ Letter from Peter May, chair, National Capital Memorial Advisory Commission, to Representative Doc Hastings, chair, House Committee on Natural Resources, December 20, 2012, <http://parkplanning.nps.gov/showFile.cfm?projectID=44217&docType=public&MIMEType=application%252Fpdf&filename=Hastings%5FHFR6291%5FNCMAC%5FReport%5F122012%2Epdf&clientFilename=Hastings%5FHFR6291%5FNCMAC%5FReport%5F122012%2Epdf>.

⁵¹ Testimony of Associate Director, National Resource Stewardship and Science, National Park Service, Department of the Interior Herbert C. Frost, in U.S. Congress, House, Committee on Natural Resources, Subcommittee on Public (continued...)

in the District of Columbia, several options exist. These include amending the CWA, providing a one-time exemption for individual monuments and memorials, or continuing to prohibit donor recognition.

Commemorative Works Act Amendment

To allow for all future monuments and memorials to recognize donors, Congress could amend the CWA to alter or delete 40 U.S.C. Section 8905(b)(7). An amendment to 40 U.S.C. Section 8905(b)(7) could include specific language providing for acceptable and unacceptable forms of recognition, or it could require that regulations be promulgated by the Secretary of the Interior or Administrator of GSA to guide the donor recognition process.

Amending the CWA to allow for some donor recognition was contemplated by Dr. Hebert C. Frost, associate director, Natural Resource Stewardship and Science, National Park Service, during his testimony before the House Natural Resources Committee's Subcommittee on Public Lands and Environmental Regulation on March 14, 2013. He stated,

To promote a uniform process for all memorials sponsors and to ensure a strong design review, a change of guidance related to donor recognition should be carefully considered more broadly for all memorials under the CWA rather than by individual memorial exception.⁵²

Dr. Frost further suggested that guidelines created pursuant to an amendment should conform to current donor recognition guidance for non-District of Columbia national parks.⁵³

Should donor recognition or acknowledgement be allowed for commemorative works in the District of Columbia, the *Director's Order* provides a possible way to recognize donors. By placing a small item or plaque, unadorned with corporate logos or slogans, at the memorial site, donors could be recognized for their support of the memorial effort. Alternatively, Congress could amend the CWA to delegate decision-making authority for individual monuments and memorials to another entity such as the NCPC or NPS. The agency could then promulgate rules or regulations on when donor recognition would be appropriate and provide guidance on its form.

Individual Exemptions

As an alternative to a comprehensive amendment to the CWA, Congress could create individual exemptions for each monument or memorial. Individual exemptions would allow certain monuments and memorials to recognize donors and could allow Congress to set the terms of such acknowledgements. Providing for individual exemptions could allow for consideration of each

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Lands and Environmental Regulation, *Legislative Hearing on H.R. 588, H.R. 716, and H.R. 819*, 113th Cong., 1st sess., March 14, 2013, p. 1, at <http://www.nps.gov/legal/testimony/113th/HR%20588%20VVMC%20Donor%20Recognition%203-14-2013%20DOI%20Final.pdf>.

⁵² Ibid.

⁵³ Current guidance that covers the national parks generally includes the National Park Service *Director's Order #21* and the National Park Service Management Policies. Further, the National Mall and Memorial Parks Donor Recognition Plan, adopted in 2011, covers non-commemorative works monuments and memorials in the District of Columbia.

memorial's subject, location, and scope in deciding how recognition would take place. In this scenario, it is possible that monuments and memorials that consist of only a statue could be treated differently from those that are larger in scale and include a bookstore or visitors center. On July 18, 2013, P.L. 113-21 was enacted. The law provides an individual exemption to the CWA prohibition on donor recognition to the Vietnam Veterans Memorial Visitor Center.⁵⁴

Continue Donor Recognition Prohibition

Congress could also continue to prohibit donor recognition at monuments and memorials covered by the CWA. The prohibition on donor recognition was created to avoid donor names competing with memorial subjects. Allowing donor recognition arguably could impinge on the memorial and shift the emphasis to the donors.

Additionally, some donor names may change. Changes may provide a challenge should donor names be engraved, etched, or otherwise included as a permanent part of a memorial design. Subsequently, the NCPC policy and CWA prohibition currently ban donor recognition or acknowledgement to preserve the memorial landscape and avoid visibly altering or competing with the memorial subject of the commemorative work. This sentiment is also included in the *Director's Order #21*, which states that “[d]onor recognition should not be proposed in park areas if it would compete for attention with, or attract attention away from, the purpose for which the park was created.”⁵⁵ Continuing to prohibit donor recognition, however, would likely not assist sponsor groups in receiving donations from foundations and corporations, thus making it potentially more difficult to raise the necessary funds for commemorative works.

Museums and the CWA

In 1846, Congress accepted James Smithson's gift to create the Smithsonian Institution.⁵⁶ Since then, the Smithsonian has expanded to include 17 museums in the District of Columbia, most of which are located on or adjacent to the National Mall.⁵⁷ In recent years, Congress has authorized

⁵⁴ P.L. 113-21, §2, July 18, 2013.

⁵⁵ U.S. Department of the Interior, National Park Service, *Director's Order #21: Donations and Fundraising*, July 11, 2008, p. 21, at <http://www.nps.gov/policy/Dorders/DO21-reissue.pdf>.

⁵⁶ 9 Stat. 102, ch. 178, August 10, 1846. Upon his death in 1829, James Smithson—a British scientist—bequeathed his fortune to the United States (Paul H. Oehser, *The Smithsonian Institution* (New York: Praeger Publishers, 1970), p. 15). In December 1835, President Andrew Jackson notified Congress of Mr. Smithson's bequest. In his message, President Jackson wrote: “I transmit to Congress a report from the Secretary of State, accompanying copies of certain papers relating to a bequest to the United States by Mr. James Smithson, of London, for the purpose of founding ‘at Washington an establishment under the name of the Smithsonian Institution, for the increase and diffusion of knowledge among men.’ The Executive having no authority to take any steps for accepting the trust and obtaining the funds, the papers are communicated with a view to such measure as Congress may deem necessary.” U.S. Congress, Joint Committee on Printing, *A Compilation of the Messages and Papers of the Presidents, Volume III* (New York: Bureau of National Literature, 1897), p. 1406.

⁵⁷ The Smithsonian Institution Museums in Washington, DC, are, the National Museum of African American History and Culture, the National African Art Museum, the National Air and Space Museum, the Smithsonian American Art Museum, the National Museum of American History, the National Museum of the American Indian, the Anacostia Community Museum, the Arts and Industries Building, the Freer Gallery of Art, the Hirshhorn Museum and Sculpture Garden, the National Zoological Park, the National Museum of Natural History, the National Portrait Gallery, the National Postal Museum, the Renwick Gallery, the Arthur M. Sackler Gallery, and the Smithsonian Institution Building (the Castle). Additionally, the Smithsonian Institution operates the National Air and Space Museum Udvar-Hazy (continued...)

a new Smithsonian museum—the National Museum of African American History and Culture,⁵⁸ which is under construction—and legislation has been introduced to establish another—the National Museum of the American Latino.⁵⁹

The CWA applies only to land administered by the NPS or GSA in the District of Columbia.⁶⁰ Thus, museums sited on non-NPS or -GSA administered land would not be subject to the CWA. Additionally, the CWA does not include museums in its definition of commemorative works. Pursuant to 40 U.S.C. Section 8902(a)(1),

any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include any such item which is located within the interior of a structure or structures which is primarily used for other purposes.⁶¹

Further, the CWA prohibits the siting of museums in Area I or East Potomac Park. Pursuant to 40 U.S.C. Section 8905(b)(5),

No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

When authorizing the National Museum of African American History and Culture in 2003, Congress specifically exempted it from the CWA prohibition against the creation of museums on NPS- or GSA-administered land.⁶² The granting of this exemption arguably suggests that Congress believes the CWA applies to museums at any District location, if they are located on NPS- or GSA-administered land.⁶³ This application of the CWA to a museum would be in contrast to the specific CWA prohibition against the placement of a museum in Area I or East Potomac Park.⁶⁴ Whether the CWA applies to museums, therefore, is an open question.⁶⁵

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Center near Dulles Airport in Virginia and two museums in New York City—the National Museum of the American Indian George Gustav Heye Center and the Cooper-Hewitt National Design Museum.

⁵⁸ 20 U.S.C. §80r.

⁵⁹ H.R. 3459 (112th Congress), introduced November 29, 2011; S. 1868 (112th Congress), introduced November 15, 2011; S. 568 (113th Congress), introduced March 14, 2013; and H.R. 1217 (113th Congress), introduced March 27, 2013.

⁶⁰ 40 U.S.C. §8903(a). The National Park Service 24-step outline, as provided by the National Capital Memorial Commission, September 2001, is published as Appendix A of the National Capital Planning Commission's Museum and Master Plan, published December 2001. For more information, see National Capital Planning Commission, "Appendix A: Steps for Establishing a Memorial in the Nation's Capital," *Memorials and Museums Master Plan*, (September 2001, updated 2006), at http://www.ncpc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan_PartThree.pdf, pp. 167-168.

⁶¹ 40 U.S.C. §8902(a)(1).

⁶² P.L. 108-184, §8, 117 Stat. 2681, December 16, 2003; 20 U.S.C. §80r-6.

⁶³ For further legal questions on the application of the Commemorative Works Act, please contact CRS Legislative Attorney Kristina Alexander at 7-8597 or kalexander@crs.loc.gov. Ms. Alexander contributed to this section.

⁶⁴ 40 U.S.C. §8905(b)(5).

⁶⁵ 40 U.S.C. §8902(a)(1). As previously noted, the CWA defines a commemorative work as "any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of (continued...)"

To reconcile the application of the CWA to museums, Congress could choose to apply the CWA and its process to museums. This could standardize the process for creating museums in the District of Columbia. Codifying congressional intent could also streamline the museum-creation process; set guidelines for the placement of museums in certain locations within the District of Columbia; and clarify the role of third-party organizations for the creation, funding, and design of future museums in a manner similar to the CWA's requirement for monuments and memorials.

Expanding the scope of the CWA to include non-NPS or non-GSA administrated land and museums could put an additional burden on the commemorative works process. In addition to evaluating the site location, design, and progress of monuments and memorials, the NCMAC, NCPC, and CFA could be required to evaluate authorized museums under the same conditions as monuments and memorials. Current commemorative work guidance, however, does not provide direction on museums and interior spaces. The Vietnam Veterans Memorial Visitors Center, however, could provide precedent for the evaluation of "museum" space. The Visitors Center's authorization specifically provides that it is a commemorative work.⁶⁶

Conclusion

In each Congress, several bills are introduced to authorize new commemorative works in the District of Columbia. As new commemorative works proposals are introduced and new exemptions from the CWA are sought, Congress will be faced with choices on how to commemorate events and individuals. This report provided three types of exemptions and presented options for potential congressional action in each area. General options include providing an exemption from the CWA for an individual monument or memorial, amending the CWA and thereby providing changes applicable to all new commemorative works, and continuing the current commemorative works process.

For each potential exemption, the options available to Congress are not mutually exclusive. It might be possible, for example, both to grant a one-time exemption to a sponsor group and to amend the CWA for future monuments and memorials. Similarly, Congress could choose to be more involved in some aspects of the commemorative works process established by the CWA or delegate additional authority to the NCPC, CFA, or NCMAC, as appropriate.

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American history, except that the term does not include any such item which is located within the interior of a structure or structures which is primarily used for other purposes.”

⁶⁶ P.L. 108-126, 117 Stat. 1348, November 17, 2003.