

MEMORANDUM

January 23, 2026

To: Office of Senator Angus King
Attention: Patrick Bond, Senior Policy Advisor

From: Jonathan M. Gaffney, Supervisory Attorney, jgaffney@crs.loc.gov, 7-7706

Subject: Legal Requirements for Constructing a Memorial Arch in Memorial Circle

This memorandum¹ responds to your request for information regarding the legal requirements for constructing a triumphal or memorial arch in Memorial Circle on Lady Bird Johnson Island, which is located in the Potomac River at the western end of the Arlington Memorial Bridge.² The memorandum first provides an overview of two laws: (1) the Commemorative Works Act (CWA), which governs the construction of memorials in Washington, D.C., and its “surrounding environs” on land administered by the National Park Service (NPS) or General Services Administration (GSA),³ and (2) 40 U.S.C. § 8106, which requires “express authority of Congress” to erect a “building or structure . . . on any reservation, park, or public grounds of the Federal Government in the District of Columbia.”⁴ It then analyzes how these laws might impact a proposed memorial arch on Memorial Circle. Specifically, a memorial arch on Memorial Circle currently would appear to be subject to the CWA, as the location is administered by the NPS. As a result, congressional authorization and the approval of other entities would be required before construction might begin.⁵ Separately, § 8106 would appear to require congressional authorization to construct a memorial arch within Washington, D.C., including in Memorial Circle.

¹ CRS Specialist on the Congress Jacob R. Straus provided background information for this memorandum, including through his CRS products on the Commemorative Works Act. See *infra* notes 6, 27.

² Lady Bird Johnson Park is managed by the National Park Service as part of the George Washington Memorial Parkway Unit. Nat’l Park Serv., *National Park Service Adds Safety Features in Memorial Circle*, GEO. WASH. MEM’L PKWY. (Sept. 21, 2020), <https://www.nps.gov/gwmp/learn/news/national-park-service-adds-safety-features-in-memorial-circle.htm> [<https://perma.cc/82L4-MVME>]; Nat’l Park Serv., *Lady Bird Johnson Park*, GEO. WASH. MEM’L PKWY. (Jan. 5, 2024), <https://www.nps.gov/gwmp/planyourvisit/ladybirdjohnsonpark.htm> [<https://perma.cc/822W-LVNB>].

³ Commemorative Works Act, Pub. L. No. 99-652, 100 Stat. 3650 (1986) (classified as amended to 40 U.S.C. ch. 89). Although this memorandum focuses on the CWA and 40 U.S.C. § 8106, other statutes, such as the National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (classified as amended to 42 U.S.C. ch. 55), may impose additional procedural requirements on the construction of a memorial arch on Memorial Circle. This memorandum does not address these other, potentially applicable laws, but CRS remains available to follow up on these topics.

⁴ 40 U.S.C. § 8106.

⁵ See *id.* §§ 8901(4), 8903(a)(1) (together providing that the CWA applies to land administered by the NPS or GSA). But see *id.* § 8124 (authorizing “Federal and District of Columbia authorities administering properties in the District that are owned by the Federal Government or by the District” to “transfer jurisdiction over any part of the property among or between themselves for purposes of administration and maintenance under conditions the parties agree on”).

Information in this memorandum is drawn from publicly available sources and may be of general interest to Congress. CRS may provide all or part of this information in memoranda or reports for general distribution to Congress. If so, CRS will preserve your confidentiality as a requester. CRS remains available to follow up in person or remotely on these or other issues.

The CWA⁶

In 1986, Congress enacted the CWA with four stated purposes:

- To “preserve the integrity of the comprehensive design of the L’Enfant and McMillan plans for the Nation’s Capital”;⁷
- 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”;⁸
- To “preserve, protect, and maintain the limited amount of open space available to residents of, and visitors to, the Nation’s Capital”;⁹ and
- To “ensure that future commemorative works in the areas administered by the [NPS] and the Administrator of General Services in the District of Columbia and its environs . . . are appropriately designed, constructed, and located; and . . . reflect a consensus of the lasting national significance of the subjects involved.”¹⁰

To achieve these aims, Congress generally prohibited the construction of new “commemorative works” in “the District of Columbia and its environs” without congressional approval.¹¹ The CWA also established standards for new commemorative works and imposed consultation and planning requirements on the approval of new commemorative works.¹²

Covered Works

The CWA applies to “future commemorative works in areas administered by the [NPS] and the Administrator of General Services in the District of Columbia and its environs.”¹³ Thus, to be covered by the CWA, a proposed memorial must meet three criteria:

- It must be a “commemorative work,” as that term is defined by the CWA;
- It must be located on land administered by the NPS or GSA; and
- It must be located in the District of Columbia and its environs, as defined by the CWA.

Under the CWA, a “commemorative work” is

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

⁶ For more information on the CWA and its historical use, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus (2023), and CRS Report R43743, *Monuments and Memorials Authorized and Completed Under the Commemorative Works Act in the District of Columbia*, by Jacob R. Straus (2024).

⁷ 40 U.S.C. § 8901(1).

⁸ *Id.* § 8901(2).

⁹ *Id.* § 8901(3).

¹⁰ *Id.* § 8901(4).

¹¹ *Id.* § 8903(a)(1).

¹² *Id.* § 8903(b)–(d).

¹³ *Id.* §§ 8901(4), 8903(a)(1).

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 a structure which is primarily used for other purposes.¹⁴

The CWA defines “the District of Columbia and its environs” as “those lands and properties administered by the [NPS] and the [GSA] located in the Reserve, Area I, and Area II as depicted on the map entitled ‘Commemorative Areas Washington, DC and Environs,’ numbered 869/86501 B, and dated June 24, 2003.”¹⁵ Map No. 869/86501 B (the CWA Map) is included in **Appendix A**. The CWA further defines “Reserve” as “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.”¹⁶

The NPS generally lacks authority to sell or transfer National Park System land absent congressional authorization.¹⁷ With respect to Washington, D.C., Congress appears to have created a limited exception to this general rule: “Federal and District of Columbia authorities administering properties in the District that are owned by the Federal Government or by the District may transfer jurisdiction over any part of the property among or between themselves for purposes of administration and maintenance under conditions the parties agree on.”¹⁸ These transfers are subject to two requirements. First, “the National Capital Planning Commission shall recommend [a] transfer before it is completed.”¹⁹ Second, “[t]he District authorities shall report all transfers and agreements to Congress.”²⁰ The extent to which such a transfer might impact the applicability of the CWA is unclear and has not, to CRS’s knowledge, been the subject of litigation.

Since the enactment of the CWA, Congress authorized the NPS and Department of Defense to exchange two parcels of land adjacent to Arlington National Cemetery.²¹ These parcels are depicted on the maps in **Appendix B**. One of the parcels, depicted on the map “Arlington National Cemetery, Memorial Ave-NPS Parcel,” falls within Area II on the CWA Map.²² As that parcel is no longer administered by the NPS, it appears that proposed memorials on it would not be subject to the CWA.²³

Required Procedures

The CWA establishes procedures for both the authorization of a new memorial and the design and construction of authorized memorials.²⁴ Before Congress might authorize a new commemorative work, the CWA provides that the House Committee on Natural Resources and Senate Committee on Energy and Natural Resources “shall solicit the views of the National Capital Memorial Advisory Commission,” an

¹⁴ *Id.* § 8902(a)(1).

¹⁵ *Id.* § 8902(a)(2).

¹⁶ *Id.* § 8902(a)(3).

¹⁷ See, e.g., U.S. CONST. art. IV, § 3, cl. 2 (“Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”); *Gibson v. Choteau*, 80 U.S. (13 Wall.) 92, 99 (1871) (“Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring [federal] property, or any part of it, and to designate the persons to whom the transfer shall be made.”). For more information on NPS’s general statutory authorities to dispose of its property, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, coordinated by Carol Hardy Vincent (2025). For more information on the Property Clause, see Cong. Rsch. Serv., *Federal and State Power over Public Lands*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIV-S3-C2-2/ALDE_00013510/#ALDF_00025116 (last visited Jan. 21, 2026).

¹⁸ 40 U.S.C. § 8124.

¹⁹ *Id.* § 8124(a).

²⁰ *Id.* § 8124(b).

²¹ National Defense Authorization Act for FY2020, Pub. L. No. 116-92, § 2834, 133 Stat. 1198, 1893 (2019).

²² Compare **Figure B-2**, *infra*, with **Figure A-1**, *infra*.

²³ See 40 U.S.C. §§ 8901(4), 8902(a)(2), 8903(a)(1).

²⁴ *Id.* §§ 8903, 8905–8906.

advisory body established by the CWA.²⁵ In addition, the CWA establishes guidelines for military commemorative works and works commemorating events, individuals, or groups.²⁶ Legislation authorizing new commemorative works generally does not include the location of such works.²⁷ The CWA prohibits the construction of new commemorative works in the Reserve, and it requires explicit congressional authorization of new commemorative works on land in Area I of the CWA Map.²⁸

Once Congress has authorized a new commemorative work, the CWA imposes additional requirements before construction may take place. First, following Congress's initial authorization of a new commemorative work in the District of Columbia or its environs, the commemorative work's sponsor must consult with the National Capital Memorial Advisory Commission and submit a proposed design and site to the Commission of Fine Arts and National Capital Planning Commission for approval.²⁹ After approval by the commissions, construction may proceed only if the NPS or GSA determine that the project is structurally sound and durable, all required contractual documents have been submitted, and the sponsor has sufficient funds for construction and perpetual maintenance of the work.³⁰ As noted above, construction in Area I requires explicit congressional approval, either after a sponsor proposes a site or at the time of Congress's initial authorization.³¹

Section 8106

Congress enacted the precursor to § 8106 in 1912.³² As amended, it now provides: "A building or structure shall not be erected on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress."³³ The Government Accountability Office has observed that "one finds little mention of 40 U.S.C. § 8106 apart from the occasional passing reference."³⁴ CRS did not locate any legislative history for § 8106 and, although CRS located two court cases that cited § 8106, neither interprets the meaning of § 8106.³⁵

²⁵ *Id.* § 8903; *see id.* § 8904 (establishing the National Capital Memorial Advisory Commission). Although the CWA frames this consultation requirement as mandatory, the general principle that one Congress cannot bind a future Congress suggests that Congress could authorize a memorial without consulting with the commission. *See, e.g.,* *United States v. Winstar Corp.*, 518 U.S. 839, 873 (1996) (recognizing that "'a general law . . . may be repealed, amended or disregarded by the legislature which enacted it,' and 'is not binding upon any subsequent legislature'" (quoting *Manigault v. Springs*, 199 U.S. 473, 487 (1905))).

²⁶ 40 U.S.C. § 8903(b), (c). As with the consultation requirement, these guidelines likely are not binding on future congressional action. *See Winstar Corp.*, 518 U.S. at 873.

²⁷ *See* "Establishing a Memorial in the Nation's Capital" in STRAUS, *COMMEMORATIVE WORKS IN THE DISTRICT OF COLUMBIA*, *supra* note 6; CRS In Focus IF11937, *Commemorative Works Act: Siting Memorials in the District of Columbia*, by Jacob R. Straus (2024).

²⁸ 40 U.S.C. § 8908(b)(1), (c).

²⁹ *Id.* § 8905(a).

³⁰ *Id.* § 8906(a)–(b).

³¹ *Id.* § 8908(b)(1).

³² Act of Aug. 24, 1912, ch. 355, 37 Stat. 417, 444. As originally enacted, the provision read: "Hereafter there shall not be erected on any reservation, park, or public grounds, of the United States within the District of Columbia, any building or structure without express authority of Congress." *Id.*

³³ 40 U.S.C. § 8106.

³⁴ GOV'T ACCOUNTABILITY OFF., 3 PRINCIPLES OF FEDERAL APPROPRIATIONS LAW p. 13-168 (3d ed. 2015).

³⁵ The first case involved regulations promulgated by the Capitol Police Board regarding demonstrations on the U.S. Capitol grounds and was decided on other grounds. *Cnty. for Creative Non-Violence v. Kerrigan*, 865 F.2d 382, 386 n.6 (D.C. Cir. 1989) (noting that § 8106, then codified at 40 U.S.C. § 68, did not authorize the Capitol Police Board to promulgate regulations), *aff'g* *Cnty. for Creative Non-Violence v. Carvino*, 660 F. Supp. 744 (D.D.C. 1987). In the second case, the court considered whether § 8106 applied to a challenge to the construction of the Three Sisters Bridge but rejected it as inapplicable, as the land on which the bridge was to be constructed had been transferred to the District of Columbia. *D.C. Fed'n of Civic Ass'ns, Inc. v. Airis*, 275 F. Supp. 540, 543 (D.D.C. 1967).

Ongoing litigation in *National Trust for Historic Preservation v. National Park Service* regarding the construction of a ballroom at the White House may provide some guidance on the meaning of § 8106. The plaintiff in that case relies, in part, on § 8106 to argue that construction of the ballroom is unlawful.³⁶ In response, the government asserts that § 8106 may not be operative and, in any event, does not apply to the White House grounds.³⁷ The district court held a hearing on the plaintiff's motion for a preliminary injunction on January 22, 2026, and may rule imminently.³⁸

Application of the CWA and § 8106 to the Proposed Memorial Arch

President Donald Trump has announced that he intends to begin construction on a “Triumphal Arch” in early 2026, to coincide with the United States Semiquincentennial.³⁹ Several news reports suggest that one potential location for the proposed arch is Memorial Circle,⁴⁰ a traffic circle located within Lady Bird Johnson Park.⁴¹ **Figure 1** depicts the location of Memorial Circle.

³⁶ *E.g.*, Plaintiff's Supplemental Brief in Support of Motion for Preliminary Injunction at *12, *Nat'l Tr. for Hist. Pres. v. Nat'l Park Serv.*, No. 25-4316 (D.D.C. Dec. 29, 2025) (arguing that “Congress has indisputably not provided ‘express authority’ to erect the Ballroom” (citing 40 U.S.C. § 8106)).

³⁷ Defendant's Memorandum of Points & Authorities in Opposition To Plaintiff's Motion for Temporary Restraining Order & Preliminary Injunction at 15–16, *Nat'l Tr. for Hist. Pres. v. Nat'l Park Serv.*, No. 25-4316 (D.D.C. Dec. 15, 2025).

³⁸ Mike Scarcella, *US Judge Weighs Bid to Halt Trump's White House Ballroom*, REUTERS (Jan. 22, 2026), <https://www.reuters.com/legal/litigation/us-judge-weighs-bid-halt-trumps-white-house-ballroom-2026-01-22/> [<https://perma.cc/UNS3-SHVJ>].

³⁹ *E.g.*, Julia Manchester, *Trump: Construction of DC's New Arch to Start in Early 2026*, THE HILL (Jan. 2, 2026), <https://thehill.com/homenews/administration/5669878-trump-construction-washington-new-arch-2026/> [<https://perma.cc/BJV5-X4X2>].

⁴⁰ See Anastasia Tsioulcas, *President Trump Envisions D.C. Arch to Mark 250th Anniversary of U.S.*, NPR (Oct. 16, 2025), <https://www.npr.org/2025/10/16/nx-s1-5576506/president-trump-arch-us-250th-anniversary>, [<https://perma.cc/S9ZG-G48Y>] (“The proposed arch . . . would be located in a traffic circle between Arlington National Cemetery and the Lincoln Memorial.”); Alexandra Koch, *Trump Says “Triumphal Arch” Monument Construction to Begin Within 2 Months in DC: Report*, FOX NEWS (Dec. 31, 2025), <https://www.foxnews.com/politics/trump-says-triumphal-arch-monument-construction-begin-within-2-months-dc-report> [<https://perma.cc/V6CR-L54R>] (depicting a model of the proposed arch in Memorial Circle).

⁴¹ See *supra* note 2.

Figure 1. Memorial Circle

Source: Nat'l Park Serv., *National Park Service Adds Safety Features in Memorial Circle, GEO. WASH. MEM'L PKWY.* (Sept. 21, 2020), <https://www.nps.gov/gwmp/learn/news/national-park-service-adds-safety-features-in-memorial-circle.htm> [<https://perma.cc/82L4-MVME>].

Application of the CWA

Whether the proposed memorial arch is subject to the CWA depends on the three factors listed above:

- Whether it is a “commemorative work”;
- Whether it would be located on land administered by the NPS or GSA; and
- Whether it would be located in the District of Columbia and its environs.

The proposed memorial arch appears to satisfy each of these conditions. First, the memorial arch appears to be a “commemorative work” as defined by the CWA, as it would be a “monument” or “structure” that is “designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history”—specifically, the Semiquincentennial.⁴² Second, assuming it were to be built in Memorial Circle, the memorial arch would be located on land administered by the NPS, as Memorial Circle falls within Lady Bird Johnson Park.⁴³ Third, again assuming the memorial arch were to be built in Memorial Circle, it would be located within the “District of Columbia and its environs” for purposes of the CWA, as Memorial Circle falls within Area I of the CWA Map, found in **Appendix A**.⁴⁴ Accordingly, the proposed memorial arch, if built in Memorial Circle, likely would be subject to the CWA.

As a commemorative work subject to the CWA, the memorial arch would require congressional authorization and the approval of other entities before construction might begin.⁴⁵ In addition, as Memorial Circle falls within Area I of the CWA Map, the CWA requires explicit congressional approval

⁴² 40 U.S.C. § 8902(a)(1); Tsioulcas, *supra* note 40 (noting that the proposed arch “is being discussed as a commemoration of the nation’s 250th anniversary”).

⁴³ Nat'l Park Serv., *Lady Bird Johnson Park*, *supra* note 2. This memorandum assumes that Memorial Circle would continue to be “administered by the NPS” at the time of any potential construction. If, however, NPS were authorized to transfer administration of Memorial Circle to another agency and did so, perhaps via the authority in 40 U.S.C. § 8124, *see supra* note 21, construction of a memorial arch on that property would likely not be subject to the CWA.

⁴⁴ Compare **Figure 1** with **Figure A-1**.

⁴⁵ See 40 U.S.C. § 8903(a)(1).

for construction in Area I, either separately or as part of the initial authorization.⁴⁶ Absent these statutory authorizations, construction of a memorial arch in Memorial Circle currently would appear to not comport with the CWA's requirements.

Application of § 8106

Although, as noted above, CRS could not locate any legislative history or court decisions discussing the meaning of § 8106, the court in *National Trust for Historic Preservation* may provide guidance on its meaning, though the arguments in the case mainly turn on the statute's specific application to the White House grounds.⁴⁷ Absent further judicial guidance, the statute's plain meaning would appear to apply to the construction of a memorial arch in Memorial Circle.⁴⁸ The proposed memorial arch would likely be a "building or structure" covered by the statute.⁴⁹ Likewise, as Memorial Circle is within Lady Bird Johnson Park (which is in Washington, D.C.) and is administered by the NPS, it likely qualifies as "any reservation, park, or public grounds of the Federal Government in the District of Columbia" under § 8106. As a result, § 8106 appears to require congressional authorization to construct a memorial arch in Memorial Circle.

Conclusion

Two laws—the CWA and § 8106—require congressional authorization to construct certain buildings or works. Assuming that a memorial arch would be constructed in Memorial Circle and that NPS continues to administer Memorial Circle, the CWA would appear to govern the construction of the arch. Likewise, § 8106 would appear to require congressional authorization to construct a memorial arch in Memorial Circle so long as that property constitutes a "reservation, park, or public ground[] of the Federal Government in the District of Columbia."

⁴⁶ See *id.* § 8908(b)(1).

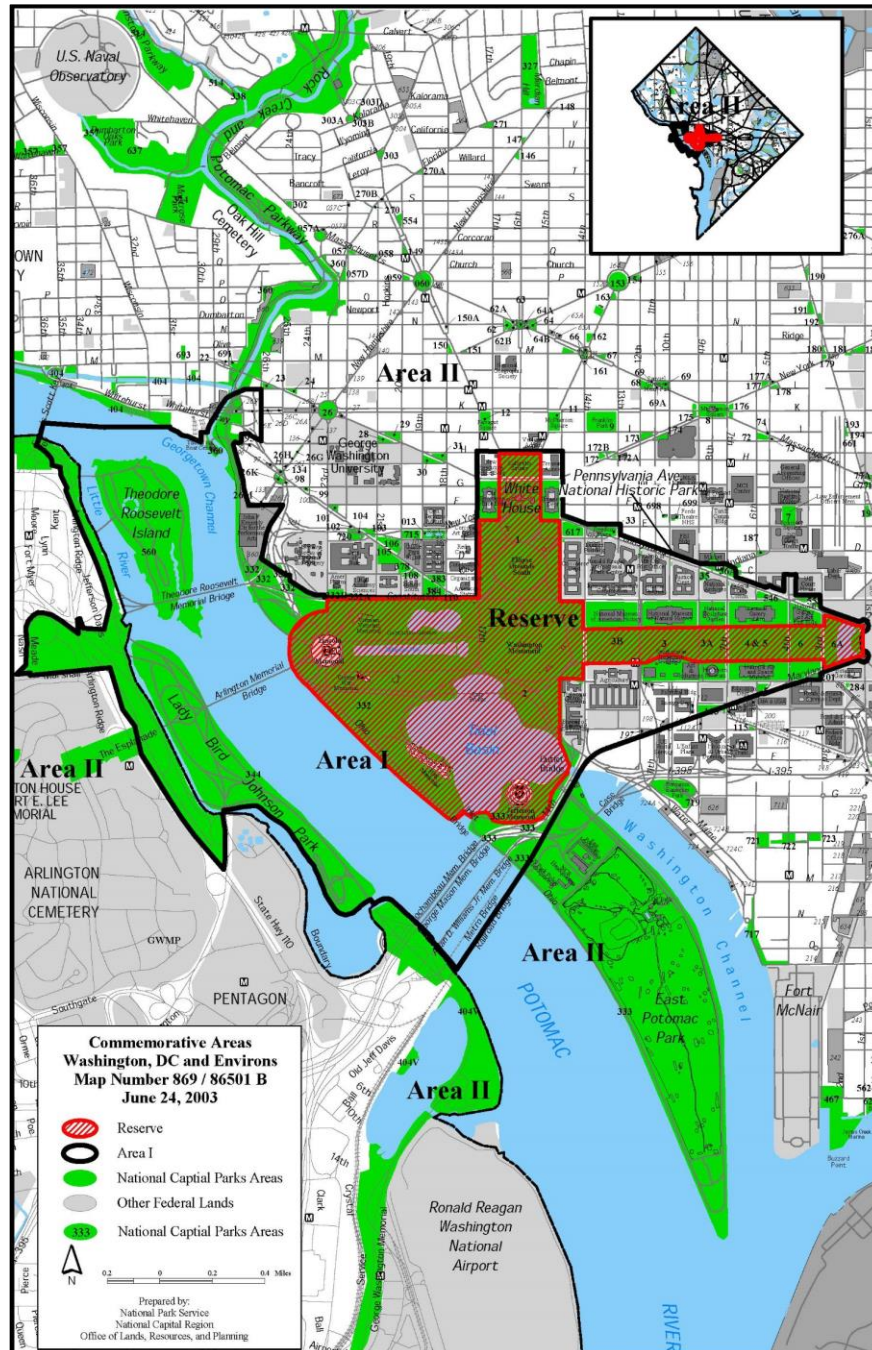
⁴⁷ See *supra* note 37.

⁴⁸ *E.g.*, *Greenery Rehab. Grp., Inc. v. Hammon*, 150 F.3d 226, 232 (2d Cir. 1998) ("If the statutory terms are unambiguous, our review generally ends and the statute is construed according to the plain meaning of its words."); see *Loper Bright Ents. v. Raimondo*, 603 U.S. 369, 400 (2024) ("Courts . . . understand that . . . statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning.").

⁴⁹ See *Building*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/building> [<https://perma.cc/9YY8-EBSC>] (last visited Jan. 21, 2026) (defining "building" as "a usually roofed and walled structure built for permanent use"); *Structure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/structure> [<https://perma.cc/C8KY-HUTG>] (last visited Jan. 21, 2026).

Appendix A. Map of Land Subject to the CWA

**Figure A-I. Commemorative Areas Washington, DC and Environs,
Map No. 869/86501 B**

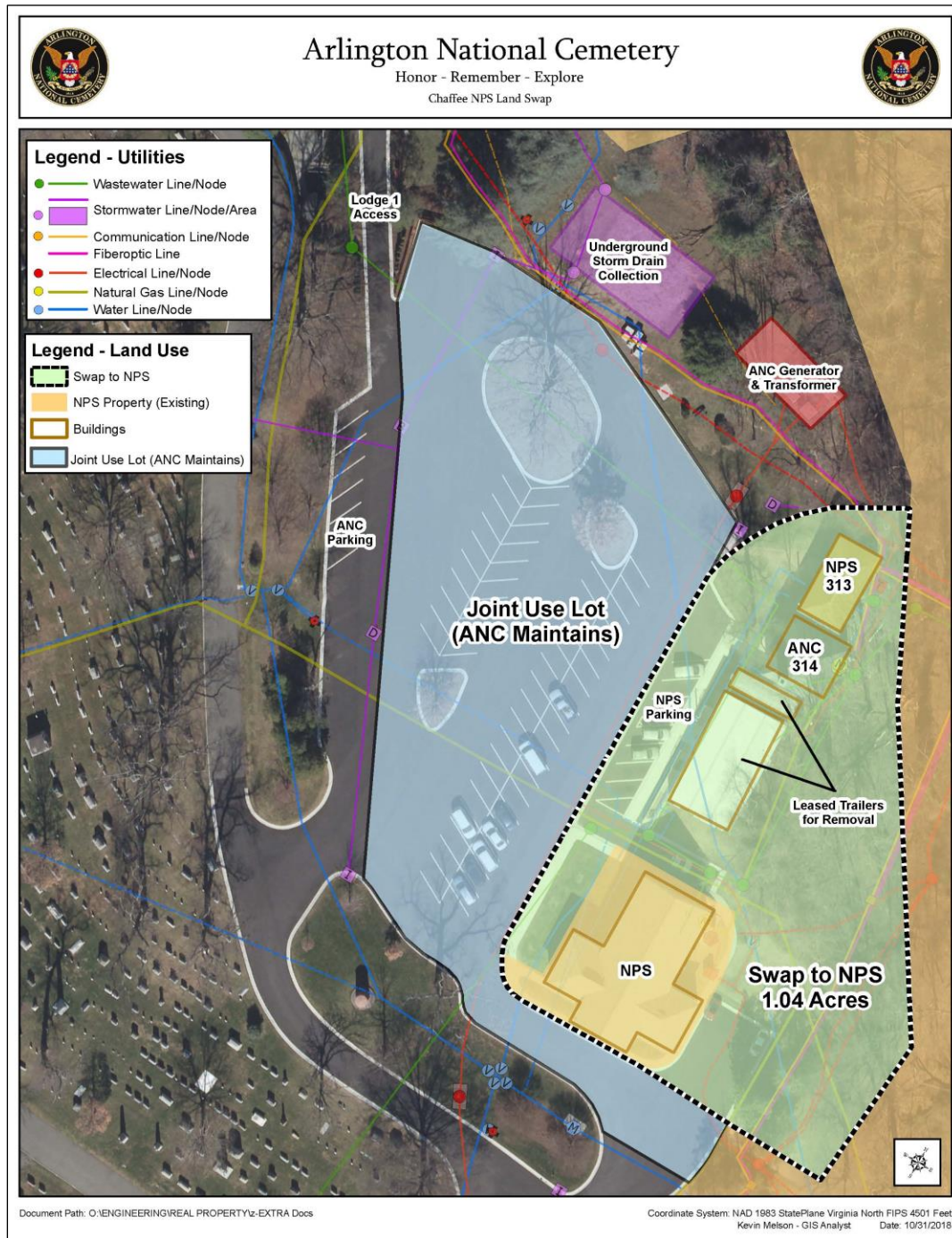


Source: OFF. OF LANDS, RES. & PLAN., NAT'L PARK SERV., COMMEMORATIVE AREAS WASHINGTON DC, AND ENVIRONS, MAP NO. 869/86501 B (2003).

Appendix B. Maps of Parcels Exchanged in 2020

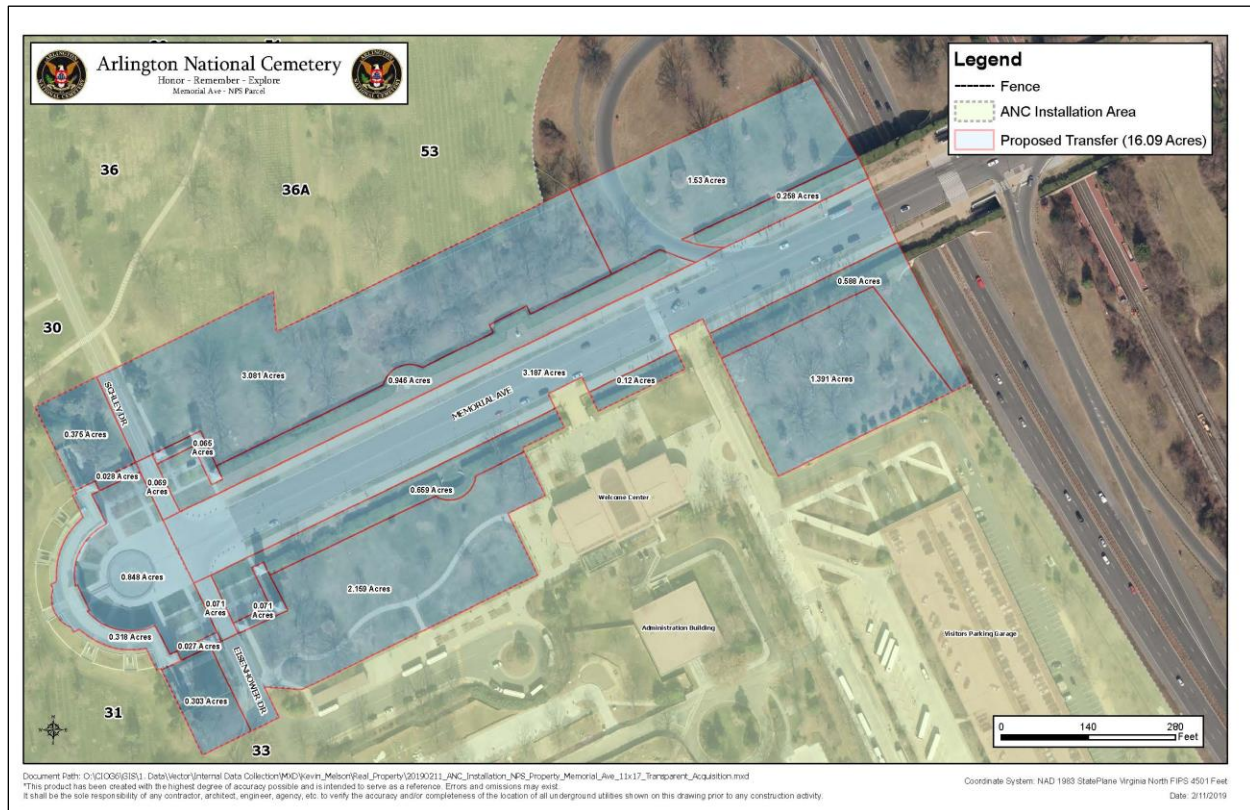
Figure B-1. Map of Chaffee NPS Land Swap

As referenced in the FY2020 National Defense Authorization Act



Source: ARLINGTON NAT'L CEMETERY, DEP'T OF THE ARMY, CHAFFEE NPS LAND SWAP (2018).

Figure B-2. Map of Memorial Ave – NPS Parcel
As referenced in the FY2020 National Defense Authorization Act



Source: ARLINGTON NAT'L CEMETERY, MEMORIAL AVE – NPS PARCEL (2019).