

## **HISTORIC CEMETERIES IN THE STATE OF TENNESSEE**

### **General Information, Laws, and Guidelines**

The [Tennessee Historical Commission](#) is developing a Cemetery Preservation Program to provide guidance and related services. A committee has been created in order to ensure the effectiveness of this program, which is administered by THC's Historic Cemeteries Preservation Specialist, G. Graham Perry III (615) 532-0087; [graham.perry@tn.gov](mailto:graham.perry@tn.gov)). The specialist provides resources covering preservation techniques for the proper care and maintenance of cemeteries, offers information regarding legal statutes covering cemetery protection, and acts as an advocate for cemetery preservation.

This sheet provides general guidelines for property-owners, developers, families, and citizens needing information regarding what to do in the case of accidental discovery, maintenance, and/or the necessary process to remove an historic cemetery. An additional purpose is to inform citizens of THC's role regarding historic cemeteries on private property. It is important to note that in Tennessee, ALL human remains (whether modern or prehistoric) are protected under state law. *The information presented here is for the convenience of interested parties and should not be used as a substitute for legal counsel.*

#### **Desecration**

Although there are several state statutes relevant to historic cemeteries, the most applicable statutes are [T.C.A. 39-17-311](#) (*Desecration of a venerated object*) and [T.C.A. 39-17-312](#) (*Abuse of corpse*). Desecration of a burial or cemetery is a Class A felony, and the disinterment of a dead body, corpse or human remains without legal authority is a Class E misdemeanor.

#### **Relocation of a Cemetery**

Tennessee law stipulates a process by which a landowner or interested party must follow in order to relocate a cemetery or grave. First, the party **MUST** request permission from the Chancery Court. The cemetery to be moved must be abandoned and/or neglected, and any new proposed use of the site must corroborate with proper respect for and veneration of the dead. Relatives of the deceased must be given legal notice, but no permission from said relatives is required. A property owner possesses the right to remove and relocate the graves at his/her expense after complying with state statutes. The removal must be conducted with proper care and civility, and the landowner must provide a suitable place for reinterment of remains.

[T.C.A. 46-4-101-104](#) (*Termination of Land Use as Cemetery*) is the primary statute that covers removal and relocation of graves. Note that a [disinterment order](#) from the [Tennessee Department of Health, State Registrar, Office of Vital Records](#) ([T.C.A. 68-3-508](#) and Rule 1200-7-1-.08) may be a prerequisite to remove human remains.

#### **Archaeologist or Funeral Home for Removal**

Archaeological methods are superior in the case of graves that have been abandoned or in areas where graves are difficult to locate. Archaeologists have expert experience in identifying historical artifacts (coffin hardware, etc.) and are best suited to identify human remains in areas in a state of poor preservation. Graves created after 1925 can generally be handled by funeral homes. Contact the [Tennessee Division of Archaeology](#) for more information.

#### **Discovery of Human Skeletal Remains**

If human skeletal remains are accidentally exposed due to construction or other activities, the contractor or landowner **MUST** cease all work in the area and immediately call a medical examiner or coroner AND local law enforcement ([T.C.A. 11-6-107d](#)). Then, the Division of Archaeology should be contacted. These steps must be followed when human remains of *any kind* are found.

#### **Does a Cemetery Exist on my Property?**

Any person or entity interested in property for purchase or development should always remain aware that cemeteries could exist on the tract. Some important ways to determine whether a cemetery exists on a particular tract of land include: (1) checking old deeds and property records; (2) checking old maps; (3) talking with long-time local residents; (4) searching for sunken areas on the property that seem to be oriented east to west; (5) looking for [Vinca minor](#) (cemetery ivy) and (6) looking for tombstones, fragments, and/or [plain stone markers](#).

If a cemetery is determined to be present on the property, there are *obligations* a landowner/developer **MUST** meet. For example, construction crews are required to leave a ten-foot buffer around the perimeter of a grave(s) and in the case of a crypt, a five-foot buffer ([T.C.A. 46-8-103](#)). Also, landowners must remember that family members have a right to visit the graves of ancestors, *even if* they are located on private property—this precedent is set under Tennessee Case Law. Furthermore, owners or future buyers of a land tract have an obligation to protect graves from disturbance when a cemetery is shown on a deed.

Family members concerned about protecting an ancestral burial ground should consider marking it well with fences and a sign. Also, they should consider obtaining a survey by a professional surveyor and recording it on the deed. These actions will help establish the cemetery's existence in the public record.

### **Historic Cemeteries Located on Private Property**

The [Tennessee Historical Commission](#) accepts reports by public and private interests regarding exposed human skeletal remains, but only after the conditions established under the heading **Discovery of Human Skeletal Remains** (on page 1 of this document). THC will coordinate with the Division of Archaeology for an initial evaluation to see whether or not remains are present. In cases where remains are exposed or endangered, the Division of Archaeology will provide technical advice to help landowners understand their obligations and options under the state's cemetery statutes.

A private landowner must always adhere to Tennessee's cemetery laws when a cemetery exists on his/her property. At this time, the Tennessee Historical Commission nor the Division of Archaeology can require a private landowner to have a burial investigation performed. Both are limited to technical advice UNLESS human skeletal remains are actually disturbed. There are many private archaeological consultants throughout the state that can provide such services, and a list of these can be provided by the Tennessee Historical Commission or the Division of Archaeology upon request.

### **Helpful Resources for Parties Interested in Historic Cemeteries**

Archaeological consultants working in Tennessee

[https://www.tn.gov/content/dam/tn/environment/archaeology/documents/arch\\_CONSLIST\\_3\\_2019.pdf](https://www.tn.gov/content/dam/tn/environment/archaeology/documents/arch_CONSLIST_3_2019.pdf)

Davidson County Cemetery Survey

<https://data.nashville.gov/Genealogy/Davidson-County-Cemetery-Survey/ttqg-mpiz>

Endangered Cemeteries in Tennessee

<https://www.savinggraves.net/tennessee/177-endangered-tennessee-cemetery-reports>

Find a Grave <https://www.ncptt.nps.gov/articles/cemetery-conservation/>

Middle Tennessee State University Center for Historic Preservation

<https://www.mtsuhistpres.org/>

<https://www.mtsuhistpres.org/resources/cemetery-resources/>

Resources on Cemetery History and Preservation

<http://www.potifos.com/cemeteries.html#preservation>

<https://www.nps.gov/tps/how-to-preserve/briefs/48-preserving-grave-markers.htm>

<https://www.ncptt.nps.gov/articles/cemetery-conservation/>

<https://www.mtsuhistpres.org/wp-content/uploads/2018/03/Intro-Guide-to-Cemetery-Cleaning.pdf>

Tennessee Code Annotated

<http://www.tsc.state.tn.us/>

Tennessee State Burial Law

<http://www.tngenweb.org/law/cemetery-law.html>

Tennessee State and County Medical Examiners

<https://www.tn.gov/health/health-program-areas/oscm.html>

<https://www.tn.gov/health/health-program-areas/oscm/county-medical-examiner.html>

Tennessee State Library & Archives (find public libraries and historical societies)

<https://sos.tn.gov/tsla>

Tennessee Tombstone Transcription Project

<http://www.usgwtombstones.org/tennessee/tenn.html>

The Association for Gravestone Studies

<https://www.gravestonestudies.org/>