

# Hallowed Ground: A Brief on Access and Maintenance Rights to Grave Sites on Private Land

Farm Law for Operators and Landowners

## Introduction

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*"Good friend, for Jesu's sake forbear*

*To dig the dust enclosed here.*

*Blest be the man that spares these stones,*

*And curst be he that moves my bones."<sup>1</sup>*

Epitaph on the grave of William Shakespeare, Holy Trinity Church, Stratford-upon-Avon, United Kingdom

Across North Carolina, one often sees gravestones standing alone or in small clusters in various states of maintenance among the rows of tilled farm fields and mowed pastures. Sometimes these are enclosed, sometimes not. Many of these family burial sites serve as final resting places for ancestors who once owned and worked the land, but who rest now on land that is no longer owned by their descendants. There are likely many other abandoned known and unknown resting places, many perhaps overgrown with forest cover.<sup>2</sup> Active research efforts could uncover such sites and make them known to landowners and descendants of the buried,<sup>3</sup> and such research has been favored by federal policy.<sup>4</sup>

Commercial cemeteries are regulated by the North Carolina Cemetery Act,<sup>5</sup> which also establishes a state board to establish detailed regulations, and generally concerns the commercial sale and maintenance requirements of burial plots and mausoleums. Exempted from that law are church and government-owned cemeteries, regulated in various manner by other state and federal statutes. The scope of this short article concerns burials on private land, known in marked and maintained sites

and those neglected, and takes a closer look at North Carolina's law concerning private or abandoned cemeteries,<sup>6</sup> their protection from desecration and rights of access and maintenance by descendants of the deceased.

[Note that the author claims no professional or personal experience in cemetery or burial site access and maintenance, and certainly has never shouldered responsibility for tending to an ancestor's rest; the topic is one of author's long curiosity from driving across North Carolina as a private "farm lawyer" and NC Cooperative Extension specialist. The narrative below is written from straight online legal research with scant use of AI (for historical framing). Given the ubiquity of grave sites on private lands across the landscape, the author assigns a logical relevance to North Carolinians' changing use and transfer of private rural lands. The brief reveals numerous items in need of further illumination.]

## No Prohibition on Private Burial

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There is no North Carolina state prohibition on burials on private lands. However, there may be restrictions in county and municipal zoning ordinances.<sup>7</sup> Various state statutes do regulate the disposition of remains, including disposition of cremated remains.<sup>8</sup> For example, as a general matter the top of a burial vault (e.g. casket) in all ground interments must be a minimum eighteen inches below the ground surface.<sup>9</sup> Spreading of cremated remains is allowed on "uninhabited" public lands, public waterways or the sea, or on private land with consent of the owner.<sup>10</sup>

There is at least one statewide restriction on private burials, noting the regulation permitted well-sites may not be located within 300 feet of a burial site.<sup>11</sup> This is a well permitting restriction and does not address burial near an existing wells in the unlikely event such a decision is made to do so; however, investigation of a well permit during due diligence would reveal this deficiency and impact marketability of a parcel.

## Discovered Burial Sites During Land Disturbance: Process

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North Carolina's Unmarked Human Burial and Human Skeletal Remains Protection Act<sup>12</sup> was passed in 1981 to address the concern that "[u]nmarked human burials and human skeletal remains are subject to vandalism and inadvertent destruction at an ever-increasing rate."<sup>13</sup> Though there is a reporting requirement for discovery of unmarked graves, the author found no public database that tracks the reports.<sup>14</sup>

The North Carolina Department of Cultural Resources - and its Office of State Archeology - does not track incidents of burial site discovery on private lands. But discoveries do happen: as reported in 2022 where a purchaser of an acre of land in Vance County discovered an estimated 50 graves of former enslaved people while converting the land to a garden.<sup>15</sup> News organizations report discoveries in Johnston, Orange, Durham and other counties.<sup>16</sup> How often graves are discovered

due to normal agricultural or construction land disturbance is unknown. Given that land clearing for agricultural production is now rare, more likely discoveries would come through forestry and non-agricultural conversion.

North Carolina statutory law requires anyone who reasonably believes that human skeletal remains are being “disturbed, destroyed, defaced, mutilated, removed, or exposed” to notify the county medical examiner.<sup>17</sup> If the discovery is incident to “construction or agricultural” activity, such work must cease immediately until authorized to resume by either the medical examiner or the State Archeologist’s office.<sup>18</sup> The county medical examiner first determines whether the discovery requires opening an investigation.<sup>19</sup> If the discovery does not require medical examiner investigation (i.e. the remains are indeed old), the State Archeologist has 48 hours to “make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains;” if the State Archeologist fails to do so within the 48 hour window, that office loses jurisdiction to halt the initial land disturbing activities.<sup>20</sup> It appears at this point that whatever activity was in progress at the time of discovery may then resume without disturbing the remains, but subject to later entry by investigators. (The grave removal process is reviewed below.)

If the State Archeologist cannot obtain landowner consent to enter for excavation of the remains, the State Archeologist (Department of Natural and Cultural Resources) may provide “reasonable notice” to the landowner before proceeding to secure an “administrative inspection warrant” to enter the property. Such a warrant may be secured from “any magistrate of the general court of justice, judge, clerk, or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected.”<sup>21</sup>

If the archeologist investigates and determines the remains are Native American, state law requires immediate notification of the North Carolina Commission of Indian Affairs. If the remains are determined not native American, the State Archeologist then is required to publish notice in a local newspaper of general circulation in the county of discovery for four successive weeks to try and identify the remains or next of kin. If the latter come forward, the State Archeologist has 90 days to reach an agreement on disposition of the remains. Presumably for a discovery where a descendant comes forward, the next of kin have apparently ultimate authority on the disposition, which may include no action leaving remains in situ (then subject to removal process by landowner).

Establishing a relationship to the interred deceased follows state intestacy law (see below). Note that the landowner bears no costs concerning the excavation and analysis,<sup>22</sup> but may bear the costs of removal (see below).

## Criminal Penalty for Grave Desecration

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North Carolina has criminalized intentional grave disturbances at least back to 1840<sup>23</sup> with the present laws updated in 1889 and 1981. The North Carolina Supreme Court - reiterating statutory policy as common law - recognized that “[a landowner] [has] not the right to remove the dead bodies interred there, or the memorial stones erected by the hand of affection and respect... Causes might arise that would require and justify the removal of dead bodies from one place of interment to another, but such removal should be made, with the sanction of kindred, in a proper way, or by

legislative sanction.”<sup>24</sup> Black's Law Dictionary defines "desecrate" as: "To divest (a thing) of its sacred character; to defile or profane (a sacred thing).”<sup>25</sup> As in all state jurisdictions, grave desecration - the grave, headstone, coffin, etc. - is a Class I felony in North Carolina, carrying a maximum sentence of 24 months (see § 15A-1340.17).<sup>26</sup> The statute lists the following as criminal acts:

(1) Open, disturb, destroy, remove, vandalize or desecrate any casket or other repository of any human remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave or any portion thereof.

(2) Take away, disturb, vandalize, destroy, tamper with, or deface any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts erected or placed within any cemetery to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person. This subdivision shall not apply to the ordinary maintenance and care of a cemetery.<sup>27</sup>

As to human remains, it is a Class H (39 month maximum sentence)<sup>28</sup> to - without authorization of law or the consent of the surviving spouse or next of kin of the deceased - to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate any human remains that have been interred in a cemetery.<sup>29</sup> In addition to the above, disturbing a grave, moving any markers, and “shrubby, flowers, plants or other articles planted or placed within any cemetery to designate where human remains are interred” draws a felony criminal penalty unless by permission of next of kin. Caretakers of known grave sites and cemeteries are exempt.<sup>30</sup>

It is important to note that the North Carolina Supreme Court has limited the criminal application of the above statute to damage to a cemetery where a body is actually buried, as opposed to removal of fencing and markers of a remnant cemetery site where the burial had been disinterred and reinterred elsewhere.<sup>31</sup>

## Civil Claims by Descendants for Desecration

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Regarding civil claims for damages against a grave defiler (e.g. a current landowner, contractor, etc.), the North Carolina Court of Appeals confirmed - in two opinions related to one incident,<sup>32</sup> referred to here as Robinson I and Robison II<sup>33</sup> - that such a right of action exists. Robinson I relies on the NC Supreme Court decision of King v. Smith,<sup>34</sup> which in 1952 established the civil cause of action for grave desecration damages, and linked such civil action to the elements in the criminal

statute (in force at the time, but with similar effect as outlined above) as evidence toward proving such a claim.<sup>35</sup> *Robinson II* focused primarily on the time allowed to bring such a desecration claim, which is ten (10) years accruing from the discovery of the desecration.<sup>36</sup>

While the *Robinson* case does not identify the required elements of a cause of action for desecration, it does suggest alleged facts for a sufficient pleading in such a case. Such facts include:

*(1) the wrongful injury to or removal of a grave monument;*<sup>37</sup>

*(2) the destruction of graves by leveling a hill on which a graveyard was situated; or*

*(3) proximately causing, 'directly or indirectly, defacement, damage, or other mistreatment of the physical area of the decedent's grave site or common areas of the cemetery in a manner that a reasonable person knows will outrage the sensibilities of others.'*<sup>38</sup>

The case does however hold that an action for grave desecration vests standing to sue in “the next of kin of the [deceased] who were then living.” Note that the *Robinson I* case holds that the time limit to bring such action - in such cases ten years<sup>39</sup> - accrues from the time of discovery of the desecration. Of course, where desecration occurs years prior to discovery, evidentiary challenges may be difficult, as will compensation challenges for a grave defiler no longer in business.

Regarding standing to bring a civil action, common law standing vests in the “next of kin then living.” Ascertaining who qualifies as “next of kin,” North Carolina courts appear to follow the rule that such persons are determined by examining the statute of descent or distribution. Also, such descendants cannot bring separate actions, but must bring one unified action.<sup>40</sup> Thus, in North Carolina, “next of kin” would be determined under the Intestate Succession Act.<sup>41</sup> A “next of kin” wishing to maintain an action must state their relationship with specificity - presumably in reference to the Intestate Succession Act - rather than an assertion that they are the “descendants of [the buried person].” It follows - though cases are not clear - that the right to sue exists in a living heir and not their lineal descendants (e.g. a living parent has standing to sue, their child does not). A parent might designate standing to a lineal descendant, given that such right may be designated to another by statute for purposes of access (see below).

## Statutory Rights of Access and Maintenance by Descendants

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North Carolina limits the subset of individuals who may - with permission - enter the land of another for purposes of investigation and discovery of a grave believed to be present on the land, or for discovery, maintenance and visitation of a known grave or abandoned public cemetery.<sup>42</sup> This subset of individuals is limited to:

*a) descendants of the person whose remains are reasonably believed to be interred in the grave or*

*abandoned public cemetery;*

*b) a designee of such descendant(s); and*

*c) any other person who has a special personal interest in the grave or abandoned public cemetery.<sup>43</sup> This statutory authorization does not define special personal interest.*

It may be reasonable to assume that such an individual should have written permission on their person to avoid trespass removal by an investigating local authority such as the sheriff or wildlife resources commission officer.<sup>44</sup> This statute applies to public lands as well, which would appear to limit the authority of a public officer (such as a state park ranger) to grant permission for exploration of potential grave sites. Again per case law the word “descendants” may likely be interpreted as limited to living heirs under the Intestate Succession Act or their designee.

This subset of who may enter with permission becomes important to gain access to a parcel where the current landowner refuses to grant permission or permission otherwise cannot be obtained. The general statutes authorize a special proceeding before the county clerk of court for access to grave sites on land not owned by descendants of the buried deceased when the current landowner denies access. Only individuals defined by the permissive statute (above) have standing to bring such an action.<sup>45</sup> Any individual meeting the description above may petition - in the form of a special proceeding - the clerk of superior court of the county in which the petitioner has reasonable grounds to believe the grave or abandoned public cemetery is located for an order allowing the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery.<sup>46</sup> The elements a petitioner must prove to the clerk of court are as follows:

- (1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public cemetery;
- (2) [t]he petitioner, or the petitioner's designee, is a descendant of the deceased, or the petitioner has a legitimate historical, genealogical, or governmental interest in the grave or abandoned public cemetery;
- (3) [t]he entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.<sup>47</sup>

There are no reported cases suggesting the weight or examples of evidence sufficient to meet the “reasonably believed to be interred” and “special personal interest” thresholds to achieve entry, or the “reasonable grounds to believe” and “legitimate interest” thresholds required for a clerk’s order of entry. That said, such a petition is recorded in the case of *Massey v. Hoffman*,<sup>48</sup> and when challenged on constitutional grounds as a taking of private property (by regulation), the NC Court of Appeals stated - citing North Carolina precedent - that protection of grave sites was a proper use of the state’s police power.<sup>49</sup> Quoting the NC Supreme Court in the case of *Mills v. Cemetery Park Corp.*<sup>50</sup> the Massey court wrote: “The sentiment of all civilized peoples, since earliest Biblical times, has held in great reverence the resting places of the dead as hallowed ground. In such matters we

deal with concerns that basically are spiritual. Awe toward the dead was a most powerful force in forming primitive systems for grappling with the supernatural. 'It is a sound public policy to protect the burying place[] of the dead.'"<sup>51</sup>

In a person's petition for an order of entry by the clerk of court - the "permission slip" to enter the land - the petitioner should specify dates and daylight hours in which they may enter the property and the period of time they wish to remain (the clerk lacks the authority to grant night time entry). Further, petitioner's request should also request periodic returns to the property for maintenance following "restoration" of the grave or abandoned public cemetery, plus a specific route through the property to the grave site or cemetery. Note that the statute itself is silent on to what extent the petition may restore the grave site, and whether the clerk may allow the petitioner to erect or replace gravestones, the amount of area to be cleared, or placement of a fence around the site. The Massey court did affirm the petition to "restore, maintain and visit."<sup>52</sup> The North Carolina Supreme Court further defined the right of restoration in the case of *Rodman v. Mish*<sup>53</sup> citing sources from other states to hold that "[p]ersons having a right to protect private cemeteries or graves therein may erect a fence around the cemetery."<sup>54</sup> This would appear to be the law in North Carolina.

## Easement Right of Access

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Family cemeteries have often been designated on both surveys and as reserved language in deeds of transfer. For example, in a deed describing a parcel of land, there is often language "excepting" from that transfer a portion of the parcel containing the family cemetery, though often described without size or dimensional specificity.

At least one North Carolina case suggests that the extended non-use (for 50 years) of an express easement reserved in a deed for purposes of visiting and maintaining grave sites does not itself extinguish an express easement.<sup>55</sup>

In *Rodman v. Mish*, discussed supra, the NC Supreme Court noted that where a burial plot is reserved to the grantor in a transfer of the real property by deed, the ownership of the burial plot is held by the heirs at law (as determined by intestate succession statute). One might argue such ownership also devolves by will. Descendants with standing to sue need not be the legal owners of such burial plot,<sup>56</sup> which raises the question of whether the 'heirs' test" is a theoretical matching of individuals to their place in the scheme of intestate succession in the event the deceased died testate.

## Sanctioned Removal of Graves

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North Carolina has a prescribed process for grave removal which may be effected by a range of entities, including state and federal governments, utilities and private individuals, though each with a limiting qualification. For federal and state governments, the power applies where the government entity determines that "such removal [of graves] is reasonably necessary to perform its governmental functions and the duties delegated to it by law."<sup>57</sup> This would appear to be cases

involving eminent domain for such things as highway expansion. As to utilities, the removal power is limited to lands they own (not merely a right of way easement), and only in the case of impoundment of land for a reservoir.<sup>58</sup> Such requirements appear to apply to “graves” as opposed to “abandoned cemeteries.” As for an individual or private entity that owns the land, such power of removal is restricted to “abandoned cemeteries” and would not apply to a cemetery or burial site maintained by descendants of the interred. The statute defines “abandoned” as “[c]eased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.”<sup>59</sup> Such removal by private persons or entities would arguably be forestalled by a successful action by descendants (described above) to gain access and maintenance privileges (i.e. the burial site no longer meets the definition of abandoned).

All such removals require a thirty (30) days’ written notice before disinterment to the “next of kin of the decedent” (likely defined as noted above), such kin to be ascertained by reasonable search and inquiry. Also, the individual or entity must post a notice for four successive weeks in a paper of general circulation in the county where the grave is located (the first publication cannot be made less than 30 days before disinterment).<sup>60</sup> Following disinterment and reinterment to a “suitable cemetery,” the removing individual or entity must file written certification of the removal facts in both (if different) the county of disinterment and reinterment. The certification of facts includes reasons for removal, all reasonably obtainable facts about the decedent, and the precise location of reinterment.<sup>61</sup> The removing person or entity bears the costs of removal, as well as up to \$200 toward the costs of a ‘next of kin’ attending the reinterment. The removal statute assigns supervision of disinterment and reinterment activity to the county board of commissioners or an official appointed by the board, such as the county director of health services. If the counties of disinterment and reinterment are different, the process must involve the board of commissioners of both counties. The statute requires due care in provision of suitable “coffins or boxes” as well as protection and transfer of markers.<sup>62</sup> Note that these powers granted the local commissioners do not amount to a power of eminent domain.<sup>63</sup> Note that no statutory process is prescribed by the applicable statute to challenge the disinterment, or the appropriate penalty for failing to follow the statutory requirements. It would follow that anyone with the legal right of access for visitation and maintenance of a grave site or cemetery would bring an action to enjoin the removal. Alternatively, given the board of commissioners’ jurisdiction and required approval, a challenge before that body would appear appropriate.

Note again that for private individuals and entities who own land, their statutory privilege of removal only extends to land they own which contains an abandoned cemetery, which is defined as a tract of land used for burial of multiple graves that has “ceased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.”<sup>64</sup>

# Illustrative Dispute: King v. Orr and King v. Pender County

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In 2005, a dispute arose between descendants of persons buried on land owned by another. The court cases (six reported dispositions by the NC Court of Appeals) concerned both the statutory rights of access and maintenance described above, including the process to declare such rights, and a landowner's authorization to remove the graves by petition to the County Board of Commissioners. The facts of these cases - involving notations of a cemetery and easement on an old map - illustrate the need to expressly dedicate such easements to the public to extend access to descendants.

Below is a basic summary of the dispute and its dispositions to final result:

## **Descendants of the Buried: The Kings (Plaintiffs)**

In 1932, two couples (A.D. King and spouse Annie King, and L.E. Stanley and spouse Gaynelle Stanley, "grantors") subdivided their parcel of land on Topsail Sound in Pender County to A.W. King ("grantee") via quitclaim deed, transferring to him a "Lot 1". In the deed, the grantors reserved a "12 foot road... on the East side of the line between Lots 1 and 2." (facts assume grantors retained Lot 2).

In 1972, A.W. King died intestate, and his parcel was subdivided among his heirs. The subdivision into six parcels was recorded by plat.<sup>65</sup> The plat depicted an easement noted as "sixty (60.0') foot right-of-way... not dedicated to the general public" running along the boundary of the outermost parcel, Tract Six. Though not depicted on the plat, upon Tract Six lies the "King Family Cemetery." One of A.W. King's heirs - Homer King - came to own Tracts Five and Seven (as shown on the estate plat) via an estate deed which referred to the recorded plat for a property description, adding a textual reference to the "60 foot easement" shown as a "dotted line" on the estate map. Homer also died in 1972, presumably after recording the deed which included his spouse, Margaret Whaley. Ms. Whaley survived Homer, and is the mother of A. William King.

A.D. King - one of the original grantors - was father to A.S. King, who was father to Robert King, who owned nearby property that was not depicted on the 1972 estate map (i.e. not one of the six parcels divided from A.W. King's estate).

## **The New Landowners: The Orrs (Defendants)**

In 1990, Robert C. Orr and spouse, Marianne J. Orr" purchased Tract Six from other King descendants, which was conveyed by warranty deed subject to rights of way and easements shown on the original 1972 recorded estate plat. The Orr's had the parcel surveyed, with the surveyor noting a "60 feet easement to cemetery" identified as a broken line.

## **The Dispute: It Starts with a Gate**

In 2005, the Orrs put a gate across the 60 foot easement and barring convenient access to parties including Robert King and A. William King. The Orrs also removed the existing fence around the cemetery (in disrepair) and replaced it with a smaller one, reducing the size of the cemetery. The

Kings and Ms. Whaley sued the Orrs to quiet title to the easement and require removal of the gate. The Orrs answered that they had acquired title to the easement by adverse possession. The trial court hearing the dispute entered an order by summary judgement in favor of the Kings; the Orrs appealed.

The NC Court of Appeals (in King I) upheld the easement as an easement appurtenant, where an easement is created by law to a landlocked parcel subdivided without public right of way access, in favor of Ms. Whaley because she owned land connected to the 60' easement, essentially the dominant estate. The court relied on North Carolina case precedent holding that when a plat (referred to in a deed) depicts an easement, purchasers take the land subject to the easement though it may not be described in the 'metes and bounds' description in the deed. However, the Court denied the Kings' access as the easement was noted on the plat as "not dedicated to the general public," and they were not landowners connected to the easement, thus being members of the general public.

Ms. Whaley - with her access to the cemetery - made the Kings her agents for purposes of fixing up the cemetery, which caused another confrontation and court action. Curiously, the Kings' did not pursue the statutory route to entry as descendants, so the statutory rights of the Kings as descendants was not addressed in the court's several published opinions in the long dispute. After a confrontation at the cemetery site between the Orrs and the Kings (with removal by sheriff) and suit against the Kings for trespass, the Appeals Court dismissed the Orrs' trespass claims (King IV66) based on the finding of the lawful easement.

### **Grave Removal Action by the Orrs**

Meanwhile, following the decision in King I, the Orrs petitioned the Pender County Board of Commissioners - under the statutory process - for removal of the graves in the King Cemetery. The commissioners approved, and the decision was considered by the NC Court of Appeals (King II67 and King V68) which specifically held that it was for a trier-of-fact (i.e. judge or jury in trial court) to factually determine whether the cemetery and graves had actually been abandoned as required by the removal statute (for private landowners). The court eventually - in 2016 - affirmed a finding of non-abandonment (King VI69), thus denying the Orrs the statutory process of grave removal.

## **Local Government Obligations Regarding Abandoned Cemeteries**

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The statute on neglected and abandoned cemeteries authorizes local governments to maintain trust funds for their maintenance. The statute allows "any person, firm or corporation, by will or otherwise" to allocate funds to the county clerk of court for grave and cemetery maintenance. The minimum

amount one can assign for this purpose is \$5000. The clerk of court is directed:

- 1) to keep a separate record for keeping account of the money deposited; and
- 2) to keep a perpetual account of the same therein; and
- 3) to record therein the specific instructions about the use of the income on such money.

The clerk of court is directed to “see that the income is spent according to such specific instructions and shall place a copy of the accounting in the estate file.” These funds are to be kept perpetually until the total amount falls below \$100. The clerk of court may invest the money as allowed by law, and may assign these trustee duties to a commercial bank or trust company. As of the writing of this fact sheet, no survey and statewide accounting of such funds appears to be available, or record of work commissioned by counties for maintenance of designated grave sites.

Lastly, as far as local property taxation of lands upon which graves and cemeteries are located, such grounds are exempt from local property tax so long as the land is not being sold for burial purposes.<sup>70</sup> There is no application for the exemption, and the landowner does not have to show a plat or map of the cemetery (“burial property”).<sup>71</sup> Note that such exemption offers local assessors or landowners little guidance on how much land qualifies for the exemption relative to the size of its burial use.<sup>72</sup>

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# Endnotes

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<sup>1</sup> Cited in *Mills v. Carolina Cemetery Park Corp.*, 242 N.C. 20, 27, 86 S.E.2d 893, 898 (1955)

<sup>2</sup> For example, read this news article from 2024 on logging over known grave sites: News 12 Investigates: NC law gaps exposed as development encroaches on historic cemeteries [<https://wcti12.com/news/news-12-investigates/news-12-investigates-nc-law-gaps-exposed-as-development-encroaches-on-historic-cemeteries>].

<sup>3</sup> At least one project is underway by NC State and the NC Department of Transportation, mapping sites in Edgecombe County. See NCDOT Partnering with N.C. State University to Map Unmarked Burial Sites [<https://www.ncdot.gov/news/press-releases/Pages/2024/2024-07-29-ncdot-partnering-with-nc-state-university-to-map-unmarked-burial-sites.aspx>]. In addition, a 2023 survey by the Office of State Archeologist

[\[https://archaeology.ncdcr.gov/programs/education/climatechange/savingplaces/cemeterysurvey/\]](https://archaeology.ncdcr.gov/programs/education/climatechange/savingplaces/cemeterysurvey/) examined cemeteries of formerly enslaved for damage from the 2019 Hurricanes Florence and Michael.

<sup>4</sup> In 2022, Congress passed the African-American Burial Grounds Preservation Act ([H.R.6805 \[https://www.congress.gov/bill/117th-congress/house-bill/6805/text/\]](https://www.congress.gov/bill/117th-congress/house-bill/6805/text/)) directing the National Park Service to establish programs for discovery and maintenance of black cemeteries (the program was not funded).

<sup>5</sup> N.C.G.S. §65-46 et seq.

<sup>6</sup> N.C.G.S. § 65-47(a)

<sup>7</sup> For Example, Harnett County UDO permits private cemeteries in residential zoned districts. See [Unified Development Ordinance of Harnett County, North Carolina \[https://www.harnett.org/planning/downloads/official-adopted-udo-amended-2025-may.pdf\]](https://www.harnett.org/planning/downloads/official-adopted-udo-amended-2025-may.pdf).

<sup>8</sup> See [N.C.G.S. § 90-210.130 \[https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_90/GS\\_90-210.130.html\]](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_90/GS_90-210.130.html)

<sup>9</sup> [N.C.G.S. § 65-77 \[https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter\\_65/gs\\_65-77.pdf\]](https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter_65/gs_65-77.pdf)

<sup>10</sup> [N.C.G.S. §90-210.130\(f\) \[https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_90/gs\\_90-210.130.html\]](https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_90/gs_90-210.130.html)

<sup>11</sup> [15a NAC 18c .02.03\(a\)\(2\)\(K\) \[http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20c/15a%20ncac%2018c%20.0203.pdf\]](http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20c/15a%20ncac%2018c%20.0203.pdf)

<sup>12</sup> N.C.G.S. § 70-26 et seq.

<sup>13</sup> N.C.G.S § 70-27(a)

<sup>14</sup> Author's search of the [NC Office of the Medical Examiner \[https://www.ocme.dhhs.nc.gov/\]](https://www.ocme.dhhs.nc.gov/) revealed no such database.

<sup>15</sup> "Man discovers graves of over 50 enslaved people on newly purchased Henderson property [\[https://abc11.com/hidden-graveyard-cemetery-slave-north-carolina-history/12250779/\]](https://abc11.com/hidden-graveyard-cemetery-slave-north-carolina-history/12250779/)," WTVD

<sup>16</sup> Google AI result to search: "record of discovered enslaved burial sites north carolina"

<sup>17</sup> N.C.G.S. § 70-29(a)

<sup>18</sup> [North Carolina Office of State Archeology \[https://archaeology.ncdcr.gov/\]](https://archaeology.ncdcr.gov/).

<sup>19</sup> Under G.S. 130A-383

<sup>20</sup> N.C.G.S. § 70-30(a)-(d)

<sup>21</sup> N.C.G.S. § 15-27.2

<sup>22</sup> N.C.G.S. § 70-36(b)

<sup>23</sup> See version notation N.C.G.S. §14-148 (Defacing or desecrating grave sites)

<sup>24</sup> *State v. Wilson*, 94 N.C. 1015, 1020 (1886)

<sup>25</sup> Black's Law Dictionary (9th ed. 2009)

<sup>26</sup> NCGS § 14-149

<sup>27</sup> N.C.G.S. §14-149

<sup>28</sup> N.C.G.S. §15A-1340.17

<sup>29</sup> N.C.G.S. § 14-149

<sup>30</sup> N.C.G.S. § 14-148

<sup>31</sup> *State v. Phipps*, 338 N.C. 305, 449 S.E.2d 450 (1994)

<sup>32</sup> In these cases against two defendants, a new owner of the property in the process of development piled building materials upon the graves of ancestors of the plaintiffs.

<sup>33</sup> *Robinson v. Forest Creek Ltd. P'ship*, 213 N.C. App. 593, 712 S.E.2d 895 (2011) ("*Robinson I*") and *Robinson v. Wadford*, 222 N.C. App. 694, 731 S.E.2d 539 (2012) ("*Robinson II*").

<sup>34</sup> 236 N.C. 170, 72 S.E.2d 425 (1952)

<sup>35</sup> Note that in *King v. Smith*, the court applied the elements of a criminal statute in force at the time (N.C.G.S. § 65-15), which was repealed in 1971.

<sup>36</sup> Effectively N.C.G.S. §1-47

<sup>37</sup> This was the specific holding of *Rodman v. Mish*, 269 N.C. 613, 615, 153 S.E.2d 136, 138 (1967)

<sup>38</sup> *Robinson v. Forest Creek Ltd. P'ship*, 213 N.C. App. 593, 712 S.E.2d 895 (2011) ("*Robinson I*").

<sup>39</sup> N.C. Gen. Stat. § 1-56 (2011) (affirmed in *Robinson v. Wadford* supra)

<sup>40</sup> *Rodman v. Mish*, supra (quoting 14 Am. Jur. 2d, Cemeteries, § 41)

<sup>41</sup> N.C.G.S. § 29-1

<sup>42</sup> N.C.G.S. § 65-101

<sup>43</sup> Id.

<sup>44</sup> See N.C.G.S. § 14-159.6.

<sup>45</sup> N.C.G.S. § 65-102

<sup>46</sup> N.C.G.S. § 65-102(a)

<sup>47</sup> N.C.G.S. § 65-102(b)

<sup>48</sup> 184 NC App. 731, 647 S.E.2d 457 (2007)

<sup>49</sup> The Court cited in support *Shields v. Harris*, 190 N.C. 520, 527, 130 S.E. 189, 192 (1925); *Strickland v. Tant*, 41 N.C. App. 534, 537, 255 S.E.2d 325, 328, cert. denied, 298 N.C. 304, 259 S.E.2d 917 (1979).

<sup>50</sup> 242 N.C. 20, 27, 86 S.E.2d 893, 898 (1955)

<sup>51</sup> 184 NC App at 736.

<sup>52</sup> 184 NC App. 731

<sup>53</sup> 269 N.C. 613 (1967)

<sup>54</sup> 269 N.C. 613 at 616, citing *Kenner v. Cousin*, 163 La. 624, 112 So. 508 (1927) and *Lay v. Carter*, 151 N.Y.S. 1081 (1915).

<sup>55</sup> *Yates v. Graham*, 2003 N.C. App. LEXIS 1683 (2003)

<sup>56</sup> *Rodman v. Mish*, at 617.

<sup>57</sup> N.C.G.S. §65-106(a)(1)

<sup>58</sup> N.C.G.S. §65-106(a)(2)

<sup>59</sup> N.C.G.S. §65-85(1)

<sup>60</sup> N.C.G.S. §65-106(b). More specific guidance to what is considered a "publication of general circulation" is described in N.C.G.S. §1-597

<sup>61</sup> N.C.G.S. §65-106(c)

<sup>62</sup> N.C.G.S. §65-106(g) An example of such local board of commissioner obligation appears in the

Henderson County, NC administrative bylaws, §46-21 et seq. (“Removal of Graves from Abandoned Cemeteries”) Note that the penalty for violation is Class III misdemeanor in §1-14 of that ordinance.

<sup>63</sup> N.C.G.S. §65-106(f)

<sup>64</sup> §65-85(1),(2)

<sup>65</sup> The facts do not state so, but one would assume a personal representative was qualified, and enough agreement was evident among the heirs to agree to a survey and subdivision of their cotenancy.

<sup>66</sup> *Orr v. King*, 2011 N.C. App. LEXIS 1764, 2011 WL 3570069

<sup>67</sup> *King v. Orr*, 234 N.C. App. 116 | 761 S.E.2d 755 (2013)

<sup>68</sup> *King v. Pender County*, 241 N.C. App. 656, 775 S.E.2d 695 (2015) (unpublished)

<sup>69</sup> *King v. Pender County*, 249 N.C. App. 90, 790 S.E.2d 680 (2016)

<sup>70</sup> § 105-278.2

<sup>71</sup> § 105-278.2 (b)

<sup>72</sup> For further local government challenges, see McLaughlin, C. [The Burial Property Exemption](https://canons.sog.unc.edu/2024/08/the-burial-property-exemption/) [<https://canons.sog.unc.edu/2024/08/the-burial-property-exemption/>]. (UNC School of Government, 2024).

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