

A Grave Situation: Protecting the Deceased and Their Final Resting Places from Destruction

Eternal resting places are under threat and the dead are finding that eternity is not forever after all. History is more than words; it is the foundation of our buildings, art, tools, and household items. Final resting places of the dead have a dual existence. Gravesites serve as hallowed places of permanent rest, but more importantly, these sites often reveal how our ancestors lived and offer insights as to our current way of life. Truly constituting American “cultural resources,” the physical remains of people and their way of life are worth preserving.¹ Cultural and historical resources, however, cannot be replaced if they are destroyed by land development, erosion, or relic hunters. Our heritage as Americans, and human beings, belongs to everyone. Without protection, the loss of archaeological and historic sites will result in the loss of irreplaceable information of the past. As Judge Brannon once stated, “If relatives of blood may not defend the graves of their departed, who may?”² This question merits exploration.

In Florida: Statutory Protection for Cultural Resources

Each state has enacted laws to protect and preserve archaeological sites. Most use a permit system to regulate digging and artifact collection on public lands. Trafficking in human remains is clearly illegal in all states.³ Florida statutes and case law protect artifacts and human burials on public and private lands, but ownership of artifacts generally depends upon where they are found.⁴

Artifacts discovered on private property belong to the landowner, and those recovered from state-owned land remain property of the state.⁵ However, Florida law permits those who recover isolated artifacts from parts of Florida rivers to keep them if they report the find to the state.⁶ Two caveats bear consideration: 1) entering the state’s or another person’s property without permission to search for artifacts is trespass to land; and 2) removing artifacts from another’s land without their consent is theft.⁷ Discoveries of human remains and artifacts associated with human burials are protected regardless of property ownership.⁸

Florida’s legislature has enacted many statutes to further the goals of preserving and protecting the state’s cultural heritage. Four pieces of legislation were devised to fund and provide public access to archaeological sites and protect unmarked human remains: 1) The Florida Museum of Natural History Act;⁹ 2) Emergency Archaeological Property Acquisition of 1988;¹⁰ 3) the Florida Historical Resources Act;¹¹ and 4) Offenses Concerning Dead Bodies and Graves.¹²

The Florida Museum of Natural History (FMNH) at the University of Florida must maintain a depository of archaeological and ethnographic specimens and materials to provide a base for research on the distribution of prehistoric archaeological sites, and an understanding of the Native American and historic Euro-American cultures that occupied them.¹³ Under Florida law, “such collections shall belong to the state with title vested in the museum.”¹⁴ FMNH must comply

with pertinent state archaeological rules. Other institutions, departments, and agencies are authorized to deposit collections from archaeological sites to the FMNH. The museum is authorized to accept, preserve, maintain, or dispose of such specimens and materials in a manner that makes each collection and its accompanying data available for research and use by FMNH staff, and by cooperating institutions, departments, agencies, and qualified independent researchers.¹⁵

The Emergency Archaeological Property Acquisition Act of 1988 created a rapid method of acquisition for a limited number of specifically designated properties that may bypass previously accepted state land acquisition methods. The State Archeology/Burial Sites Fund can be used to protect properties that are of major statewide archaeological significance from destruction resulting from imminent development, vandalism, or natural events.¹⁶ The act requires \$2 million to be annually segregated in an account for emergency archaeological acquisition. This funding applies only to property that is an archaeological resource of statewide significance, and when such resource’s historical significance will be irretrievably lost if the state cannot acquire the property.¹⁷

Under the Florida Historical Resources Act, all treasure trove, artifacts, and objects having intrinsic historical and archaeological value that have been abandoned on state-owned lands or state-owned sovereign submerged lands belong to the state, with the title thereto

vested in the Division of Historical Resources (DHR).¹⁸ The Florida Historical Resources Act authorizes DHR to 1) adopt rules as deemed necessary to carry out its duties and responsibilities; 2) enter into contracts or agreements with other public and private entities; and 3) accept gifts and loans.¹⁹

DHR must acquire, maintain, preserve, interpret, exhibit, and make available for study objects that have intrinsic historical or archaeological value relating to the history, government, or culture of the state, including tangible personal property.²⁰ The act also authorizes DHR to arrange for the disposition of such specimens at accredited state institutions, and to loan specimens to permit-holding institutions (e.g., museums) for study, display, and curatorial responsibilities.²¹ The DHR can designate any archaeological site of significance to the scientific study or public representation of the state's historical, prehistorical, or aboriginal past as a state archaeological landmark, or any interrelated grouping of significant archaeological sites as a state archaeological landmark zone.

Individuals are prohibited from conducting field investigation activities on land designated as an archaeological site without first securing a permit from DHR.²² However, DHR may allow permitted archaeological activities to be undertaken by reputable museums, universities, or other qualified entities that have, or will secure, the archaeological expertise for performing "systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs," which must be submitted to DHR.²³ State institutions that DHR designates as "accredited institutions" are allowed to conduct archaeological field activities on state-owned or controlled lands, or within the boundaries of a state archaeological landmark zone, without obtaining an individual permit for each project.²⁴

Penalties for violation are more stringent for those who undertake prohibited activities by excavation, in part because of the substantial dam-

age that is often left behind.²⁵ Another reason for the harsher penalties is that excavation can disturb the spatial arrangement of archaeological artifacts and human remains.²⁶ For example, fines do not exceed \$1,000 or one year in prison where no excavation is involved. Committing such offenses via excavation can result in fines up to \$5,000 and five years in prison.²⁷

Protection Specifically for Buried Human Remains

Buried human remains in Florida have distinctive legal protections — both statutory and court-sanctioned. Under Florida law, knowledge of the gravesite's existence can define which law is applicable.

• *Statutory Protection for Unmarked Human Burials* — The Florida Legislature has enacted statutes pertaining to unmarked human burials, intending that "all human burials and human skeletal remains must be accorded equal treatment and respect based upon common human dignity without reference to ethnic origin, cultural background, or religious affiliation."²⁸ This section discusses some of the laws that may apply in the event that historical human remains are encountered unexpectedly.

The mandates of Florida Statutes apply when human skeletal remains, human burial, or associated burial artifacts have been discovered within the state.²⁹ An "unmarked human burial" is statutorily defined as "any human skeletal remains or associated burial artifacts" or any location connected with such remains (whether artifacts were located there or legitimately believed to be present) and the location is not marked as a gravesite.³⁰

Upon discovery of an unmarked human burial, other than during an authorized archaeological excavation, "all activity that may disturb the unmarked human burial shall cease immediately, and the district-medical examiner (DME) shall be notified."³¹ After receiving notification of the unmarked human burial, the DME has 30 days to determine whether to maintain jurisdiction or to refer the matter to the state archaeolo-

gist. If the unmarked human burial is determined not to be involved in a legal investigation and represents the burial of an individual who has been dead 75 years or more, the DME will notify the state archaeologist.³²

Upon receiving notice from the DME, the Department of State's DHR may assume jurisdiction over and responsibility for the unmarked human burial. This procedure is conducted to initiate efforts to properly protect the burial, human skeletal remains, and associated burial artifacts.³³ The state archaeologist must attempt to locate and consult with people who may have familial, community, tribal, or an ethnic relationship with the deceased, to determine proper disposition of the remains.³⁴ Frequently, no links to family or community can be identified. To determine the proper disposition of the burial in such cases, the state archaeologist should consult with persons with relevant experience, including 1) a human skeletal analyst; 2) two Native American members of current state tribes recommended by the Governor's Council on Indian Affairs, Inc. (if the remains are those of a Native American); 3) two representatives of related community or ethnic groups if the remains are not those of a Native American; or 4) an individual who has special knowledge or experience regarding the particular type of the unmarked human burial.³⁵

The state archaeologist is required to determine whether the unmarked human burial is historically, archaeologically, or scientifically significant. If the burial is deemed significant, re-interment may not occur until the remains have been examined by a designated human skeletal analyst.³⁶ Furthermore, if the unmarked human burial is significant and if the parties (as discussed above) with whom the state archaeologist is required to consult agree, the human skeletal remains and the associated burial artifacts shall belong to the state of Florida. The title thereto will be vested in the DHR.³⁷

Treatment of Native American burials differs because Native American tribes have sovereign nation status. Tribal oversight of such cultural

items would have precedence over state agencies. The Native American Graves Protection and Repatriation Act (NAGPRA)³⁸ “safeguards the rights of Native Americans by protecting tribal burial sites and rights to items of cultural significance to Native Americans.”³⁹ Under NAGPRA, federal agencies and institutions that receive federal funding are required to return Native American “cultural items” to their respective peoples. The act defines “cultural items” as “human remains, funerary objects, sacred objects and objects of cultural patrimony.”⁴⁰

When the remains are classified as archaeologically or scientifically significant, the archaeologist will negotiate a “scope of work” or a “management plan” with the state archaeologist. A management plan may include disinterment or preservation in place. If disinterment is selected, the archaeologist will work with a physical anthropologist to carefully remove the remains for forensic examination. Following completion of the forensic investigation, a management report is provided to facilitate decisions regarding whether site development activities may proceed in the vicinity of the discovery.⁴¹ Florida master site files (FMSF) forms must be completed or updated as needed, and in compliance with Florida law. The archaeologist then submits a final report to the state archaeologist.⁴² The FMSF is a paper file archive and computer database of the state’s known cultural resources.⁴³

Organized alphabetically by county, the FMSF currently lists more than 106,000 properties/cultural resources, which represent the “known physical remains of Florida’s prehistoric and historic cultural heritage.”⁴⁴ The FMSF is maintained in Tallahassee by the DHR’s Bureau of Archaeological Research (within Florida’s Department of State). Documented properties in the FMSF are usually older than 50 years.⁴⁵ Archaeologists can report new sites electronically using the bureau’s archaeological site form. New sites are assigned numbers sequentially as they are recorded.⁴⁶ Authorized researchers can thereby access site survey reports and ar-

chaeological site forms online using computerized search tools, including keyword, subject, and author search capability.⁴⁷

• *Protection for Known, Private Graveyards* — In Florida, when land upon which a cemetery is located is transferred, do subsequent landowners have an obligation to preserve the cemetery, or can they simply pave over the burials and cause the dead to become the forgotten? Although Florida’s statutory law specifically protects *unmarked* human burials, protection of *marked* or known gravesites often relies upon Florida case law. A review of the following cases defines the legal protections that apply to marked, but otherwise unprotected, gravesites.

Mingledorff v. Crum, 388 So. 2d 632 (Fla. 1st DCA 1980), addressed family graveyards. The plaintiffs, descendants of those buried in a 4,000 square foot cemetery on land owned by the defendant, desired that the cemetery be declared a public cemetery. The plaintiffs also wanted the right to visit and maintain the cemetery, and to have the right of future burial as long as space was available.⁴⁸

The court-defined elements for a common law cemetery dedication: 1) Setting aside land for a public use; 2) the property owner’s words or acts must show an intent that the land is dedicated to a public use; and 3) acceptance by the public of the dedication.⁴⁹ The court also found that a public dedication cannot be restrictive in its nature; it must be dedicated to the whole public. Based on these general guidelines, the court concluded that the land was not a public cemetery dedicated for use by the public. Instead, the land was held to be a private cemetery utilized only by the former property owner’s family.⁵⁰

Having settled that the cemetery was not a public dedication, the court then turned to whether landowners could ever set aside land for a private family cemetery and, if so, what rights the descendants of those buried in the cemetery would have.⁵¹ The court cited the second restatement of *American Jurisprudence*, as well as cases in oth-

er states (e.g., *Hines v. State*, 149 S.W. 1058 (Tenn. 1911), and *Heiligman v. Chambers*, 338 P.2d 144 (Okla. 1959)) regarding this narrow concern.⁵²

First, the court reasoned that landowners can dedicate a portion of their property as a private burial ground. Reserving a private burial site can be express, or implied “by acts, acquiescence, or other conduct evincing clearly such a purpose.”⁵³ Where there is such a dedication and the land is used as a burial ground, the land cannot be for any other use. Private burial plots can be open to those who have a right to be buried there (if plots are available) and are accessible for visitation, repair, and beautification.⁵⁴ Rights to access the cemetery are limited by reasonable time and manner.⁵⁵ The cemetery must be maintained in a tidy and dignified fashion.⁵⁶ A property owner has a right to access one’s property at all times, and his or her other property can not be damaged, or their enjoyment be disturbed.⁵⁷ A cemetery loses its special status once abandoned, when it is no longer a “resting place for the dead, with anything to indicate the existence of graves, as long as it is known and recognized by the public as a graveyard.”⁵⁸

Furthermore, the court specifically defined some aspects of the general legal propositions discussed above, although the decision did not focus on whether the reserved burial plot was a dedication, a trust, or an easement.⁵⁹ The court also limited rights of accessibility to individuals who are related by blood or marriage to those buried in the cemetery.⁶⁰ The right of burial includes all the incidental activities with it, such as the right of suitable graveside services. Moreover, funeral home employees may access the site as necessary to perform their functions.⁶¹ Graves must be maintained in a clean and dignified fashion so that the area is healthy and inoffensive.⁶² Markers added to the cemetery must be as “are customary with the community.”⁶³ The court further directed the relatives of the deceased who showed interest in maintaining the graves to have the cemetery surveyed, existing graves

and future burial sites within the cemetery's boundary identified, and to establish the means and schedule of maintenance of the cemetery.⁶⁴ The court concluded that so long as the plaintiffs' duties were fulfilled, the land held in fee simple by the defendant was subject to an "easement and trust" of the plaintiff's family burial ground.⁶⁵

Gibson v. Barry Cemetery Association, 250 S.W.2d 600 (Tex. Civ. App. 1952), in part demonstrates the general rule that relatives of the deceased in a particular cemetery, by that fact alone, do not have any title to the land. Relatives generally have only the right of "visitation, ornamentation, and the protection of the graves of such relatives as are buried thereon from desecration."⁶⁶

Vidrine v. Vidrine, 225 So. 2d 691 (La. 3d DCA 1969), involved a cemetery dedicated to the public. The court found that the relatives' rights were essentially a covenant running with the land, binding the present property owner via an implied contractual relationship.⁶⁷ The owner could not remove or disturb a grave, or bar relatives from visiting or maintaining graves, the land containing the cemetery could not be used for purposes not in keeping with its use as a cemetery, and the owner could not reduce the size of the cemetery.⁶⁸ The property owner did, however, have the right to charge for burial lots, regulate where burial plots would be placed, and regulate how burials are conducted as long as such requirements were characteristic of previous burials in the cemetery.⁶⁹

The West Virginia case of *Concerned Loved Ones and Lot Owners Association of Beverly Hills Memorial Gardens v. Pence*, 383 S.E.2d 831 (W. Va. 1989), involved a cemetery owner who sold 20 of 70 acres of a parcel that had been originally conveyed to be a cemetery. The 20 acres were used for timber production and, possibly, coal mining.⁷⁰ The court held that, when determining what activities are permissible within cemetery boundaries, it would decide whether the activity is "so unrelated to cemetery purposes that it will not be sanctioned without legislative

authority."⁷¹ Mining operations were not related to cemetery purposes.⁷² The court remanded the case in part to have the trier of fact determine whether all 70 acres had been dedicated to a cemetery.⁷³

Wilder v. Evangelical Lutheran Joint Synod, 227 N.W. 870 (Wis. 1929), and *Tracy v. Bittle*, 213 Mo. 302 (1908), expand upon the fate of a cemetery when it, too, finally breathes its last breath.⁷⁴ *Wilder* stood for the proposition that a cemetery lost its special status as against property owners only when those already buried in a cemetery were exhumed and removed by lawful means.⁷⁵ A cemetery did not, however, lose its special status simply because people were no longer buried in it.⁷⁶

Tracy explored the meaning of an abandoned graveyard.⁷⁷ When a graveyard is abandoned, and the remaining bodies properly exhumed, the land reverts to its original purpose or use without overriding limitations.⁷⁸ Abandonment was described as "when these graves shall

have worn away; when they who now weep over them shall have kindred resting places themselves; when nothing shall remain to distinguish this spot from common earth around, and it shall be wholly unknown as a graveyard...."⁷⁹

The *Mingledorff* court relied on *Heiligman* and *Hines* to reaffirm the general legal guidelines that govern a family cemetery's birth, life, and demise. In *Heiligman*, the plaintiffs sought to prevent removal of bodies from a private burial ground. The burial ground was regarded as a legitimate family plot because the land had been segregated by a wall; the dead were laid to rest in a proper manner; and their graves were properly marked.⁸⁰ The general rule was that a private burial ground created a trust upon the property owner to preserve the land as a cemetery and not to interfere with the rights of the deceased's relatives to access the cemetery for visitation and maintenance.⁸¹ The court noted that properly marked

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cemeteries put subsequent owners of the land on notice of the cemetery's existence.⁸² The court also noted that abandonment was not achieved by merely failing to cut grass or maintain tombstones; only removal of the buried can cause the graveyard to be abandoned.⁸³

In *Hines*, a family cemetery had been established, utilized, and sufficiently maintained by the descendants of those buried within it.⁸⁴ The court found that a dedication of land for a burial ground need not be expressed in the property deed, but could be implied because the graves were visible; relatives had sufficiently maintained the cemetery; and the property owner had been put on notice.⁸⁵ The court declared that a dedication of land for a burial ground is a trust held by subsequent landowners for the benefit of the deceased's relatives. The relatives would have the right to access the graveyard, and to be buried in the graveyard, if plots were available. The relatives would also have a duty to maintain the cemetery and perform activities in a reasonable manner and time "so as not to unnecessarily injure the owner of the farm in its cultivation and use."⁸⁶

While *Mingledorff* is a case on point regarding the legal status of private family plots, other Florida cases and laws reaffirm and illuminate aspects of the legal status of family plots in Florida. For example, one Florida case involving a public cemetery established that the rights of those with an interest in preserving a cemetery's static condition are not unlimited. In *City Comm'n v. Woodland Park Cemetery Co.*, 553 So. 2d 1227 (Fla. 3d DCA 1989), a cemetery dedicated to the public was zoned "residential." The cemetery's owners wanted a portion of the cemetery zoned "commercial" to allow for a commercial building.⁸⁷ When the zoning request was denied, the owners argued that they were subject to "reverse spot zoning," a situation where an individual property was arbitrarily zoned as to not "make a reasonable use of its property in accord with the character of the adjacent area."⁸⁸ The court found

that reversed spot zoning did occur, and because it was unreasonable and bore no substantial relationship with public concerns, struck down the arbitrary zoning classification.⁸⁹ The *Woodland Park* court contemplated changed conditions, reasoning that the road upon which the cemetery was situated had, over a period of 50 or more years, been transformed from an underdeveloped country road to a four-lane, heavily traveled thoroughfare with commercial development on both sides.⁹⁰

While private family burial plots (of less than two acres) are exempted from Florida's regulation of funeral and cemetery services and regulation of easements, statutory definitions and mandates reaffirm the cases discussed above. For example, religious cemeteries of less than five acres and family plots of less than two acres were exempt from regulation.⁹¹ Care and maintenance of cemeteries includes caring for tombstones, walkways, roads, and lawns so that a cemetery is "well-cared for and [in a] dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community."⁹² Moreover, if a licensed cemetery company wishes to utilize land dedicated as a cemetery for other purposes, the company must first obtain approval from the Department of Financial Services and notify the public of the potential sale. The state agency must balance all interested parties' concerns and has discretion over whether to grant approval; if approved, the company must exhume all bodies prior to the alternate use or sale of the land.⁹³ In general, Florida's separate regulation of easements affirms the rights of ingress and egress from cemeteries for the deceased's relatives and contemplates that either the landowner or the deceased's relatives can maintain the cemetery.⁹⁴

• *In Florida: Synopsis of Private Graveyard Law* — What protections does a family or a small private cemetery have today in Florida against the onslaught of land development? First, a private landowner can set aside a portion of his or her land as a private or family burial plot.⁹⁵

Regardless of the way "dedication" is defined, dedicating land as a cemetery provides a special status or protection from landowners' ordinary transactions and expectations. Visible indicators (monuments, headstones, etc.) are generally sufficient to put a landowner on notice of a cemetery's presence.⁹⁶ A cemetery must maintain its special status until that status is lost by abandonment; a cemetery is abandoned only when all traces of its being a cemetery cease to exist and the people laid to rest within it have been lawfully exhumed.⁹⁷ Abandonment does not include mere failure to regularly maintain a cemetery or cessation of new burials, but it does include lack of knowledge of the cemetery's existence as exemplified when there are no living witnesses who know of the cemetery's location or borders (where not enclosed with a fence).⁹⁸

Generally, relatives of the deceased have the right to future burials where plots are available, and additionally have visitation rights and egress and ingress rights to the cemetery.⁹⁹ Relatives of the deceased are expected to maintain the cemetery in a dignified and healthy manner. "Maintenance" includes weed removal, planting flowers, and maintaining roads, walkways, tombstones, and other markers.¹⁰⁰ Cemetery access must occur at reasonable times and in a reasonable manner,¹⁰¹ and activities should not disturb the landowner's enjoyment and use of the remaining property.¹⁰² Although property owners retain title to the land, they cannot sell or utilize the property in a manner inconsistent with the cemetery's purpose¹⁰³ or in contravention of the relatives' right of access and burial.¹⁰⁴ A landowner who oversees or manages the cemetery (such as a church that oversees its own cemetery) can regulate the cemetery and charge appropriate fees for upkeep and future burials.¹⁰⁵

Under F.S. §497.253, governing entities can permit or require removal of human remains so that land can be utilized for other purposes. When human remains have been removed, a cemetery can be regarded as abandoned,

and the special status of the land it occupied is lost.¹⁰⁶ Therefore, the special status of a cemetery cannot perpetually exist as long as exhumation is a legitimate option.

Concluding Considerations

The dead cannot draw breath to defend their legal rights or to preserve what is left of themselves and their final resting places. Preserving cultural resources, human remains, and gravesites falls to relatives of the deceased, federal and state governments, and others who can act to prevent their destruction. Knowledge of federal and state legal resources and case law can provide concerned citizens and attorneys with the legal means to preserve America's heritage and cultural resources.□

¹ See Fla. Dept. of State, Division of Historical Resources, Education: Cultural Resource Protection for Private Landowners — Overview, <http://www.flheritage.com/archaeology/education/culturalmgmt> ("Cultural Resources" are those resources that represent a culture or society, either past or present, and may include landscapes, structures, and/or archaeological sites. Typically, cultural resources that are protected are those from past cultures, such as historic Euro-American and Native American, because these cultures are irreplaceable.').

² *Ritter v. Crouch*, 76 S.E. 428, 430 (W. Va. 1912) (Brannon, President).

³ See generally Fla. Dept. of State, Office of Cultural and Historical Programs, Abandoned Cemeteries: Statutes and Rules Related to Historic and Abandoned Cemeteries, and to Unmarked Human Remains, <http://www.flheritage.com/archaeology/cemeteries/index.cfm?page=Laws>.

⁴ *Id.*

⁵ *Id.*; Fla. Dept. of State, Office of Cultural and Historical Programs, Archaeology: Education, Cultural Resource Protection for Private Landowners, http://www.flheritage.com/archaeology/education/culturalmgmt/landmark_designation.cfm.

⁶ *Id.*

⁷ See Fla. Dept. of State, Division of Historical Resources, Best Management Practices, <http://www.flheritage.com/archaeology/education/culturalmgmt/Handbook.pdf>.

⁸ *Id.*

⁹ 48 FLA. STAT. ANN. §1004.56-57 (West 2012).

¹⁰ 18 FLA. STAT. ANN. §253.027 (West 2012).

¹¹ 18 FLA. STAT. ANN. §§267.011-1736 (Lexis 2012).

¹² 46 FLA. STAT. ANN. §872.01-06 (West 2012).

¹³ 48 FLA. STAT. ANN. §1004.56.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 18 FLA. STAT. ANN. §253.027(2).

¹⁷ 18 FLA. STAT. ANN. §253.027(4)-(5). See 18 FLA. STAT. ANN. §253.027(6) for further considerations regarding whether these funds should be allocated to a particular project.

¹⁸ 18 FLA. STAT. ANN. §267.115 (West 2012).

¹⁹ 18 FLA. STAT. ANN. §267.031 (West 2012).

²⁰ 18 FLA. STAT. ANN. §267.115.

²¹ 18 FLA. STAT. ANN. §267.12(3) (West 2012).

²² *Id.*

²³ 18 FLA. STAT. ANN. §267.12(1). "The division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the division shall deem to be properly qualified to conduct such activity." *Id.*

²⁴ 18 FLA. STAT. ANN. §267.12(2). The accredited institution must first give written notice of all anticipated archaeological activities to DHR, with sufficient information (e.g., a written scope of work, maps, etc.) reasonably required to ensure the proper preservation, protection, and excavation of the archaeological resources. No archaeological activity may begin until DHR has determined, within 15 days of receipt of notification, that the planned project will be in conformity with its adopted guidelines, regulations, and criteria. *Id.*

²⁵ See COMPLIANCE REVIEW SECTION, DIV. OF HISTORICAL RESOURCES, MGMT. PROCEDURES FOR ARCHAEOLOGICAL AND HISTORICAL SITES AND PROPERTIES ON STATE-OWNED OR CONTROLLED LANDS 1 (1995) (discussing that disturbance of an archaeological site destroys the spatial arrangement of objects, even though objects themselves may be recoverable).

²⁶ *Id.*

²⁷ 18 FLA. STAT. ANN. §267.13 (West 2012); see generally 46 FLA. STAT. ANN. §775.082-.084 (West 2012). Moreover, a person is guilty of a misdemeanor who, in some manner, alters an historical object 1) to illegitimately enhance its commercial value, 2) to falsely identify it, or 3) to offer for sale an object as an original historical specimen if the object is not an original specimen. 18 FLA. STAT. ANN. §267.13(3).

²⁸ 46 FLA. STAT. ANN. §872.05(1) (West 2012).

²⁹ *Id.*

³⁰ 46 FLA. STAT. ANN. §872.05(2)(f).

³¹ 46 FLA. STAT. ANN. §872.05(4).

³² 46 FLA. STAT. ANN. §872.05(4)(a).

³³ 46 FLA. STAT. ANN. §872.05(6).

³⁴ 46 FLA. STAT. ANN. §872.05(6)(b).

³⁵ 46 FLA. STAT. ANN. §872.05(6)(c).

³⁶ 46 FLA. STAT. ANN. §872.05(6)(a).

³⁷ 46 FLA. STAT. ANN. §872.05(6)(c).

³⁸ Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001, *et seq.* (1990).

³⁹ *Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936, 938 (10th Cir. 1996).

⁴⁰ 25 U.S.C. §3001(3).

⁴¹ 46 FLA. STAT. ANN. §872.05(5)(a), (c), 872.05(7) (West 2012); FLA. ADMIN. CODE R. 1A-44.003 (West 2012); FLA. ADMIN. CODE R. 1A-44.005 (West 2012).

⁴² 18 FLA. STAT. ANN. §267.031(5)(n) (West 2012); see Fla. Dept. of State, Office of Cultural and Historical Programs, Florida Master Site File, <http://www.flheritage.com/preservation/sitefile/>; Dept. of State, Office of Cultural and Historical Programs, Archaeological Site Form: Florida Master Site File (1997), <http://www.flheritage.com/preservation/siteFile/documents.cfm> (form can be utilized to record information pertaining to gravesites and burial grounds).

⁴³ See Florida Master Site File, note 42.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* The U.S. National Archaeological Database (NADB) is an invention of more than 240,000 reports on archaeological investigation and planning. Although the database is largely comprised on "gray" literature (unpublished, uncataloged, and of limited circulation), it represents a large amount of the primary data reported on archaeological sites in the U.S. The NADB's search engine provides direct access to the bibliographic data; reports can be searched by keyword, state, county, worktype, title, cultural, affiliation, material, year of publication, and author. U.S. Dept. of the Interior, Nat'l Park Serv. Archeology and Ethnography Program,

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⁴⁸ *Mingledorff*, 388 So. 2d at 633-34. In its subsequent analysis, the court emphasized the fact that there were visible graves and the former property owner's dedication of land as a cemetery had been documented. *Id.* at 634-35.

⁴⁹ *Id.* at 635.

⁵⁰ *Mingledorff*, 388 So. 2d at 635. The graves had gone back to before the 1900s and subsequent owners had sporadically maintained the cemetery. *Id.* ("His widow, Mrs. Fannie Roberts, from time to time cleared and cleaned the cemetery, after the property owner died in 1938.")

⁵¹ *Id.*

⁵² *Id.* at 635-36.

⁵³ *Mingledorff*, 388 So. 2d at 635. See also *Andrus v. Remmert*, 146 S.W.2d 728, 730 (Tex. 1941) (It should be noted that where a portion of a dedicated cemetery remains unused, "it appears that there is no reasonable expectation that such surplus land will ever be used for burial purposes at any reasonable time in the future, such surplus land should be treated as abandoned as a cemetery.")

⁵⁴ *Id.* at 635-36.

⁵⁵ *Mingledorff*, 388 So. 2d at 635.

⁵⁶ *Id.* at 637.

⁵⁷ *Id.*

⁵⁸ *Mingledorff*, 388 So. 2d at 636. See also *Mayes v. Simons*, 8 S.E.2d 73, 74 (Ga. 1940). The court's description of an apparent abandoned cemetery, if not an actual abandoned cemetery: "The evidence showed that the last burial in the plot claimed as a cemetery occurred in the year 1868, and, although conflicting in some respects, authorized findings to the effect that the graves in question were never marked except by rocks, without inscription, on the side of one of them, the size and number of the rocks not being shown in the record; that by neglect and inattention for more than fifty years the graves had ceased to bear any sign likely to attract attention to their existence as such; that the space so occupied had lost all appearance as a cemetery before the husband of the principal defendant purchased the property upon which such cemetery lot may have been formerly situated; and that such purchase was made in good faith, and without knowledge or notice of the existence of such cemetery." *Id.*

⁵⁹ *Mingledorff*, 388 So. 2d at 636.

⁶⁰ *Id.* See also *Turner v. Turner*, 48 Va. Cir. 114, 115 (Va. Cir. Ct. 1999) ("The meaning of 'family' depends on the field of law which it is used.... More broadly, 'family' can mean all descendants of a common progenitor.... [T]he court agrees . . . the word 'family' was used in its broadest sense.... [The ancestor who established the family graveyard] could not have intended to reserve a burial ground only for his immediate family....").

⁶¹ *Mingledorff*, 388 So. 2d at 636.

⁶² *Id.* Specifically, the cemetery's graves and markers must be maintained, flowers and grasses must be planted, weeds should

be controlled, and even stagnant water and dead flowers should be removed. *Id.* See also *Barrick v. Hockensmith*, 69 Pa. D. & C.2d 475, 483 (Pa. C.P. 1975) ("The duty of maintenance...thus exceeds a duty to avoid flagrant desecration, but falls short of a duty to conduct future burials... extends not only to mowing grass and similar menial chores. It reaches as well defendants' use of the structure which adjoins the burial ground.")

⁶³ *Mingledorff*, 388 So. 2d at 637.

⁶⁴ *Id.*

⁶⁵ *Id.* For further discussion regarding what is and is not a public dedication of land, see *Garland v. Clark*, 88 So. 2d 367, 371 (Ala. 1956) (holding that a public dedication must be a dedication to the public at large and not for a particular part of the public); see also 14 AM. JUR. 2d, Cemeteries §17 (2012); *Chandler v. Henry*, No. CA97-1530, 1998 Ark. App. LEXIS 556, *10 (Ark. Ct. App. Sept. 2, 1998) (holding that a footpath rather than a road, accessible by a car, was acceptable access to a protected cemetery). For information on situations in which a graveyard is missing although a deed has left a reservation for one. See *McDonough v. Roland Park Co.*, 57 A.2d 279, 280 (Md. 1948); see also 14 AM. JUR. 2d, Cemeteries §20 (2012).

⁶⁶ *Gibson*, 250 S.W.2d, at 601.

⁶⁷ *Vidrine*, 225 So. 2d at 693.

⁶⁸ *Id.* See also *Chace v. Leising*, 72 N.Y.S.2d 743, 745-46 (Sup. Ct. 1947). The defendants' act of cutting down trees that caused the limbs to fall and break cemetery headstones constituted improper interference with a protected cemetery. *Id.*

⁶⁹ *Vidrine*, 225 So. 2d at 698.

⁷⁰ *Beverly Hills*, 383 S.E.2d at 833.

⁷¹ *Id.* at 835.

⁷² *Id.* at 836.

⁷³ *Id.* at 838.

⁷⁴ See also 14 AM. JUR. 2d Cemeteries §20 (2012).

⁷⁵ *Wilder*, 227 N.W. at 871-872.

⁷⁶ *Id.* at 871. In the case, relatives of those buried in the cemetery sought to prevent the landowner, a college, from using the cemetery for purposes other than that of a cemetery, like having a garage on the cemetery. *Id.*

⁷⁷ *Tracy*, 112 S.W. at 317.

⁷⁸ *Id.* at 318-19.

⁷⁹ *Id.* at 317.

⁸⁰ *Heiligman*, 339 P.2d at 147.

⁸¹ *Id.*

⁸² *Id.* at 147-48.

⁸³ *Id.* at 148.

⁸⁴ *Hines*, 149 S.W. at 1059.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Woodland Park*, 553 So. 2d at 1227-28. Situated near a major thoroughfare, the frontage of the thoroughfare is zoned commercial, and behind this commercial frontage are residential neighborhoods. The cemetery's owners sought only to rezone 1.3 acres in order to build a funeral home with parking. *Id.* at 1228.

⁸⁸ *Id.* at 1230-31.

⁸⁹ *Id.* at 1233.

⁹⁰ *Id.* at 1234. The court referred to the cemetery as a "literal zoning peninsula," an individual parcel not in keeping with the character of the rest of the area. *Id.*

⁹¹ 33 FLA. STAT. ANN. §497.260 (West 2012).

⁹² 33 FLA. STAT. ANN. §497.005 (West 2012).

⁹³ 33 FLA. STAT. ANN. §497.270 (West 2012).

⁹⁴ 40 FLA. STAT. ANN. §704.08 (West 2012).

⁹⁵ See *Mingledorff*, 388 So. 2d at 635. This dedication of land can be viewed as an easement, a trust, or as a reservation. See *id.* at 635-36. A dedication of land for a family plot is not a public dedication, as the entire general public does not have a right to utilize the cemetery. See *id.* at 635; *Gardland*, 88 So. 2d, at 370-71.

⁹⁶ See *Hines*, 149 S.W. at 1059. Finally, it must be noted that, whether express or implied, a dedication of land must be in a manner so that the specific location of the cemetery on the land can be readily known. See *McDonough v. Roland Park Co.*, 57 A.2d 279, 280 (Md. 1948).

⁹⁷ See *Wilder*, 227 N.W. at 871-72; *Tracy*, 213 Mo. at 317.

⁹⁸ See *McDonough v. Roland Park Co.*, 57 A.2d 279, 280 (Md. 1948); *Heiligman*, 338 P.2d at 148; *Mingledorff*, 388 So. 2d at 636.

⁹⁹ See *Gibson*, 250 S.W.2d at 601. See also *Mallock v. Southern Memorial Park, Inc.*, 561 So. 2d 330 (Fla. 3d DCA 1990).

¹⁰⁰ See *Hines*, 149 S.W. at 1059; *Mingledorff*, 388 So. 2d at 636-37.

¹⁰¹ See *Hines*, 149 S.W. at 1059.

¹⁰² See *Mingledorff*, 388 So. 2d at 637.

¹⁰³ See *Gibson*, 250 S.W.2d at 601; *Vidrine*, 225 So. 2d at 698.

¹⁰⁴ See *Gibson*, 250 S.W.2d at 601; *Vidrine*, 225 So. 2d at 698; *Heiligman*, 338 P.2d at 147.

¹⁰⁵ See *Vidrine*, 225 So. 2d at 698.

¹⁰⁶ See *id.*; 33 FLA. STAT. §497.253.

This article is a modified version of M.T. Olexa, et al., "No Grave Like Home: Protecting the Deceased and Their Final Resting Places from Destruction without Going Six Feet Under," 11(1) DRAKE J. AGRIC. L. 51 (2006), and is published with permission.

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