



Briefing Sheet

Lead Department: Planning **Action Officer:** Senior Planner/GIS

Subject: Grave disinterment, removal, and reinterment request for an abandoned cemetery discovered during development planning off Paramount Parkway.

Action Requested: Adopt Resolution 2005-145

Briefing: 9/12/2005 **Public Hearing:** Yes No **Action:** September 26, 2005

Expedite less than 30 days: Yes No September 26, 2005

If yes, explain rationale: The G.S. is very clear on the process to disinter, remove, and reinter graves, therefore, no need to delay.

Background: The property owner, Duke Realty, hired Mr. John Clauser, Jr.: Of Grave Concerns, Inc. to evaluate an abandoned cemetery (Mills Cemetery) discovered during development planning for an area off Paramount Parkway. The Evaluation of the Mills Cemetery (*Attachment A*), includes a location map, statement of significance, an evaluation of options for the cemetery, etc. The options included preservation in place, moving the cemetery to another area of the property, and moving the cemetery off-site. In summary, the evaluation reports that there is no historical need for preservation in place and that the Mills Cemetery be moved to a new off-site location consistent with the procedures outlined in the G.S. 65-13.

Executive Summary: G.S. 65-13(a)(4) Removal of Graves (*Attachment B*).

Staff Recommendation: Staff recommends that the Board of Commissioners allow the petitioner, on behalf of the property owner, to proceed with the disinterment, removal, and reinterment of the Mills Cemetery graves to an established cemetery, which includes written notice to next of kin and published notices per G.S. 65-13(b).

Resource Impact (time/funds/equipment):

Staff time: *Minimal to prepare Briefing Sheet*
 Funding Source: *N/A*
 Resources Utilized: *Report prepared by Mr. John Clauser, Jr.: Of Grave Concerns, Inc.*

Staff Coordination (list communication efforts) mark agree, disagree or review. (2nd Briefing is used when information has significantly changed from one briefing to the next.)

Required	Department	1 st Briefing	2 nd Briefing
X	<i>Town Manager</i>		
X	<i>Senior Director Resources Mgmt</i>	<i>Reviewed</i>	
X	<i>Senior Director Development Services</i>		
X	<i>Senior Director Community Services</i>	<i>Agree</i>	
X	<i>Public Information Officer</i>	<i>Reviewed</i>	

If disagreeing, then explain:

History of briefing: (This section should be updated as the item proceeds through the process.)

Date:	Discussion:
September 12, 2005	1 st Briefing
September 26, 2005	BOC Decision

- List Attachments:**
- Attachment A – Grave Removal Request Evaluation Report
 - Attachment B – G.S. 65-13 & N.C Cemetery Laws

Public Information Plan: Answer the following questions to determine the level of Public Information Plan needed for this item:

Question	Type <u>YES</u> or <u>NO</u> in the space provided
Does the item’s subject matter affect the majority of our population? <i>(Note: specify the target audience within the Executive Summary section above.)</i>	No
Would the action for the item have a direct affect, positive or negative, on community services currently provided to our citizenry (residential/business)?	No
Does the item propose an internal policy change?	No
Does the item propose an external policy change that would result in an amendment to our town codes, ordinances, Land Use Plan, or Zoning Map?	No
Does the item require an appropriation of funds equal to or over \$90,000?	No
Will/does the item related to a Capital Improvements Project?	No
Are there any ordinance or general statue requirements for public notification?	Yes, but not the responsibility of the Town
<i>(Note: If so, site the ordinance or general statute language within the Executive Summary section above.)</i>	G.S. 65-13
Does the item require a Public Hearing?	No
Will there be a public forum session held on the subject to gather input?	No

If you answered YES to two or less of the questions listed above, attach public information plan “Standard Issue”.

RESOLUTION 2005-145

**A RESOLUTION ALLOWING THE DISINTERMENT, MOVE
AND REINTERMENT OF AN ABANDONED CEMETERY
REFERRED TO AS THE *MILLS CEMETERY* LOCATED NEAR
PARAMOUNT PARKWAY**

WHEREAS, Of Grave Concerns, Inc. submitted a Grave Removal Request for the abandoned cemetery referred to as the Mills Cemetery; and

WHEREAS, the request includes an evaluation report prepared by Of Grave Concerns, Inc. which G.S. outlines the the Planning and Zoning Board has forwarded a recommendation for approval with condition; and

WHEREAS, the Board of Commissioners, which is authorized per G.S. 65-13(a)(4) to allow the proposed request, did receive the Planning Department recommendation at their Briefing Meeting on September 12, 2005:

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Morrisville:

Approves **Resolution 2005-145** allowing Of Grave Concerns, Inc. to proceed with the Mills Cemetery disinterment, move, and reinterment to a new off-site location per the requirements of G.S. 65-13.

Adopted this 26th day of September 2005.

Gordon Cromwell, Mayor
Town of Morrisville

ATTEST:

G.J. Hooks, Town Clerk

**Town of Morrisville
Planning Department
Zoning & Subdivision**

Grave Removal Request

Petitioner: John W, Clauser, Jr.: Of Grave Concerns Telephone Number (919) 839 0501

Address: 1523 Hanover Street

City: Raleigh State NC Zip Code: 27608

Property Owner: Duke Realty

Address: 1800 Perimeter Parkway, Suite 300

City: Morrisville State: NC Zip Code: 27560

Reason for Petition: Grave removal is necessary for ideal development and full use of the property

of grave concerns, inc.

1523 Hanover Street – Raleigh, NC 27608
Telephone (919) 839 0501

PROJECT PERSONNEL

Project Manager:

John Clauser
Of Grave Concerns, Inc.
1523 Hanover St.
Raleigh, NC 27608

(919) 839 0501

Licensed Funeral Director Performing Move

R. Ward Sutton
Cemetery Services
P.O. Box 8555
Rocky Mount, NC 27803

(242) 443 3443

VERIFICATION

I _____, being the property owner located on Wake County Plat Map 2005 Page 1089, first being duly sworn, deposes and says that he has read the forgoing Petition and that the facts stated therein are true of his personal knowledge, except in such matters as stated on information and belief, and as to those matters he believes them to be true

Sworn to and subscribed before me,

This the _____ day of _____, 20

Notary Public

EVALUATION

An abandoned cemetery was discovered during preliminary development planning for an area that included property identified on Wake County Map #2005, page 1089. The 39-acre Collins Tract is identified by PIN 0746-87-5026. For purposes of identification and convenience the cemetery will be referred to as the Mills Cemetery, after one of the families represented in the burials. As planning proceeded, and it became clear that the planned development would affect the cemetery, the landowners and the developer contacted Of Grave Concerns, Inc., a consulting firm specializing in cemetery questions, such as determining the size of a cemetery, preparing mitigation and preservation options, and arranging cemetery relocations.

Of Grave Concerns is a small archaeological consulting firm specializing in recording and developing preservation plans for cemeteries. The company was formally established in 1999. John W. Clauser Jr., the principal, has a BA in Anthropology from Syracuse University, an MA in Anthropology from the University of Florida, Gainesville and considerable experience; thirty-five years as an historic archaeologist and twenty years dealing with historic cemeteries. Over one hundred cemeteries have been located and recorded for a wide range of individuals and agencies including private citizens, four sheriff's departments, county school boards and private developers. Mr. Clauser has served as an expert witness for cemetery cases on two occasions and an eminent domain case once and has been directly involved with numerous cemetery moves.

Standard historic archaeological research methods were used to investigate the cemetery. Site files at the North Carolina Office of State Archaeology and the Cemetery Survey located in the State of North Carolina Archives were checked to determine whether the cemetery had been previously recorded. City directories for the period were inspected. The cemetery had been recorded by Brockington and Associates in 2001 and had been assigned North Carolina Archaeological site number 31WA1489. The site form also indicates that a North Carolina Cemetery Survey Form had been completed.

Documentation on file at the North Carolina Office of State Archaeology and Duke Realty (Southerlin: 2001, Jenkins: 2005) indicate an extensive amount of fieldwork at the cemetery. The cemetery had been probed to locate unmarked graves, mapped and properly recorded. Topsoil had been mechanically stripped from selected areas around the supposed perimeter of the cemetery to assure the bounds were correct. A second investigator from Brockington Associates revisited the site to verify the results. All conclusions in this report are based on their fieldwork.

The cemetery area was visually inspected for surface indications of burials: head and foot markers, visible depressions in the soil and grave mounds, for example. Grave locations were mapped to scale and the resulting map was inspected to determine a pattern. Blank spaces in the pattern were then re-inspected and probed using a ¼ inch steel probe to locate a grave pit. If a grave was located in this manner, it was marked and added to the map. Twenty-nine graves were located and mapped in an area of 12,000 square feet. The field methods utilized are not 100% accurate, but do represent a reasonable and prudent effort and meet current professional standards. Since some graves may have been missed, 35 graves were selected for planning. While the actual number of graves may vary slightly, this is a reasonable estimate.

The historic significance of the cemetery was considered by Of Grave Concerns, Inc. Criteria for considering inclusion of properties in the National Register of Historic Places and previously published research by the author were used to evaluate significance. The Mills Cemetery is a classic Southern Folk Cemetery as described in Clauser: 1994. The use of field stone markers, upland location, periwinkle and red cedar are key points in this identification. The size of the cemetery, 29 graves +/- is not unusual. The Mills Cemetery is not a unique example of the type and there are superior examples presently preserved.

There are four general significance criteria used to determine eligibility for inclusion in the National Register of Historic Places. Properties may be considered for inclusion if they are:

- A) associated with events that have made a significant contribution to the broad patterns of our history;
- B) associated with the lives of persons significant in our past;
- C) embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components lack individual distinction; or,
- D) have yielded or may be likely to yield information important to history or prehistory.

When the Mills Cemetery is evaluated using these criteria, it does not appear to be significant. It is an example of a Southern Folk Cemetery, but the significance this cemetery type lies in its location, distribution of graves and use of various types of grave markers as compared to other cemeteries of the type. Since this information has been recorded by a qualified researcher and submitted to the Office of State Archaeology and the North Carolina Cemetery Survey, it will not be lost. Therefore there is no historical need for preservation in place.

Cemeteries and gravesites are not generally considered for inclusion in the National Register. “The primary reason for this restriction is that objective evaluation of cemeteries is easily affected by personal sentiments with which descendents of the interred view graves and cemeteries” (Claudia Brown, Supervisor Survey and Planning Branch, North Carolina Department of Cultural Resources: 1994).

The decision to move a cemetery is not taken lightly, but is approached with a great deal of caution. There is a natural reluctance to disturb burial places, no matter what the reason. Therefore a number of alternatives were investigated prior to this application.

Several development options involving the cemetery were considered. The first to be considered was preservation in place. This had the advantage of no moving cost and the preservation of an historic feature *in situ*. There were several reasons this option was not viable. Traffic patterns, structure locations and overall design considerations argued against the option. Full and complete use of the property would be eliminated. Cemeteries attract vandals presenting the problem of maintenance and security. There is also the reluctance of individuals to purchasing property that includes a cemetery.

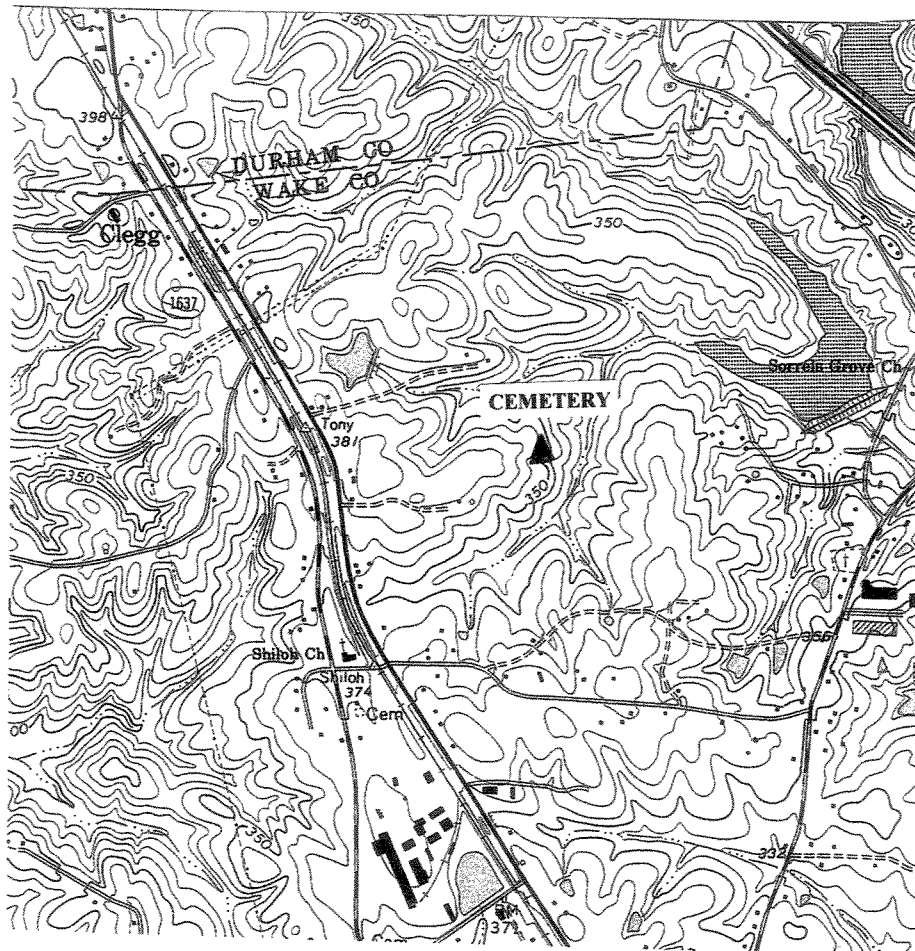
The second option was moving the cemetery to another area of the property. Security and maintenance issues involved in the first option still come into play. Another problem would be the added expense of moving the graves without recouping full use of the property. The cemetery would have been removed from its context without full benefit to the owner.

The last option considered was moving the cemetery off site. The burials will be moved to an established cemetery yet to be selected. This option provides complete use of the property, eliminates security and maintenance issues and places the graves in an area that will not rapidly deteriorate into an overgrown and forgotten group of burials.

In summary, the historic significance of the cemetery has been considered. Several options for treating the cemetery have been evaluated. It is our recommendation that the Mills Cemetery be moved to a new off-site location.

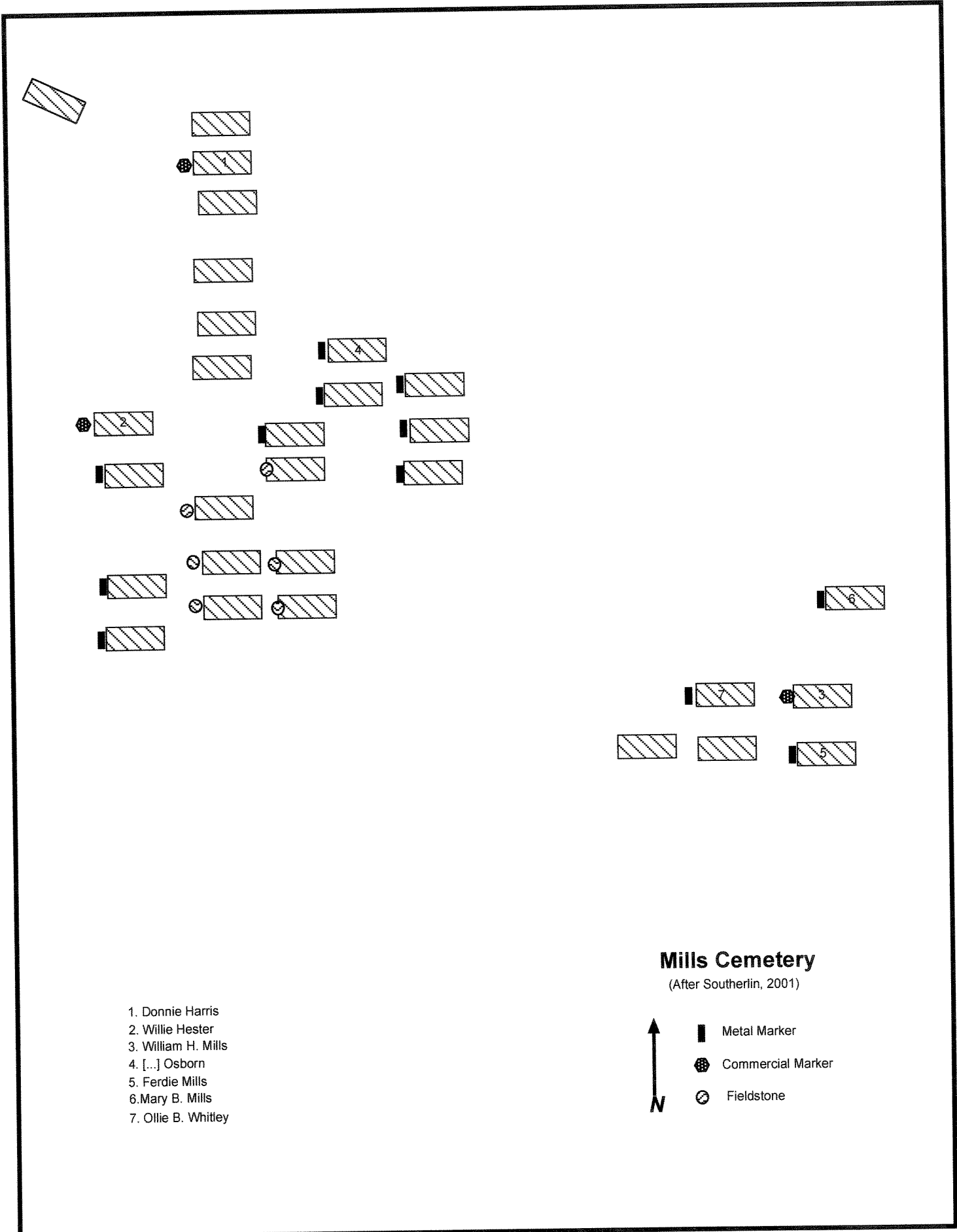
REFERENCES

- | | |
|---------------------------|---|
| Jenkins, David
2005 | “”Letter Report, Archaeological Assessment of Perimeter Park Lots 3 and 10, Wake County, North Carolina. August 5, 2005. |
| Southerlin, Bobby
2001 | “Evaluation and Delineation of an Abandoned Cemetery at the Collins Tract, Wake County.” Letter Report to Duke Construction. June 6, 2001. |
| 2001 | “Evaluation and Delineation of an Abandoned Cemetery at the Collins Tract, Wake County.” Letter Report to Duke Construction. June 29, 2001. |



Mills Cemetery

Location
USGS, Cary



1. Donnie Harris
2. Willie Hester
3. William H. Mills
4. [...] Osborn
5. Ferdie Mills
6. Mary B. Mills
7. Ollie B. Whitley

Mills Cemetery
(After Southerlin, 2001)


 Metal Marker
 Commercial Marker
 Fieldstone

NOTICE

In the matter of the intention for the removal and reinterment 29 burials in Morrisville, Wake County, North Carolina under NCGS 65-13. Notice is hereby given to relatives both known and unknown of the 29 individuals buried in marked and unmarked graves in the 39-acre Collins Tract (PIN 0746-87-5026). The property is further described in Wake County Deed Book 11438, Page 967. The cemetery is located 0.4 miles west of NC 54 and 0.6 miles south of the Durham County Line. Seven burials are identified and 22 are not. Identified individuals include: Donnie Harris (1896 – 1962), Willie Hester (1894 – 1951), Willie H. Mills ((1923 – 1956), [...] Osborn (?), Ferdie Mills (1934 – 1971), Mary B. Mills (1924 – 1958), Ollie B. Whitley (? – 1964) Anyone having information concerning these graves, or the next of kin should contact Of Grave Concerns, Inc. (919) 839 0501.

Article 5.

Removal of Graves.

65-13. Removal of graves; who may disinter, move and reinter; notice; certificate filed; reinterment expenses, due care required.

(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, electric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:

- (1) By the State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.
- (2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery or burying ground for which such church has assumed responsibility of care and custody.
- (3) By an electric power or lighting company when it owns land that is to be used as a reservoir on which graves are located.
- (4) By any person, firm or corporation, which owns land on which abandoned cemeteries or burying grounds are located after first securing the consent of the governing body of the town, city or county in which such abandoned cemeteries or burying grounds are situated.

(b) The party effecting the disinterment, removal and reinterment of a grave containing a decedent's remains under the provisions of this Chapter shall, before disinterment, give 30 days written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal and reinterment to be published at least once per week for four successive weeks in a newspaper of general circulation

in the county where such grave is situated and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery or burial ground.

(c) The party removing or causing the removal of all such graves shall, within 30 days after completion of the removal and reinterment, file with the register of deeds of the county from which the graves were removed and with the register of deeds of the county in which reinterment is made, a written certificate of the removal facts. Such certificate shall contain the full name, if known or reasonably ascertainable, of each decedent whose grave is moved, a precise description of the site from which such grave was removed, a precise description of the site and specific location where the decedent's remains have been reinterred, the full and correct name of the party effecting the removal, and a brief description of the statutory basis or bases upon which such removal or reinterment was effected. If the full name of any decedent cannot reasonably be ascertained, the removing party shall set forth all additional reasonably ascertainable facts about the decedent including birth date, death date, and family name.

The fee for recording instruments in general, as provided in G.S. 161-10(a)(1), for registering a certificate of removal facts shall be paid to the register of deeds of each county in which such certificate is filed for registration.

(d) All expenses of disinterment, removal, and acquisition of the new burial site and reinterment shall be borne by the party effecting such disinterment, removal, and reinterment, including the actual reasonable expense of one of the next of kin incurred in attending the same, not to exceed the sum of two hundred dollars (\$200.00).

(e) The office of vital statistics of North Carolina shall promulgate regulations effecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Chapter shall ensure that the site in which reinterment is accomplished shall be of such suitable dimensions to accommodate

the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Chapter disinterment, removal, and

reinterment is effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment, removal, and reinterment shall be performed by a funeral director duly licensed as a "funeral director" or a "funeral service licensee" under the provisions of Article 13A of Chapter 90 of the North Carolina General Statutes.

(g) All disinterment, removal and reinterment under the provisions of this Chapter shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal and reinterment take place. If reinterment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the reinterment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of reinterment. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reintering such remains. Due care shall also be taken to remove, protect and replace all tombstones or other markers, so as to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

(h) Nothing contained in this Article shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent

North Carolina Cemetery Laws

G. S. 14-148 and G. S. 14-149 outline the penalties for defacing and desecrating gravesites and for plowing over or covering up graves: Violation is a misdemeanor and a Class I felony respectively. The fine is up to \$500, and imprisonment is between sixty days and a year. Both penalties may result.

G. S. 65-1 through G. S. 65-3 outline the duties of the county commissioners: They are required to keep a list of all abandoned public cemeteries on file with the register of deeds. A copy is also to be sent to the secretary of state's office. The county commissioners are also required to take control of all abandoned public cemeteries and may appropriate whatever sums are deemed necessary for their upkeep.

G. S. 65-7 through G. S. 65-11 describe the legal means for setting up a trust funds for the upkeep of a cemetery: Money in amounts between \$100 and \$10,000 may be deposited with the clerk of superior court as a perpetual trust fund for the maintenance of cemeteries. Trustees may be appointed by the clerk.

G. S. 65-13 details the proper procedure for the removal of graves, including who may disinter, move and reinter: The party moving the grave(s) must give at least thirty days notice, written notice to the next of kin, if known. Notice must also be published at least once a week for four successive weeks in a newspaper published in the county in which the proposed removal is to take place. Removal expense is incurred by the mover, with some expense (not over \$200) to be incurred by the next of kin. The removal is performed by a funeral director under the supervision of the county commissioners and the local health director. A certificate is then filed by the mover with the register of deeds.

G. S. 65-37 through G. S. 65-40 authorize municipalities to assume control of any abandoned cemeteries within their boundaries: A municipality may appropriate, take possession of, and continue the use of certain lands as cemeteries. It is also authorized to use funds for improvement and maintenance.

G. S. 65-74 and G. S. 65-75 discuss who may enter private property in order to investigate, visit, or maintain a private grave or an abandoned public cemetery: A descendant of the interred or any other person with a special interest in the site may do so. He or she must notify the landowner in writing of his or her intent and then may visit periodically during daylight hours only, with the landowner's approval. If such approval cannot be obtained, the descendant may petition the clerk of superior court for an order allowing him or her access. After a special proceeding providing for notice and a hearing, the clerk may issue such an order, if deemed appropriate.

G. S. 70-29 through G. S. 70-33 give the procedure for notifying the proper authorities upon the discovery of unmarked remains: Anyone who discovers unmarked burials, or suspects that they are being disturbed, must notify the county medical examiner or the state archaeologist immediately. Then there is a period of forty-eight hours to make arrangements for the protection or removal of the graves. The North Carolina Department of Cultural Resources may obtain administrative inspection warrants for the purpose of gathering additional information as necessary.

Public Relation Matrix—Standard Issue

No	Mechanism	Tasked	Budget	Date & Duration	Target Audience	Message Intent	Outputs
1	Staff	Lead Department staff	\$0.00	Continuous effort	<ul style="list-style-type: none"> Elected Officials Citizens Adjacent Property Owners Business Community members Morrisville Chamber of Commerce Development Community members 	<ul style="list-style-type: none"> Establish a reliable feed of information for the public on newsworthy milestones as it relates to the subject matter. 	Taking advantage of one on one contacts with stakeholders through course of regular work to provide a resource contact for information.
2	Briefing Agenda Item	Lead Department Staff	\$0.00— No additional expenditures	Update after each briefing. Remains on schedule until action taken on item.	<ul style="list-style-type: none"> Elected Officials Citizens Applicants 	<ul style="list-style-type: none"> Provide updated factual information relative to the subject outlining the contributing factors and rationales using the briefing format complete with action item and support material. 	<p>Prepare Briefing Item to provide informative material to be used by the Board of Commissioners to take action effecting policy, law, land use, and/or zoning.</p> <p>Once departmental coordination and review of Briefing Item has occurred, a copy should be placed in the Board Agenda Notebooks.</p>
3	Website: www.ci.morrisville.nc.us or www.townofmorrisville.org	Public Information Center	\$0.00— No additional expenditures outside of current web funds	Schedule update upon receipt of information Remains until action taken on item. Post to web Friday before the regular Board meeting date.	<ul style="list-style-type: none"> Elected Officials Citizens Development Community members Business Community members 	<ul style="list-style-type: none"> Increase public awareness of subject matter Provide factual information relative to the degree of benefits or impacts to Morrisville as a result of the subject matter. Generate public input to gauge the temperature of the community. 	Post Agenda on web site complete with links to backup material placed in the Board of Commissioners Agenda
4	Public Meeting	Town Managers and Lead Department staff	\$0.00	As scheduled on the briefing item.	<ul style="list-style-type: none"> Elected Officials Citizens Business Community members Development Community members Applicants 	<ul style="list-style-type: none"> Provide factual briefing of information relative to the degree of benefits or impacts to Morrisville Generate public input relative to the subject matter. Meet legal requirements of Open Meetings Law 	Board of Commissioner discussion and debate of the Briefing item during the scheduled public meeting(s) for action.