

# SEMINAR AND WORKSHOP SUMMARY REPORT (2016)



10/22/2016

## Preserving and Protecting American Hero's Graves in New Jersey



Summary report on the 3<sup>rd</sup> Annual “Cemenar” held on **24 September 2016** at the Hunterdon County Library Main Branch. A Hunterdon 300<sup>th</sup> event sponsored by the Mt. Amwell Project, Inc.



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## PRESERVING AND PROTECTING AMERICAN HERO'S GRAVES IN NEW JERSEY

This report was produced by the Mount Amwell Project, Inc.

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## EXECUTIVE SUMMARY

This was the third annual cemetery seminar (“Cemenar”) and for 2016 it was sponsored by The Mount Amwell Project, Inc. It was also supported and scheduled as a Hunterdon 300<sup>th</sup> Committee event. The previous seminars or “Cemenars” were organized and presented by concerned members of the sponsoring organizations to raise awareness of the importance of preserving historic cemeteries or burial places within Hunterdon County. Examples of neglect, discussion of preservation issues, and demonstrations of specific preservation techniques were presented as part of the first two “Cemenars.”

It is our collective belief that all burial sites and human remains, regardless of historic period or culture, deserve the same level of protection and respect. The 2016 event brought the concern for preservation and protection to the statutory framework within the State of New Jersey and how the inadequacies of the current law places historic cemeteries at risk.

The objective of this year’s event was to *educate the public on public policy issues relating to cemetery protection laws and collect stakeholder views on what needs to be improved concerning these issues in New Jersey (i.e. suggested broad common sense legislative initiatives).*

A wide variety of stakeholders were invited to participate and representatives from the following groups responded: County Clerk’s Office, local municipalities, NJ State Senate, the NJ Cemetery Association, The Hunterdon County Historical Society, local historians, and members of the public with particular preservation concerns.

The event consisted of two parts: a seminar in morning and a workshop in the afternoon. The seminar was introduced by the keynote speaker, Lance Ashworth, president of the Fishkill Supply Depot Restoration project, followed by a presentation by Bob Leith of the Hunterdon County Historical Society of several case histories of cemeteries destroyed or impacted by statutory deficiencies or neglectful

enforcement. Art Rittenhouse, representing the Hendricks(on) Family Association, presented a summary of the destruction and reconstruction of the Beau Ridge Townhouse Development off S. Laurel Ave. Holmdel, NJ. The morning session closed with a Q&A with attorney Michael V. Camerino, Esq. Mr. Camerino took questions from the attendees following case histories. Most of the questions were related to private property access and planning board decisions.



Michael Camerino, Esq.

A brief survey of other state's law and a presentation of a law category framework presented by David Reading, Executive Director of the Mount Amwell Project provided the inspiration for the workshop– the focus of the afternoon session.

Workshop participants separated into breakout groups, discussed and selected options, and assigned priorities of several categories of law pertaining to historic cemeteries guided by a prepared workbook. The completed workbooks provided the raw input for the summary information as shown in tables 3, 4, & 5.

The key high–priority recommendations of the workshop were:

- *EXPAND ROLE OF NEW JERSEY CEMETERY BOARD TO INCLUDE HISTORIC CEMETERIES IN ORDER TO PROVIDE A REGULATORY AUTHORITY TO REGISTER HISTORIC CEMETERIES AND ENFORCE THEIR PRESERVATION AND PROTECTION.*
- *REQUIRE THAT ALL DEEDS REFLECT THE PRESENCE OF A CEMETERY OR BURIAL GROUND IN THE PROPERTY DESCRIPTION AND ENSURE THAT THE CEMETERY PRESENCE IS MAINTAINED THROUGH ALL FUTURE TRANSFERS.*
- *ALLOW CONDITIONAL ACCESS TO PRIVATE OWNED GRAVEYARDS, CEMETERIES AND BURIAL GROUNDS BY FAMILY, DESCENDANTS OR THEIR AGENTS FOR RESTORATION AND MAINTENANCE.*
- *PROHIBIT DESTRUCTION OF PRIVATELY OWNED CEMETERIES BY LANDOWNERS.*
- *PROPERTY DEDICATED TO CEMETERY PURPOSES AND USED AS A BURIAL GROUND MAY NOT BE SOLD IN SUCH A MANNER AS TO INTERFERE WITH ITS USE AS A CEMETERY. (ALIENATION)*

## KEYNOTE ADDRESS



**Lance Ashworth**, President of the Friends of the Fishkill Supply Depot, Fishkill, NY.

The Friends of the Fishkill Supply Depot (FSD) began as a grassroots effort in 2006 to oppose the planned development of a strip mall on top of the FSD and the Continental Army burial complex located there; operated as “Fishkill Historical Focus” until August 2009. Presently incorporated as a [501(c) 3] not-for-profit advocating for the preservation, study, and proper historical interpretation of the Fishkill Supply Depot and Encampment.

On August 14, 1776, the Provincial Congress meeting at White Plains, NY resolved to quarter troops at Fishkill, establish hospitals and depots for provisions, and “convert the place into an armed encampment.” The original FSD was likely several hundred acres located south of Fishkill Village and north of the Hudson Highlands. FSD District added the National Register of Historic Places in January 1974 as 72 acres of land mainly east of US9.

Upon passing through the town in November 1778, Lieutenant Thomas Anburey, a British prisoner taken at Saratoga, described Fishkill as follows: “The principal depot of Washington’s Army, where there are magazines, hospitals, and workshops etc. which form a town of themselves; there are a great number of huts; and near the magazines are some well-constructed barracks with a prison, surrounded by lofty palisades.” During the war, the Van Wyck Homestead served as the headquarters of the Fishkill Supply Depot. George Washington, Alexander Hamilton, Marquis de LaFayette, John Jay, Benedict Arnold, and others visited this location. Functions of the Supply Depot. Barracks, Prison, Print Shop, Saw Mill, Post Office, Boat Makers, Artillery Park, Horse Stables, Blacksmith, Chandler, Wheelwright, Bake Ovens, and Hospitals

“When [General] Washington, after the battle of White Plains, retreated to the Jerseys, some of the regiments, with the wounded, found their way to Fishkill. The Wiccopee Pass was fortified, and a headquarters established at the Van Wyck house north of it. “...through the streets of Fishkill, after the battle of White Plains, and in places between the Dutch and Episcopal churches the dead were piled up by the side of the road as high as cord wood.”  
–excerpt from Old Dutchess Forever.

Soldiers’ Cemetery – 1860s – “Near the residence of Mr Sidney E. Van Wyck, by the large Black Walnut trees, and east of the road near the base of the mountain, was the Soldier's Burial Ground. Many poor patriot soldier's bones lie moldering there; and how many, if we did but know this, we should be startled at their magnitude. This almost unknown and unnoticed burial ground holds not a few, but hundreds of those who gave their lives for the cause of American Independence.

The wounded of battles who afterwards died, were buried there. The constant stream of death from the hospitals were buried there. The small pox, which broke out in the camp, and prevailed very malignantly, added many more. All of these causes would swell the number, until it would seem large enough and too large to have remained to this day so unobserved and unknown.

Many of these were State Militia men, and it seems no more than just that the State should make an appropriation to erect a suitable monument over...this spot. Rather than thus remain for another century, if a rough granite boulder were rolled down from the mountain side and inscribed:

To the unknown and unnumbered dead of the American Revolution: that rough unhewn stone would tell to the stranger and the passerby, more to the praise and fame of our native town, than any of us shall be able to add to it by works of our own. For it is doubtful whether any spot in the State has as many of the buried dead of the Revolution as this quiet spot in our old town.”

The site has been the subject of 33 known archaeological examinations which have identified 13 soldiers’ bodies, building foundations, other ruins, and hundreds of artifacts. Since purchasing the property in the late 1980s, the owner has been intent on commercial

development of the site...despite recommendations from the New York State Historic Preservation Office and community pressure.

So why did our group need to form in order to protect the soldiers' cemetery and the rest of the Fishkill Supply Depot site? In 1975 with the construction of the Dutchess Mall and the increased vehicle traffic along Route 9 in Fishkill, the DOT sought to widen the road from a 2-lane road to what is essentially an 8 lane highway. In order to widen the road, the DOT needed to move the marker, which it did, ½ mile north to the Van Wyck Homestead property. This singular event caused the location of the burial ground to be lost. Later, in 1986, an out-of-town developer purchased the property, not knowing that it contained the burial ground and other very unique features relating the Revolutionary War's supply and logistics effort.

We, the Friends' group, want to be the experts on the FSD site, under the belief that the more we know of its history and importance, the better positioned we will be to argue for its preservation. In 2012, we formed an historic research committee to study the site. To complement our own historical research, we sought and won a nearly \$25,000 grant from the National Park Service to hire a firm to identify, gather, and analyze all of the past archeological studies performed at the Fishkill site and then to develop a single, comprehensive report with maps and presentation booklets. That way, when asked by stakeholders such as Senator Gillibrand, we will be able to provide a single report that explains what is presently known about the site's features. We are also pursuing a grant to pay for an historian to write the official history of the Fishkill Supply Depot. Some of the remaining preservation challenges are:

- How many soldiers are buried at FSD?
- "Burial Ground" v "Soldiers' Cemetery"
- Court of Public Opinion v. Legal Court
- Native Americans, African-Americans
- National Cemetery Association
- To advertise or not...
- Owner seizes the narrative
- Discrepancy in size, location
- GPR calibration settings
- Public perception: How to protest a patriotic event?

- Private property considerations: State and Local Laws

## Suggestions & Considerations

Some areas to consider pursuing future preservation effort

- Research, research, research!
- Fold3.com
- Known Archives
- “One stop shop”
- College, high school students
- Genealogists
- Partnership Building
- Cemetery’s Board of Trustees
- Cemetery’s Employees
- Family Members
- Veterans’ Groups (active with site)
- Historic sites where men served
- Grants
- Caretaking
- Landscaping
- Headstone maintenance
- Other upkeep
- Recordkeeping
- Digitalization
- Positive Community Exposure
- Recurring newspaper series
- Bookmarks
- Refrigerator Magnets
- Tri-Fold Brochure
- Social Media (Twitter, Facebook)
- Family Networks
- Modern-day descendants
- Historical Societies
- Fundraising/donations

## CASE HISTORIES

**Bob Leith** - The Hunterdon County Historical Society

The following list of cases where the burials are at risk or have already been lost in Hunterdon County are shown in table 1. For details contact Bob Leith at the Hunterdon County Historical Society, 114 Main Street, Flemington, NJ 08822.

TABLE 1: AT RISK BURIALS IN HUNTERDON COUNTY

Location	Risk issue
Apgar Cemetery	Access permitted in deed but access to cemetery denied by current land owner.
Barton Cemetery	Shown on survey, cemetery not protected by Planning Board or developer, vandalized by drinking teens during construction of sub-division. 15 headstones lost.
Carman Cemetery	1843 Deed has been forgotten or misplaced, "Her heirs forever for all uses purposes and benefits of a graveyard or burying ground."
East Amwell	Headstones found on private property, "GRS 1912"; found in woods.
Hardin Cemetery	Cemetery tied to perimeter metes and bounds in 1838, however, left out of subsequent deeds during recent minor sub-division in 1989. Raised septic system put next to cemetery. The cemetery is not in any deed.
Housel/Hoagland Cemetery	Plowed under in 1890.
LaRowe Cemetery, Howell, Landis, Bosenbury, Moore, Slacktown, Covered Bridge	Appeared on deed but were deliberately not transferred during land sale, however, a new deed was not created.
Locktown Christian Church	Recently a raised septic system has been designed to be next to existing burials in the church cemetery. Currently under review by Delaware Township and the State Board of Health.
Taylor Cemetery	Lost in 1987 sub-division even with "...excepting 10 ½ perches, as now enclosed, with the necessary privilege for a burial ground." found in the deed from 1827 to 1985. Current owner has a horse trail thru the cemetery. The cemetery is not in any current deed. Access denied by owner.
Van Syckle Cemetery	Mention in a Will but not on deed – John VanSyckle’s Will Land sold in 1926 by grandson who gave permission to remove wall and headstone to cemetery. Bones removed during road construction and given to descendent.
Vanderbilt Cemetery	Descendants unable to visit due to landowner ignoring letters to visit.
Waldron Cemetery	1864 Deed not tied to metes and bounds but to a white oak tree so the actual location is only known by a headstone placed by Theo Bellis.
Water Street Cemetery, Milford & Stem Oil Cemetery	Shown on map. Now gone, parking lots.

## HOLMDEL DESCREATION

**Arthur J. Rittenhouse**, Vice President of the Hendricks and Hendrickson Family Association of Monmouth County NJ.



The Hendrickson family burial ground located in Beau Ridge townhouse development off South Laurel Avenue in Holmdel, NJ was destroyed in July and August 2010 by the Beau Ridge Homeowners Association. Apparently one of the residents felt the cemetery was scary, as a justification for this destruction. Tombstones were crushed and hand carried out to trucks which took them to a quarry where they were crushed. Only 13 markers are left out of 60. The remaining tombstones, these were not taken because Dr. Andrew Hendricks had Holmdel police issue a cease and desist order.

One of the earliest graves was dated 1802 and the last in 1950. There is a marker for a soldier from the War of 1812. He was certified by a group in NJ that researches soldiers from that period. One of the remaining tombstones from the 1860's is Charles Hendrickson.

There was a flag ceremony January 2011. Tulips were laid on destroyed tombstones representing the Dutch heritage. The cemetery was rededicated on March 13, 2011. Crosses were provided at cost by a company affiliated with Holy Cross cemetery in North Arlington, NJ and the archdiocese of Newark.

On Memorial Day 2011, flags were placed at all of the gravesites in memory not only of the veterans but all of our ancestors and the sacrifice they made for our country.

The reconstruction of the Hendrickson family burial ground was begun on December 12, 2015 through legal action, fund raising and volunteer work. With the goal to reconstruct the cemetery to original condition albeit with new granite reproduction headstones.

Contributions in support of the reconstruction can be made to the Hendricks (on) Family Association, a NJ nonprofit corporation.



**CEMETERY CIRCA 2008. BEAU RIDGE TOWNHOUSE IN BACKGROUND**



**REMAINING TOMBSTONES, THESE WERE NOT TAKEN BECAUSE DR. ANDREW HENDRICKS HAD HOLMDEL POLICE ISSUE A CEASE AND DESIST ORDER.**

## NEW JERSEY AND OTHER STATES LAWS OVERVIEW

**David R. Reading**, Executive Director, the Mount Amwell Project, Inc.

It is generally believed within the historic preservation community that New Jersey laws provide inadequate protection of historic cemeteries, that is, inactive and unregulated cemeteries and burials grounds against loss due to neglect, development, or vandalism. In the “2nd annual “Cemenar” in 2015, attorney Joanne Brynes reported that the current body of NJ law consisted of three statues, Section 40:10B-3 – Historic cemeteries, known as the “Historic Cemetery Act”, Section 40:60-25.61, allowing municipalities to acquire title to abandoned cemeteries, and the New Jersey Cemetery Act which was enacted in 1971. That statute is prospective only and applies only to cemeteries created after that date by a government, church or a cemetery company established according to certain rules. It does not pertain to pre-1971 or “historic” cemeteries and therefore not considered here.

### **New Jersey**

The “**Historic Cemetery Act**” (40:10B-3) states that the governing body of a county may annually appropriate an amount not to exceed \$10,000.00 for the restoration, maintenance and preservation of historic cemeteries not owned by the State, a county, municipality, or religious corporation or association and burials are limited to prominent citizens or residents of the State or of the Colony of East Jersey or the Colony of West Jersey, or veterans of the Colonial Wars, the War of Independence, the War of 1812, the Mexican-American War, the Civil War , the Spanish-American War, or World War I, and not more than 10% of the interments have been made after 1880, in which no interment has been made for 50 years, and for which no funds are available for regular maintenance or preservation.

This statue is highly restrictive, ruling out any financial aid to a farm or family cemetery in the state. Additionally, local municipalities are usually reluctant to appropriate tax payer funds for private projects. This law provides little help in preserving historic cemeteries and JoAnne Brynes said “it is completely silent on the rights of the families of those interred,

or the rights of those interred for that matter. And it completely fails to address how any such rights may be considered in light of private property rights.”

**NJ Rev Stat § 40:60–25.61** – 1983 statute which allows for the acquisition of abandoned burying grounds by a municipality where the owner of the property is unknown.

“Abandoned burying ground or cemetery; application for order vesting title in municipality. The governing body of a municipality may apply, in accordance with the provisions of this act, to the Superior Court for an order vesting title in the municipality to any abandoned burying ground or cemetery therein owned or controlled by a person who cannot be located through diligent inquiry. L.1983, c. 194, s. 1, eff. May 24, 1983.”

This statute is useful, but not well known. It was used by Millburn Township in 2014 to acquire the Parsil Family Cemetery and may be used by The Borough of Stockton to acquire the Howell/Rittenhouse graveyard.

**The "Family and Private Burial Grounds Preservation Act."** – S-193, Kyrillos, AN ACT concerning the preservation of family or private burial grounds, supplementing Title 40 of the Revised Statutes, and amending P.L.2003, c.261. This bill was inspired by the Holmdel Hendrickson Family Cemetery destruction in 2012. The bill would provide the legal protection necessary to prevent the disturbance and destruction of burial grounds in the State that have been established and used exclusively by private persons or families. The Senate State Government, Wagering, Tourism & Historic Preservation Committee met on Monday, September 12, 2016 at 1:00 PM in Committee Room 7, 2nd Floor, State House Annex, Trenton, New Jersey. For a copy of the bill see:

[http://www.njleg.state.nj.us/2016/Bills/S0500/193\\_I1.PDF](http://www.njleg.state.nj.us/2016/Bills/S0500/193_I1.PDF)

New Jersey Art. 1, § 1 of the New Jersey Constitution, private property shall not be taken for public use without just compensation paid to the owners. Generally, the State shall not use the power of eminent domain to acquire lands for recreation and conservation purposes without approval by both Houses of the Legislature; however, the State may use its power of eminent domain to the extent necessary to establish a value for lands to be acquired

from a willing seller for recreation and conservation purposes using constitutionally dedicated moneys.

NJ § 26:6-4. – Whenever a dead body is transported from outside of New Jersey into the State, the person in charge of the premises where the interment or cremation will occur must make a diligent inquiry in order to determine whether the deceased person was a World War II veteran declared eligible for federal veterans benefits by the United States Department of Defense.

NJ § 13:8C-28. The New Jersey Historic Sites Commission has the power to exercise eminent domain over any areas, properties, or lands that it deems should be acquired, preserved and maintained for the use, education and pleasure of the people of New Jersey.

NJ § 28:1-5. Similarly, a county may acquire land for the purposes of serving as a cemetery.

NJ § 2C:17-3(a) (6). It is a crime of third-degree criminal mischief to tamper with a grave, crypt, mausoleum or other site where human remains are stored or interred, with the purpose to desecrate, destroy or steal human remains.

NJ § 2C:20-3(a). There is no particular statute for unlawfully taking or possessing monuments or gravestones; however, monuments and gravestones are considered movable property and therefore a person is guilty of theft if he unlawfully transfers monuments or gravestones with the purpose of benefitting himself or another who is not entitled to possession either.

NJ § 2C:20-3. A person is guilty of theft if he removes or exercises control over a headstone, headstone marker, flag, or flag holder from a gravesite. The definition of flag includes, but is not limited to, an American flag. Notwithstanding other provisions for fines and restitution, a person who commits a theft from a grave site shall be liable for a fine up to \$1,000.00 for each headstone, headstone marker, flag or flag holder removed and shall receive a term of community service of up to 30 days.

NJ § 44:4-119. Acquisition of cemetery by county; issuance of bonds. A county may acquire by devise, gift, purchase, condemnation or in any other manner, such land as in the judgment of the governing body may be necessary and proper for a burial ground for those

who may die therein without leaving means necessary to defray their funeral expenses. Such lands may be within the boundaries of an existing cemetery. If in the opinion of the governing body the amount of such cost will be too burdensome to be borne by the taxpayers in any one year, they may issue bonds therefore, in the manner in which other county bonds are issued pursuant to law.

NJ 2C:33-9 – A person commits a disorderly person's offense if he purposely desecrates any public monument, insignia, symbol, or structure, or place of worship or burial. 'Desecrate' means defacing, damaging or polluting.

## Other States

Public concern over protection and preservation of historic cemeteries is widespread throughout the United States. This concern has manifested in a variety state laws, statues, and codes across the spectrum of protection levels, from minimal to highly regulated and controlled. A brief overview from some other states provides us with a glimpse of how these other states have attempted to protect their historical evidence embodied in cemeteries and hopefully inspire the workshop participants.

### Ohio

Ohio Cemetery Task Force – On September 29, 2013, House Bill 59 of the 130th Ohio General Assembly was enacted creating the Ohio Cemetery Law Task Force. While granting general authority to the Task Force to review all laws related to cemeteries, it also provided a unique opportunity for stakeholders of all walks of life to present their views on the current state of cemeteries in Ohio.

Task Force members were as diverse as the stakeholders that provided insightful information on the past, present, and future of cemeteries. During the many multifaceted discussions held by the Task Force one tenet became clear and was a driving force in the meetings: All burial sites and human remains, regardless of historic period or culture, deserve the same level of protection and respect. In following that tenet this report was crafted.

During discussions, central categories were identified and then used as a guide for deliberations:

- 1) Definitions
- 2) Preservation and Protection
- 3) Registration, Record Keeping and Technology
- 4) Maintenance
- 5) Enforcement
- 6) Funding
- 7) Statutory Alignment
- 8) Protected Groups

After drawing on its own members' experiences and those of stakeholders presenting testimony and written statements, the Task Force recommended common sense legislative initiatives that were unanimously agreed upon and which may be reasonably implemented in the near future.

The report also contains more general recommendations on topics that are significant in nature but which the task force could not fully and fittingly address in the timeframes provided. The task force avoided any recommendation of the conflict between private property owner rights and descendant, scientist, genealogists, and archeologist's interests.

The exact recommendation was that: "the issue be isolated and subjected to much greater scrutiny at the policy level ..."

Cemetery preservation and protection is complex and diverse. The Ohio Task Force found it beneficial to organize the body of potential law in to manageable categories. Some of these categories are shown below.

- o access
- o alienation
- o desecration
- o notice of existence
- o petition for conservatorship
- o private property rights
- o discovery
- o protected groups(veterans)
- o education/outreach
- o record keeping
- o enforcement
- o registration
- o environmental issues
- o statutory alignment
- o funding
- o theft
- o graffiti
- o zoning

## **Texas**

Texas Health and Safety Code Chapter 715 – A non-profit corporation may be organized to restore, operate, and maintain a historic cemetery. The procedure requires a court to approve the establishment of a conservatorship over the cemetery, so it may require the services of an attorney.

Texas Section 71011(a)–(b) of the Health and Safety Code states that a person who discovers an unknown or abandoned cemetery shall file notice of the cemetery with the county clerk of the county in which it is located, documenting the land on which it is found by way of description as well as an approximate location of the cemetery and the evidence of the cemetery that was discovered.

Texas Section 71021 of the Health and Safety Code – Property dedicated to cemetery purposes and used as a burial ground may not be sold in such a manner as to interfere with its use as a cemetery.

Texas Section 71041 of the Health and Safety Code states that any person who wishes to visit a cemetery that has no public ingress or egress shall have the rights for visitation during reasonable hours and for purposes associated with cemetery visits. The owner of the lands surrounding the cemetery may designate the routes for reasonable access. Section 710521 further states that interference with ingress and egress is a Class C misdemeanor.

### **Indiana**

IC 14-21-1-13.5. The Department of Natural Resources Division of Historic Preservation and Archaeology is authorized to conduct a survey program of every cemetery and burial ground in Indiana.

IC 14-21-3. Before a person buys property containing a cemetery, the current owner must record the deed in the recorder's office.

### **Illinois**

20 ILCS 3440 – The Illinois Historic Preservation Agency (IHPA) administers the Human Skeletal Remains Protection Act. It protects all unregistered graves, graves artifacts, and grave markers that are over 100 years old and are not located in a cemetery that is registered with the State Comptroller's Office under the Cemetery Care Act.

### **Maryland**

Maryland Annotated Code, business Regulations, 5-505 – Abandoned, private, or family cemetery property cannot be sold and converted to another land use without a circuit court judgment. Private cemetery owners are required by state law to provide reasonable access to relatives of the deceased or interested persons for the purposes of restoring, maintaining, and viewing the burial site.

Maryland Annotated Code, business Regulations, 5-502 – Formal request/court action  
Private cemetery owners are required by state law to provide reasonable access to relatives

of the deceased or interested persons for the purposes of restoring, maintaining, and viewing the burial site.

## **Pennsylvania**

Pennsylvania 9 P.S. § 213 Restriction on alienation and use of historic burial places. No municipality shall alienate or condemn any historic burial place or appropriate it to a use other than that of a burial ground unless done with the approval of the PA Historical and Museum Commission or the General Assembly. If a historic burial place is used for any reason other than a burial ground and memorials are removed from it, the burial ground authority should record the removal indicating the date of removal and where the object was removed to.

## **Rhode Island**

Rhode Island § 30-25-10 – Care of neglected veteran graves. The director, and the agents or employees of the division, may enter into and upon any public or private cemetery or burial ... to perform the other tasks as may be necessary to restore and maintain the grave and its surroundings in a decent and orderly condition.

Rhode Island § 23-18.2-2 – Burial places to be preserved. – No municipality shall alienate or appropriate any burial place to any use other than that of a burial ground. No portion of any burial place shall be taken for public use without the approval of the general assembly. If any burial place is appropriated for any other use and the bodies buried in it or the monuments, gravestones, or other memorials marking the burial place are removed, the burial ground authority shall preserve a record of the removal indicating the date of the removal and the site or place to which the removal was made.

Rhode Island § 23-18-10.1 Registering historical cemeteries. – In addition to the records and indexes now required to be maintained by every recorder of deeds in all cities and towns, the recorder of deeds in every city and town shall maintain a register of all historical cemeteries located within the city or town. The tax assessor of each city or town shall note the location of each historical cemetery so registered on the appropriate tax assessor's map with a symbol consisting of the letters "CEM" inside a rectangle.

Rhode Island § 23-18-11 Regulation of excavation around cemeteries. - (a) The city or town council of any municipality may by ordinance prescribe standards regulating any construction or excavation in the city or town, when those standards are reasonably necessary to prevent deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground.

Rhode Island § 30-25-11 Consent of custodian of neglected grave. - When any cemetery or burial place containing a neglected grave is found by the director of human services, or the agents or employees of the division, to be under the custody or control of some private owner or public authority, then the director shall obtain permission in writing from the person or persons having custody or control before entering into and upon the cemetery or burial place; provided, that if no person or persons can be found having the custody or control of the cemetery or burial place, the director shall assume the right of entry and shall perform the duties specified in Rhode Island § 30-25-10, without further notice.

Rhode Island § 45-5-12 Neglected burial grounds. - (a) Town councils may also take possession of and hold ancient, neglected, or abandoned burial grounds including historic cemeteries as defined in § 23-18- 1(5), whenever they can take possession without opposition from the persons interested in those grounds. The councils may take, hold, and manage in trust all funds given to the councils to keep these grounds in repair or for ornamenting or improving these grounds, and may in their discretion appropriate from the treasury of their town's money for the purpose of keeping in repair, preserving the monuments in, and maintaining any neglected burial ground. Review and streamline the process. (b) Any person interested in caring for burial ground described in subsection (a) which has not been maintained and the owner of which is unknown or whose present address is unknown, may petition the town council for permission to clean up and maintain that burial ground at the person's own expense.

Rhode Island 23-18-11 (c) - (a) Discovery. Whenever a previously unknown cemetery, unmarked cemetery, archaeological burial site, or human skeletal material is inadvertently located during any construction, excavation, or other ground disturbing activity, including archaeological excavation, the building official of the city or town where the discovery is located shall be immediately notified. The building official shall, in turn, notify the state

medical examiner and the Historical Preservation & Heritage Commission if the grave, cemetery, or skeletal material appears to be historic.

### **South Carolina**

South Carolina 27-43-310 (A) An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress and egress to the cemetery, burial ground, or grave as provided in this section by any of the following persons: Family members and descendants of deceased persons buried on the private property or an agent who has the written permission of family members or descendants. If written permission is not forthcoming after 30 days may institute a proceeding in the magistrate's court. (S.C. Code of Laws, Section 27-43-310).

South Carolina 6-1-35 - Preservation and protection of cemeteries. Counties and municipalities are authorized to preserve and protect any cemetery located within its jurisdiction which the county or municipality determines has been abandoned or is not being maintained and are further authorized to expend public funds and use county or municipal inmate labor, in the manner authorized by law, in connection with the cemetery.

### **Tennessee**

Tennessee - TN Code § 46-8-103 (2015) (a) A deed for real property that indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer or buyers of the property to protect the gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying the property, to ensure that the deed reflects the presence of the gravesite or crypt on the property.

### **Texas**

Antiquities Code of Texas, Title 9, Chapter 191 of the Texas Natural Resources Code. If a historic cemetery is publicly owned by a state agency or political subdivision of the state (counties, cities, utility districts, etc.), the burials are protected as archeological sites. State agencies and political subdivisions of the state must notify the commission before a publicly owned cemetery that is 50 years old or older can be altered beyond on-going maintenance and daily cemetery activities. The THC, the state agency that administers the

Antiquities Code, has developed a policy that addresses both historical and archeological concerns related to the preservation and exhumation of historic graves. The THC policy regarding historic cemeteries calls for recordation, protection, and preservation in place whenever possible.

### **Virginia**

VA § 57-27. Access to cemeteries located on private property; cause of action for injunctive relief; applicability. A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified in this subsection.

### **Wisconsin**

Wisconsin 157.70 2r – All burial sites in no matter how old they are or who is buried in them, and no matter if they are marked or unmarked, are protected by State Law. Private land owners who own human burial sites have certain rights and responsibilities. They must protect the burials on their land from disturbance. In return, they may be eligible for property tax exemptions. Most importantly, it is illegal to dig into a burial site or to disturb mounds or burial markers without authorization from the director of the Wisconsin Historical Society.

Registry of Interested Persons – Wisconsin Administrative Code HS 1.03 describes the procedures for the registry. The Wisconsin Historical Society provides procedures to identify, catalog, preserve, excavate, analyze, and transfer custody of human burials per Wisconsin Administrative Code HS 2.

Wisconsin 157.637 – Veteran burials – A cemetery authority of a cemetery, other than a cemetery that is organized and operated by, or affiliated with, a religious association, may not prohibit the burial of the human remains of a person specified in s. 45.61 (2) [Veteran]

at the cemetery if the cemetery authority is paid in its usual and customary manner for the burial.

Wisconsin 157.70 – Require registration when and if a designated entity to keep records is created as in “(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site...”

Wisconsin 157.70 (2) – (a) Under a special inspection warrant as required under s. 66.0119, identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. (b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites.

## WORKSHOP SUMMARY



Several attendees participated in the Workshop which had the purpose of capturing public opinion on which aspects of NJ laws needed changing and what was the priority of these changes. Each participant was given a workbook containing 18 categories of law assigned among three main groups or tracks. The participants separated into smaller discussion groups to 1) discuss the definition and meaning of the category, 2) Discuss the alternatives drawn from other states, and 3) individually select a preferred option and priority for the category. The workbooks were collected and the results summarized. The categories are listed and defined below in table 2.

TABLE 2: LAW CATGORIES DEFINITIONS

Def	Category definition
a.	<b>Abandoned conservatorship (public)</b> – Describes the process of acquiring cemeteries listed on tax maps as “owner unknown” by municipalities desiring to conserve or protect and preserve the site.
b.	<b>Abandoned conservatorship (private)</b> – Describes the process of acquiring cemeteries listed on tax maps as “owner unknown” by organizations or individuals desiring to conserve or protect and preserve the site.
c.	<b>Access to private property</b> – Obligations, responsibilities, restrictions or requirements on private land owners to allow access to family members, genealogists, historians, and archeologists for visits, restoration, or upkeep.
d.	<b>Alienation (public)</b> – Restrictions on transfer of property containing historic cemetery for non-cemetery purposes by public owners.
e.	<b>Alienation (private)</b> – Restrictions on transfer of property containing historic cemetery for non-cemetery purposes by private owners.
f.	<b>Database</b> – A state wide repository of historic cemetery information.
g.	<b>Deeds</b> – Process requirements for keeping deed restrictions concerning cemeteries in place on land sales or transfers and penalties for failure to do so.
h.	<b>Desecration</b> – Penalties for destruction and theft of cemetery object including tombstones.
i.	<b>Discovery/notice of existence</b> – The obligation to report discovery of human remains and the procedures for doing so.
j.	<b>Protected groups</b> – Special protections for groups such as Veterans.
k.	<b>Protection (public)</b> – Requirements for private and public owners to not destroy or allow others to destroy historic cemeteries.
l.	<b>Public taking</b> – Allowance for State or local government to exercise eminent domain to acquire private cemeteries for preservation purposes.
m.	<b>Protection (private)</b> – Requirements for private and public owners to not destroy or allow others to destroy historic cemeteries.
n.	<b>Registration</b> – A state wide record of historic cemeteries.
o.	<b>Regulatory responsibility</b> – The Government agency or Department having the responsibility to regulate historic cemeteries. Regulation can include public education, enforcement and record keeping.
p.	<b>Restoration and maintenance (public)</b> – Requirements for public and private owners to restore and maintain historic cemeteries.
q.	<b>Restoration and maintenance (private)</b> – Requirements for public and private owners to restore and maintain historic cemeteries.
r.	<b>Zoning &amp; planning</b> – Requirement for local planning boards regarding preservation and protection.

Five categories were deemed either as already adequately covered by New Jersey law or rated at a low priority as follows:

1. The current law NJ Rev Statue 40:60–25.61 adequately addresses the issue of *public conservatorship of abandoned cemeteries* (def a). It states that municipalities may acquire abandoned cemeteries with proper attempt to locate owner with diligent inquiry. The workshop overwhelmingly suggested no change.
2. *Desecration* (def h) – While it was generally believed that an increase in penalties for decorated a historic cemetery was probably needed that current legislative proposal (Kyrillos S193) increases penalties for wanton destruction of a cemetery for commercial purposes is a step in the right direction, but penalties should not be limited only to those for commercial purposes.
3. While the workshop participants thought the protection and maintenance of *veteran graves* was important (def j), time constraints did not allow adequate discussion on this fairly complex issue to result in any particular suggestions for additional law except to say that all veterans’ graves should be maintained.
4. The workshop consensus was that no change should be made to laws concerning *taking* of privately owned cemeteries under eminent–domain (def l). Specifically NJ constitution Article 1, §1 and NJ § 13:8–28.
5. Current NJ law (C. 40:55D–109) authorizes municipalities to provide a historical preservation commission to survey, recommend, advise, report, and promote historic preservation issues to *local planning boards*. The commissions can ensure that such historic sites including burial sites are included in all sites plans and in deeds. No new provisions were recommended by the workshop (def r).

The recommendations, suggestion, and opinions of the workshop participants for the remaining 13 categories are summarized in the three tables below for privately owned, public owned, and general regulatory issues for the preservation and protection of historic cemeteries, burial grounds, and graveyards in New Jersey.

TABLE 3: PRIVATELY OWNED

Law Category	Dominant workshop suggestive changes to NJ law
<b>Access</b>	<ul style="list-style-type: none"> <li>○ Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. (Priority: Very High)</li> <li>○ No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified above. Suggested by Texas 711.041, South Carolina 27-43-310 &amp; Virginia § 57-27.1. (Priority: Very High)</li> <li>○ Financial incentives. Provide “Carrot” to private property owners. Give homeowner incentive (property rebate, tax exemption for burial site. Give homeowner the upper hand; access by appointment or various times of year only. Tax reduction/credit, property tax rebate or exemption of taxes on burial grounds, indemnify landowner. (Priority: High)</li> </ul>
<b>Alienation of Privately owned cemeteries</b>	<ul style="list-style-type: none"> <li>○ Property dedicated to cemetery purposes and used as a burial ground may not be sold in such a manner as to interfere with its use as a cemetery. Suggested by Texas Section 711.021 of the Health and Safety Code. (Priority: Very High)</li> <li>○ Abandoned, private, or family cemetery property cannot be sold and converted to another land use without a circuit court judgment. Burial ground cannot be used for other purposes. Suggested by Maryland Annotated Code, business Regulations, 5-505. (Priority: High)</li> <li>○ Title searches should pick-up any potential sites/exceptions in a 50 year title search. To ensure that any property transfer will include older sites/excepted burying yards or cemeteries, perhaps a search should go back to the “warranty deed”, with the exact language used in the deed to be conveyed to any buyer. (Priority: Medium)</li> </ul>
<b>Deeds</b>	<ul style="list-style-type: none"> <li>○ Deed must reflect the presence of a cemetery or burial ground in the property description. Deed to contain all info of burial site &amp; combined with any subsequent deals so that information is not lost. (Priority: Very High)</li> <li>○ A deed for real property that indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the</li> </ul>

	<p>immediate and future buyer or buyers of the property to protect the gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying the property, to ensure that the deed reflects the presence of the gravesite or crypt on the property. (Priority: Very High)</p> <ul style="list-style-type: none"> <li>○ Before a person buys property containing a cemetery, the current owner must record the deed in the recorder's office or face financial penalty. Onus on current owner; disclosure required. Reinstated by statute; subsequent recording and disclosure required of owner. Question– “grandfather clause? (Priority: Medium)</li> <li>○ State wide statute permitting local restoration of deed restrictions. Have it recited on deed from warranty to current of any cemetery (burial site) disclosure of cemetery/burial site. (Priority: Very High)</li> <li>○ All known cemeteries must be recorded in every deed (including government purchases) i.e. no exceptions w/all rows, easements and/or deed restraints every time property is conveyed as it’s part of the policy or all deeds must include brand new surveys and the title policy upon recording. (Priority: High)</li> <li>○ Require title companies to make through title searches. (Priority: High)</li> </ul>
<p><b>Protection of Private cemeteries</b></p>	<ul style="list-style-type: none"> <li>○ All burial sites in no matter how old they are or who is buried in them, and no matter if they are marked or unmarked, are protected by State Law. Private land owners who own human burial sites have certain rights and responsibilities. They must protect the burials on their land from disturbance. In return, they may be eligible for property tax exemptions. From Wisconsin 157.70 2r. (Priority: Very High)</li> <li>○ A deed for real property that indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer or buyers of the property to protect the gravesite or burial ground from disturbance. Tennessee Code § 46–8–103 (2015), (Priority: Very High)</li> </ul>
<p><b>Restoration &amp; Maintenance private</b></p>	<ul style="list-style-type: none"> <li>○ Private cemetery owners should be required by state law to provide reasonable access to relatives of the deceased or interested persons for the purposes of restoring, maintaining, and viewing the burial site, but homeowners should be indemnified against any/incidents/visits. Suggested by Maryland Annotated Code, Business Regulations, 5–502. (Priority: High)</li> </ul>

TABLE 4: PUBLICLY OWNED

Law Category	Dominant workshop suggestive changes to NJ law
<b>Alienation publicly owned cemeteries</b>	<ul style="list-style-type: none"> <li>○ No municipality shall alienate or condemn any historic burial place or appropriate it to a use other than that of a burial ground unless done with the approval of the lawful regulatory body for historic cemeteries (not yet identified) and the municipality in which the cemetery is located. The General assembly only gets involved if lawful regulatory body for historic cemeteries and municipality cannot come to an agreement. Suggested by Pennsylvania A 9 P.S. § 213. (Priority: High)</li> </ul>
<b>Protection – public</b>	<ul style="list-style-type: none"> <li>○ If a historic cemetery is publicly owned by a state agency or political subdivision of the state (counties, cities, utility districts, etc.), the burials are protected as archeological sites. State agencies and political subdivisions of the state must notify the lawful regulatory body for historic cemeteries (not yet identified) before a publicly owned cemetery that is 50 years old or older can be altered beyond on-going maintenance and daily cemetery activities. Suggested by Antiquities Code of Texas, Title 9, Chapter 191 of the Texas Natural Resources Code. (Priority: High)</li> <li>○ The city or town council of any municipality may by ordinance prescribe standards regulating any construction or excavation in the city or town, when those standards are reasonably necessary to prevent deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground. (Priority: Medium)</li> </ul>
<b>Restoration &amp; Maintenance – public</b>	<ul style="list-style-type: none"> <li>○ Require minimal preservation activities either by municipalities directly or through agreement with organizations or individuals dedicated to preservation historic cemeteries. Prohibit destruction of historic cemeteries by municipalities. (Priority: High)</li> <li>○ Preservation and protection of cemeteries. Counties and municipalities are authorized to preserve and protect any cemetery located within its jurisdiction which the county or municipality determines has been abandoned or is not being maintained and are further authorized to expend public funds and use county or municipal inmate labor, in the manner authorized by law, in connection with the cemetery. (Priority: High)</li> <li>○ Change NJ Historic Cemetery Act to allow maintenance of publically owned cemeteries. (Priority: High)</li> </ul>

TABLE 5: REGULATION &amp; RECORDING

Law Category	Dominant workshop suggestive changes to NJ law
<b>Abandoned – Non-Profit/private Conservatorship</b>	<ul style="list-style-type: none"> <li>○ A non-profit corporation may be organized to acquire, restore, operate, and maintain a historic cemetery. The procedure requires a court to approve the establishment of a conservatorship over the cemetery. Suggested by Texas Health and Safety Code Chapter. (Priority: Very High)</li> <li>○ Any person interested in caring for a burial ground which has not been maintained and the owner of which is unknown or whose present address is unknown, may petition the town council for permission to clean up and maintain that burial ground at the person's own expense. Suggested by Rhode Island § 45-5-12. (Priority: High)</li> </ul>
<b>Database</b> Catalog is needed to identify and keep track of burial sites.	<ul style="list-style-type: none"> <li>○ Identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. (b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Suggested by Wisconsin 157.70 (2) (Priority: High)</li> </ul>
<b>Discovery/Notice of Existence</b>	<ul style="list-style-type: none"> <li>○ A person who discovers an unknown or abandoned cemetery shall file notice of the cemetery with the county clerk of the county in which it is located, documenting the land on which it is found by way of description as well as an approximate location of the cemetery and the evidence of the cemetery that was discovered. Texas Section 711.011(a)-(b) of the Health and Safety Code. (Priority: High)</li> <li>○ Whenever a previously unknown cemetery, unmarked cemetery, archaeological burial site, or human skeletal material is inadvertently located during any construction, excavation, or other ground disturbing activity, including archaeological excavation, the building official of the city or town where the discovery is located shall be immediately notified. The building official shall, in turn, notify the state medical examiner and the Historical Preservation &amp; Heritage Commission if the grave, cemetery, or skeletal material appears to be historic. Suggested by Rhode Island 23-18-11 (c) (Priority: Very High)</li> <li>○ When discovered should be recorded at the county level and “noted” on the most current deed of record as a “notice”. (Priority: Very High)</li> </ul>

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<b>Registration</b>	<ul style="list-style-type: none"><li>○ Require registration of historic cemeteries defined as any inactive, in a defined area with 2 or more people and no burials for at least 50 years.</li><li>○ Require state wide registration with the lawful regulatory body for historic cemeteries (not yet identified) to establish a registry for any person that has an interest in a cataloged burial site or class of cataloged burial sites. Suggested by Wisconsin 157.70. (Priority: High)</li><li>○ In addition to the records and indexes now required to be maintained by every recorder of deeds in all municipalities, the recorder of deeds shall maintain a register of all historical cemeteries located within the municipality. The tax assessor of each city or town shall note the location of each historical cemetery so registered on the appropriate tax assessor's map with a symbol consisting of the letters "CEM" inside a rectangle. Suggested by Rhode Island § 23-18-10.1. (Priority: High)</li></ul>
<b>Regulatory Responsibility</b>	<ul style="list-style-type: none"><li>○ Expand role of NJ Cemetery Board to include historic cemeteries. (Priority: Very High)</li><li>○ Create a new Historic Cemetery Committee under DEP. (Priority: High)</li><li>○ Should remain at a local (county or municipality level). (Priority: Medium)</li></ul>

## APPENDICES

### Attendees

The following people contributed to the “Cemenar” event as presenters, attendees, organizers, sponsors, and for the italicized names – workshop participants. They include representatives of state, county, and local government, academia, and historical preservation organizations as well as historians, attorneys, and concerned citizens.

*John Allen*

Lance Ashworth

*Patricia Barber*

*Ron Barber*

*Suzanne Bennett*

*C. Miller Biddle*

*Joan W. Biddle*

Michael Camerino, Esq.

Julie Diddell

Eric Diddell

*Steven F. Firtko*

Marfy Goodspeed

*Diana Haywood*

Marcia Karrow

Bob Leith

Leslie Leith

Randy Niederer

*David R. Reading*

Art Rittenhouse

*Karen Prince–Steinberg*

*Mary Van Horn*

*Donald Weinbaum*

