



FACT SHEET #9: FREQUENTLY ASKED QUESTIONS ABOUT CEMETERIES

INTRODUCTION

Cemeteries, or places for burying the dead, reflect and represent the cultural values and practices of the past that help us learn about our history. They include individual and collective burial places dating from prehistoric or historic times. A cemetery may or may not possess above-ground features. Cemeteries are easy to identify when they are located near public rights-of-way, fenced, clearly identified with signage, and well maintained, and grave markers and other structures are clearly visible. Access to these cemeteries is usually unrestricted.

However, hundreds, perhaps thousands, of Oklahoma cemeteries lack the characteristics that facilitate their identification and protection. Some are overgrown with brush, and grave markers are damaged or missing. Others can be accessed only with a private landowner's permission, and others are unknown until a construction project uncovers them. Archeological testing may be necessary to determine that a cemetery is present. Natural markers, such as a stand of mature trees in a cultivated field, may be the only clue to a cemetery's location.

Regardless of location or condition, a cemetery must be respected and treated appropriately. Cemeteries embody diverse religious practices, cultural affiliations, traditions, and personal preferences. For these reasons, the following information is presented to assist persons interested in the study and protection of Oklahoma cemeteries.

The Oklahoma Historical Society's (OHS) Research Center and State Historic Preservation Office (SHPO) have special roles in carrying out the agency's mission, which is to collect, preserve, and share the history and culture of the State of Oklahoma and its people. The Research Center and the SHPO maintain information about Oklahoma cemeteries and respond to inquiries about their identification and protection. The most frequently asked questions are answered below, and a list of contacts and quick references is also provided.

A. CEMETERIES AND THE NATIONAL REGISTER OF HISTORIC PLACES

1. What is the National Register of Historic Places (NRHP)?

The NRHP was established under the National Historic Preservation Act of 1966. The Act provides that the Secretary of the Interior shall maintain this national list of buildings, structures, sites, districts, and objects significant in American history, architecture, archeology, engineering, or culture. Listing in the NRHP provides (a) recognition of a property's significance, (b) limited protection, (c) owner eligibility for federal tax incentives under certain circumstances, and (d) eligibility for matching grants when such funds are available.

The National Park Service (NPS) administers the NRHP program for the Secretary, and the Keeper of the National Register is the final authority on the listing of properties. The SHPO works in partnership with NPS to identify and nominate eligible properties for listing. Over 1,240 buildings, structures, sites, districts, and objects in Oklahoma are included in the NRHP. The complete list is found in *Oklahoma's National Register Handbook* (<http://www.okhistory.org/shpo/nrhandbook.htm>), and detailed information about the meaning of listing and the nomination process is found in "SHPO Fact Sheet #11: Frequently Asked Questions about the National Register of Historic Places" (<http://www.okhistory.org/shpo/factsheets/fs11nr.pdf>).

2. Are cemeteries eligible for listing in the NRHP?

Most cemeteries are not eligible for listing in the NRHP. It includes buildings, structures, sites, districts, and objects that meet at least one of four broad criteria: A, association with important events; B, association with important persons; C, architectural, artistic, or design merit, or representative of a period or a type of construction; or D, likely to yield information. However, there are categories of properties that are not eligible, except under special circumstances. These, special circumstances, called Criterion Considerations, include (a) religious property; (b) moved property; (c) birthplace or grave; (d) cemetery; (e) reconstructed property; (f) commemorative property; or (g) property less than fifty (50) years old when listed. Additionally, to qualify for the NRHP, a property must possess integrity (elements of integrity include location, design, setting, materials, workmanship, feeling and association), as well as significance.

A cemetery is eligible for the NRHP if it derives its primary significance from graves of persons of transcendent importance; from age; from distinctive design features; from association with historic events; or if it has the potential to yield important information if that information is not available in extant documentary evidence. Further information about the evaluation of cemeteries is found in Oklahoma National Register of Historic Places Nomination and Request for Determination of Eligibility Manual (<http://www.okhistory.org/shpo/nr/nrmanual.pdf>) and in "National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places" (<https://www.nps.gov/nr/publications/bulletins/nrb41/>).

3. Which Oklahoma cemeteries are listed in the NRHP?

As of July 1, 2017, nineteen Oklahoma cemeteries are listed in the NRHP. Churches (and other properties) with small cemeteries as contributing resources, buildings and/or other cemetery improvements (but not the cemetery itself), and individual gravesites are also among Oklahoma's NRHP entries. While they are not the focus of this fact sheet, the laws concerning cemeteries cited in this fact sheet apply to all burial locations.

A few examples of NRHP-listed cemeteries include the African-American associated Jamison Cemetery, Okay Vicinity, Wagoner County; Silver City Cemetery, Grady County, for its association with the Silver City trading post on the Chisholm Trail; and, near Miami, Ottawa County, the Peoria Tribal Cemetery (Confederated Peoria Indian Thematic Resources), as one of only two remaining historic properties associated with the Peoria Tribe. To review a specific NRHP nomination form (which contains a description and statement of significance), visit <http://www.okhistory.org/shpo/nationalregister.htm>.

4. How are cemeteries nominated to the NRHP?

The SHPO identifies and nominates eligible properties of all types, including cemeteries, to the NRHP as outlined in NPS regulations, standards, and guidelines (SHPO Fact Sheet #11).

The SHPO maintains records of historic properties in the Oklahoma Landmarks Inventory (OLI), including hundreds of cemeteries (<http://www.okhistory.org/shpo/oli.htm>). Some are listed in the NRHP, others are eligible, some are ineligible, and still others have not been evaluated. Whenever the SHPO receives documentation of a cemetery or other resource, the information is added to the OLI, regardless of NRHP eligibility.



Jamison Cemetery, Okay vicinity, Wagoner County



Enid Cemetery & Calvary Catholic Cemetery, Enid,
Garfield County

To propose a cemetery for NRHP nomination, first contact the SHPO to see if it is already documented in the OLI. If not, the SHPO will request the nomination proponent review the National Register Preliminary Opinion on Eligibility Instructions (<http://www.okhistory.org/shpo/nrprelim.htm>) and complete and submit the Historic Preservation Resource Identification Form for Cemeteries (<http://www.okhistory.org/shpo/forms/cemeteryidform.pdf>). Based on this documentation, the SHPO will provide its preliminary opinion on eligibility. This step saves the nomination proponent's time and expense required to produce a formal NRHP nomination for a cemetery that may be ineligible.

If the cemetery appears eligible for the NRHP, the SHPO will guide the nomination proponent to prepare the formal nomination package. If the SHPO considers the cemetery ineligible, the nomination proponent may decide to submit a complete nomination package and request that the SHPO process it.

In either case, the SHPO schedules the nomination for the Historic Preservation Review Committee's (HPRC) consideration and follows the NPS regulations for notification of property owners, elected officials, and the public. The HPRC is appointed by the Governor to advise the SHPO about NRHP nominations, and they formulate their recommendations during quarterly public meetings. The SHPO considers their recommendations and decides whether or not to nominate the property.

Once the SHPO signs a nomination, it is forwarded to the Keeper of the Register (NPS, Washington, D.C.) for official action. The SHPO informs property owners, elected officials, nomination proponents, and the public about the Keeper's decision. More information about the process is provided in SHPO Fact Sheet #11.



Chiefs Knoll, Post Cemetery, Fort Sill, Comanche County

B. PROTECTING CEMETERIES

1. What government agency regulates cemeteries in Oklahoma?

Overall, cemeteries in Oklahoma are not regulated; however, Title 8 of the Oklahoma State Statutes (OSS) concerns cemetery corporations and associations and related issues. Also, OSS Title 21 § 1168.1-7 addresses issues related to human skeletal remains and associated burial furniture (<http://www.oscn.net>).

2. Do the Oklahoma State Statutes include provisions for protection of cemeteries?

Yes. Injury to Cemetery or Tomb (OSS Title 21 § 1167) is summarized as follows:

“Declares that a person is guilty of a misdemeanor who shall willfully or with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing or other work for the protection or ornament of any such cemetery or place of burial of any human being, or of any lot within a cemetery, or who shall willfully or with malicious intent destroy, cut, break or injure any tree, shrub or plant within the limits thereof. Directs that persons found guilty of such violations shall be punished by a fine of not less than \$50 nor more than \$5,000, or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment.”

3. Who should a person contact to report vandalism of a cemetery?

Vandalism or destruction of a cemetery and theft of grave markers or other funerary items are crimes. As for reporting any possible criminal activity, contact the local law enforcement agency with jurisdiction. Depending on the cemetery's location, call either the city police department or the county sheriff's office.

4. Can a property owner destroy a cemetery to make way for new construction, such as housing additions, commercial development, etc.?

Cemeteries can be legally relocated to make way for new construction, and a developer engaged in such an activity most likely has an attorney guiding the process. However, the willful destruction of a cemetery for any purpose is in violation of state law (see B.2.). Anyone suspecting such a violation should report it immediately to the local police department or county sheriff's office.

5. Are private landowners required to protect cemeteries on their private property?

They are not required to conduct maintenance work. However, if they willfully damage or destroy a cemetery, they will be in violation of state law. Suspected violations should be reported to the local police department or county sheriff's office.

6. Can a burial discovered on private property be moved and how?

Yes. For guidance about the relocation of a grave, contact the Oklahoma Department of Health. Details about the process are found at <http://ok.gov/funeral/documents/ODH%20310.105.7.pdf>.

7. Does Oklahoma state law provide protection for prehistoric burials?

Yes. Violating Sepulture and the Remains of the Dead, commonly referred to as the "Burial Act" (OSS Title 21, Chapter 47, Section 1168) concerns the disturbance of prehistoric and unmarked graves. It specifies the procedure for dealing with accidental discovery of burials which involves both the SHPO and the Oklahoma Archeological Survey (OAS). Further, the section provides that the marketing and trafficking of human skeletal remains and burial furniture is a crime, and penalties for violation of the law are prescribed in the statute.

It is important to note that anyone discovering a burial should immediately contact the local police department or the county sheriff's office. These officials will determine if the discovery is a crime scene or if it should be reported to the SHPO and OAS.

C. CEMETERY OWNERSHIP AND MAINTENANCE RESPONSIBILITIES

1. Who is responsible for maintenance of cemeteries?

It depends on who owns the cemetery. If a city or county government owns the cemetery, contact the respective local officials about maintenance concerns. Many cemeteries in Oklahoma are governed by a local cemetery association, which is usually responsible for maintenance, and the organization likely depends on private donations and volunteers to care for the cemetery. In many cases, no such organization may exist today, especially if the cemetery is abandoned.

Listing in the NRHP does not provide for maintenance of any kind. The State of Oklahoma has no authority to maintain cemeteries on private land or under the jurisdiction of local governments.

2. We want to maintain a historic cemetery that is overgrown and contains headstones that are scattered about and in need of repair. Can we just start doing the work?

Despite the good intentions, caution should be exercised. It is important to determine who owns the cemetery and whether there are descendants of the interred to consult. Your concern and generosity may not be appreciated by everyone. A local funeral director might provide advice. If the maintenance effort moves forward, remember that careful research about the location of graves will be important to avoid causing further damage or even re-installing a gravestone in the wrong place.

3. There was once a cemetery association taking care of a historic cemetery, but its members are either deceased, moved away, or just not involved. How can we assume their responsibilities?

Review OSS Title 8 (see B.1.) for information about cemetery associations and corporations. We suggest you consult an attorney to guide your efforts.

4. How can a person visit an abandoned cemetery that is surrounded by private land?

Oklahoma State law provides for access to such cemeteries. Refer to Abandoned Cemetery on Privately Owned Land -- Visitation Rights (OSS Title 8 § 187) which is summarized as follows:

“Declares that any person who wishes to visit an abandoned cemetery which is completely surrounded by privately owned land, for which no public access is available, shall have the right to reasonable access for the purpose of visiting the grave of a deceased relative. Extends the right of public access only to visitation during reasonable hours and only for the purposes usually associated with cemetery visits. Defines an “abandoned cemetery” as any place where human skeletal remains are buried and in which no body has been interred for at least twenty-five years and where such a site is readily identifiable as a cemetery by an inspection of the property. Requires any relative of the deceased who wishes to visit such a cemetery to make a good faith effort to notify the owners and tenants, if any, of the property prior to visiting the cemetery. Prohibits this section from being interpreted to allow the creation of an easement or claim of easement or a right of ownership or claim of right of ownership to an abandoned cemetery.”

5. How do you find out who owns a cemetery?

As with determining ownership of any property, the definitive source is the county clerk and/or county assessor for the respective county. The information may be available on the county government’s website. If not, you can call or visit their offices. It will be helpful to have good locational information (such as Section, Township, and Range) before contacting the county clerk or county assessor.

6. How do you report the location of an old cemetery so it will not be forgotten?

We suggest you complete the SHPO’s Historic Preservation Resource Identification Form for Cemeteries (see A.4.) and submit it for filing in the OLI. Cemetery locations may also be reported to the OAS. Tribal governments may have a cemetery program (see C.9.), and if there may be tribal members buried in a cemetery, its location should be reported to the tribe.

7. What should I do if I find an old gravestone while plowing my field?

Contact the county sheriff’s office for guidance. There is always the possibility that the gravestone was stolen and disposed of on your property. It is also possible that a previous landowner destroyed a cemetery without regard to state law, and there could be other gravestones and human remains below the surface of the field.

8. How do I find out if there is an old cemetery that I cannot see on my property?

Contact the SHPO and the OAS with the legal description for the land. We will check our respective files and let you know if there is a recorded cemetery for the location. If you have some indication that there is a cemetery, you may need an archeologist to investigate to make the determination.

9. Do tribal governments have special programs regarding identification and preservation of cemeteries?

Yes, many tribal governments have cemetery registration programs. Each tribe has important customs and traditions for treatment of burials. A list of each tribal government located in Oklahoma is available on the SHPO’s website at <http://www.okhistory.org/shpo/tribalconsultation.htm>. Reviewing a tribe’s website may provide the information you need about their program and process for reporting cemeteries. Some tribes, including the Chickasaw, Choctaw, and Muscogee Creek, have cemetery clean-up programs, and if tribal members are buried in a cemetery in need of maintenance, the respective tribe might be of assistance in a maintenance project.

10. Are there sources of funding for cemetery maintenance?

No. There are no government grant programs available to local governments, nonprofit organizations, or individuals for cemetery maintenance.

11. Where can we find information about repairing historic headstones?

The National Center for Preservation Technology and Training, National Park Service (<http://ncptt.nps.gov>) and the Association for Gravestone Studies (<http://www.gravestonestudies.org>) are sources of guidance for the appropriate repair of headstones. Also, Preservation Oklahoma, Inc., the statewide nonprofit organization for historic preservation, sometimes offers workshops on the topic, and announcements of these events are posted at <http://www.preservationok.org>.



Rose Hill Plantation, Hugo vicinity, Choctaw County

D. GENERAL CEMETERY RESEARCH QUESTIONS

1. Which Oklahoma agencies and organizations maintain information about cemeteries?

The Research Center maintains The Oklahoma Cemetery Indexes which is organized by county and includes the names and locations of cemeteries identified to date and can be accessed at the Oklahoma History Center. Also, visit the Research Center's online catalogue at <http://www.okhistory.org/research> to find information from cemetery canvas projects and other records. Just enter your search query (such as county name plus cemetery). The SHPO's OLI (see A.4.) contains files on several hundred cemeteries. The amount of information varies from cemetery to cemetery, but the name, location, and a brief description is usually recorded in these files.

The OAS, located at The University of Oklahoma, houses the archeological site files for the state. Approximately 23,000 sites are recorded in these files, including numerous cemeteries and burial sites dating from prehistoric as well as historic times. The locations of archeological sites are restricted by law. However, landowners and others often require access to the information, and questions about these site files should be directed to OAS.

2. Is there a certain period of time before a cemetery is considered inactive (abandoned)?

Yes. Oklahoma State Statutes Title 8, Section 1087 (see B.4.) provides that a cemetery is considered abandoned if no burials have occurred there in at least twenty-five (25) years.

3. How can I find out where an ancestor may be buried?

Obituaries are excellent sources for burial locations. As the Oklahoma Historical Society is the official state repository for newspapers, the Research Center can assist a patron to find an ancestor's obituary. Also, <http://www.findagrave.com> and <http://www.billiongraves.com> are quick and easy sources to consult.

4. How can we find out where graves were moved as a result of relocation to make way for a construction project (such as a lake)?

Relocation of a single or a few graves or even an entire cemetery can occur to make way for a construction project, such as a large reservoir. Contact the agency responsible for the original construction or the current managing entity. A local funeral director may also be of assistance.

5. How can we determine who is buried in an unmarked grave?

It may never be possible to confirm the identity of the interred. Family histories of landowners or interviews with local residents might yield clues. Under appropriate circumstances, exhumation of the remains for scientific study could help answer the question.

6. When a cemetery is closed, what happens to its records?

There is no legal requirement for disposition of cemetery records. What records were maintained through time and who had control of them varies widely. Consulting local libraries, county historical and genealogical societies, and the county clerk and/or county assessor are suggested first steps; also, contact the Research Center or its online catalogue (see D.1.).

7. How does a family obtain a military grave marker for an ancestor or have a damaged military marker replaced?

To obtain a new military marker, complete and submit the Department of Veterans Affairs application found at <http://www.va.gov/vaforms/va/pdf/VA40-1330.pdf>. To replace a damaged marker, go to <http://www.cem.va.gov/cem/hmm/replacements.asp> or call 1-800/697-6947.

E. CONTACTS AND QUICK REFERENCES

Association for Gravestone Studies

101 Munson Street, Suite 108
Greenfield, MA 01301
413/772-0836
<http://www.gravestonestudies.org/>

BillionGraves

<http://www.billiongraves.com>

Chicora Foundation, Inc.

Cemetery Disaster Planning Booklet
<http://www.chicora.org/pdfs/Cemetery%20Disaster%20Planning.pdf>
<http://www.chicora.org/cemetery-publications.html>
<http://www.chicora.org/cemetery-preservation.html>

Department of Veterans Affairs

New military marker: <http://www.va.gov/vaforms/va/pdf/VA40-1330.pdf>
Replace a damaged marker: <http://www.cem.va.gov/cem/hmm/replacements.asp>
1-800-697-6947

Find a Grave

<http://www.findagrave.com>

National Park Service

National Center for Preservation Technology and Training: <http://ncptt.nps.gov/>
See also: <http://ncptt.nps.gov/blog/category/training/cemetery-monument-conservation-materials-research/>
“National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places”
<https://www.nps.gov/nr/publications/bulletins/nrb41/>

Oklahoma Archeological Survey

University of Oklahoma
111 East Chesapeake, Room 102
Norman, OK 73019
405/325-7211
<http://www.ou.edu/archsurvey/>

Oklahoma Department of Health

Relocation of Graves: <http://ok.gov/funeral/documents/ODH%20310.105.7.pdf>

Oklahoma State Statutes:

Title 8 concerns cemetery corporations and associations and related issues
Title 8, Section 187 concerns access to cemeteries on private land
Title 8, Section 187 defines abandoned cemetery, no burials in 25 years
Title 21, Section 1167 concerns damage to cemeteries
Title 21 § 1168.1-7 concerns issues related to human skeletal remains and associated burial furniture

Title 21, Chapter 47, Section 1168 concerns the disturbance of prehistoric and unmarked graves (commonly known as the Oklahoma Burial Act)

Access the Oklahoma State Statutes through the Oklahoma Supreme Court Network

<http://www.oscn.net>

Preservation Oklahoma, Inc.

405 N.W. 15th Street
Oklahoma City, OK 73103
405/525-5325

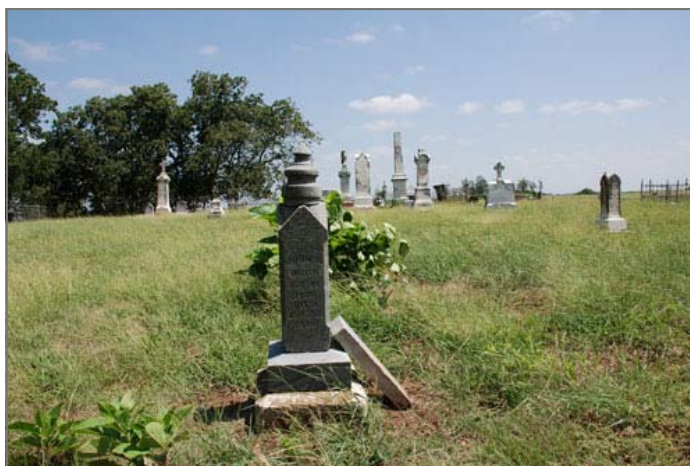
<http://www.preservationok.org>

(Offers cemetery preservation workshops from time to time)

Research Center

Oklahoma Historical Society
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105
405/522-5225

<http://www.okhistory.org/research>



Silver City Cemetery, Tuttle, Grady County

State Historic Preservation Office

Oklahoma Historical Society
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105
405/521-6249

<http://www.okhistory.org/shpo/shpom.htm>

On the SHPO's website:

Historic Preservation Resource Identification Form for Cemeteries

<http://www.okhistory.org/shpo/forms/cemeteryidform.pdf>

National Register Preliminary Opinion on Eligibility Instructions

<http://www.okhistory.org/shpo/nrprelim.htm>

Oklahoma Landmarks Inventory (OLI)

<http://www.okhistory.org/shpo/oli.htm>

Oklahoma's National Register Handbook

<http://www.okhistory.org/shpo/nrhandbook.htm>

Oklahoma National Register of Historic Places Nomination and Request for Formal Determination of Eligibility Manual

<http://www.okhistory.org/shpo/nr/nrmanual.pdf>

“SHPO Fact Sheet #11: Frequently Asked Questions about the National Register of Historic Places”

<http://www.okhistory.org/shpo/factsheets/fs11nr.pdf>

Tribal Governments and Tribal Historic Preservation Offices in Oklahoma

<http://www.okhistory.org/shpo/tribalconsultation.htm>