



# Start Up Tips for Green Burial Cemetery Operators

The following is meant to help would-be green cemetery operators parse out some of the appropriate and necessary steps to take in opening new cemetery space. Not all steps are necessary for all types of cemeteries, and requirements and procedures will obviously vary by town, state and region. While this article may give a general approach, working with local authorities is the key to success.

## Knowing the Law

Green burial cemetery owner and operator Shelia Champion from Alabama suggests that prior to entering into the process, green cemetery entrepreneurs would best be served by approaching the formation of a cemetery from a general point of view rather than as a green crusader. Be prepared to cite the Federal Trade Commission's Funeral Rule, if necessary, that states:

- no casket or vault manufacturer can claim their products won't leak (either water in or body fluids out)
- a funeral home MUST accept ANY casket the family provides, therefore, a plain pine box or a cardboard cremation box, either of which will leak as soon as the dirt is piled on
- embalming is not mandatory except in a very few instances; refrigeration is an alternative

She also points out the difficulty – and lack of necessity – of proving a negative. As she states, “You will **not**, and I cannot emphasize this enough, find any laws that tell you what you **can** do. You will only find laws that are clearly what you cannot do, or are so vague as to make you think you cannot do something.”

Rather than focusing on unstated or undocumented myths or misconceptions, she suggests, simply follow the mapped out course for starting any kind of cemetery (if one exists in your state), and do the

best research you or any involved professional and public servant can do.

Prairie Creek Conservation Cemetery operator Freddie Johnson offers the following sound advice: “Start with accurately assessing state funeral and cemetery statutes and what they offer as your choices. Some state statutes provide more than just one category of cemeteries (i.e., “exempt” categories). It is important to understand how a State's **combination** of funeral and cemetery statutes can prove to be more or less supportive of a natural burial cemetery.”



He also advises, “Interpretation of state funeral and cemetery statutes can be (and usually are) confusing. Often only an attorney specializing in this sector can be relied on for some of the more complex questions, and eventually the cemetery applicant will most likely want to have such an expert as a part of their team.”

## Forming Your Plan

The following fundamental questions may be helpful in ascertaining your and your partners' level of commitment. As you answer them, begin creating a priority list that puts essential items first to save precious time and money.

- Is it more beneficial to start a new cemetery or could the aim be met by reclaiming an existing cemetery?
- Can the project be accomplished in conjunction with an existing organization, or with identified stakeholders, such as an established conservation agency, group, or service organization?
- What will happen to the cemetery when you are no longer responsible for it?
- What are the prioritized goals for the cemetery, its partners, and the land?
- How do you plan to accommodate families?
- What level of participation will you expect from them?
- Who do you need to recruit?
- What short and long term goals are there and what is the timeframe for achieving them?
- Who owns the land (public, private, religious, other)?
- If you don't have land, how will you get it?
- What is the primary demographic you plan to serve? Secondary?
- How will you create a market? How will you keep your constituents informed?
- Do you have a team member fluent in messaging, social media, public speaking, or other ways of engaging with the public?
- What maintenance issues (pest control, plant restoration, monitoring, etc.) do you anticipate?
- How will you plan to memorialize (field stone, cenotaph, artwork, benches, etc.)?
- What will be your plan to manage or limit visitation to sensitive areas?
- What excavation and burial methods and techniques are best suited to the land?

- What are the preferred methods for grave and trail maintenance?
- How will you determine grave placement, plats, zones?
- Do you anticipate offering serial burial?

In addition, the following systemic questions will need to be addressed:

- What organizational or governing structure (non-profit, association, limited liability corporation, etc.) will best serve the project and provide sustainability, economic viability, and flexibility?
- Who is already in place that you can include?
- What strengths, weaknesses, limitations, and potential do they bring to the project?
- What will their role be after first stage development is complete?
- What other systems or organizations are already in place that will aid or complement the process?
- What is your state's endowment requirement, and how will you raise money and manage it?
- What legal instrument will you need (deed, trust, easement, etc.)?
- What surveys, maps, plats, and percolation tests will be required?
- Who will you need to hire to complete them, what will they cost, and how will you pay for them?
- What filing requirements are there, and in what order and timeframe must they be completed?
- How is the property zoned and who regulates it (township, county, city council, selectmen)?
- What role can you expect the state, county or municipal health department to play?
- What professionals will you need to help create and maintain the cemetery?
- What stakeholders, such as abutters, need to be made aware of your plans and when?

## Developing a Financial Strategy

Many would-be cemetery operators are surprised to learn that they are required by state law to provide an endowment prior to opening the gates. Cemetery endowment care trust funds ensure that there will always be money available for maintenance, redesign, perpetual care, and catastrophic occurrences. Funds are drawn from income earned by the principal only; the fund itself is not available for withdrawal. The larger the endowment, the more funding. You will be asked to sign an Endowment Care Cemetery Trust Agreement or something similar.<sup>1</sup>

While green burial cemeteries do not propose to spend great amounts for items such as gravestone cleaning, lawn mowing, pesticide or herbicide use, or other conventional expenditures, funds are still needed to ensure things such as trail maintenance or boundary monitoring. Both need funds to cover administrative costs and related overhead.

Insurance companies will want to know that you have an adequate endowment in order to agree to insure the property. After determining the legal endowment requirements for your state, establish an endowment care trust. Raising money for an endowment could be crowd sourced, solicited from potential investors or donors, or by other means.

Endowment funds must be managed and invested wisely. A cemetery authority, or board of trustees, may be required to help with this. Trustees, according to the ICCFA, “should have the authority to commingle individual endowment care trust fund accounts into a master trust, maintaining separate records of corresponding allocations and divisions of assets, liabilities, income, and expenses...The cemetery authority of an endowment care cemetery should adopt a written policy which covers the investment philosophy, goals, responsibilities, and strategy for the way in which the endowment care trust funds are to be managed and invested.”<sup>2</sup>

Note that endowment funds may be subject to annual filing requirements and will need proof of the activities through periodic examination by a regulatory authority. Plan to hire a professional to keep adequate records and aid in necessary filing.

In the area of growing income, it’s important to consider determining competitive pricing while developing market branding by providing clear product and services revenue centers. Some states limit what commercial activities cemetery operators can engage in, so if you are unable to provide direct goods, it is good to partner with someone in the community who can.

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## Determining Your Governance Structure For Profit

Your business structure will determine the amount of regulatory paperwork you will have to file, what your personal liability for business decisions will be, and how you will be taxed on your business income. Sole proprietorships, partnerships, limited liability companies, and corporations are four main business structures that can be considered for operating a cemetery in the for-profit business sector.

- Sole Proprietorship — a business owned and

managed by one individual who is personally liable for all business debts and obligations

- Partnership — a single business owned by two or more people
- Limited Liability Company (LLC) — a legal structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership
- Corporation — an independent legal entity owned by shareholders. A C-corporation is a traditional corporation. A Subchapter S-

corporation is a special type of corporation created through a tax election with the IRS.

### **Nonprofit**

- Religious cemeteries — IRC 501(a) exempts cemeteries described in IRC 501(c)(13) from federal income tax

- Cemetery association — a nonprofit cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association
- Cemetery corporation — a nonprofit corporation organized for the purpose of operating a cemetery

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## **Knowing the Players**

As with any venture, it pays to know who you will be working with to make your cemetery a reality. Not only do we need to know the appropriate office, we need to build relationships with key individuals and agencies along the way. Those are the same people who will carry your message throughout their organization, so how you interact with them in the course of doing business may impact future dealings, as well as set a tone of acceptance for your project and green burial in general. You will probably be required to furnish their name(s), address, title, phone, association with company or department, and even curricula vitae, so be sure to document this thoroughly to save having to backtrack. Here are some of the people you may encounter.

### **Who May Be Involved at the State Level**

Each state provides its own statutes regarding the formation of a new cemetery of any kind. The first step in considering the opening of new cemetery space is to check your state's general cemetery statutes and health codes that pertain to dealing with dead bodies. Be prepared to interact with other state agencies and offices, including:

- Secretary of State
- Department of Labor
- Insurance Commission
- Department of Public Health and Safety
- Bureau of Vital Statistics
- Natural Resources or other environmental agency
- Cemetery Regulatory Board, if present

### **Who May Be Involved at the Local Level**

There may be both county and municipal entities that must be addressed on a multitude of issues and to process paperwork. Each state will differ, but expect that you may need to be in contact any of the following:

- County Commissioner
- County Attorney
- County Health Agency
- Town or City Zoning Board
- Town or City Select Board
- Probate Judge
- License Commissioner
- Tax Assessor
- Cemetery Commissioners
- Cemetery Trustees

### **What Professionals May Be Involved**

Check with the health department, county or municipal offices for a list of acceptable, pre-approved professionals to complete any of the required tasks. People you may need to help in your endeavor include:

- Soil classifier
- Engineer
- Geologist
- Hydrologist
- Wildlife expert
- Landscaper
- Ecological/biological restoration expert
- Financial advisor
- Tax accountant
- Insurance agent
- Realtor

## Acquiring the Right Property

If buying land, all the steps involved in assuring its approval relative to the state, county or city need to be done before investing in the land.

Purchase agreements for the land should, as much as possible, include conditions and contingencies that protect the operator should any of the approvals or other items on the list prove unattainable. For instance, when making an offer, make closing contingent upon getting approval by the city or county to make it a cemetery within a specified period of time. Given the time it may take when working with government and other agencies and institutions, asking for a 60-90 day wait period is not unreasonable.

The type and feel of your green cemetery is going to be determined in some part by the topography of the land, but regardless of how you envision it, our cemetery operators have offered some basic recommendations.

They suggest that you look for land that:

- has the appropriate zoning
- does not have owner restrictions
- does not have deed covenants
- is relatively flat
- is not located in a flood zone
- has no wells on the property
- has little or no surface water
- is not in areas with expensive homes

Some rural property that is zoned agriculture will allow green cemeteries, some will not. When checking on a property, ask if a cemetery is considered permissible use in that zone. If not, a use variance may be requested, which would require municipal and neighbor consent.

Be aware that, while the need for burial space is commonly greatest near population centers, that same land is also valuable to developers for housing or needed for agriculture.

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## Filing the Application

One of the first hurdles is determining which governing body has the authority to issue the necessary licenses, permits, and authorizations. Chances are good that it will be the health department but not always.

Some states have clearly written instructions that detail what guidelines and procedures are necessary to acquire approval. Your local city or town hall should be able to point you in the right direction if you are unable to discover the process online or any other way.

Regardless of what entity you will be interacting with, it is likely that the following items will be required or requested:

### Application form

Be sure to answer every question on the application in order to avoid what could be costly delays or reapplying. Whatever form is officially required should be available from the office where you will be filing, though you may be able to find the appropriate form online.

### Vicinity map

This is a general overview of the land indicating location, neighboring properties, schools, and businesses, surface water sources, highways, and other features. Town tax maps often suffice and are available in your city or town clerk's office.

### Legal description of the property

The language in your property deed includes what are called 'meets and bounds' that specify location coordinates, boundaries, and distances in a series of measurements called courses that start at



permanent recognizable start points. These are called monuments, which may be naturally existing on the property such as a stone or tree, created by a surveyor such as a stake, or are nearby, such as a roadway. Legal language includes coordinates and directions that are replicable.

### **Copy of the deed**

You will need to prove ownership of the property free and clear of any liens. Copies of deeds may be obtained, sometimes at a fee, from a recorder of deeds, county clerk's or municipal office in the town where the property is registered. You will need to provide your full name, location of the property by tax map ID number and the year it was purchased.

### **Plot plans**

Plot plans are drawn to scale and include the exact location of the following:

- Lot size, property dimensions
- Property lines
- Location of all soil test sites
- Percentage of slope and direction
- Contour elevations
- Drainage areas
- Well locations
- Surface water features
- Utilities
- Water lines
- Easements
- Dimensions of structures
- Any proposed wells, septic systems, drainage systems, cut or fill areas, ponds or other major changes

### **Plat map**

Green burial cemeteries do not generally follow the standard row placement of plots that are mapped out on what is called a plat map. However, you may be asked to provide a paper map of where you intend to bury. There are several cemetery plot mapping software packages available that, together with your soil overlay map, that will not only make it possible to fulfill this requirement if asked for but

will make your job easier as you go along. However, if you choose to go old school, drawing it out on paper or hiring a surveyor to map it for you will work, too.

### **Setback and limit compliance**

Setbacks are distances from either buildings, known water sources, roadways, or other entities. They are usually state mandated but there may be locally enforced zoning as well. Be sure to check for state requirements first, then check with your city or town offices for local zoning and health regulations. Don't forget to call Dig Safe if there is any question about buried electrical conduit.

### **Written consent from abutters**

We can't stress enough the importance of alerting abutters to your plans and working as hard as it takes to educate them about safety issues and why you are building this cemetery. Having abutters and others in the community on board will make all the difference in how smoothly the initiation phase goes. One unhappy, uneducated abutter can look for ways to nix your project even after you have made the investments of time and money. Even though they have no say in the matter if a cemetery is ruled permissible use, good neighbors are priceless. Take the time to get them on board.

You can obtain a list of abutters from your real estate agent, county or town office, or find them by looking on the tax map and requesting their deed card which will have full addresses. Write them, including links to the GBC and other green cemetery resources, and brochures and other written materials that lay out the issues. Follow up with a personal call, and visit them if necessary. Present at a town-wide informational evening. Speak to the issue at selectmen's meetings, town meetings, in churches, civic clubs, libraries — anywhere that you can build support for the concept.

If you can't persuade an abutter, having a community of support might sway the balance. A

signed agreement from abutters will go a long way in gaining acceptance from granting authorities.

### **Identification of other stakeholders**

If you are in partnership with others, you will be asked to identify them. Include a listing of their names, address, phone and email, and a general description of their role.

### **Soil maps**

Prior to purchase of your property, you will have determined what general water sources and other features make this an appropriate place to form a cemetery. Ideally, you will have time to complete an environmental inventory prior to purchase. In any case, you will be required to prove what is and is not on the land prior to obtaining approval from authorities. The GBC provides a template for ecological assessments that include:

- a general description of the property that includes abutting features and concerns
- a detailed description of the property, including coordinates, maps and photos
- a detailed description of the geological properties, topography
- a detailed description and mapping of water features
- a survey of vegetation and plant life, including native and invasive plant species
- a detailed description of endangered and abundant wildlife, evidence of migration corridors
- a map of areas with erosion and other specific areas of concern
- documentation of mineral rights, existing rights-of-way, deed restrictions

Usually you will be required to produce soil overlay maps that show contour levels at every five feet, where soils exist and what type they are, at what depth, what drainage naturally exists, and what water sources are evident. Percolation tests may also be required to determine depth of standing and seasonal water. Soil and groundwater

characteristics may be determined by performing soil borings, typically one per acre. These may be required by the Health Department in addition to the approving entity.

Often college and university environmental science and other departments provide inventories at a reasonable rate. Professional wildlife and plant biologists, engineers, and others can assist in completing assessments. Government environmental resources and conservation groups may all provide advice on locating the right person to help with this project.

The required overlay of a soils map prepared by the Natural Resource Conservation Service (NRCS- Soil Conservation Service) can actually be found on-line at: <http://websoilsurvey.nrcs.usda.gov/app/>

### **Detail of social and cultural resources**

While performing the soil mapping, any man-made structures, such as old cellar holes, wells, rock walls, and burial grounds must be documented. Not only is this a good addition to your report, it helps in developing a marketing strategy and developing your trail map.

### **Site visit**

The granting authority will probably require that you hire an engineer, soil classifier, land surveyor, geologist or other appropriate professional who will make a site visit that will include percolation (perc) testing. Test pits will be evaluated according to horizon (layers of soil), depth (0-10", 10-40", 40-60"), coloration of soil, and whether water was encountered at that depth. Seasonal high water may be encountered, as may clay, which will most likely have varying depths throughout the property. Have the excavator dig several pits in multiple locations on the property to discover how much and where the property can be utilized as planned. Digging extra pits costs roughly \$100 a pit but will be well worth the price by preventing surprises in the future.

When hiring a professional, you might want to talk to two or three to see which one you want to use. The more experience they have, the easier it will be for you. Ask if they have the necessary forms for the report. If the soil professional does not provide the equipment to dig test holes, you may have to do so by hiring a backhoe operator. A good site evaluator will want to see the soil layers, which rules out use of an auger which will mix the layers together, making it difficult to assess. It will be necessary to dig down 6' to establish where the water table is, or whether there is ledge.

Knowing what soils are at burying depth of 3.5' is important, but so is knowing whether rock or clay are present at additional depths, as this could potentially affect saturation and drainage rates.

Along with the technical report, you may wish to file an acknowledgement that you as the property owner intend to adhere to setbacks and limits required by law. List those state, county, or town mandated parameters in the affidavit.

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## **Application Process and Follow-Up**

### **When you submit your package**

Check the guidelines or follow instructions on the application for filing. To be on the safe side, you may wish to file with any or all of the following offices or others: Probate Judge's Office, the Chairman of the County Commission; the Mayor; the Health Department. Make copies for yourself and any partners or stakeholders.

### **Ask for notification of approval**

Be sure to ask for notification of approval, informing each office or individual that you are trying to meet strict deadlines. Write down who you spoke with and when, and note any specific instructions or promises that were given.

### **Licensure**

The approval process may culminate in the granting of a license to operate a cemetery. The license will need to be recorded with the probate court or

other office for a fee. You may have to leave the documents with them, but ask for a copy. They will record it and send the original back to you. Check to see if you will need to file for a city or county business license.

### **Deed filing**

Either you or the attorney you have hired to close the land purchase or for other tasks will be responsible for filing the deed in the town or city where your cemetery is located.

### **Tax filing**

If you have chosen to operate as a for-profit business, either as a sole proprietor, limited liability company. Regardless of the type of organizational governing structure or status you choose to operate under, you will be responsible for filing with the IRS annually.

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<sup>1</sup>A sample **Endowment Care Cemetery Trust Agreement** is available at <http://www.greenburialcouncil.org/resources/education>

<sup>2</sup>For more information regarding cemetery endowments, go to: <https://www.icfa.com/government-legal/model-guidelines/endowment-care-trust-funds#sthash.SEd2CgiS.dpuf>

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