

CHAPTER 9

RELOCATION OF CEMETERIES

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## CHAPTER 9

### RELOCATION OF CEMETERIES

#### SECTION I - GENERAL

##### 1. PURPOSE AND SCOPE

This chapter provides guidance, procedures, and policies to follow in accomplishing the relocation of cemeteries and burial grounds necessitated by Department of the Navy projects. When used in this chapter, "property" refers to real property.

##### 2. REFERENCES

- (a) [Presidential Memorandum "Government-to-Government Relations with Native American Tribal Governments" of 29 April 94](#)
- (b) [10 U.S.C. § 2664](#)
- (c) NAVFACENGCOM P-73, Chapter 3

##### 3. GENERAL POLICY

a. The relocation or protection of cemeteries is based upon (1) the need for acquisition of a real estate interest and (2) the extinguishment of the legal rights of next of kin to visit and preserve the acquired burial grounds of their ancestors and relatives. The Navy's policy is to respect the wishes of next of kin for the removal and reinterment of the remains. Generally, just compensation in the acquisition of an existing cemetery or burial ground consists of providing a substitute cemetery comparable to the existing one, including disinterment and reinterment of the remains. It also includes transferring all other facilities including monuments from the old site to the new site.

b. This chapter concerns the acquisition of cemeteries only in the context that the cemetery uses of the property will be relocated to other sites. In the event that the acquired cemetery is not relocated, or where existing local cemeteries are operating on Navy property, the Facilities Engineering Command's (FEC) Asset Management Real Estate Division is only responsible for the real estate-related

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functions, such as acquisition, property records, etc. Functions related to cemetery maintenance, visitation, security, and similar functions should be coordinated with the local activity/public works department.

c. In keeping with the general principles of [reference \(a\)](#), acquisitions involving federally recognized Native American tribal burial grounds, resources, or rights should receive prior consultation and coordination with FEC counsel.

## **SECTION II - CEMETERY RELOCATION PROCEDURES**

### **4. CEMETERY RELOCATION PLAN**

a. The FEC will prepare a Cemetery Relocation Plan based upon a thorough investigation. The plan will contain a full statement of all essential factors including, but not limited to, the following:

(1) A statement about the necessity for relocation of the cemetery.

(2) A map of the project depicting the location of the cemetery clearly identified by an appropriate symbol (i.e., cross).

(3) A statement of the nature and control exercised over each cemetery. The statement will contain a description of each cemetery, including location, type, number of graves, improvements, state of maintenance, names of parties having control, and nature of the jurisdiction and control. Also include all other appropriate information. The investigation must be thorough and meticulous to assure that no single graves or small private burial plots are overlooked.

(4) A detailed map or plan of the existing cemetery with each grave identified by name and number.

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Designate graves not identified as "Unknown" and number appropriately. Mark on the plan all buildings, roads, and other facilities.

(5) Large photographs of the cemetery showing representative views, and where necessary, smaller photographs of all tombstones, etc. Properly index and identify the photographs for use in the proceedings and for record purposes.

(6) A description of the reinterment site, including its location and its improvements, together with information about its present use. If it is an existing cemetery, give information on whether it is under the control of a duly constituted association or whether it will be acquired with a newly formed association then assuming control. That information shall include the name of the cemetery, the name of the association, and identification of the persons in the association. If the reinterment site will be acquired, state the appraised value with full information about when and how acquisition will occur.

(7) A map or plan of the reinterment site noting proposed locations of all buildings, roads, and facilities, and the location of each grave carefully identified by appropriate number.

(8) Photographs of the reinterment site.

(9) A register of the remains that will be reinterred, including name, race, date of birth, date of death, type of casket, type of monument, and next of kin. Information on next of kin shall include names, addresses, relationship to deceased, whether next of kin have signed a permit agreeing to the disinterment and reinterment of the remains in the new cemetery site, and whether next of kin desire to be present at disinterment and/or reinterment.

(10) A statement from the officials in charge of the existing cemetery, if any, approving the relocation plan.

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(11) A statement from the officials of the reinterment site approving the plan and agreeing to accept control of the relocated graves. (The officials may be those of an existing cemetery if relocation will be done in an existing cemetery, or they may be those of a newly formed association, if a new burial site will be acquired.)

(12) A statement signed by an appropriate, authorized official of the state, county, and/or city having jurisdiction, stating that the cemetery relocation plan satisfies local requirements and laws relating to disinterment, transportation, and reinterment of bodies. (If there is no such requirement, obtain a statement to that effect.)

## **5. ESTIMATED COSTS**

The FEC will provide an estimate of costs of relocating the cemetery with supporting data and documentation, together with pertinent specifications, bid invitations, bids, and awards, if any. The FEC will furnish this information as a separate submission, at the same time as the relocation plan.

## **6. CERTIFICATE OF FACILITIES ENGINEERING COMMAND**

a. Attach to the plan of relocation a certificate stating that:

(1) A thorough and diligent search and inquiry was made to determine the existence, location, identity, and vital statistics of all the remains in the existing cemetery, and to ascertain the names and addresses of the next of kin.

(2) All next of kin who could be located were informed of the need for relocation and of the relocation plan, either by personal interview or by correspondence.

(3) All next of kin interviewed have signed grave relocation permits in accordance with the plan or have given statements that they desire reinterment at other locations or sites.

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(4) The Cemetery Relocation Plan contains a true listing of all grave relocation permits obtained.

(5) All original signed grave relocation permits are on file in the FEC office where they may be inspected and copies made, if desired.

## **7. VACANT BURIAL SPACES IN FAMILY PLOTS**

a. The Cemetery Relocation Plan may contain information for replacement of spaces that have been reserved in existing cemeteries for future burials, provided that a cemetery relocation is replacement in-kind. In developing these provisions in the Relocation Plan, observe the following guidelines:

(1) In the case of an active cemetery administered by an existing cemetery authority with defined plots owned by separate families, give first consideration to the establishment of a new cemetery of equal size, or to a reduced size in proportion to the reinterments that will be made in other locations near the new site, if preferred by next of kin. The Relocation Plan may provide for the relocated cemetery authority to assign family burial plots in the relocated cemetery substantially of the same size as those in the existing cemetery to be relocated. If the relocation site is an already existing cemetery, the Relocation Plan may contain a proposal for financing the acquisition of burial spaces for future use in the same, or lesser number as exist in the present family plot as desired by the next of kin. Payment for those spaces should be made through the relocation contractor, with reimbursement to the contractor by the Government. The plan should also discuss and present a proposal on the nature of the burial permits that will be issued by the cemetery authority and the method that will be used to assure their availability when needed.

(2) In the case of an active community-type cemetery not formally organized, but having through usage established family plot areas with or without fencing, curbing, or other interior boundaries, burial spaces for future use may be provided and should be the lesser of the following:

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(a) The number of those spaces for future burials now available in the present cemetery, or

(b) The number of spaces desired by, and required for, the burial of the living members of the immediate family. If family desires cannot be determined or resolved, the Relocation Plan may provide for those spaces based on local burial customs, or on customs of the cemetery that will be relocated. Although it is preferable in this type of cemetery to furnish a new site with assigned family plots, there may be situations where the best interests of the Government or the wishes of the next of kin require arrangement for those additional spaces in an existing cemetery.

## 8. PERPETUAL CARE

a. The Relocation Plan should include provisions for perpetual care, if it is available at the old cemetery. If perpetual care is not available at the old cemetery, it should be given favorable consideration if:

(1) It is required by state law for privately developed cemeteries;

(2) It will be provided at other relocated cemeteries for the same project or for a nearby project in another state that required perpetual care;

(3) It is required by the regulations of an existing cemetery that is the most desirable and feasible relocation site; and/or

(4) It can be justified as a part of the most economical Relocation Plan that can be developed to the satisfaction of all intended parties, including cemetery trustees and/or next of kin.

b. Provisions for perpetual care proposed on the basis of any of the above-mentioned considerations should be fully discussed and presented in the Relocation Plan.

c. Where perpetual care will be supplied, contract

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specifications must require that the grave relocation contractor will pay the fixed per-grave cost for perpetual care and maintenance to the relocated cemetery reorganizations or associations. This is a separate cost in addition to the charge for each grave site in which reinterment is made or supplied in exchange for an unused space in the existing cemetery. Handle these payments in the same manner as payment for relocation sites the contractor acquires as laid out in [sup-paragraph 14.b.](#) below, for which the contractor pays on a reimbursable fixed charged basis. If partial payments to the contractor are proposed, the contract must contain appropriate requirements for them.

### **SECTION III - CEMETERY RELOCATION SITES**

#### **9. SELECTION OF NEW SITES**

Select a cemetery relocation site after careful consideration of all reasonably available areas, and with due consideration to the recommendations and wishes of the next of kin, cemetery organization, and other interested parties. Within reason, the new site shall be approved by all interested parties. The new site will be reasonably accessible to public roads and will be so located that expansion may be accommodated for additional graves discovered in the process of disinterment. The site selected should have natural drainage, soil conducive to growth of landscaping, and of sufficient depth and quality to permit the interment of remains at minimum cost. Test borings should be made where there is doubt about the type, depth, and character of the soil. All bidders should have the opportunity to examine the test results before bidding. Where established cemeteries exist at locations reasonably close to the project area, arrangements may be made for the relocation of the remains to these established cemeteries rather than acquire a separate site, if it is in the best interest of the Government to do so. In no case will the site be on Government-owned land.

#### **10. ACQUISITION OF NEW SITES**

a. General. Acquisition of new cemetery sites may be

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accomplished by direct purchase or by condemnation. Acquisition by condemnation proceedings instituted by the Government is not encouraged.

b. Purchase. The preferred method of acquisition is by negotiation of an option or agreement for purchase from the owners to the United States of America. The site will be appraised and a preliminary title search made by a qualified attorney, abstractor, or title company to determine that no legal obstacle exists to prevent acquisition in fee simple by direct purchase. The new site shall be inspected for signs of environmental contamination in accordance with the procedures in **P-73 Chapter 3, Toxic and Hazardous Substances**. Obtain the longest time period possible to exercise the option. In no event should the option period be less than that needed to process a condemnation action through NAVFACENGCOCOM and the Department of Justice, and to obtain a court order approving the Relocation Plan. The FEC will not exercise the option until the court approves the Relocation Plan, unless the removal of all the remains to the new site does not require court authorization. The option format that will be used may be patterned after, and include appropriate provisions of, Appendix A of **P-73 Chapter 5**.

c. Condemnation. If the only site satisfactory to the cemetery association or next of kin cannot be optioned or acquired by direct purchase at a satisfactory price consistent with the Government's approved, appraised valuation, acquire the relocation site by condemnation proceedings. The proceedings will not be filed, however, until a relocation agreement has been made with the officials of the existing cemetery association who have authority to convey title to the United States. Where title to the relocation site is taken in the name of the United States, whether by condemnation or otherwise, it may be transferred to the cemetery association in exchange for the existing cemetery title. This is accomplished by the exchange of lands procedures under the requirements of [reference \(b\)](#).

d. Title. To assure that title to the new site is

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good and marketable, it is essential to obtain title evidence such as a title certificate or title insurance policy, whether the property is acquired by purchase, donation, or condemnation. It is also essential to obtain all interests in the land necessary for its use as a burial ground, and to acquire or extinguish all conflicting rights.

#### **SECTION IV - EXISTING CEMETERY SITE ACQUISITION PROCEDURES**

##### **11. ACQUISITION OF EXISTING CEMETERY SITE**

a. Normally, acquisition of an existing burial ground or cemetery site requires acquisition of all real estate interests and extinguishment of burial and visitation rights.

b. Always extinguish the burial and visitation rights simultaneously with acquisition of the real estate fee title and easement interests in the land.

c. Acquisition of an existing cemetery will always be carried out by a condemnation proceeding filed in the appropriate Federal district court. In the same proceedings, the court will be asked for an order extinguishing burial and visitation rights and approving the Relocation Plan.

##### **12. CONDEMNATION PROCEDURES**

a. Accomplish condemnation of land comprising a cemetery by filing a condemnation complaint. Prepare the complaint in the manner set forth in **P-73 Chapter 11**. The FEC will submit the Relocation Plan prepared as prescribed in [paragraph 4](#) above to NAVFACENGCOM with the condemnation assembly.

b. The FEC will, as appropriate and obtainable, submit with the condemnation assembly a stipulation or stipulations obtained from the owner or owners of the old cemetery site. The stipulation(s) will state that the replacement of the site and the relocation of the remains, monuments, and facilities will constitute just compensation.

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### 13. COURT ORDER FOR DISINTERMENT

a. General. To obtain Federal court orders approving disinterment and reinterment of remains, it is necessary to acquire land interests in the same proceedings in which the cemetery relocation plan is filed. To provide a basis for court jurisdiction in these cases, the following procedures shall be used in acquiring cemeteries.

#### b. Public Cemeteries

(1) This category includes formally organized burial grounds under the control of cemetery associations, churches, and similar organizations. These cemeteries shall be acquired by condemnation under an arrangement and agreement with the cemetery association or other governing body for relocation. Acquire the fee title to the cemetery and submit a complete and detailed cemetery relocation plan as part of the condemnation assembly. The Relocation Plan will be a part of the documentation submitted to the Department of Justice with the condemnation request. Upon filing of the Relocation Plan with the court, it will support a request for an order of disinterment according to its terms. All burial and visitation rights will be extinguished at the same time.

#### c. Private Cemeteries

(1) Private cemeteries are those burial grounds commonly under control of individuals, such as family burial plots. Usually these plots lie within large parent tracts or parcels and are vested in identical ownership. In those cases, describe and map the burial grounds or plots as separate and distinct parcels, and acquire by condemnation proceedings, even though the parent tract or parcel may also be acquired by a separate transaction, by direct purchase or by condemnation.

(2) Acquire every burial plot or parcel in fee simple and extinguish all outstanding rights, including burial and visitation rights. Include the cemetery Relocation Plan in the condemnation assembly, and ask the Federal court for an order for disinterment and reinterment according to the plan.

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#### 14. RELOCATION METHODS

a. General The actual work of relocating a cemetery will not be started until the court has issued the order for disinterment. Usually, a qualified organization under Government contract will do the work. Specifications for the work will not only include Federal requirements, but will also include requirements of local and state laws and regulations concerning cemetery relocations. As necessary, revise specifications to incorporate those requirements. In addition, the specifications will be approved by the trustees of the cemetery association or other interested parties, if necessary. This procedure contemplates the possibility of relocation agreements with the organizations having jurisdiction over the cemeteries that will be relocated and/or the next of kin. It also contemplates the possibility of that organization or next of kin agreeing to contract for the actual relocation work.

b. Reinterment at Other Sites. Normally, Relocation Plans provide for reinterment of remains and relocation of monuments at the Government's new site. At the request of next of kin, however, arrangements may be made for the delivery to authorized persons, who must be qualified morticians, of the remains of decedents disinterred from cemeteries within project areas, together with monuments, markers, and other facilities, removed from those cemeteries. This is done to facilitate transportation to, reinterment in, and re-erection at a site other than the Government's reinterment site. In these cases, the Government's relocation contractor will undertake the disinterment and preparation for reinterment. The contractor will also deliver the old casket or the new casket furnished by the Government, including the remains, at graveside in the old cemetery, or to another location as requested by the next of kin that is not farther than the Government's reinterment site. In addition, the Government will make a monetary contribution, through its relocation contractor, toward the expenses of reinterment elsewhere. However, limit those contributions to the additional amount the Government would have expended under the relocation contract to accomplish the reinterment in the Government's reinterment cemetery. This includes items such as purchase

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of burial plot, opening and closing the grave, transportation to Government reinterment site, erection of monuments and markers, etc. Limit the cash contributions made for those items through the Government's contractor to the amount of the next of kin's actual costs. Normally the cash contribution should not exceed the amount the Government would have spent had the remains been relocated in the Government's relocation cemetery as contemplated by the agreement with the contractor. Exceed this limitation only upon the most extenuating circumstances.

#### **15. SUPERVISION OF CEMETERY RELOCATIONS**

Cemetery relocation by its very nature is unusual and sensitive. It is essential, therefore, to exert care to accomplish the work with discretion and dispatch, and scrupulously follow contract requirements. To assure that conduct throughout the relocation, the FEC may employ a local person or persons whom the cemetery association concerned or some other local organization may recommend, to work as a liaison for the FEC. The liaison will locate and interview next of kin, relatives, and others, and notify them of the time that the remains will be disinterred and reinterred. This person may be a minister or other respected local citizen employed on a "Contract for Services" basis. That person shall not be required to perform reburial rites or ceremonies as part of his/her employment, but may do so at his/her volition if desired by next of kin. This individual would be employed primarily as a public relations representative and not in place of an inspector at the work site. Also, this individual's primary function would be to establish and maintain optimistic community relations for the relocation contractor and the FEC.

#### **16. FINAL REPORT**

In order to complete court and Navy records of cemetery relocations, it is necessary to prepare a final completion report of each relocation. This report will contain photographs of the old site and the new site and contain data on the methods used to satisfy the interested parties, including next of kin, cemetery groups, local

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governmental bodies, etc. The report will contain a description of rededication ceremonies, if any, and will have a complete listing of all the remains transferred, containing names, plan of graves before and after, plot numbers, names of plot owners, and other pertinent information. Make an inspector's report or final certificate of completion a part of this report. The FEC will prepare this report in sufficient numbers for distribution to the court and other necessary distribution, including the cemetery association, if any, the local county office of record, and other interested state or local offices having jurisdiction.

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