

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: March 17, 2014

SUBJECT: Designation of Seth Swift from Health Department to supervise NCDOT in relocation of approximately 2 graves

PRESENTER: Terry Wilson/Russ Burrell

ATTACHMENTS: Yes

1. Letter from NCDOT
2. General Statute §65-106

SUMMARY OF REQUEST:

Jacob Day, Right of Way Agent for the North Carolina Department of Transportation is requesting that the Board designate an individual from the Health Department to supervise and provide direction to disinter and re-inter the deceased from Moores Grove Church Cemetery to available area within Moores Grove Church Cemetery. These graves are located in the construction limits of the Howard Gap Road improvement project (B3662).

BOARD ACTION REQUESTED:

Request designation of Seth Swift from the Public Health Department to supervise and provide direction to NCDOT to relocate approximately 2 graves in Moores Grove Church Cemetery.

Suggested Motion(s):

I move that the Board designate Seth Swift from the Health Department to supervise and direct the NCDOT in relocating approximately 2 graves from Moores Grove Church Cemetery to an available area within Moores Grove Church Cemetery.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

1594 E. MAIN STREET
SYLVA, NC 28779

ANTHONY J. TATA
SECRETARY

February 24, 2014

cc: B.O.C.
Toby Linnville
Steve
Amy
Seth Smith

WBS #: 45393.2.2
TIP #: R-5207A
COUNTY: Henderson

DESCRIPTION: SR 1006 (Howard Gap Rd.) from US 64 E. to NCDOT Project B-3662

SUBJECT: Relocation of approximately 2 graves from Moores Grove Church Cemetery to available area within Moores Grove Church Cemetery

Henderson County
Board of Commissioners
1 Historic Courthouse Square, Suite 1
Hendersonville, NC 28792

Members of the Board:

This is to confirm that it will be necessary to disinter approximately 2 graves from the above mentioned cemetery location in Henderson County. These graves are located in the construction limits of the Howard Gap Road improvement project.

Upon approval of the Henderson County Board of Commissioners, regarding the necessity to disinter and re-inter the deceased with the mentioned site, please submit to this office a certified copy of the resolution in accordance with NC General Statute §65-106.

Should additional information be necessary, please contact me at (828) 586-4040 (jbd@ncdot.gov) or Teddy Greene (tg@ncdot.gov)

Sincerely,

Jacob Day
Right of Way Agent

cc: Henderson County Health Department
Ed Green, Division Engineer
Brian Burch, Division Construction Engineer
Hendersonville City Council

§ 65-106. Removal of graves; who may disinter, move, and reinter; notice; certificate filed; reinterment expenses; due care required.

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

(1) By the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.

(2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery for which such church has assumed responsibility of care and custody.

(3) By an electric power or lighting company when it owns land on which graves are located, and the land is to be used as a reservoir.

(4) By any person, firm, or corporation who owns land on which an abandoned cemetery is located after first securing the consent of the governing body of the municipality or county in which the abandoned cemetery is located.

(b) The party effecting the disinterment, removal, and reinterment of a grave containing a decedent's remains under the provisions of this Part shall, before disinterment, give 30 days' written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal, and reinterment to be published at least once per week for four successive weeks in a newspaper of general circulation in the county where such grave is located, and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery.

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

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

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

(e) The Office of Vital Records of North Carolina shall promulgate regulations affecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate.

(f) The party effecting the disinterment, removal, and reinterment of a decedent's remains under the provisions of this Part shall ensure that the site in which reinterment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Part, disinterment, removal, and reinterment are effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment, removal, and reinterment shall be performed by a funeral director duly licensed as a "funeral director" or a "funeral service licensee" under the provisions of Article 13A of Chapter 90 of the General Statutes.

(g) All disinterment, removal, and reinterment under the provisions of this Part shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal, and reinterment take place. If reinterment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the reinterment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of reinterment.

Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reintering such remains. Due care shall also be taken to remove, protect, and replace all tombstones or other markers, so as to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

(h) Nothing contained in this Part shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent. (1919, c. 245; C.S., ss. 5030, 5030(a); Ex. Sess. 1920, c. 46; 1927, c. 23, s. 1; c. 175, s. 1; 1937, c. 3; 1947, cc. 168, 576; 1961, c. 457; 1963, c. 915, s. 1; 1965, c. 71; 1971, c. 797, s. 1; 1977, c. 311, s. 1; 2001-390, s. 3; 2007-118, s. 1.)