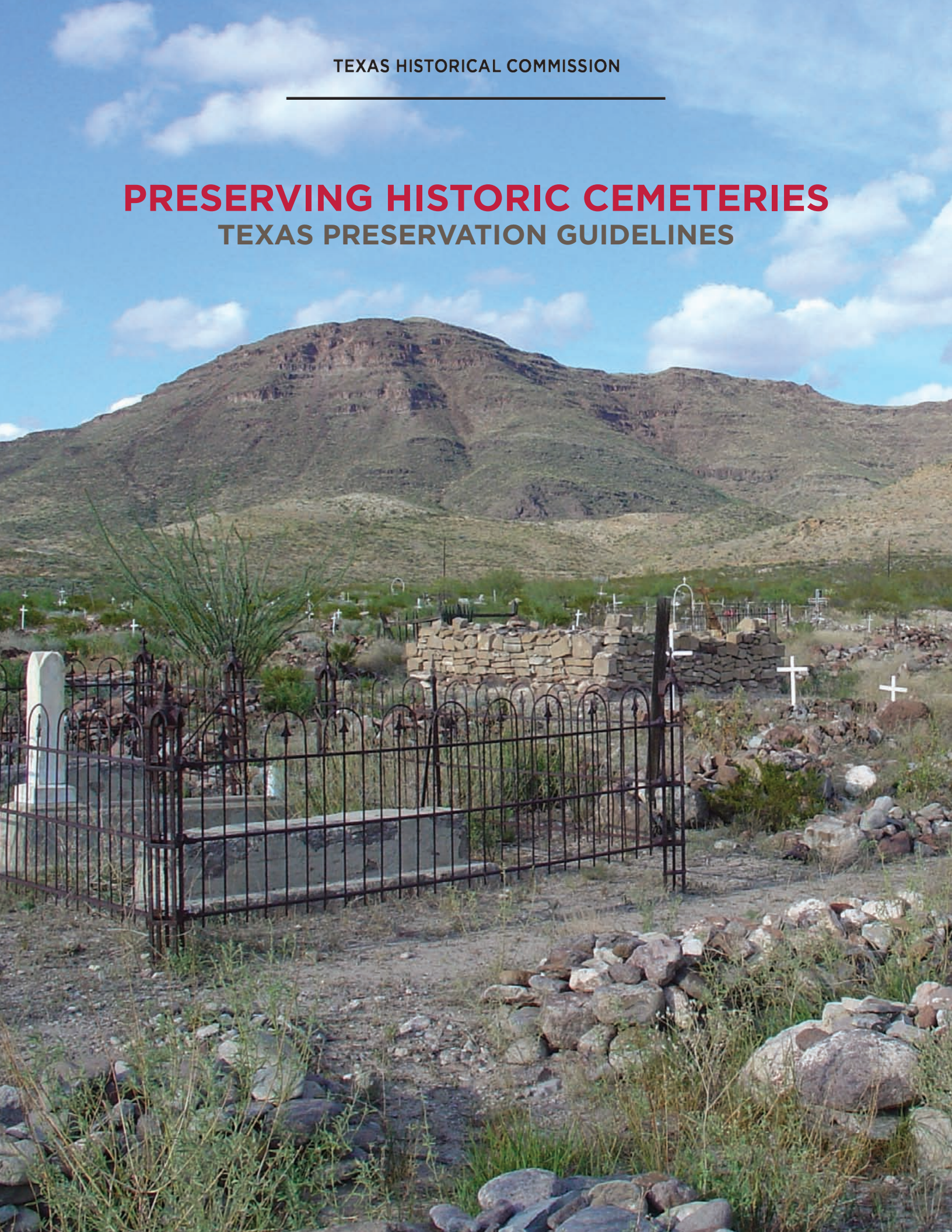
TEXAS HISTORICAL COMMISSION

# PRESERVING HISTORIC CEMETERIES

## TEXAS PRESERVATION GUIDELINES



Historic cemeteries are irreplaceable cultural resources that tell the real stories of Texas.

Cemeteries are among the most valuable of historic resources. They are reminders of various settlement patterns, such as villages, rural communities, urban centers, and ghost towns. Cemeteries can reveal information about historic events, religions, lifestyles, and genealogy.

Names on gravemarkers serve as a directory of early residents and reflect the ethnic diversity and unique population of an area. Cultural influence in gravemarker design, cemetery decoration, and landscaping contribute to the complete narrative of Texas history. Established in large part for the benefit of the living, cemeteries perpetuate the memories of the deceased, giving a place character and definition.

Unfortunately, historic cemeteries do not necessarily remain permanent reminders of our heritage. They are subject to long-term deterioration from natural forces such as weathering and uncontrolled vegetation. Neglect accelerates and compounds the process. Development activities and construction projects are also a threat to these precious resources. Vandalism and theft continue to plague both rural and urban burial grounds across the nation.

With this booklet, the Texas Historical Commission (THC) presents information to aid in the preservation of the state's historic cemeteries. However, this information alone is not enough to protect them; individuals and groups interested in saving these irreplaceable cultural resources of Texas' heritage are the driving force in long-term preservation.

# CEMETERY PRESERVATION PROGRAM

The Cemetery Preservation Program of the THC supports countywide and local cemetery preservation efforts in each of the 254 counties across the state. Cemetery Preservation Program staff provides consultation, educational materials, and training to concerned citizens and public officials.

The Cemetery Preservation Program offers the Historic Texas Cemetery (HTC) designation and the RIP Guardian network of cemetery preservation volunteers to record and protect historic cemeteries across the state. Participation in both opportunities can lead to a strong and long-lasting preservation effort.

## Historic Texas Cemetery Designation

The HTC designation is an official recognition of family and community graveyards that encourages preservation of historic cemeteries. The designation imposes no restrictions on private owners' use of the land adjacent to the cemetery or the daily operations of the cemetery. Every county in Texas has at least one cemetery designated as a Historic Texas Cemetery through this program.

RIP Guardian volunteers raise awareness for a historic cemetery by placing a sign with contact information at the site.

## RIP Guardian Network

The letters RIP are commonly found carved on gravemarkers, bidding the deceased an earthly wish for eternal rest in peace. RIP is also a cemetery preservation initiative: Record, Investigate, Protect. The RIP Guardian network provides technical assistance and education to a statewide group of cemetery preservation volunteers and empowers them with proper preservation and conservation techniques to share with others.

**Benefits of designation:**

- Records the cemetery location and boundaries in the county deed records as a historically dedicated cemetery worthy of preservation.
- Helps preserve cemeteries by alerting present and future landowners of the presence of this important historical resource on their property.
- Is a prerequisite for participating in the RIP Guardian network and applying for an Official Texas Historical Marker for the cemetery.

A cemetery is eligible for designation if it is at least 50 years old and is deemed worthy of recognition for its historical associations. The very nature of a cemetery being a landmark of a family's or community's presence is considered to validate the criteria of historical associations. Any individual, organization, or agency may submit a request for designation.

**Additional information about the Historic Texas Cemetery designation including forms, samples, and instructions can be found at www.thc.state.tx.us/cemeteries/cemhtc.shtml.**

RIP Guardian cemetery preservation volunteers battle cultural neglect and natural decay by encouraging community support, preservation planning, and sensitive maintenance. Volunteers interested in preserving the history of their community protect historic cemeteries and the individually unique stories they tell. RIP Guardians receive education materials and access to training events to help increase the value of their efforts and chart success.

RIP Guardians have the opportunity to preserve local history while sharing and learning within a statewide network. To become eligible for participation in the RIP Guardian network, potential volunteers must have completed the HTC designation process.

**Additional information about services available to the RIP Guardian statewide network of volunteers can be found at www.thc.state.tx.us/cemeteries/cemrip.shtml.**

# PROTECTING HISTORIC CEMETERIES

## Awareness

While vandalism and theft of gravemarkers, tombs, and cemetery features seem to be the most disturbing threats to any cemetery, simple neglect of maintenance is perhaps a more widespread and damaging problem.

Volunteers raise awareness by organizing annual cemetery tours.

Historical markers, cemetery clean-up days, and publicity efforts are tools that will increase public awareness of these important cultural resources. Such awareness and education are among the best ways to guarantee the preservation of a cemetery.

National, state, and local historical markers provide a focal point for drawing public attention to cemeteries. Historical markers provide an overview of the individual or institutions associated with a site. For information on the various options for historical markers offered by the THC, contact the History Programs Division at 512.463.5853, or history@thc.state.tx.us.

## Record

Concerned citizens can protect historic cemeteries by documenting their locations and boundaries. If a cemetery's boundaries are not clearly established in the county deed record, consider recording its existence through the HTC designation. This may be the single most valuable act of preservation for any cemetery. Designation application, procedures, and samples are available on the THC website at www.thc.state.tx.us/cemeteries/cemhtc.shtml. The designation process may happen at any time, and is superior to simply recording the boundaries as required by law, Section 711.011 of the Texas Health and Safety Code (see Cemetery Laws section, page 9).

While both the HTC designation and the Notice of Existence forms record the cemetery boundaries with the county clerk, the designation provides additional critical information the Notice of Existence forms do not offer. Notice forms may be found online at www.thc.state.tx.us/cemeteries/cemexist.shtml for historic cemeteries with above-ground evidence (gravemarkers, cairns, etc.) and www.thc.state.tx.us/archeology/aacemexist.shtml for burials discovered with no above-ground evidence.

Once the boundaries are recorded, historic cemeteries may again become an integral part of community planning and preservation efforts. The RIP Guardian network of preservation volunteers encourages community support through preservation planning, conditions assessments, and sensitive maintenance of cemetery features.

In all cases, however, balance common sense with practical considerations. There are times when publicizing the location of a cemetery is detrimental to its preservation. Vandals can desecrate secluded cemeteries that are located away from the eyes of the protective community. Keep statistical and historical information readily available for public use, but be discreet about the exact location of vulnerable cemeteries.

## Get Permission

Identify the organization with legal jurisdiction over the cemetery, if there is one, and get written permission for preservation. If it is on public land, contact the federal, state, or local government entity with the authority to protect the property. If the cemetery is accessible through private land, contact the landowner or his/her representative and negotiate access, in addition to obtaining written permission. Cemetery associations govern many Texas cemeteries. If a cemetery association is involved, become familiar with its rules and regulations.

## Security

Before any plans are made for preservation, take steps to secure the cemetery. If feasible, contact law enforcement officials and ask them to add the cemetery to their patrols. Surrounding landowners can be strong champions for a historic cemetery. Request their advice when creating security measures for the cemetery. Develop a good relationship with the local police department or sheriff's office. Contact neighbors living near the cemetery and ask them to report any suspicious activity to the police. Let the neighbors know that an effort is underway to restore the cemetery and tell them who to contact if they notice any problems.

Appropriate fencing allows for monitoring of the cemetery and helps prevent desecration.

Erect fencing that is appropriate for the site. Livestock can knock down and trample gravemarkers, desecrating a cemetery. Deter vandals from damaging urban cemeteries by installing fencing that is easily seen through, allowing police and concerned citizens to see and report illegal activity. Fencing is the visual boundary of a cemetery, and should reflect the boundaries recorded in the deed record. When appropriate, use lights to illuminate the dark corners of the cemetery.

Do not restrict access to cemeteries, but consider posting rules and regulations. Post signs at entrances to let visitors know who to contact for access and to show that there is an active interest in the cemetery.

## Planning for Preservation

Before a blade of grass is cut, before a stone is leveled, before any work is done, it is essential that a master plan for the preservation of the cemetery be developed. The master plan will act as a framework for future preservation activities, providing prioritized goals and actions. These goals and actions will become a step-by-step guide, identifying the scope of work to be done, as well as necessary volunteers and professionals needed to perform it. A plan should estimate how much money is required for services and materials, as well as include a realistic time frame for the completion of tasks.

When creating the master plan, consider the customs of those buried in the cemeteries. Often cemeteries contain burials from many different ethnic and religious groups with diverse burial customs. Cemeteries are an expression of a community, including the varied cultural beliefs that make the community unique. Respecting the dead means extending that respect to their living descendants. Input from relatives and other interested individuals should be solicited.

Realistically evaluate the skills of the volunteers working on the restoration. Some aspects of the project will be better left to professionals. Archeologists, surveyors, architects, historians, landscape architects, and anthropologists are examples of the types of professionals who may have talents and training to bring to a cemetery restoration project.

Take into consideration all the aspects of the cemetery and how they will interact. Will grading a road create runoffs that might undermine a monument foundation? Will cutting down a tree increase deterioration of a neighboring gravemarker? Will stone repair and/or cleaning accelerate natural weathering? Consider all these questions and more. Develop a philosophy of cemetery ecology and incorporate it into your master plan. In addition, the adage if it isn't broken, don't fix it is generally true when applied to cemetery restoration. Some of the worst restoration disasters have been brought about by well-intentioned improvement attempts.

A mirror is used to illuminate inscriptions that are difficult to read, without touching or moving a damaged gravemarker.

## Survey

After the cemetery has been protected by recording its boundaries in the county deed records through the HTC designation process, plan a survey of individual cemetery features. Cemetery features include gravemarkers, fences, and landscape elements. RIP Guardian participants receive samples for completing surveys and creating maps, databases, and other tools. Contact Cemetery Preservation Program staff for more information.

Create a map of the cemetery grounds that includes the location of trees, bushes, fences, gates, and other landscape features. Note the location and orientation of each gravemarker, mausoleum, crypt, and monument. Include the orientation of all marked and known unmarked graves. Assign each physical feature (headstones, footstones, fences, benches, etc.) a control number that will tie together the written, photographic, and map records.

Photograph all cemetery features, and label each image with the corresponding control number. If using a digital camera, adjust camera settings to record images between 1200 and 1600 pixels in order to capture images of sufficient resolution. Files should be backed up and stored in a retrievable method. Digital images should be labeled clearly with grid location and date. Images recorded with black and white film using a 35mm camera should also be labeled with grid location and date. Black and white film tends to be more stable than color, and shooting at a slower speed, 100 ASA, may provide a sharper image.

In order to read partially obscured inscriptions, try recording information in the morning. Since many gravemarkers face east, the morning sun may make inscriptions more legible. When it is not practical to record in the morning, use a mirror to angle the sun onto the gravemarker to illuminate indistinct letters and numbers. Never use chalk, talc, flour, shaving cream, etc. as an aid to reading inscriptions. These materials are very difficult to remove and may contain chemicals, oils, emollients, or bacteria that can damage the delicate stones.

Develop a database or written record that includes a control number, date of record, name of cemetery, type of feature (headstone, footstone, crypt, obelisk, etc.), size of feature, description of material used to make the feature (limestone, granite, marble, wood, iron, zinc, etc.), condition of the feature, vital information from the markers (name, dates, epitaph, etc.), description of marker carvings, and any other identifying characteristics.

Record each gravemarker and feature in a systematic method. Divide the cemetery into sections and record the information down the rows. After completing a section, spot check it to make sure all gravemarkers and features were recorded. Have another person verify the recorded information to make sure there are no errors in the transcription.

## Conservation and Repair

Historic gravemarkers, fences, and structures are delicate artifacts that must be repaired with care and expertise. Modern repair methods and materials will often harm items created 50 or more years ago. Specially trained craftspeople and conservators should undertake most repairs; however, careful volunteers can repair some artifacts within cemeteries.

Most historic gravemarkers in Texas are carved from one of three different types of stone: marble, limestone, or sandstone. These stones are relatively soft and easy to carve; as a result, they were used extensively in Texas cemeteries during the 19th and early 20th centuries. Unfortunately, because these stones are soft, they are more susceptible to the effects of weathering than harder stones such as granite.

Before beginning any treatment on a gravemarker, check it for soundness. Is the surface grainy and crumbling? Are there any large cracks? Are the vertical strata of the stone separating into sheets and flaking off? If the stone has any of these problems, or appears in any other way to be unsound, do not clean or repair it. The stone will require expert care from a stone conservator.

Limestone and marble were commonly used gravemarker materials in Texas in the 19th and early 20th centuries.

A stone's appearance can be greatly improved with a simple cleaning. If the stone appears to be sound, cleaning and simple repairs may be possible. Test any treatment on a small, hidden portion of the stone. Wait a few days or weeks and evaluate the results. If the test is successful, begin cleaning the whole stone. Follow the cleaning instructions highlighted in this brief.

Do not apply portland cement, harmful chemicals, or sealants. Do not use metal bolts or braces. Do not sink stones into concrete. Never sandblast a gravemarker or spray it with an excessive force of water.

Gravemarkers are the focal point of most cemeteries and are given the first consideration when repairs are required; however, don't overlook other historic cemetery features such as gates, fences, chapels, tabernacles, mausoleums, crypts, gravehouses, and historic plant material and landscaping. Consult with a preservation architect or other specialists before restoring these complex structures or cemetery features.

## Maintenance

Sensitive maintenance and community awareness are the best long-term solutions to the survival of any cemetery. The community as a whole can take an active part in the preservation, maintenance, and protection of local cemeteries. Civic organizations, church groups, scout troops, and historical societies are all potential assistants in efforts to care for cemeteries.

Clear brush by hand when possible. When hand cleaning is impractical, use hand mowers, but not close to the gravemarkers. For close work, use hand tools. Flag and protect field stones, fragments, and other easily-overlooked gravemarkers prior to any maintenance to help prevent damage, displacement, or destruction.

Clearing vegetation by hand helps reduce the chance of damage to historic gravemarkers and features.

Use caution when considering the use of pesticides, herbicides, or fertilizers. Acidic chemicals can deteriorate limestone, sandstone, and marble, while alkaline chemicals can deteriorate granite. In most instances, organic methods of eradicating weeds and pests are better than chemical methods. Do not burn brush or rubbish near cemeteries. Uncontrolled fire could severely damage masonry gravemarkers and destroy wood markers or structures.

## Funding

Funds for the care of historic cemeteries can be challenging to obtain. However, funding is a key component in preserving cemeteries, since much of the restoration and maintenance of gravemarkers and cemetery structures can be costly. Gifts and funding opportunities typically come from local resources. Below are a few suggestions:

- Form a cemetery association, adopt bylaws, and consider obtaining nonprofit status.
- Solicit donations from descendants of the deceased buried in the cemetery.
- Research bank records for unused trust funds designated to maintain specific graves.
- Request assistance from county commissioners courts, city councils, and county historical commissions. Though they may not be able to allocate funds, they may be able to use county or city equipment and personnel to maintain cemeteries for health and safety reasons.
- Request donations from area businesses, including funeral homes and monument companies. Businesses often look for ways to give back to the community.
- Establish a trust fund for the care of the cemetery with the money collected. Standard community fundraising activities, such as bake and rummage sales and silent auctions, can help raise money for priority projects identified in a cemetery preservation plan.

## Conclusion

Educate city and county officials about cemetery preservation issues. Inform state legislators of the need for stronger state laws. Elected officials are not always aware of historic preservation challenges in the community and they will welcome input. A working knowledge of federal, state, and local cemetery laws is essential, as is an effort to publicize attempts to protect and care for cemeteries when possible.

Keep the THC informed of cemetery preservation projects taking place in the community. If you need additional help or information regarding historic cemeteries, or if you would like to talk with a staff member about the HTC designation or the RIP Guardian network, please contact the THC's Cemetery Preservation Program staff at 512.463.5853, or history@thc.state.tx.us.

If prehistoric or unmarked burials are encountered, stop work immediately and contact the THC's Archeology Division for advice at 512.463.6096, or archeology@thc.state.tx.us. Prehistoric grave sites contain fragile, easily destroyed remains. Investigation by qualified archeologists may be necessary if the history in these sites is to be properly preserved. Simple documentation and stabilization of the find may be all that is needed in such cases. State law requires the recording of unknown or a bandoned cemeteries with the county clerk. Notice of Existence of Cemetery forms are located on the THC website at www.thc.state.tx.us/cemeteries/cemrcd.shtml for recording historic cemeteries and at www.thc.state.tx.us/archeology/aacemexist.shtml for recording cemeteries discovered as a result of archeological investigations.

Handcrafted gravemarkers represent important regional customs and traditions.

# CEMETERY LAWS

The following are state laws and court decisions regarding historic cemeteries. They provide an overview of some legal actions that have been successful in preserving burial grounds around the state. This information does not take the place of legal counsel. Consult the county or city attorney or legal counsel of your choice for more information about laws related to cemeteries in Texas. Most of the Texas laws regarding historic cemeteries are in Chapters 711–715 of the Texas Health and Safety Code; Title 13, Part 2, Chapter 22 of the Texas Administrative Code; and sections of the Penal Code. Neither the THC nor any other state agency enforces cemetery laws. This responsibility belongs to county and municipal law enforcement officials.

## Dedication for Use

Section 711.001 of the Health and Safety Code defines a cemetery as a place that is used or intended to be used for interment, containing one or more graves. Section 711.035 of the Health and Safety Code states that once a property is dedicated for cemetery use, it cannot be used for any other purpose unless the dedication is removed by a district court or the cemetery is enjoined or abated as a nuisance. Property is considered dedicated if one or more burials are present or a dedication of the property for cemetery use is recorded in the deed record.

Section 711.010(a)–(b) of the Health and Safety Code states that improvements to property that would disturb an unknown or abandoned cemetery may not be carried out until the remains are removed under a written order issued by the State Registrar or its designee under Section 711.004(f).

Single graves are considered cemeteries, and are protected by the same laws.

The property owner may petition the district court where an unknown or abandoned cemetery is located to remove the dedication for cemetery purposes, and the court shall then order the removal of the human remains from the cemetery to a perpetual care cemetery.

Texas courts have ruled that no special ceremony or record is required to dedicate a cemetery; actual use as a cemetery is sufficient for dedication. *Damon v. State*, 52 S.W.2d 368 (Tex. 1932). Enclosure of land for use as a cemetery and evidence of burial are among the criteria for dedication. *Smallwood v. Midfield Oil Co.*, 89 S.W.2d 1086 (Tex. Civ. App.–Texarkana 1935, writ dism'd).

## Discovery

Title 13, Part 2, Chapter 22, Rule §22.6 of the Texas Administration Code establishes the HTC designation as a means of preservation by recording boundaries in the county deed record.

Section 711.011(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. There are no fees associated with this filing. Notice of Existence of

Cemetery forms are located on the THC website at www.thc.state.tx.us/cemeteries/cemrcd.shtml for recording historic cemeteries and at www.thc.state.tx.us/archeology/aacemexist.shtml for recording cemeteries discovered as a result of archeological investigations.

## Held in Trust

Section 711.021 of the Health and Safety Code allows nonprofit corporations to establish, manage, maintain, improve, or operate a private cemetery.

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. *State v. Forest Lawn Lot Owners Assn.*, 254 S.W.2d 87 (Tex. 1953). However, such property may be conveyed in fee simple as long as it is still used as a cemetery and the grantee continues to maintain the cemetery for the benefit of the public. *Barker v. Hazel-Fain Oil Co.*, 219 S.W. 874 (Tex. Civ. App.–Fort Worth 1920, writ ref'd).

A living person who has relatives buried in a graveyard does not, by that fact, own the land or plots in which they are buried. That person can, however, visit, ornament, and protect the graves from desecration even if he or she must cross private property to do so. *Gibson v. Berry Cemetery Assn.*, 250 S.W.2d 600 (Tex. Civ. App.–Dallas 1952, no writ).

## Abandonment

The fact that the remains of the dead buried in a cemetery have not been removed and that tombstones mark the places of burial is sufficient to show that the cemetery has not been abandoned. *Michels v. Crouch*, 122 S.W.2d 211 (Tex. Civ. App.–Eastland 1938, no writ). In *Markgraf v. Salem Cemetery Assn.*, 540 S.W2d 524 (Tex. Civ. App.–San Antonio 1976, no writ), the court decided that land outside a cemetery fence was not abandoned because several graves were still evident.

## Access

Section 711.041 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 711.0521 further states that interference with ingress and egress is a Class C misdemeanor.

Health and Safety Code section 711.012(b) provides the Texas Funeral Service Commission the authority to write rules to support section 711.041 of the Health and Safety Code. These rules present a course of action that may be undertaken in cases where access to a cemetery is refused. See Title 22, Part 10, Rule §205.2 of the Texas Administrative Code.

The court decision in the case of *Davis v. May*, 135 S.W.3d 747 (Tex.App.–San Antonio 2003, pet. denied), affirmed the trial court's judgment granting descendants the right of ingress and egress to a private family cemetery surrounded by a single landowner.

Access to historic cemeteries on private property is outlined in the Texas Health and Safety Code.

## Desecration

Section 42.08 of the Texas Penal Code states that a person who intentionally or knowingly disinters or disturbs a human corpse has committed a Class A misdemeanor.

Section 28.03(f) of the Texas Penal Code, Criminal Mischief, provides that an offense involving damage or destruction inflicted on a human burial site is a state jail felony.

Section 42.08 of the Penal Code, Abuse of Corpse, allows that a person commits an offense if they knowingly vandalize or damage the space of the interred. This is a Class A misdemeanor, punishable by fine and jail confinement.

## Graffiti

Section 28.03 (a)(3) and (f) and Section 28.08 (a) and (d) of the Texas State Penal Code provide that an offense involving graffiti on a place of human burial is a state jail felony.

## Theft

Section 31.03(e)(4)(b) of the Texas Penal Code provides that an offense under this section is a state jail felony if, regardless of value, the property is stolen from the person of another or from a human corpse or grave.

## Perpetual Care

Chapter 712 of the Health and Safety Code governs the operation of perpetual care cemeteries, regulated by the Texas Department of Banking.

## Municipal Cemeteries and County Resources

Sections 694.003 and 713.001 of the Health and Safety Code provide that Type A general law municipalities may regulate burial of the dead and may purchase, establish, and regulate a cemetery. Home rule cities also have this authority. The municipal government may enclose, regulate, and improve cemeteries belonging to the city.

Section 713.002 of the Health and Safety Code generally provides that any city or town that owns or has control of any cemetery has the power to maintain the cemetery.

Section 713.009 of the Health and Safety Code states that a city with a cemetery within its boundaries or jurisdiction may take possession and control of the cemetery on behalf of the public health, safety, comfort, and welfare. Perpetual care cemeteries and private family cemeteries are exempt from this section.

Section 713.011 of the Health and Safety Code states that a municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

Section 713.021 of the Health and Safety Code states that a (county) commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Section 713.028 of the Health and Safety Code states that a commissioners court may use public funds, county employees, and county equipment for the maintenance of certain cemeteries for purposes of historic preservation (cemeteries with graves more than 50 years old) and protection of the public health, safety, and welfare.

Municipalities that own or control a cemetery have the power to maintain it.

## Petition for Conservatorship

Chapter 715 of the Health and Safety Code states that a nonprofit corporation may be organized to restore, operate, and maintain a historic cemetery by following a procedure set forth in the chapter.

This chapter offers an excellent framework for citizens to restore a historic cemetery and gain legal responsibility to ensure its continued preservation. The procedure requires a court to approve the establishment of a conservatorship over the cemetery, so it may require the services of an attorney. The THC can assist in preparing for the procedure.

## Cemetery Associations and Private Cemeteries

Section 711.031 of the Health and Safety Code states that cemetery organizations may adopt and enforce rules and that these rules must be made available for review.

Section 711.035(d) of the Health and Safety Code requires consent of a cemetery organization prior to public utilities or thoroughfare placement through a cemetery.

## WHAT TO DO IF A CEMETERY IS BEING THREATENED OR DESTROYED

Should you see a cemetery being disturbed by vandals, looters, or construction equipment, whether or not it is marked by gravemarkers or a fence, call local law enforcement authorities at once. Texas state laws protect cemeteries and provide a legal framework if remains must be removed. All burials must be removed according to legal statutes before a landowner can use the property for any other purpose. The same protection applies to individual burials. Review related laws in the Texas Health and Safety Code included in this document and share it with local authorities.

After contacting local law enforcement authorities, notify the county historical commission (CHC), local heritage society, newspapers, other local publications, and the THC about the destruction of a cemetery. Stay involved. Do not condone the willful destruction of cemeteries with silence or by turning a blind eye. The memory of those who have lived before us should not be forsaken for reasons of expediency or economics.

Contact local law enforcement immediately if you notice vandalism or theft at a historic cemetery.

Criminal action, or a court trial, may not always be the most appropriate method of dispute resolution. A civil lawsuit may be the only means of resolving a conflict involving a cemetery. For instance, a CHC in central Texas surveyed the historic cemeteries in the county. Several years later, the fence and gravemarkers along the boundary of one of the surveyed family cemeteries had been removed. No gravemarkers remained to provide evidence of the graveyard; thus, only the survey proved the cemetery's existence. Since the site was being considered for development, the records of the CHC were crucial to the future disposition of the land. In this case, the descendants of those interred in the cemetery filed suit and were compensated in an out-of-court settlement.

In north Texas, a cemetery occupied a prime lot in one of the largest residential developments in Texas. Developers petitioned the court to remove the cemetery's dedication so that the remains and gravemarkers could be moved to a perpetual care cemetery. A local preservation group, along with the descendants of those buried in the cemetery, led a vocal protest that received wide media attention. The court decided the cemetery should remain in its original site. With the cemetery now preserved, the new residents of the development can appreciate the cemetery as a reminder of their local heritage.

While it is disturbing to lose cemeteries to development pressures, it is perhaps even more disturbing to lose them to criminal acts of vandalism and looting. Vandalism can range from intentionally pushing over gravemarkers to spray painting graffiti on cemetery chapel walls. The demand by collectors for vintage artifacts and architectural and landscaping antiques has contributed to the increasing disappearance of elaborately carved gravemarkers, sculptures, urns, finials, benches, gates, and fencing from cemeteries. This demand also leads to the digging and looting of graves for valuable objects such as jewelry, firearms, buttons, and buckles.

If a cemetery is destroyed, use that fact as a rallying point for the preservation of a community's remaining cemeteries. Nothing can substitute for the preservation efforts of individuals and groups. Citizens must develop an active role in the preservation of local cemeteries.

## STATE ANTIQUITIES CODE INVOLVEMENT

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 under the Antiquities Code of Texas (Title 9, Chapter 191 of the Texas Natural Resources Code).

The THC issues Antiquities permits for work performed in publicly owned historic cemeteries.

The gravemarkers associated with interments may also be protected, either as part of the archeological deposits or as separate architectural features associated with the site as a whole. According to the Antiquities Code, no such deposits may be "removed, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit" from the THC, the state agency that administers the Antiquities Code (Section 191.093).

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 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 when ever possible. Survey-level investigations of these historic resources should include the collection of historical archival data and archeological data that assist in documenting the location and history of the cemetery (including the relative age and date range for the use of the location), name(s) of individual(s) buried at the site, location(s) of burial(s), and the historically platted boundaries and the actual boundaries of the cemetery or grave(s).

### Policy on Historic Grave Exhumation

When a cemetery cannot be preserved in place, the data collection associated with the exhumation of graves that falls under the THC's jurisdiction will be based on the following policy, found in 13 Tex. Admin. Code, chapter 22:

- Cemeteries or graves that are 50 years or older are considered to be historic under the Antiquities Code of Texas.
- Unmarked graves are considered to be historic unless proven otherwise through historical research.
- If no historical archival data can be found that identifies the individuals contained within the unmarked graves, the exhumations should be performed by a professional archeologist, a physical anthropologist, or forensic pathologist capable of gathering basic demographic data (i.e., sex, age, height, possible cause of death, etc.) from the human remains being exhumed. Additionally, casket morphology, casket hardware, and any funerary objects (i.e., grave offerings, clothing items, personal objects) must be examined and identified in a report. This policy applies to both marked and unmarked graves unless otherwise indicated by the THC's Archeology Division.
- Unless other laws apply, all physical anthropological investigations of human remains that fall under the THC's jurisdiction will use noninvasive techniques. If invasive techniques are proposed, the wishes of living descendants shall be solicited and their wishes shall be honored.
- Unless other laws apply, funerary objects will be reburied with the human remains after they have been documented.
- All exhumations of graves shall comply with the requirements of Chapter 711 of the Texas Health and Safety Code and those of any other laws that pertain to the exhumation of human remains.
- The THC has no formal role in decisions about the methods or ceremonies associated with reburials.

Cemeteries on public or private land can also be officially designated as State Archeological Landmarks. For designation information, contact the THC at P.O. Box 12276, Austin, TX 78711, or 512.463.6096.

# HISTORIC CEMETERIES PRESERVATION STANDARDS

The Standards for Preservation of Historic Cemeteries are the guiding rules for making decisions that impact a historic cemetery. Any planning, sensitive maintenance or conservation decision should be influenced by these principles, which are adapted from the Secretary of the Interior's Standards for the Treatment of Historic Properties.

1. Identify and inventory all features, materials, spaces, and spatial relationships that are important in defining the historic character of the cemetery. Features can include gravemarkers, sculpture, grave decorations, curbing, fences, walks, roads, lights, benches, fountains, pools, land forms (terracing, berms, grading), and vegetation (trees, shrubs, other historic plant material).

2. Preserve distinguishing original qualities that reflect the integrity of the cemetery. Avoid removing or altering any historic material or distinctive landscape features.

3. Recognize that landscape features are products of their own time. Alterations, that have no historic basis and that seek to create an earlier appearance, should be discouraged.

4. Recognize that changes over time are evidence of the history and development of the cemetery. These changes may have acquired significance in their own right, and this significance should be respected.

5. Repair, rather than replace, deteriorated cemetery features when feasible. If replacement is necessary, match the material being replaced with similar composition, design, color, texture, and other visual qualities. Replacement of missing features should be substantiated by historical, physical, or pictorial evidence rather than by relying on conjectural designs or on elements copied from other cemeteries.

6. Use the gentlest means possible to clean the surfaces of features in the cemetery. Avoid sandblasting and harsh chemicals that will damage historic materials.

7. Plan new construction so it will not destroy the historic character of the site. Differentiate new elements from the old, but ensure they are compatible with the general massing, size, and scale in order to protect the historic integrity.

8. Make every reasonable effort to protect and preserve cemetery features, including unmarked graves affected by or adjacent to any proposed work. Contact the History Programs Division at 512.463.5853 if you have concerns about the likelihood of unmarked graves or encounter evidence of disturbed graves during the course of your cemetery preservation project.

Historic structures contribute to the cultural landscape of a cemetery.

Adapted from the Secretary of the Interior's Standards for the Treatment of Historic Properties

# CLEANING HISTORIC STONE

Before cleaning any stone, carefully check its condition. If the surface readily falls away, or you notice other conditions that indicate the stone is brittle or vulnerable, do not clean it. Cleaning may irreparably damage the surface.

Historic masonry should only be cleaned if the marker is stable on its base, with no signs of flaking or sugaring.

1. Use a non-ionic soap. One of the most readily available soaps is Orvus®, commonly used in association with horse and sheep husbandry. It can be found in feed stores. Mix a solution of one heaping tablespoon of Orvus® (it comes in either liquid or paste form) to one gallon of clean water.

2. Pre-wet the stone thoroughly with clean water and keep the stone wet during the entire washing process.

3. Thoroughly wash the wet stone using natural bristled, wooden-handled brushes of various sizes. Start at the bottom and work up. The use of plastic handles is not recommended, as color from the handles may leave material on the stone that will be very difficult to remove.

4. Be thorough. Wash all surfaces and rinse thoroughly with lots of clean water.

5. When cleaning marble or limestone, one tablespoon of household ammonia can be added to the above mixture to help remove some greases and oils. Do not use ammonia on or near any bronze or other metal elements.

6. Lichens and algae can be removed by first thoroughly soaking the stone and then using a wooden scraper to gently remove the biological growth. This process may need to be repeated several times. Do not use force to remove deeply embedded lichens. If the growth cannot be removed easily with scraping, consult a conservator. Some lichen can have strong roots that may damage the stone if removed forcibly.

7. Not all stains can be removed. Do not expect the stones to appear new after cleaning.

8. Do not clean marble, limestone, or sandstone more often than once every 18 months. Every cleaning removes some of the face of the stone. However, occasionally rinsing with clean water to remove bird droppings and other accretions is acceptable.

9. Keep a simple treatment record of the cleaning, including date of cleaning, materials used, and any change in condition since last cleaning (such as missing parts, graffiti, and other damage). These records should be kept at a central location where the condition of the stones can be monitored over time.

Developed from data supplied by John R. Dennis, Dallas Museum of Art Conservation Lab

## FEDERAL PROJECT REVIEW

Several federal laws protect cultural resources in the United States; however, the National Historic Preservation Act of 1966, as amended, is the statutory tool for protecting cultural resources.

The Act promotes a national policy to preserve historic properties, significant historic and prehistoric sites, buildings, and objects that are either eligible for or listed in the National Register of Historic Places. Section 106 of the National Historic Preservation Act requires federal agencies that fund, license, permit, or approve construction or similar projects to consider the effects of the undertakings on historic properties. Section 101(b)(3) of the Act states that one of the responsibilities of the State Historic Preservation Officer (in Texas, the officer is the executive director of the THC) is to advise and assist federal agencies in carrying out their historic preservation responsibilities and to ensure that all are taken into consideration at each level of planning and development. Cemeteries are an irreplaceable cultural resource that must be considered by federal agencies during such an undertaking.

The State Historic Preservation Office (SHPO) at the THC includes four divisions that review and monitor federal projects and consult with individuals and agencies as needed—the Archeology Division, the Architecture Division, the Community Heritage Development Division, and the History Programs Division. They evaluate all sites, including cemeteries, for their eligibility for inclusion in the National Register of Historic Places.

The federal review process identifies cultural resources, including historic cemeteries, within a project area.

The National Historic Preservation Act can affect cemeteries if they are within the boundaries of a federal project area, if they have been determined to be eligible for inclusion in the National Register, and if they are to be affected by the development project in some manner. Sometimes cemeteries in a project area must be moved. The move is made according to policies developed by the federal agency in consultation with the SHPO and any interested parties. Disinterment and reburial must also follow the requirements of Chapter 711 of the Texas Health and Safety Code, unless the project occurs on federal or Indian lands, in which case the Native American Graves Protection and Repatriation Act (NAGPRA) applies. Visit the following links to learn more about NAGPRA and tribal consultation:

- www.nps.gov/nagpra/
- www.achp.gov/docs/nafolder.pdf
- www.thc.state.tx.us/tribal/basics.shtml

Professional archeologists usually make a map of the cemetery and document the gravemarkers and any other features (depressions, fencing, and plantings) associated with the cemetery. Archeologists and physical anthropologists may be present to identify and study human remains and grave artifacts during manual excavation of the interment. Often, information is recorded from the gravemarkers to provide historical documentation, such as the length of occupancy of a land tract or ethnic affiliations in the community. This documentation can assist archeologists and historians in interpreting other historic properties within a federal project area.

For questions involving possible federal involvement in projects that will affect historic cemeteries, contact the THC's History Programs Division at 512.463.5853 and the Archeology Division at 512.463.6096.

## RESOURCES


The Alliance for Historic Landscape Preservation
www.ahlp.org

The Association for Gravestone Studies
www.gravestonestudies.org

Association for Preservation Technology International
www.apti.org

*The Boston Experience: A Manual for Historic Burying Grounds.* Reprinted by the Boston Parks and Recreation Department, 1993.

Carmack, Sharon Debartolo. *Your Guide to Cemetery Research.* Cincinnati, Ohio: Betterway Books, 2002.

Chicora Foundation, Inc. *Recording Historic Cemeteries: A Guide for Historical Societies and Genealogists.* Columbia, South Carolina: Chicora Foundation, Inc., 1998.

Chicora Foundation, Inc. *Iconography of Death: Common Symbolism of Late Eighteenth through Early 20th Century Tombstones in the Southeastern United States.* Columbia, South Carolina: Chicora Foundation, Inc.

Chicora Foundation, Inc. *Grave Matters: The Preservation of African-American Cemeteries.* Columbia, South Carolina: Chicora Foundation, Inc., 1996.

Crawford, Sybil F. *The Association for Gravestone Studies' Guide to Forming a "Cemetery Friends" Organization.* Greenfield, MA: The Association for Gravestone Studies, 1995.

Hughes Wright, Roberta. *Lay Down Body: Living History in African American Cemeteries.* Detroit, Michigan: Visible Ink Press, 1996.

Jordan, Terry G. *Texas Graveyards: A Cultural Legacy.* Published by the University of Texas Press, 1982.

Meyer, Richard E. *Cemeteries and Gravemarkers: Voices of American Culture.* Logan, Utah: Utah State University Press, 1992.

National Center for Preservation Technology and Training
www.ncptt.nps.gov

Potter, Elisabeth Walton and Beth M. Boland. *National Register Bulletin, No. 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places.* Washington: U.S. Department of the Interior, National Park Service, 1992.

*Preservation of Historic Burial Grounds, Information Series No. 76.* Published by the National Trust for Historic Preservation, 1993.

Strangstad, Lynette. *A Graveyard Preservation Primer.* Walnut Creek, California: AltaMira Press, 1995.

Strangstad, Lynette. *Preservation of Historic Burial Grounds.* Washington D.C.: National Trust for Historic Preservation, 2003.

Winter Bell, Judith. *Organizing Volunteers for Preservation Projects.* Washington D.C.: National Trust for Historic Preservation, 1993.


For more information about the THC's Cemetery Preservation Program, please email history@thc.state.tx.us or call 512.463.5853.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