

# Historic Cemetery Preservation from the Regulatory and Legal Perspective

2nd Annual Preserving Historic Cemeteries  
Workshop

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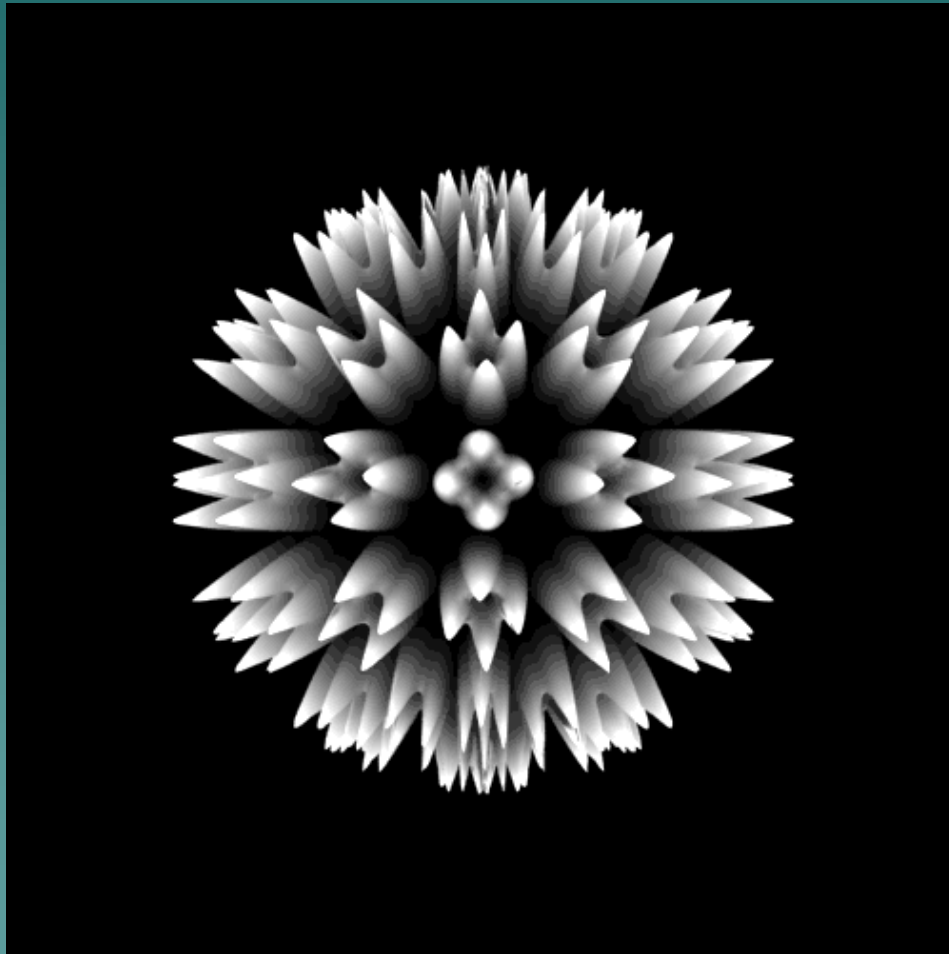
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# Disclaimer



When in doubt seek competent legal advice

There are a lot of moving parts...



**2013 South Carolina Code of Laws  
Title 27 - Property and Conveyances  
CHAPTER 43 - CEMETERIES**

**SECTION 27-43-310. Cemeteries on private property; persons entitled to access; purposes; notice; institution of proceedings in magistrate's court; immunity from civil liability.**

◆ **Universal Citation:** [SC Code § 27-43-310 \(2013\)](#)

◆ (A) An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress and egress to the cemetery, burial ground, or grave as provided in this section by any of the following persons:

◆ (1) family members and descendants of deceased persons buried on the private property or an agent who has the written permission of family members or descendants;

◆ (2) a cemetery plot owner;

◆ (3) persons lawfully participating in a burial; or

◆ (4) a person engaging in genealogy research who has received the written permission of:

◆ (a) family members or descendants of deceased persons buried on the private property; or

◆ (b) the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record.

- ◆ (B) The ingress and egress granted to persons specified in subsection (A) must be exercised as provided in this section and is limited to the purposes of:
  - ◆ (1) visiting graves;
  - ◆ (2) maintaining the gravesite or cemetery;
  - ◆ (3) lawfully burying a deceased person in a cemetery or burial plot by those granted rights of burial to that plot; or
  - ◆ (4) conducting genealogy research.
- ◆ (C)(1) In order to exercise the ingress and egress provided in subsection (A), a person authorized by subsection (A) must give written notice to the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf of and with permission of the owner of record that:
  - ◆ (a) he or the person for whom he requests ingress and egress meets the statutory requirements provided in subsection (A); and
  - ◆ (b) he requests a written proposal designating reasonable conditions for the exercise of ingress and egress as provided in subsection (B).

- ◆ (2) Within thirty days after receipt of the written notice to exercise the ingress and egress, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record must respond with a written proposal designating reasonable conditions for ingress and egress, including, but not limited to, routes to be used for access, duration of access, and time restrictions for access.
- ◆ (3) The exercise of ingress and egress on the property by persons authorized in subsection (A) for the purposes specified in subsection (B) must be exercised as reasonably restricted in time and manner by the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record. The exercise of ingress and egress must not substantially and unreasonably interfere with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.
- ◆ (4) If, thirty days after receipt of the written notice to exercise ingress and egress on the private property, written notice of reasonable conditions for the exercise of the ingress and egress as provided in subsection (B) have not been proposed or accepted, a person authorized by subsection (A) or the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner may institute a proceeding in the magistrates court of the county in which the cemetery, burial ground, or grave is located. In granting relief to either party, the magistrate may set the frequency, hours, duration, or other conditions of the ingress and egress.

- ◆ (5) A magistrate may deny the exercise of ingress and egress as provided in this section if:
  - ◆ (a) the person seeking to exercise the ingress and egress is not authorized by subsection (A); or
  - ◆ (b) the magistrate is presented with credible evidence that the person authorized by subsection (A) is involved in an imminent or actual violation of state or local law while upon, or entering, or exiting the private property; or
  - ◆ (c) the magistrate makes a finding, based upon a showing of credible evidence, that there is no condition of entry, no matter how limited in time, manner, or otherwise restricted, that would allow the person authorized by subsection (A) to enter the private property for the purposes authorized by subsection (B) without substantially and unreasonably interfering with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.
- ◆ (6) The provisions of this subsection do not authorize a magistrate to make determinations concerning the title of the property or establish an easement across the property.



- ◆ (D) In the absence of intentional or wilful misconduct, or intentional, wilful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record is immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.
- ◆ (E)(1) A person exercising ingress or egress to a cemetery, burial ground, or grave under the provisions of this section is responsible for conducting himself in a manner that does not damage the private property or the cemetery, burial ground, or grave, and is liable to the owner of record for any damage caused as a result of the ingress or egress.
- ◆ (2) The ingress or egress to a cemetery, burial ground, or grave on private property conferred by this section does not include the authority to operate motor vehicles on the private property unless a road or adequate right-of-way exists that permits access by motor vehicles and the person authorized to exercise ingress and egress by subsection (A) has been given written permission to use motor vehicles on the road or right-of-way.

- ◆ (F)(1) The provisions of this section do not apply to any deed or other written instrument executed prior to the effective date of this section which creates or reserves a cemetery, burial ground, or grave on private property, and which specifically sets forth terms of ingress and egress.
- ◆ (2) The provisions of this section in no way abrogate, affect, or encumber the title to the landowner's private property and are exercisable only for a particular private property that is subject to the provisions of this section.
- ◆ HISTORY: 2007 Act No. 113, Section 1, eff June 27, 2007.

I'll take three questions...



## **SECTION 27-43-10. Notice of proposed removal; due care required.**

A person who owns land on which is situated an abandoned cemetery or burying ground may remove graves in the cemetery or ground to a suitable plot in another cemetery or suitable location if:

(1) It is necessary and expedient in the opinion of the governing body of the county or municipality in which the cemetery or burying ground is situated to remove the graves. The governing body shall consider objections to removal pursuant to the notice under item (2) or otherwise before it approves removal.

(2) Thirty days' notice of removal is given to the relatives of the deceased persons buried in the graves, if they are known. If no relatives are known, thirty days' notice must be published in a newspaper of general circulation in the county where the property lies. If no newspaper is published in the county, notice must be posted in three prominent places in the county, one of which must be the courthouse door.

(3) Due care is taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal.

## **SECTION 27-43-20. Removal to plot agreeable to governing body and relatives; determination of suitable plot in case of disagreement.**

The plot to which the graves are removed shall be one which is mutually agreeable between the governing body of the county or municipality and the relatives of the deceased persons. If a suitable plot cannot be agreed upon between the parties concerned the matter shall be finally determined by a board of three members which shall be convened within fifteen days after final disagreement on the new location of the plot. The board shall be appointed as follows: One member shall be appointed by the county or municipality, one member shall be appointed by the relatives, and a third member shall be selected by the two. The decision of the board shall be final.

## **SECTION 27-43-30. Supervision of removal work; expenses.**

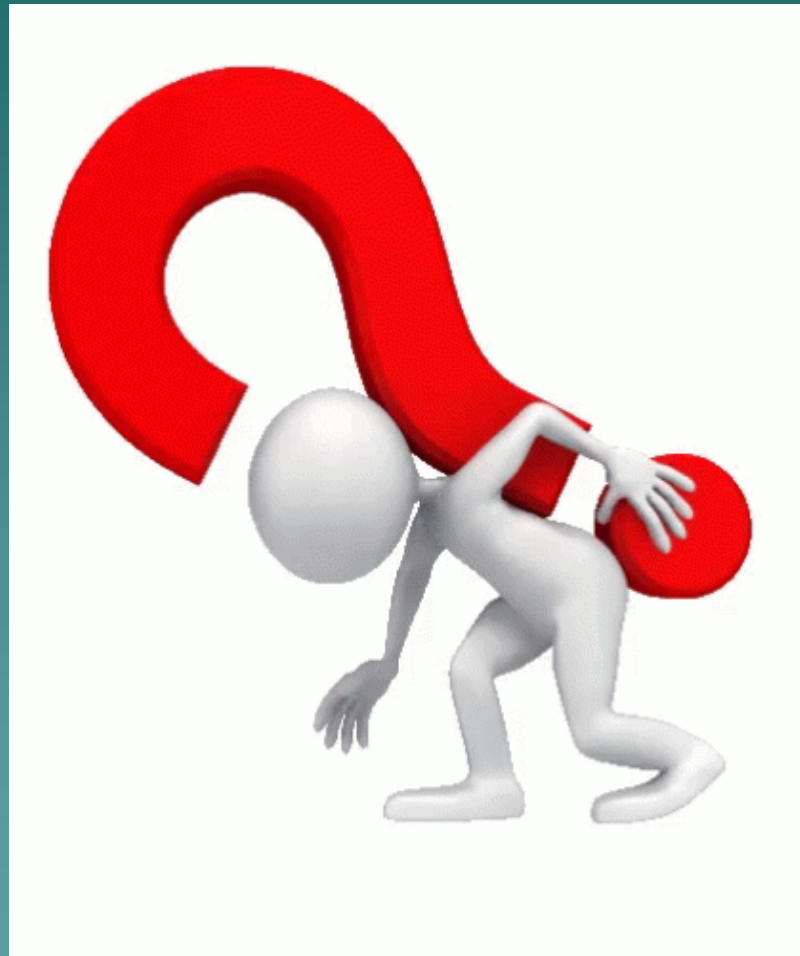
All work connected with the removal of the graves shall be done under the supervision of the governing body of the county, who shall employ a funeral director licensed by this State. All expenses incurred in the operation shall be borne by the person seeking removal of the graves.

## **SECTION 27-43-40. Evidence of abandonment.**

The conveyance of the land upon which the cemetery or burying ground is situated without reservation of the cemetery or burying ground shall be evidence of abandonment for the purposes of this chapter.



I'll take three more questions...



# South Carolina Code 16-17-600. Destruction or desecration of human remains or repositories; liability of crematory operators; penalties

Current as of: 2022

- ◆ (A) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:
  - ◆ (1) destroy or damage the remains of a deceased human being;
  - ◆ **Terms Used In South Carolina Code 16-17-600**
    - Conviction: A judgement of guilt against a criminal defendant.
    - Damages: Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.
  - ◆ (2) remove a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried, a grave, crypt, vault, mausoleum, Native American burial ground or burial mound, or other repository; or



- ◆ (3) desecrate human remains.
- ◆ A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not less than one year nor more than ten years, or both.
- ◆ A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate. This immunity does not apply to a crematory operator who knew or should have known that the body was incorrectly identified.

- ◆ (B) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:
  - ◆ (1) obliterate, vandalize, or desecrate a burial ground where human skeletal remains are buried, a grave, graveyard, tomb, mausoleum, Native American burial ground or burial mound, or other repository of human remains;
  - ◆ (2) deface, vandalize, injure, or remove a gravestone or other memorial monument or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, Native American burial ground or burial mound, memorial park, or battlefield; or
  - ◆ (3) obliterate, vandalize, or desecrate a park, Native American burial ground or burial mound, or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons.
- ◆ A person violating the provisions of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

- ◆ (C)(1) It is unlawful for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park, or for a person wilfully, knowingly, and without proper legal authority to destroy, tear down, or injure any fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains, or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park.
- ◆ (2) A person violating the provisions of item (1) is guilty of:
  - ◆ (a) a felony and, upon conviction, if the theft of, destruction to, injury to, or loss of property is valued at four hundred dollars or more, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and must be required to perform not more than five hundred hours of community service;
  - ◆ (b) a misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the theft of, destruction to, injury to, or loss of property is valued at less than four hundred dollars. Upon conviction, a person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both, and must be required to perform not more than two hundred fifty hours of community service.

- ◆ (D) A person who owns or has an interest in caring for the property, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover damages, and the cost of restoration and repair of the property, plus attorney's fees and court costs.

I'll take three more questions...



## **SECTION 49-9-10. Publication of notice before creation of artificial lake, pond, or reservoir on cemetery or burial ground.**

Any water-power or reservoir company proposing to create an artificial lake, pond or reservoir on land whereon is situated a cemetery or burying ground shall, before the creation of such lake, pond or reservoir, cause to be published once a week for four successive weeks in a newspaper published in the county or counties in which such lake, pond or reservoir shall be created or, if there be no such newspaper, in a newspaper having general circulation in such county or counties a notice which shall set forth (a) the names, if known, of all persons buried within the area to be covered by water, (b) the names, if known, of all family and other burying grounds within such area and (c) such other information as may be known to the company and which would serve to designate the known graves or graveyards within such area. Such notice shall further contain a provision calling upon the relatives of all persons buried within such area to furnish to the company in writing within a stated period of time, to be not less than thirty days from the date of last publication, a statement of their wishes with respect to the disposition of the remains of the persons so buried, signed by the person making the request and giving his post-office address.

## **SECTION 49-9-20. Procedure authorized if no requests for disposition of bodies received.**

Unless the company shall receive written requests for the disposition of the remains of deceased relatives within the time stated in such notice, the company shall be at liberty to proceed with the creation of its proposed pond, lake or reservoir and to remove, if it deems it advisable, the bodies buried within the area together with any stones or markers to some suitable place nearby or to allow the bodies to remain within the area to be covered by water and the relatives of all persons buried within such area who fail to express in writing their wishes for the disposition of such bodies shall be deemed to have abandoned such graves.



## **SECTION 49-9-30. Petition to judge upon disagreement as to disposition of bodies.**

In the event that the company and the relatives of persons buried within the pond area of such company shall be unable to agree upon a proper disposition of the bodies, the company may present a petition to the resident or presiding judge of the court of common pleas for the county in which the graves or graveyard in question are located setting forth the facts and praying for an appropriate order in the premises.




◆ **Section 49-9-50. Service of rule to show cause.**

◆ The rule to show cause provided for in Section 49-9-40 shall be directed to the interested persons who have furnished the company the written statement or request prescribed in Section 49-9-10 and shall be personally served upon such persons as are residents of the State. If the persons to be served are nonresidents service may be made by registered mail, in which case a copy of the rule and petition shall be mailed at least ten days prior to the return date of such rule.

◆ **Section 49-9-60. Hearing; final order.**

◆ Upon the return of such rule the judge before whom it is returnable may decide the issues arising thereon upon the petition and return or he may hear testimony or refer the matter to the master in equity, the clerk of court of the county or to a special referee and the matter shall thereon proceed to final determination in the same manner as is provided by law for actions so referred. The final order to be entered in the proceedings shall provide for a suitable and reasonable disposition of the bodies, taking into account all relevant circumstances, or it may provide that the bodies be allowed to remain under such conditions as the court may prescribe.

- ◆ **Section 49-9-70. Removal of bodies; supervision; expense.**
  - ◆ All removal of bodies under the provisions of this chapter shall be made under the supervision of a duly licensed embalmer and shall be at the expense of the company instituting the proceeding.
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I'll take three more questions...



**S.C. Code of Laws, Section 6-1-35. Preservation and protection of cemeteries.**

**(A) Counties and municipalities are authorized to preserve and protect any cemetery located within its jurisdiction which the county or municipality determines has been abandoned or is not being maintained and are further authorized to expend public funds and use county or municipal inmate labor, in the manner authorized by law, in connection with the cemetery.**

**(B) As used in this section, the term "preserve and protect" means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other appropriate features so as to identify the site as a cemetery and so as to aid in the preservation and protection of the abandoned cemetery**

# Last Round...





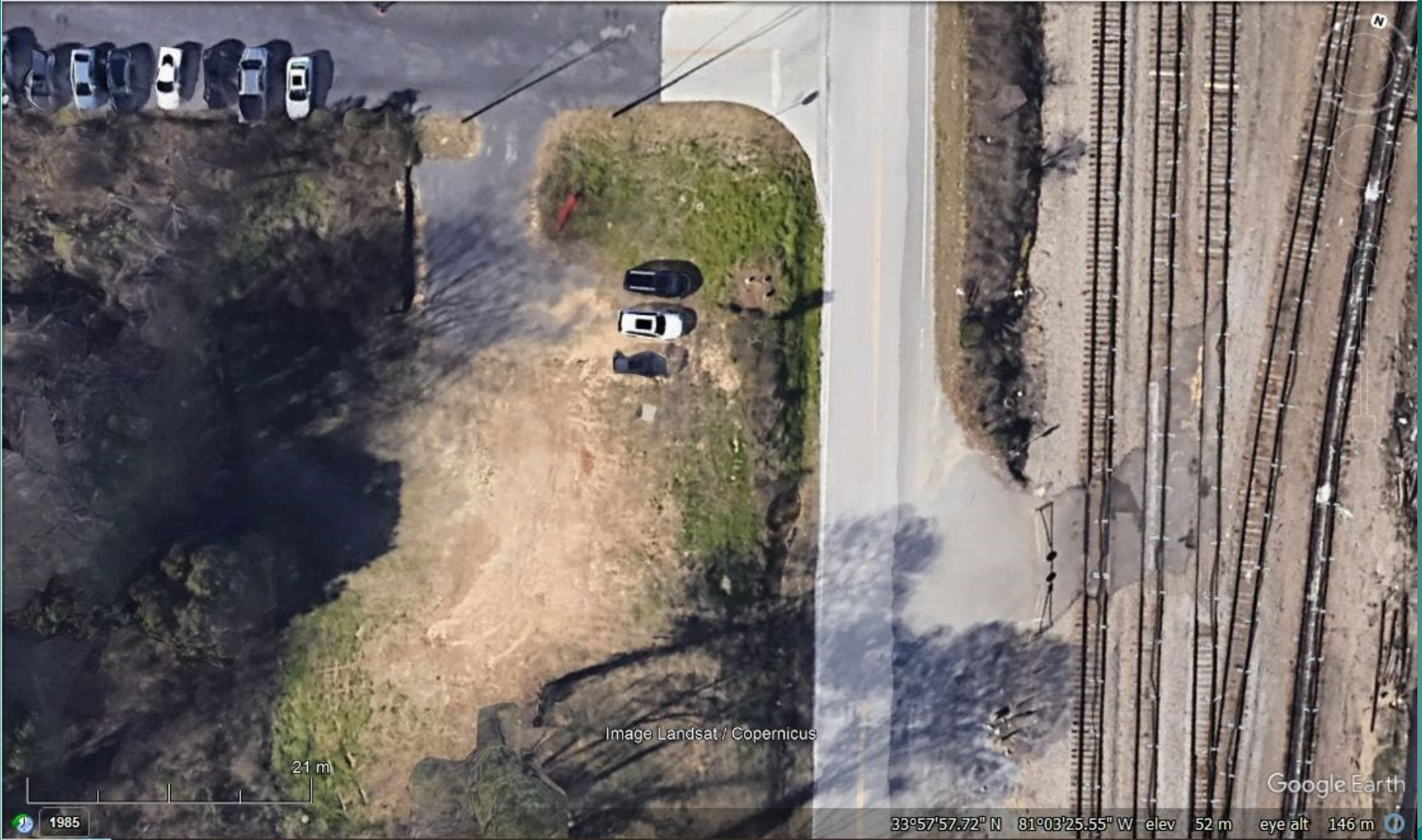


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