

DEPARTMENT OF PUBLIC WORKS
DIVISION OF HIGHWAYS

DISTRICT 3
P. O. BOX 911, MARYSVILLE

June 5, 1967

CITY PLANNING
REC
JUN 7 1967
FILE

03-General
Subject: Cemeteries -
Lands Dedicated for
Cemetery Purposes

City Planning Commission
City Hall
915 "I" Street
Sacramento, California

Gentlemen:

One of the more serious problems that arise in planning of highway routings concerns land that is dedicated for cemetery purposes. Cemetery Associations often dedicate property well in advance of any development work and land once dedicated for cemetery purposes is not subject to eminent domain proceedings and must be avoided, if at all possible. Unfortunately, in the past some dedications have reached the recording stage with very little publicity.

The local planning commissions are giving us very good cooperation in bringing applications for use permits of all kinds to our attention; however, we wish to take this opportunity to bring to your attention the importance of our being informed of proposed cemetery dedications in your area.

Our Headquarters Right of Way Department has prepared a memorandum pertaining to dedication of land for cemetery purposes, a copy of which is attached to this letter. We trust that you will find this information to be of interest.

Very truly yours,

W. L. Warren
W. L. WARREN
DISTRICT ENGINEER

Attachment

All Planning Commissions in
Division of Highways District 3

Memorandum

Transportation Agency
APR 20 1967

DESIGN DEPT.

To : Mr. J. A. Legarra
Planning

Date: April 18, 1967

File : R/W General

RECEIVED

APR 24 1967

From : Department of Public Works—Division of Highways
HQ - R/W Office

PLANNING DEPT.

Subject: Cemeteries - When and how does land become dedicated for cemetery purposes.

The following information was obtained from the "Health and Safety Code" and is included in the "Cemetery Act" issued by the Cemetery Board of the State of California. Information was also obtained from Mr. Jim Lahe of the State Cemetery Board and from Mr. Briggs, President of the "East Lawn Memorial" in Sacramento.

There are three main divisions of cemeteries: private, public and those operated by churches or other religious organizations.

PRIVATE CEMETERIES

I. STATE LAWS

Section 8553 of the Health and Safety Code states, "Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes."

Section 8551 of the Health and Safety Code states, "The Cemetery authority* shall file the map or plat in the Office of the Recorder."

A cemetery authority must apply to the State Cemetery Board for a separate Certificate of Authority for each cemetery dedicated.

For a dedication to be valid, it must comply with Sections 8550 through 8560 of the Health and Safety Code and with Section 2326 of the California Administrative Code.

* Mr. Lahe and Mr. Briggs agreed that a "Cemetery Authority" was a corporation, individuals or individual in possession of a "Certificate of Authority" issued by the State Cemetery Board according to Section 2326 of the California Administrative Code.

ITEM # 7

II. LOCAL REQUIREMENTS

The following is a comparison of the local requirements of Sacramento, Alameda and Los Angeles Counties to establish a cemetery.

	<u>Zoning</u>	<u>Use Permit</u>
Sacramento	Agricultural	Necessary
Alameda	Any District (Usually Agri-cultural)	Necessary
Los Angeles	Any District	Necessary

The following are steps necessary to obtain a use permit.

1. Application to County Planning Commission (must be accompanied with map of proposed cemetery together with dedication).
2. Notification of property owners in vicinity of property to be affected by use permit. (Method of notification varies from county to county. Some counties post notices on the subject property, others notify affected property owners by mail.)
3. Public Hearing (follows notification by several days). (Seven days in Sacramento County and 10 days in Alameda County.)
4. Planning Commission approval or disapproval.
5. Appeals period (varies to 15 days in Los Angeles County and 10 days in Sacramento County).
6. If approved - recording of Declaration of Dedication and map with the county recorder.

PUBLIC CEMETERIES

Section 8125 of the Health and Safety Code:
 "Incorporated cities, and for unincorporated towns the supervisors of the county may survey, layout and dedicate for burial purposes not exceeding five acres of public

April 18, 1967

lands situated in or near the city or town. The survey, description, and a certified copy of the order made constituting the land a cemetery shall be recorded in the recorder's office of the county in which it is located."

**CEMETERIES OPERATED BY
RELIGIOUS CORPORATIONS OR RELIGIOUS SOCIETIES**

1. Do not come under jurisdiction of State requirements.
2. Must comply with local requirements.

It would appear, from the above information, that property is considered dedicated for cemetery purposes upon the filing of a map or survey together with a dedication, dedicating the land exclusively to cemetery purposes, with the county recorder in the county where the property is situated. It also would appear that the corporation, individuals, or individual dedicating the property for cemetery purposes would have to comply with State laws and with local requirements before the dedication would be valid.

In order for the Districts to be informed of any new cemeteries being developed in their area, it will be necessary that arrangements be made with the planning commissions for notification of any applications for use permit.

The following information is taken from a legal opinion written by Robert Williams on November 2, 1962:

"An interesting question has been raised concerning the possibility of an individual dedicating a plot of ground such as a backyard for cemetery purposes in order to prevent highway construction. Whether such a dedication standing alone would be sufficient to bring any property so dedicated within the protection of Section 8560 has never been adjudicated in this State.

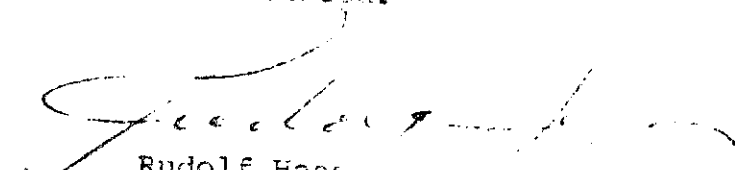
There is language in a recent California case which lends limited support to the contention that an effort to dedicate property for cemetery purposes in an area where cemeteries are prohibited by ordinance would have no effect. In *Christian Service Society v. County*

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of Butte, 161 Cal. App. (2d) 280 326 P. (2d) 532, the Court used the following language at page 283 with respect to the effect of a dedication to cemetery purposes which had occurred after the passage of a county ordinance regulating the location of cemeteries:

In the case of Application of Laurel Hill Cemetery Assn., 73 Cal. App. 193. 196 238 P. 732, the court said: 'He who would assert that a dedication has been made must show that all of the calls of the statute have been followed because such provisions have been held to be of the substance of the creation of a dedication.' In the instant case 'all of the calls of the statute' had not been made prior to the enactment of either ordinance. In fact, plaintiff makes no claim that prior to the adoption of such ordinances it had filed the map or plat for record as required by section 8551, or the declaration dedicating the property exclusively to cemetery purposes in compliance with section 8551. A compliance with the provisions of the statute following the enactment of the zoning ordinance did not exempt plaintiff from the compliance with all the terms of said ordinance."

Therefore, it seems that the dedication must also comply with local laws and ordinances of the individual counties in which the land is situated.


Rudolf Hess
Chief Right of Way Agent

C O P Y

C O P Y

C O P Y

June 8, 1967
3844 - 4th Avenue

City of Sacramento, California
City Planning Board
Room 308, City Hall

I am requesting permission to have my house rezoned R-2 (multi-dwelling) so that I may continue to occupy the lower basement apartment.

I have lived here over (3) years and have been ordered to vacate here by the Sacramento Housing Appeals Board - soon. I should be allowed to live here for the following reasons:

I am not asking you to break your "settled" rules but only to expand and define them logically.

The property is catty-corner across the street is zoned R-4 and other property very close is also multi-zoned.

I have lived here a long time and get along good with my neighbors, like it here, it is very convenient and comfortable for me.

The ceiling is about 6½ feet, the room I occupy is 8' there is generous space available and I largely live by myself except when someone is helping me with my work here on the house - seldomly.

For me to move is a violation of civil right at least by spirit and a violation of the natural and logical rights of an individual. According to these rights and the Constitutional principle given us the "right for pursuit of happiness" Also we have the famous North American Act which is part of the common law of this country--states that "The right to a pursuit of a living as long as it is honest and decent shall not be interfered with"... and living here is my living especially as it is largely used as an office and place of storage for the tools of my trade. Also by living here I have and will continue to improve this property in different ways. I have just recently repainted and reroofed the place and fixed the plumbing.

The tenant living upstairs has a large family and needs constant help with her problems and of course still has a difficult time.

In the event that rezoning is granted I will do whatever is necessary to bring it up to other different zoning standards and I intend to pursue whatever legal means is necessary to further remain here.

Thanking You,

(SIGNED) Cecil R. Lilly