

**PART III**

**CHAPTER 3**

**Cemetery Development Plans and Other Laws  
Regarding Burial Grounds**

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## 3-1.0 Overview-Cemetery Development Plans (IC 14-21-1-26.5)

State law (IC 14-21-1-26.5) requires that a person may not disturb the ground within one hundred (100) feet of a burial ground for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure without having an approved development plan.<sup>1</sup> This law does not prohibit construction near a cemetery, nor does it prohibit moving cemeteries if the proper permits are acquired. This law only requires that developers' plans take into account cemetery locations. Consequently, maintenance of existing facilities, such as road repair, repaving, or in-kind replacement, does not require a Cemetery Development Plan (CDP).

### 3-1.1 What is a Cemetery or Burial Ground

The Indiana general cemetery law defines a cemetery as any land or structure in Indiana that is dedicated to and used for, or intended to be used in the future for, the interment, entombment, or inurnment of human remains ([IC 23-14-33-7](#)). Under [IC 14-21-1-3](#), a burial ground is defined as ground in which human remains are buried, including the surrounding area that is marked by a permanent boundary such as a fence or wall, or else that is recorded or reported as containing human remains, mounds, or burial objects.

“Human remains” include any part of the body of a human being in any stage of decomposition or state of preservation, including cremated remains ([IC 14-21-1-7](#); [IC 23-14-33-21](#)). As a result, even a single fragment of human bone may be considered part of a burial ground.

Many historic and prehistoric cemeteries do not have clear boundaries, and many historic cemeteries contain gravestones that have been moved from their original locations, or lack standing gravestones altogether. Other historic cemetery locations are unknown except for reported but unverified descriptions. In such cases, a qualified professional archaeologist would need to investigate the area to determine whether a cemetery is present and to delineate the actual cemetery boundaries if it is not otherwise clear whether the cemetery is located within 100 feet of the project.

### 3-1.2 When is a Cemetery Development Plan Required?

Under [IC 14-21-1-26.5](#), a CDP must be approved if a person, municipality, or the state intends to

(A) excavate or cover over the ground or

(B) construct a new structure or alter or repair an existing structure, and this action would impact the burial ground or cemetery;

A CDP is not required if a person, municipality, or the state intends to

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<sup>1</sup> IC 14-21-1-26.5 does not apply to the following: (1) a public utility (as defined in IC 8-1-2-1(a)); (2) a corporation organized under IC 8-1-13; (3) a municipally owned utility (as defined in IC 8-1-2-1(h)); and (4) a surface coal mining and reclamation operation permitted under IC 14-34.

(A) excavate or cover over the ground or

(B) erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

Many INDOT projects involve the repair or replacement of existing structures within existing right-of-way, and do not impact nearby cemeteries. The potential impacts of a proposed project upon nearby cemeteries and the need for an approved CDP must be determined in consultation with INDOT-CRO staff.

### 3-1.3 How to Complete a Cemetery Development Plan

Under [312 IAC 22.5-2-3](#), a CDP submission must include the following:

- A signed cover letter from the applicant on letterhead with the following information:

The identity of the person or persons who would conduct the project.

The overall nature and timeframe for the project.

The location of the project by section, township, range, county, and address.

Any prior disturbance of the area.

A statement of whether federal or state funds or licenses are involved in the project.

- Mapping to show the location of the cemetery in relation to the project that includes the following:

Construction details for activities within one hundred (100) feet of the cemetery.

References to nearby landmarks.

Location of the cemetery and the project area on the appropriate U.S. Geological Survey 7.5' quadrangle map.

- A description of the cemetery sufficient to evaluate the likely impact of the project, including the following:

Any name of the cemetery.

The dates of use.

Historical information and documentation.

Precise boundaries that reference nearby landmarks. If documentation is not currently available to identify the cemetery boundaries, the applicant may be required to determine those boundaries through the following:

Remote sensing or archaeological geophysics.

Investigations by archaeologists.

Another scientific method approved by the division.

The current physical condition of the cemetery.

- A description of the grounds adjacent to and within one hundred (100) feet of the cemetery, including the following:

The nature, depth, and degree of previous disturbances, including those caused by construction, excavation, grading, or filling.

A description of soils, by types, that are present at the site, including an explanation of how they would be disturbed, graded, modified, removed, or otherwise treated.

A description of every structure.

A description of the activities anticipated to erect, alter, or repair a structure.

Areas that would contain new construction of the footprints of the proposed construction areas.

- Clear recent photographs of the cemetery and the grounds adjacent to and within one hundred (100) feet of the cemetery.
- If the application is not from the landowner, written permission from the owner of the cemetery and the owner of any area to be entered or disturbed during the project.
- In addition, if the burial ground or cemetery is located within an archaeological site, contains an archaeological site, or is itself an archaeological, then the CDP must also include an archaeological plan under [IC 14-21-1-26.5](#).

The DHPA Cemetery Registry may be a good source of information when completing a CDP. The Cemetery Registry database contains location information, survey data, and historical documentation on many cemeteries and burial grounds in the state. The State Library and local county libraries and historical societies are also good sources for historical information. Some cemetery websites include a brief history of the cemetery. Other internet resources such as <http://www.ingenweb.org/> and <http://www.findagrave.com/> may also provide useful information.

### 3-1.4 Submitting a Cemetery Development Plan for Approval

Under [IC 14-21-1-26.5](#), the approving entity depends upon the project sponsor:

A development plan of the state requires the approval of DHPA.

A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of DHPA.

If the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground (in addition to approval by the executive of the municipality);

A development plan of a governmental entity other than a municipality or the state requires the approval of the executive of the county where the governmental entity is located, and does not require the approval of the IDNR, DHPA. If the governmental entity is located in more than one

county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

Whenever a CDP is prepared for an INDOT project, a copy of the plan must be provided to INDOT-CRO for inclusion with the project documentation.

### **3-2.0 Prohibition on Road and Utility Construction in Cemeteries (IC 23-14-44-1)**

This state law restricts road or utility construction through, over, or across any part of the cemetery, within 100 feet of:

A space in which burial rights have been transferred;

A mausoleum in the cemetery;

A garden crypt in the cemetery;

A columbarium in a cemetery;

*without* the consent of the owner of the cemetery. Further, IC 23-14-44-2 gives any person the right to seek a permanent injunction to prevent road or utility construction within a cemetery. INDOT makes every effort to avoid cemeteries completely, and will only move burials if avoidance is not a feasible alternative.