

What Conservation Land Trusts Need to Know About Cremated Remains Scattering

Please note: This case statement has been revised to provide clarification of legal details that are applicable to a more general audience with the help of Tanya D. Marsh, Professor of Law, Wake Forest Law School. Previous versions were published as part of an effort specific to the state of Massachusetts.

Local conservation commissions, regional land trusts, and private landowners are becoming aware of high-powered businesses with deep pockets that are making significant land purchases for the purpose of scattering cremated remains around trees for substantive fees.

The following are some key points to help understand what is at stake for conservation land trusts, local communities, and consumers. These points have been revealed through access to public deeds, LLC filings, corporate documents, and land trust formation declarations, and from recognized leaders in the scientific community.

The Language of Conservation

The language of conservation is being used to describe a business whose practices are scientifically unsupported. In fact, evidence pointing to the potential for greenwashing is significant, posing harm to people and the land. This will affect land trust credibility going forward.

Cremated Remains Disposition Law

Case law in the US has defined the disposition of human remains to include full body burial exclusively. Differing state statutes that fail to provide a clear definition of cremated remains disposition create confusion when determining whether they are indeed human remains or simply the result of a process that reduces human bodies to calcium phosphorus and sodium. In question is whether or not accepting fees for disposition of cremated remains constitutes the burial of a human in states that require human remains must be buried in a cemetery. A key point to understand at the outset: *Cremated remains can be scattered anywhere at no cost with permission from the landowner.*^{1,2}

Burial of Cremated Remains in Established Cemeteries

Understanding a little about the organizational structure of cemeteries is helpful in highlighting the differences between them and memorial forests. In states that have

¹ Massachusetts General Laws: Title XVI, Chapter 114, Section 43M: Permanent disposition of dead bodies or remains. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter114/Section43M> accessed February 25, 2022

² Massachusetts Department of Environmental Protection, <https://www.mass.gov/guides/issues-to-consider-in-preparing-for-disposition-of-decedents> >Cremation, accessed February 25, 2022

endowment requirements, offering above-ground scattering instead of burial may skirt guarantees of perpetual maintenance and protection of the area. Five states (MA, ME, NH, VT, NY) require that cemeteries may not be organized as for-profit; the five states may organize in various ways, some of which are nonprofit corporations and associations run by active, responsible boards of directors. New York State has taken the position that land use for scattering cremated remains constitutes a cemetery.³ *Disposal of human remains in exchange for money requires that the land be designated as a licensed cemetery.*

In contrast to memorial forests that are not organized as cemeteries, burial of cremated remains in established cemeteries, including most natural and conservation cemeteries, is standard for a nominal fee for a plot, opening, and closing. Most licensed conservation cemeteries operating on conserved land follow best practices by burying cremated remains implementing scientifically-backed methods that protect plants and water sources.⁴ *To distinguish between responsible disposition of cremated remains on conserved land, the Conservation Burial Alliance has developed a list of questions to ask and created a comparison chart for easy reference.*^{5,6}

Self-Established Conservation Land Trusts

Evidence points to some scattering businesses establishing conservation land trusts for themselves in states where they operate, with no apparently active nonprofit board of directors, scientists, land trust professionals, or land trust affiliations. Evidence of any Department of Environmental Services or similar state agency involvement or consultation has not been found. Neither is there any public record of State or university extension forest services.

Before doing business with one of these, ask for their Ecological Assessments (EiAs), an Integrated Pest Management Plans (IPMs), or resource inventories. *Once the need to signal the public that they are engaged with a conservation entity is over, these "land trusts" can be dissolved with no repercussions.*

- Some deed language fails to safeguard against abandonment and sale of the property at any time; some indicate options for possible future development (Example in Florida, MA deed: "In the event of foreclosure of this Mortgage, the Premises may, at the option of Mortgagee, be sold in one or more parcels...")
- Be aware that some memorial forest properties may initially purchase land with an independent, site-specific mortgage and then convert it to the company.

³ Letter from the Division of Cemeteries to the New York State Cemetery Board dated September 30, 2020 denying exemption from the state law prohibiting for-profit companies from operating cemeteries.

⁴ Detailed description of processes for responsible cremated remains burial, The Life Forest, https://thelifeforest.com/?gclid=CjwKCAiAvOeQBhBkEiwAxutUVPbUi4neSIJm5rRXhllB2AO7p-URIXp6n6ggoTA7KnOQxrpNGGWzZxoCa8AQAvD_BwE

⁵ Questions Land Trusts Need to Ask, (Conservation Burial Alliance, accessed February 25, 2022) https://www.conservationburialalliance.org/questions_for_land_trusts_to_ask.html

⁶ *The Differences Between Conservation Burial and Memorial Forests*, Conservation Burial Alliance, accessed February 25, 2022) https://www.conservationburialalliance.org/differences_chart.html

Burying and scattering of cremated remains is not allowed on properties until they are clear of a mortgage, so ask for a timetable before purchasing. If the property is not yet open, fees may be returned according to the purchasing contract.

- Standard conservation easement language re: subdivision, building, clearing cutting, blocking public access, disturbance of soil, rights of way, etc., appears to be absent from public documents. No case law in the US states that the presence of cremated remains protects the land from development.

Local Government Loopholes

Scattering cremated remains businesses may target loopholes in the local government system, either by ignorance or design, by filing for land use, wetlands, special use, and other permits out of order, with separate governing bodies unaware of the processes occurring outside their own purview.

Cemetery commissions may not necessarily be involved as these are not licensed cemeteries; planning commissions and zoning boards focus on town economic growth opportunities and zoning rules, not necessarily the science of every business that comes to them; conservation commissions likewise may not be aware of or have any authority over various permitting applications in progress, and are not usually versed in this type of science either.

Once one entity has approved an action without knowing the missing parts, that decision has the ability to affect future approvals. For instance, if only one wetland area on a 300-acre parcel is recognized in the permitting process, it is possible that only that wetland may be recognized going forward. This might affect zoning, planning, conservation, and other aspects of permitting should other areas of the property be developed in the future.

Community Economics

Funds being collected from scattering fees likely may not stay in the community. While these land purchases, under the guise of conservation, may seem appealing, without the protections offered by bonafide land trusts, and the guarantee of protection of endangered species and cultural or botanical features, the economic support pales.

Towns that operate municipal cemeteries by State mandate rely on the income for burial of both full body and cremated remains burial to stay solvent. Having a competing enterprise could create a drain on town resources, requiring a price hike which could impact local citizens.

Legacy Protection

Scattering companies do not have to offer protections for the actual cremated remains or for their descendants' rights to access. Without the protection of a conservation easement issued by a recognized conservation land trust entity, there is no liability guarantee. And

without the further perpetual protections of a cemetery, consumers are completely unprotected. Even the tree the consumer has paid for is not guaranteed responsible tree management or, in the case of damage or death of the tree, replacement in the short or long term. They purchase the “right” to scatter only. *The fundamental covenant between landowners, and in this case consumers, and the conservation land trust is violated when there is no legacy protection.*

Environmental Damage

This science is clear. Cremated remains when scattered on living flora are potentially deadly, and create a phosphorus problem for the immediate micro-biome as well as potential for run-off into water, creating algae bloom that kills fish and other lifeforms.

- The 12/14 pH of cremated remains is 200 to 2000 times too high for plant health.⁷
- It is comprised of heavy, dense, pulverized bone that consists of calcium phosphate and sodium – a lethal combination for plants in quantity, as it is not in a useable or available form.⁸
- One representative from the NH Department of Environmental Services related the belief that the neutralizing of cremated remains may take up to 3 years; mixing with soil or fertilizer amendments will not affect that timeframe.⁹
- Only one company sells a neutralizing enzyme product that has proven to neutralize in 3 months¹⁰; the ingredients are proprietary. Departments of Environmental Protection tend to rely on full transparency and do not recognize any amendment that we are aware of.
- Phosphorus plume from cremated remains mimics fertilizer runoff that causes algae bloom, killing life in nearby waterways.¹¹
- Girdling of trees with multiple cremated remains deposits creates a recipe for eventual death of the tree and leaching damage to the plant, fungal, and soil communities surrounding it, potentially killing the tree itself.
- A failed proposal in Ashfield, MA, called for a deposit upwards of 8000 lbs. of remains on a 10-acre site, with no regulation or total limit.¹²

Forest Protection Project Best Practice Requirements

⁷ Marquez-Grant, N., Niziolowski, J., Pawlett, M., Rickson, J. *Soil Science Related to the Human Body After Death*, (The Corpse Project, Cranfield Forensic Institute, Cranfield University, March, 2016). <http://www.thecorpseproject.net/wp-content/uploads/2016/06/Corpse-and-Soils-literature-review-March-2016.pdf> accessed February 25, 2022.

⁸ Carter, David O., Jenkins, Robert. *Why Burying Ashes is Harmful to the Environment*, (Let Your Love Grow) <https://letyourlovegrow.com/blogs/blog/why-burying-ashes-is-harmful-to-the-environment> accessed February 26, 2022

⁹ Carter and Jenkins, *ibid.*

¹⁰ Carter and Jenkins, *ibid.*

¹¹ *Phosphorus Basics: Understanding Pathways of Soil Phosphorus Loss*. (Alabama A&M and Auburn Extension Service. May 2020.) https://www.aces.edu/wp-content/uploads/2020/05/ANR-2662-Phosphorus-Basics-Pathways-of-Soil-Phosphorus-Loss_052020L-G.pdf accessed February 25, 2022.

¹² Public Comments to Ashfield Planning Board on the Special Permit Application by Eternal Roots

According to Mary Johnson, founder of Regenerative Farms, USA, the global nonprofit supporting restoration for degraded lands and protection of biodiverse, carbon-rich forests, those invested in forest protection address the following areas of forest protection best practice:

- Free and Prior Informed Consent
- Additionality
- Leakage
- Mitigation for risks of corruption and mismanagement or mis-use of funds
- Social Safeguards
- Transparent Monitoring, Reporting and Verification by an independent third party
- Transparent source of and use of funds

Conclusion

All of this would appear to be the complete opposite of what land trusts and the conservation movement stands for. It is also important to note that conservation easement holders are legally responsible for any businesses that operate within the easement. There are ways to dispose of cremated remains responsibly and economically, but this is not it. The conservation community is ultimately responsible for retaining its reputation for backing enterprises and land acquisitions in a way that protects land and the public trust.

Additional Resources

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- Conservation International. *Literature Review of Best Practices for REDD+ Social Safeguards*
<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:5f56e1af-12c4-322d-8879-7a455b8a3d06>
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- Forest Stewardship Council. *Guidelines for Free, Prior and Informed Consent*
<https://fsc.org/en/newsfeed/fsc-publishes-new-guidelines-on-free-prior-and-informed-consent-fpic>
- Green Burial Council. *Other Disposition Options, What We Stand For, Memorial Forest Scattering*
https://www.greenburialcouncil.org/other_disposition_options.html
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- Kennen, Kate and Kirkwood, Niall. *Phyto: Principles and resources for site remediation and landscape design* (Routledge, NY, 2015).
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- Natural Resources Conservation Service. *Soil Health Literature Review*
<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:7dce8f2f-af62-3af0-89eb-f5fd0ab47914>
- Penn State Center for Nutrient Solutions. *The Phosphorus Paradox*
<https://www.youtube.com/watch?v=qCZ89Tj5BRM>
- Soil Health Academy <https://soilhealthacademy.org/videos/>
- Sustainable Death Care Improves Water, Soil, and Air Quality, *Eco-Spotlight with Julia Brunner*, October 12, 2020 <https://eco-spotlight.com/interview/sustainable-death-care-improves-water-soil-and-air-quality/>
- US Department of Agriculture. *Soils Health*
https://www.nrcs.usda.gov/wps/portal/nrcs.detailfull/national/soils/health/?cid=nrcs142p2_053860

About the Author

Lee Webster's experience with home funeral and conservation burial advocacy and education informs her work as a nationally recognized leader in the end of life sphere. She has served in chief leadership positions with the National Home Funeral Alliance and the Green Burial Council, and helped found the National End-of-Life Doula Alliance and Conservation Burial Alliance while directing NH Funeral Resources, Education & Advocacy.

She is a writer, researcher, long-time hospice volunteer, home funeral guide, former town conservation commissioner and NH State Conservation Commissions Board member. She is the author of several home funeral and green burial books, including [Changing Landscapes: Exploring the growth of ethical, compassionate and environmentally sustainable green funeral service](#), and has published articles and interviews that can be

found in various media outlets, including The New Republic, Boston Globe, The New York Times, NPR, and many others. Her latest collaborative book with Columbia University's DeathLab is [The Future of the Corpse: Our Changing Ecologies of Death and Disposition](#).