


City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 8, 2012

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: RASHAD M. YOUNG, CITY MANAGER 

SUBJECT: AUTHORIZE THE CITY MANAGER TO EXECUTE CONSERVATION EASEMENT AGREEMENT WITH ALEXANDRIA HISTORICAL RESTORATION & PRESERVATION COMMISSION FOR THE ALEXANDRIA CONTRABANDS AND FREEDMEN CEMETERY

ISSUE: City Council authorize the City Manager to sign a Conservation Easement Agreement with the Alexandria Historical Restoration and Preservation Commission for the purpose of preserving the Alexandria Contrabands and Freedmen Cemetery.

RECOMMENDATION: That City Council authorize the City Manager to:

- (1) Sign the attached Conservation Easement Agreement with the Alexandria Historical Restoration and Preservation Commission in substantially the form attached and subject to approval by the City Attorney; and
- (2) Execute all documents that may be required.

BACKGROUND: A Save America's Treasures Grant (51-06-ML-0478) was received for FY2006-2012 expenditures to fund a portion of the costs associated with the documentation, memorialization and preservation of the Alexandria Contrabands and Freedmen Cemetery. Under the terms of the grant, a preservation easement is required to be placed on the property before the grant can be closed out.

The Contrabands and Freedmen Cemetery was established in 1864 as a burial ground for African Americans who fled slavery, seeking a safe haven in Union-controlled Alexandria during the Civil War. More than 1700 people were buried there over the five years that the federal government managed the cemetery. After 1869, the cemetery may have been used unofficially by area families as a burial ground but was likely not maintained formally. Over the years, the site has been compromised and hundreds of graves lost from a number of actions: the removal of soil from the cemetery for brick making; the adjacent development of two major highways; and the construction of a gas station and office building on the sacred site. While other physical sites that recalled the once-considerable African American presence in Alexandria have been lost, the City of Alexandria acquired the property in 2007 in order to remove the buildings, reclaim the cemetery, and create a permanent memorial.

Since 2007, the Office of Historic Alexandria and the Department of Transportation and Environmental Services have performed an archaeological survey of the cemetery, identifying and recording over 500 burials. A design for a permanent memorial has also been selected, and groundbreaking for construction is expected shortly. The full burial record of each person buried in the cemetery after March 5, 1864, will include date of death, name, age, place of death, and in some cases additional information including reason for death, next of kin, who officiated at the cemetery, whether a fee was paid, etc. Interpretive materials for the memorial will include maps, images of freedmen, quotes from activists Harriet Jacobs and Julia Wilbur, and a marker that can be affixed next to burial names when a descendant family member is identified.

The creation and publication of a full site history and a website that informs visitors to the memorial about the freedmen's history, those buried in the cemetery, the archaeology, and citizen action to preserve the cemetery and create the memorial is also being completed.

FISCAL IMPACT: Total project cost: \$149,399 of which \$147,894 is eligible to be matched by a Save America's Treasures Grant of \$73,897. The City will receive reimbursement of \$40,750 after all grant funds are expended and all terms of the grant are satisfied – including the easement, National Register of Historic Places nomination, history report, archaeology report, and website. The match already generated by the City of Alexandria for the three categories (personnel, fringe benefits, construction materials and labor) exceeds the 50% match required. The City has provided \$91,131 in previous operating budgets from FY 2007 through FY2011.

ATTACHMENT: Deed of Conservation Easement Agreement

STAFF:

Mark Jinks, Deputy City Manager

Lance Mallamo, Director, Office of Historic Alexandria

Pamela Cressey, City Archaeologist

Richard Baier, Director, Dept. of Transportation and Environmental Services

Emily Baker, City Engineer, Dept. of Transportation and Environmental Services

DEED OF CONSERVATION EASEMENT AGREEMENT

For a Save America's Treasures Grant to Contrabands and Freedmen's Cemetery

Exempted from recordation tax under the Code of Virginia (1950) as amended,
Sections 58.1-811 (a) (3) and 58.1-811 (D)

This Conservation Easement Agreement ("Agreement") is made the XX day of XXXX, 2011, between the **City of Alexandria, a Municipal Corporation of Virginia**, as GRANTOR of a conservation easement (hereafter referred to as the "Grantor"), and the **Alexandria Historical Restoration and Preservation Commission**, as GRANTEE of the conservation easement (hereafter referred to as the "Grantee"). This Agreement is entered under the laws of the Commonwealth of Virginia (Sections 10.1-1009, 10.1-1010) for the purpose of preserving the Contrabands and Freedmen's Cemetery, an archaeological site that is important culturally and historically. This property is within the Alexandria National Register Historic District, a National Historic Landmark.

1. The Subject Property. This Agreement creates a conservation easement in real estate legally described in Exhibit A. The Subject Property is the site of the Contrabands and Freedmen's Cemetery, located at 1001 South Washington Street, Alexandria, Virginia (hereafter referred to as the "Subject Property").

2. Grant of conservation easement. In consideration of the sum of \$73,897 received in grant-in-aid financial assistance from the National Park Service of the United States Department of the Interior, the Grantor hereby grants to the Grantee a conservation easement in the Subject Property for the purpose of assuring preservation of the Contrabands and Freedmen's Cemetery.

3. Easement required for Federal grant. This conservation easement is granted as a condition of the eligibility of the Grantor for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the Historic Preservation Fund for the Save America's Treasures Grant Program.

4. Conditions of easement:

a. Duration.

This conservation easement is granted in perpetuity commencing on the date when it is filed in the Land Records for the City of Alexandria, in the Commonwealth of Virginia, in the United States of America ("Land Records").

b. Documentation of condition of the Contrabands and Freedmen's Cemetery at time of grant of this easement.

In order to make certain the full extent of Grantor's obligations and the restrictions on the Subject Property Exhibit B is included at the end of this agreement. This Exhibit documents the current nature and condition of the Subject Property including a list of current character-defining materials, features, and spaces. The Grantor agrees that the nature and condition of the Subject Property on the date of execution of this easement is accurately depicted by the documentation provided in Exhibit B. The above referenced documentation shall be

maintained for the life of this easement in the Grantee's conservation easement file for the Subject Property.

c. Construction of the Contrabands and Freedmen's Cemetery Memorial.

The Grantor agrees that the planned Contrabands and Freedmen's Cemetery Memorial and any related work on the site shall not adversely affect cultural and archaeological resources, including graves. The Grantor agrees to provide photographic documentation of the Subject Property within thirty (30) days of completion of the Contrabands and Freedmen's Cemetery Memorial.

The Grantor shall take all reasonable precautions to protect the archaeological site from disturbance or destruction that may result from the construction of the Contrabands and Freedmen's Cemetery Memorial, including, but not limited to the following actions: construction plans will be reviewed by the City Archaeologist; a layer of fill dirt has been placed as a protective cap over the graves and cultural resources; and if construction activities will penetrate the protective fill, archaeological site monitoring and/or archaeological work, reviewed and approved by the City Archaeologist, will be conducted to ensure protection of graves and other cultural resources.

d. Duty to maintain the Subject Property.

The Grantor agrees to assume the cost of continued maintenance of the Subject Property so as to preserve the archaeological integrity of the Subject Property to protect those qualities - its cultural resources, including graves and American Indian material - that made the Subject Property eligible for listing in the National Register of Historic Places for the duration of this Easement. The Grantor shall take all reasonable precautions to protect the archaeological site from looting, vandalism, erosion, disturbance or destruction from any cause.

Management of trees and vegetation on the Subject Property shall be in accordance with sound horticultural practices and in such a way as to avoid any damage to the cultural and archaeological resources and minimize erosion on the Subject Property.

e. Restrictions on post-Memorial construction activities that would affect archaeological resources.

The Grantor agrees that no ground-disturbing activity shall be undertaken or permitted to be undertaken on the Subject Property, without prior review by the City Archaeologist. The City Archaeologist will assure all work will meet applicable *Secretary of the Interior's Standards for Archeology and Historic Preservation*.

The City Archaeologist will review any proposed ground-disturbing activity and shall either reach a determination of "no effect" or "potential effect" as follows:

I. If the proposed ground disturbance shall not exceed the depth of the protective fill cap, the City Archaeologist shall reach a determination of no effect, and the activity may occur without approval from the Grantee.

II. If the City Archaeologist determines that the proposed ground disturbance activity shall extend beyond the depth of the protective fill cap, the City Archaeologist shall request permission from the Grantee to undertake the activity. The City Archaeologist's request to

the Grantee shall include a description of the ground- disturbing activity, a map showing the location and extent of the ground disturbance, affirmation that the work complies with the *Secretary of the Interior's Standards for Archeology and Historic Preservation*, and a summary of measures that shall be taken to protect the archaeological site during the ground-disturbing activity.

Archaeologically significant deposits, sites, or features on the Property, both known and unknown, including all cultural resources and graves associated with the Contrabands and Freedmen's Cemetery and American Indian areas as documented on the site maps, shall not be disturbed or excavated without prior approval from the Grantee. All such work shall be performed by, or under the supervision of, a professionally qualified archaeologist.

f. Annual Report

The City Archaeologist shall provide the Grantee with an annual report, on a date to be agreed upon between the City Archaeologist and the Grantee, providing information on all ground disturbance and maintenance activities that occurred on the subject property during the previous year.

g. Disposition of the Subject Property

The Subject Property shall not be divided, subdivided, or conveyed in fee other than as a single tract.

h. Maintenance of recovered materials.

The Grantor agrees to ensure that all data and material excavated from the Subject Property shall be treated and preserved according to the Virginia Department of Historic Resources State Curation Standards (March 24, 1998) and City of Alexandria Archaeological Standards. Such artifacts shall be processed and studied by the archaeological staff of the Grantor or its successor, and placed in the archaeology repository of the Grantor or its successor in the manner prescribed in the Secretary of the Interior's applicable *Standards for Archeology and Historic Preservation* or will comply with the requirements of the Native American Graves Protection and Repatriation Act, and with 36 CFR 79 and 43 CFR 10.

i. Public access.

The Grantor agrees to provide public access to the Memorial after its construction with no admission. The Subject Property will be open to the public using the same policy as other City parks and open spaces.

j. Right to inspect.

The Grantor agrees that the Grantee, its employees, agents and designees shall have the right to inspect the Subject Property at all reasonable times, with twenty-four hours written notice, in order to ascertain whether the conditions of this conservation easement agreement are being observed. However, in the case of any natural or man-made disaster or imminent endangerment to the Subject Property, the easement holder shall be granted access to the Subject Property with no prior notice.

k. Anti-discrimination.

The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the

Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee.

l. Easement shall run with the land; conditions on conveyance.

This conservation easement shall run with the land and be binding on the Grantor, its successors, and assigns. The Grantor agrees to insert an appropriate reference to this easement agreement in any deed or other legal instrument by which it divests itself in part or in whole of either the fee simple title or other lesser estate in the Subject Property, the Subject Property, or any part thereof.

m. Casualty Damage or Destruction.

In the event of an emergency which affects the subject property the Grantor through its City Archaeologist, shall within two (2) working days develop an appropriate treatment plan in accordance with conditions of this Agreement and shall provide such plan to the Grantee for their review and written approval within 30 days of receiving the request from the Grantor.

In extreme emergency situations the Grantor may take any actions required to safeguard life and property without prior consultation of the Grantee, but shall minimize impact to the site. In extreme emergencies when graves and/or other cultural resources are endangered, the City Archaeologist may conduct necessary actions to mitigate adverse effects without prior consultation from the Grantee. The Grantor shall notify the Grantee in writing within 14 calendar days of the damage or destruction such notification including what, if any, emergency work has already been completed.

If upon reviewing the condition of the Subject Property following the emergency or catastrophic event, the Grantee determines that the features, archaeological resources and graves which made the Subject Property eligible for listing on the state and national registers have been lost or so damaged that its continued listing is in question, the Grantee will notify the Keeper of the National Register and the State Historic Preservation Office (Department of Historic Resources) in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Grantee in writing of any decision to remove the Subject Property from the National Register. If the Subject Property is removed from the National Register, this Agreement will be null and void and Grantee shall notify Grantor in writing of such decision and the appropriate documents shall be filed in the Land Records. If the damage or destruction that warrants the property's removal from eligibility for the National Register is deliberately caused by the gross negligence or other actions of the Grantor or successor owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the Subject Property which will then be returned to the U.S. Government.

n. Enforcement.

The Grantee shall have the right to prevent and correct violations of the terms of this conservation easement. If the Grantee, upon inspection of the Subject Property, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and/or archaeological importance of the Subject Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30)

calendar days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction, determines that a violation exists or has occurred, the Grantee may seek to obtain an injunction to stop the violation, temporarily or permanently and may request that the court require the Grantor to restore the Subject Property to a condition that would be consistent with preservation purposes of the grant from the National Park Service. In any case where a court finds that a violation has occurred, the Grantee may request that the court require the Grantor to reimburse the Grantee and the Commonwealth of Virginia Attorney General for all the State's expenses incurred by the Commonwealth in stopping, preventing, and/or correcting the violation, including, but not limited to, reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

o. Effective date; severability.

This conservation easement shall become effective when filed by the Grantor in the Land Records, with a copy of the recorded instrument provided to the Grantee for its conservation easement file. If any part of this conservation easement agreement is held to be illegal by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the conservation agreement does not contain the particular part held to be invalid.

p. Amendments.

The parties may by mutual written agreement jointly amend this conservation easement, provided the amendment shall be consistent with preservation purpose of this conservation easement and shall not reduce the regulatory controls listed in the conditions of this conservation easement. Any such amendment shall not be effective unless it is executed in the same manner as this easement, refers expressly to this easement, and is filed in the Land Records.

This instrument reflects the entire agreement of Grantor and Grantee regarding the subject easement. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution of this Agreement, unless set out in this instrument.

In witness whereof, Grantor and Grantee have set their hands under seal on the days and year set forth below.

GRANTOR: The City of Alexandria, Virginia

By: _____
Rashad M Young, City Manager

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA COUNTY: On this _____ day of _____, 2011, before me the undersigned, a Notary Public for said Commonwealth, personally appeared **Rashad M. Young, City Manager**, to me personally known, who stated that he is **City Manager of the City of Alexandria**, that no seal has been procured by said corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its **City Council**, and that as such officer, he acknowledged that he executed the foregoing instrument as his voluntary act and the voluntary act of the corporation.

NOTARY PUBLIC

My commission expires: _____

GRANTEE: Alexandria Historical Restoration and Preservation Commission

By: _____
Charles L. Trozzo, Chairman

Attest: _____
Charles D. Ablard, Vice Chairman

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA: On the _____ day of _____, 2011, before me, a Notary Public for said State, personally appeared **Charles L. Trozzo**, who stated that he is the duly appointed and actively serving **Chairman, Alexandria Historical Restoration and Preservation Commission**, and that he executed the foregoing conservation easement agreement as his voluntary act and as the voluntary act of the Alexandria Historical Restoration and Preservation Commission.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A TO THE CONSERVATION AGREEMENT

Legal description of the Subject Property Contrabands and Freedmen's Cemetery

This agreement creates a conservation easement in real estate legally described in two parcels as follows:

Legal Description of 1001 South Washington Street, Alexandria, VA

Being as shown on plan sheet 2 of the plans for the City Project 0095-96A-106, RW 201, C524 further known as Parcel 001 as it appears on a plat entitled "Plat Showing Division of Property at the S. W. Corner Washington Street & Church Street," prepared by Cecil J. Cross, Land Surveyor, dated July 25, 1955 and recorded in Deed Book 416 at Page 464 of the Land Records of the City of Alexandria, Virginia. The legal description of the Property is as follows: Beginning at a ½ inch rod set at the southwest intersection of Church Street and South Washington Street; thence south 09 degrees 30 minutes 00 seconds west 125.00 feet to a ½ inch rod set; thence north 80 degrees 49 minutes 00 seconds west 150.00 feet to a ½ inch rod set; thence north 09 degrees 30 minutes 00 seconds east 125.00 feet to a 2 inch pipe found; thence south 80 degrees 49 minutes 00 seconds east 150.00 feet to the ½ inch rod set and point of beginning containing 18,749.7 square feet or 0.4304 acres.

And being the same property conveyed to the Grantor by Deed recorded as Instrument Number 070009229 in the land records of the City of Alexandria, Virginia.

Legal Description of 714 Church Street, Alexandria, Virginia

All of that certain lot or parcel of land situated, lying and being in the City of Alexandria, Virginia, and being more particularly described as follows: Lot 4.01 as it appears on a plat entitled "Plat showing consolidation and dedication of various easements on the property of Church Street Associates, also known as part of Lot 501, division of property at S. W. corner of S. Washington Street and a portion of S. Columbus Street (vacated by Ordinance #2798), City of Alexandria, Virginia," prepared by Kenneth W. White, Land Surveyor, dated October 6, 1983, and recorded in Deed Book 1134 at Page 737, of the land records of the City of Alexandria, Virginia.

And being the same property conveyed to the party of the first part by Deed recorded as Instrument #010000721, among the aforesaid land records.

And being the same property conveyed to the Grantor by Deed recorded as Instrument Number 070002535 in the land records of the City of Alexandria, Virginia.

EXHIBIT B TO THE CONSERVATION EASEMENT

Documentation of Current Conditions Baseline Photographic Documentation and History Contrabands and Freedmen's Cemetery

The current nature and condition of the Subject Property is an open area with sparse vegetation. A wooded slope marks the western extent of the site. A strip of small trees and brush remains along the south and west sides of the site. Two concrete slabs remain from the two 20th century buildings that were demolished in preparation for archeological work on the site. The property is surrounded by a chain link fence. The site is shown in the attached aerial photographs taken by Jerry Dierug on November 16, 2009 (*See Images 1 and 2*). The condition of the Subject Property remains as shown in the photographs on the date of this Agreement.

Historic Character Defining Features:

1. The cemetery – No grave markers, perimeter fence, or entry carriageway are visible today. However archaeological investigation in 2007 and 2009 identified grave shafts and a non-burial area interpreted as the carriage path into the Cemetery.
 - A. Grave Shafts – Archaeologists discovered 534 grave shafts in the Cemetery. Historical records from 1864 to 1869 provide names of 1712 individuals who most likely were buried at the site, but interments may have continued for decades. Graves were dug side by side, forming lines of north-south running rows parallel to South Washington Street. Graves are in a generally east-west orientation with the head of the coffin to the west. Many of the shafts were oblong in shape; others appear hexagonal, reflecting the shape of the actual coffin. The shafts range from 8 feet to 4 feet in length, indicating that both adults and children were buried here. Oyster shells were found on some of the shafts. The ritual placement of shells on the surface of graves can be linked to African burial traditions. All identified grave shafts were documented according to standard archaeological practices. Survey data was collected to create an accurate map depicting all grave locations and shapes of each grave. Orange plastic snow fencing was used to cover the graves before a layer of protective fill, generally at least two feet in depth, was placed above them. This will serve as a marker if any ground disturbance occurs in the future. It is possible that at least half of the historic graves still survive on the property. Hundreds of additional graves are thought to remain in areas that are still protected, including the sections under two concrete slabs remaining from 20th century structures and below the asphalt and sidewalk of South Washington Street.
 - B. Carriage Path – An 11- to 13-foot-wide gap between rows of graves along South Washington Street was uncovered running east to west across about half of the site. No graves were found in this area so it is thought to be an access way.

American Indian Tool Making Site - A buried portion of the western slope of the cemetery protects a significant Native American archaeological site.

Archaeological investigation revealed American Indian use of the site in the form of more than 3,000 lithic (stone) artifacts. While most of the finds consist of small flakes that are by-products of manufacturing stone tools, a number of the artifacts are styles of spear points and knives that are diagnostic; that is, they can be dated to particular time periods. These diagnostics include types that indicate sporadic encampments by hunter/gatherers from as early as 13,000 until about 1,200 years ago. The oldest artifact discovered in Alexandria comes from this site--a spear point with a leaf-shaped blade and a flute (or groove) created near its base to allow for attaching it to a shaft. This tool type, known as a Clovis point, was used by hunters in the grassland environment that would have predominated in Virginia at the end of the last glacial era. Modern Features

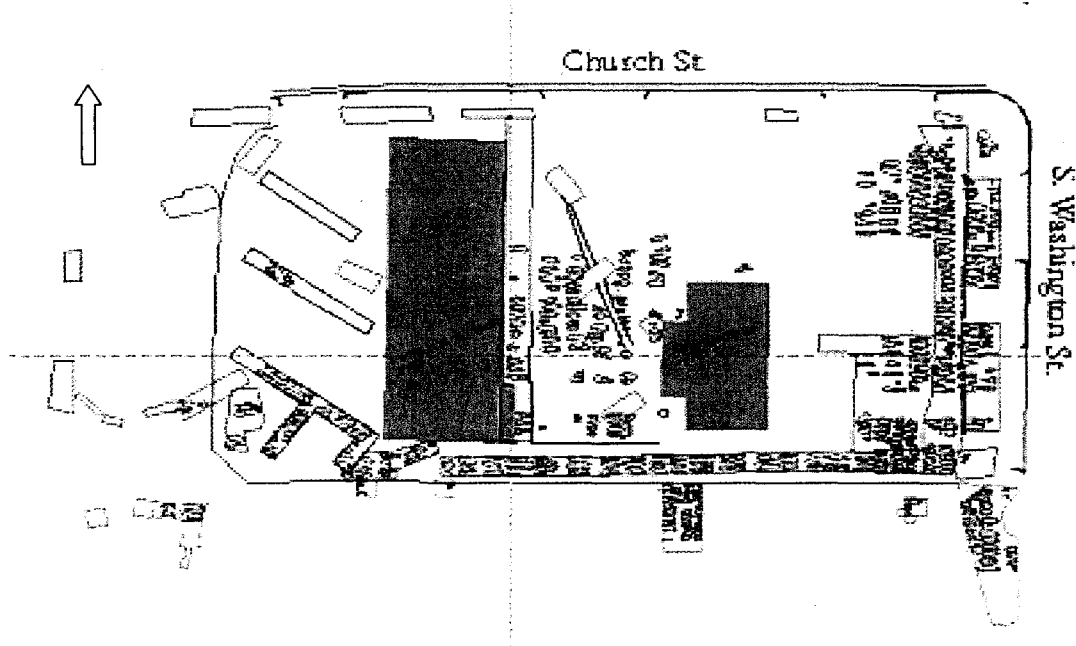
- A. Slabs - Two concrete slabs remain from the two 20th century buildings that were demolished in preparation for archeological work on the site.
- B. Brick Wall and Stairs – This feature remaining from the 1960 building at 714 Church Street was not demolished to protect graves and to provide a reminder to visitors of the mid-20th century intrusions into the cemetery.
- C. Fuel Tanks –The Virginia Department of Historic Resources, the Virginia Department of Transportation, the Virginia Department of Environmental Quality, the City of Alexandria, and Sunoco, Inc. (owner of the gas station) all agreed that the three fuel tanks and a waste oil tank used by the gas station should remain in the ground to offer the best protection for any nearby burials. The gas tanks were placed in a large pit that extended to a depth of about 12 to 16 feet below the ground surface, while the waste oil tank was placed at a depth of about 5 feet below the surface. The tanks were drained and then cleaned. The gas tanks were filled with concrete slurry, and the areas around all tanks were back filled with gravel and soil to cover them completely. The pipes that led from the tanks to the pumps were capped. No burials were seen or disturbed during tank closure.

Attached Images:

- *Archaeological Feature Map*
- Photograph of Grave Shafts
- Photographs and Drawing of Clovis Points
- Aerial View of the Cemetery Site Taken on November 16, 2009

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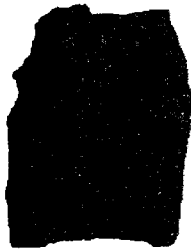
Archaeological Feature Map showing positions of identified graves and location of the two foundation slabs which remain on the property.



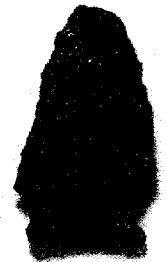
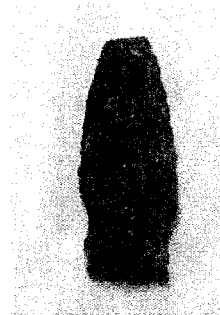
Rows of grave shafts in Freedmen's Cemetery. (Outlines enhanced.)



American Indian Artifacts found during archaeological investigation



Clovis Point, ca. 13,000 years old
Point, ca.
years old



Savannah River Point, Potts
Holmes variant 1,200
ca. 4,000 years old.

All images courtesy of City of Alexandria, Alexandria Archaeology