

Roles and Responsibilities

SUMMARY

Several state agencies have specific roles and responsibilities for managing Minnesota's archaeological resources, including American Indian burial sites. The Office of the State Archaeologist has a major role in protecting and preserving Minnesota's archaeological resources. Created in 1963, the office has experienced gradual changes in its structure and authority over the last several years. Staff at the Minnesota Indian Affairs Council have been critical of how the current state archaeologist has exercised this authority. This has contributed to a poor working relationship between the archaeologist's office and the council. In addition, differences of opinion regarding the appropriateness of some archaeological methods and definitions and poor communication and mistrust have added to the tension between staff at the two offices.

For nearly 40 years, the Legislature has expressed an interest in preserving Minnesota's archaeological resources. According to the Minnesota Field Archaeology Act of 1963, "It is in the public interest to provide for the preservation of historic sites, buildings, structures, and antiquities of state and national significance for the inspiration, use, and benefit of the people of Minnesota."¹ Other state laws echo this sentiment. The Minnesota Environmental Rights Act of 1971 includes historical resources in its definition of natural resources and states that ". . . each person is entitled by right to the protection of air, water, land and other natural resources within the state . . ."² Likewise, the Outdoor Recreation Act of 1975 says that ". . . the unique natural, cultural and historical resources of Minnesota . . . should be made available to all the citizens of Minnesota now and in the future."³ Preserving Minnesota's archaeological resources can also benefit American Indian tribal governments and communities by helping to record their culture, which is, according to some tribal leaders, being threatened by economic and social changes.

This chapter looks at how Minnesota regulates archaeological activities. It addresses the following research questions:

- **What are the current roles, responsibilities, policies, and procedures for protecting and preserving Minnesota's archaeological resources, including American Indian burial sites?**

Protecting archaeological resources is a state responsibility.

¹ *Minn. Stat.* (2000) §138.51.

² *Minn. Stat.* (2000) §116B.01.

³ *Minn. Stat.* (2000) §86A.02, subd. 1.

- **What are the major sources of conflict between the Office of the State Archaeologist and the Minnesota Indian Affairs Council?**

To answer these questions, we examined state and federal laws, policies, and practices. We talked with staff from several state agencies, including the departments of Administration, Natural Resources, and Transportation, the Minnesota Historical Society, the Attorney General's Office, and the Minnesota Indian Affairs Council. We interviewed tribal leaders and cultural resources staff from all 11 of the American Indian reservations and communities in the state. Finally, we talked with archaeologists from the University of Minnesota, Hamline University, professional organizations, and private businesses; local government officials; and private developers.

STATE AND FEDERAL LAWS

Two major state laws regulate the protection and preservation of archaeological resources in Minnesota: the Field Archaeology Act of 1963 and the Private Cemeteries Act.⁴ The Field Archaeology Act defines archaeology as the study of the traces of human culture by surveying, digging, sampling, excavating, or removing objects of interest from land or water. The act further defines archaeological resources to include “. . . all aboriginal mounds and earthworks, ancient burial grounds, prehistoric ruins, historical remains, and other archaeological features,” as well as ancient implements, skeletons, bones, or other items of archaeological interest.⁵ The Private Cemeteries Act requires that all human burials and human skeletal remains, which by law are archaeological resources, be given equal treatment and respect without regard to their ethnic, cultural, or religious background. In addition to these state laws, the federal National Historic Preservation Act requires that archaeological resources be considered in all projects that are federally funded or licensed and the National Environmental Policy Act requires that they be considered during the environmental assessment process and in environmental impact studies.⁶

State law defines Indian burial sites as an archaeological resource.

Overall:

- **While several state agencies help regulate archaeological activities, the Office of the State Archaeologist has a major role in protecting and preserving Minnesota's archaeological resources, including human burial sites.**

Minnesota statutes require the Office of the State Archaeologist in the Department of Administration to: sponsor, conduct, and direct archaeological research; protect and preserve archaeological sites, objects, and data; disseminate archaeological information; identify, authenticate, and protect human burial sites;

⁴ *Minn. Stat.* (2000) §§138.31-138.42 and §§307.08-307.12.

⁵ *Minn. Stat.* (2000) §138.31, subd. 2.

⁶ P. L. 89-665 and P. L. 91-190. In addition, the federal Native American Graves Protection and Repatriation Act (P. L. 101-601) requires that all agencies receiving federal funds return all American Indian burial remains, funerary items, or items of cultural patrimony to the appropriate contemporary Indian community.

and review and issue archaeological permits. The Commissioner of Administration, in consultation with the Minnesota Historical Society, the Minnesota Indian Affairs Council, and other interested parties, appoints the state archaeologist to a position in the classified service. The archaeologist's office has two full-time staff, both archaeologists, and a fiscal year 2001 operating budget of approximately \$196,000 from a General Fund appropriation.⁷

Minnesota statutes also give the Indian Affairs Council and the Historical Society specific responsibilities to help ensure that the state's archaeological resources are protected. In addition, statutes require that other state agencies whose activities may affect archaeological resources, such as the departments of Natural Resources and Transportation, cooperate with the archaeologist's office, the Historical Society, and the Indian Affairs Council.⁸

The Minnesota Indian Affairs Council is the official liaison between the State of Minnesota and the state's 11 tribal governments shown in Figure 1.1. The council provides a forum for urban Indian issues and administers various programs to enhance economic opportunities for Minnesota's Indians and protect their cultural resources. The Indian Affairs Council has a staff of eight, including an executive director appointed by the Board of Directors. One staff person works full time on cultural resources concerns, including burial issues. The council has an operating budget of approximately \$700,000 for fiscal year 2001, about two-thirds of which comes from a General Fund appropriation and one-third from special revenue and federal appropriations.

**The Minnesota
Indian Affairs
Council
represents
11 tribal
governments.**

The Minnesota Historical Society was created by the territorial Legislature in 1849. It is an independent, nonprofit corporation governed by a 30-member Executive Council that appoints a director who is responsible for managing the society's staff and budget. The Historical Society carries out a number of duties on behalf of the state, as directed by statute. It houses the State Historic Preservation Office, which performs most of the society's regulatory functions related to historic preservation, including activities under the federal National Historic Preservation Act, the National Environmental Policy Act, the Minnesota Historic Sites Act, and the Minnesota Field Archaeology Act.⁹ The historic preservation office has 12 full-time staff, including one archaeologist, and an operating budget of \$445,000 for fiscal year 2001, of which 40 percent comes from federal sources.

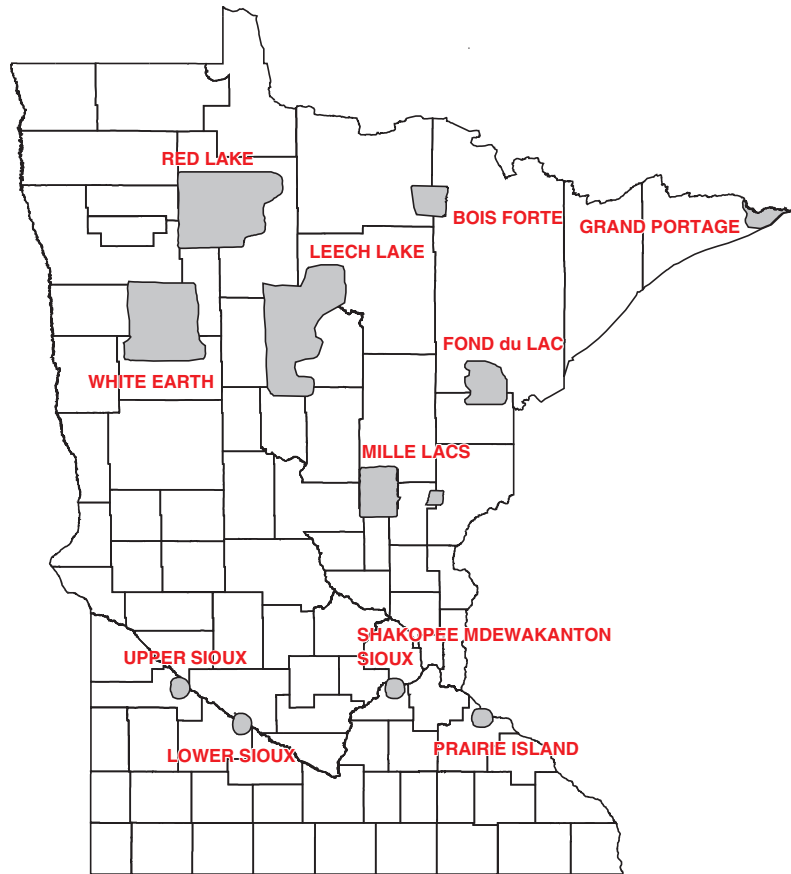
State and federal laws help preserve Minnesota's archaeological resources by requiring: (1) permits for archaeological investigations, (2) reviews of land development plans, and (3) the identification and authentication of burial sites and remains. The Field Archaeology Act designates the state archaeologist the "agent

⁷ The office also received about \$8,000 from a variety of other state, federal, and private sources specifically to help fund an archaeology conference and Minnesota Archaeology Week.

⁸ The Minnesota Department of Transportation has four archaeologists on staff and also contracts with private consulting firms for archaeological work related to highway construction. The Department of Natural Resources contracts with the Minnesota Historical Society for seven archaeologists to protect archaeological resources in state parks, forests, and trails. In addition, the Historical Society has six other archaeologists on staff who conduct research throughout the state.

⁹ P. L. 89-665, P. L. 91-190, *Minn. Stat.* (2000) §§138.51-138.585, and *Minn. Stat.* (2000) §§138.31-138.42.

Figure 1.1: Location of Minnesota Indian Reservations and Communities



SOURCE: Minnesota Indian Affairs Council.

of the state” in administering and enforcing the act’s provisions.¹⁰ The office often shares responsibilities with the Indian Affairs Council and the Historical Society. Although state law gives the Historical Society the authority to develop administrative rules for issuing permits and reviewing development plans, it has not done so.¹¹

As we show in the following sections:

- **Minnesota state government’s involvement in the regulation of archaeological activities is complex.**

¹⁰ *Minn. Stat.* (2000) §138.34.

¹¹ *Minn. Stat.* (2000) §138.39. Until 1994, statutes designated the Historical Society, rather than the Office of the State Archaeologist, as the lead agency charged with enforcing Minnesota’s archaeological laws.

The involvement of state agencies—and individual Indian tribal governments—depends largely on whether a site being considered for development or study contains an archaeological resource, whether the site is on public or private land, how the development is funded, and the type of archaeological resource involved.

Issuing Permits

In Minnesota, archaeologists must obtain a state permit before any archaeological work can begin on a state site.¹² The law defines a state site as any land or water “owned or leased by or subject to the paramount right of the state, county, township, or municipality.”¹³ The state does not require permits for archaeological work on private land.

Archaeologists need permits to work on sites on state land.



Archaeological excavation at Lake Carlos.

We found that:

- **Although both the Office of the State Archaeologist and the Minnesota Historical Society share responsibility for issuing archaeological permits, the state archaeologist oversees the permit process.**

As shown in Table 1.1, the Historical Society issues permits to qualified archaeologists for projects on state sites upon the recommendation of the state archaeologist. When a person applies for a permit, the archaeologist’s office uses standards adopted by the U.S. Department of Interior to review the qualifications of project staff. At the same time, the office examines the soundness of the

¹² Statutes refer to archaeological “licenses,” but we use the word “permit” because the process permits specific projects to proceed rather than licensing an individual to engage in archaeological fieldwork. Other states refer to these documents as permits.

¹³ *Minn. Stat.* (2000) §138.31, subd. 2.

Table 1.1: Roles and Responsibilities for Issuing Permits

Archaeologist's Office

- Make recommendations on permits for archaeological work on state sites
- Issue emergency permits for state sites
- Develop permit renewal application form and specify required information
- Revoke or suspend permits

Historical Society

- Issue permits for projects approved by the state archaeologist on state sites
- Make recommendations to Attorney General for district court injunctions
- Issue emergency permits for state sites
- Renew permits for state sites
- Revoke or suspend permits
- May adopt rules for issuing permits

Archaeologist's Office and Historical Society

- Formulate provisions related to issuing permits

SOURCE: Office of the Legislative Auditor.

proposed research methodology and helps identify ways to lessen any adverse impact the proposed project might have on archaeological resources. According to the archaeologist's office, in 1999 only one individual began archaeological fieldwork on a state site before obtaining a permit. The state does not charge permit fees, and archaeologists performing work on private or federal land do not need a state permit. Permits are issued for one year.¹⁴

We found that:

- **During calendar year 1999, the state issued 123 permits for 259 projects on state sites, mostly for archaeological work unrelated to American Indian history or religion.**

The number of projects exceeded the number of permits because some permits covered multiple projects or sites. For example, the departments of Natural Resources and Transportation obtain only one permit each that allows them to engage in numerous archaeological projects. Of the 259 licensed projects, about one-fifth (58) were on sites related to Indian history or religion.

As a condition of receiving a permit, project staff must submit site forms and final reports to the archaeologist's office for its review. The office also encourages archaeologists working on private land to submit site forms and final reports so that the office can maintain a current archaeological database. Maintaining an accurate and up-to-date database is vital to almost all of the state archaeologist's activities. During fiscal year 2000, the office entered data from 333 site forms

¹⁴ Although we did not examine how long it takes to issue permits, some archaeologists told us that since 1995, when the current state archaeologist was hired, they have been able to obtain permits generally within ten days of application. Before 1995, some archaeologists said that it often took months to receive a permit.

into its database, including information on 252 newly recorded sites and additional information for 81 previously recorded sites.¹⁵ Currently, the database contains information on approximately 9,000 verified archaeological sites in Minnesota, and about 6,500 additional sites that have been identified, but not verified.

Reviewing Plans

According to state and federal laws:

- **The Office of the State Archaeologist, the Minnesota Historical Society, the Minnesota Indian Affairs Council, or individual American Indian tribes must review development plans or be consulted before certain types of land development projects can proceed.**

As shown in Table 1.2, state agencies that suspect archaeological or historical sites may be affected by development projects on their land must submit plans to the archaeologist's office and the Historical Society for review.¹⁶ Historical society staff copy the state archaeologist on all correspondence with state agencies regarding plans that affect archaeological resources and also notify the agencies

Table 1.2: Roles and Responsibilities for Reviewing Development Plans

Archaeologist's Office

- Review state agency plans involving archaeological resources and local government plans involving burials on state sites
- Forward plans involving Indian history or religion on state sites to the Indian Affairs Council
- Review plans involving burial sites for projects on private land that receive federal funds or need a federal license
- Forward plans involving Indian burial sites for projects on private land that receive federal funds or need a federal license to the Indian Affairs Council

Historical Society

- Review state agency plans involving historical resources on state sites
- Review plans involving historical resources on federal land or for projects on private land that receive federal funds or need a federal license

Indian Affairs Council

- Review plans involving Indian history, religion, or burials on state sites
- Review federal plans involving Indian burial sites for projects on private land that receive federal funds or need a federal license

Tribal Communities

- Consult on plans involving Indian cultural resources on federal land or for projects on private land that receive federal funds or need a federal license

SOURCE: Office of the Legislative Auditor.

¹⁵ The office reviewed many other site forms that did not meet its criteria for being included in its archaeological database.

¹⁶ Local governments that suspect Indian burial sites may be affected by development projects on their land must submit development plans to the archaeologist's office and Indian Affairs Council for review.

that they must contact the state archaeologist. The archaeologist's office reviews the state plans that it receives to ensure that project staff are qualified, the research methodology is appropriate, and archaeological resources are safeguarded. The archaeologist's office submits information on plans that affect Indian sites, along with its recommendations, to the Minnesota Indian Affairs Council for review.

A different review process applies to federal projects. Often referred to as the "Section 106" process, it is overseen by the State Historic Preservation Office in the Minnesota Historical Society.¹⁷ It differs from the state process in four ways. First, the federal process requires agencies to consult with individual Indian tribes rather than the Minnesota Indian Affairs Council. Second, the federal process requires agencies to seek Indian tribes' input before plans are actually developed. In contrast, the state process requires that the Indian Affairs Council review plans before agencies solicit bids on the projects. Third, the federal review process applies to all projects on federal land and all private or public land development that receives federal funds or needs a federal license. In contrast, the state process only applies to state or local government land or water. Fourth, federal law does not require that the archaeologist's office be consulted or review federal plans even when certain types of archaeological resources, such as remnants from early Euro-American settlements, are affected. The archaeologist's office generally only reviews those federal plans that affect known or suspected burial sites.¹⁸ In these cases, the Historical Society notifies the archaeologist's office and encourages the federal agency to contact the state archaeologist.

There are different review processes for state and federal projects affecting archaeological resources.

We found that:

- **Most development plans involving state sites do not affect archaeological resources, including burial sites.**

During 1999, the Minnesota Historical Society reviewed approximately 2,100 state plans, including state environmental impact statements and assessment worksheets, and about 3,800 federal plans to determine if they could affect historical resources.¹⁹ According to Historical Society staff, a small fraction of the plans affected archaeological resources. The Historical Society sends copies of its reviews for projects affecting archaeological resources on state sites and for federal projects involving known or suspected burial sites to the archaeologist's office.

Staff at the archaeologist's office told us that they reviewed about 260 plans involving state sites in 1999—all as part of the permit process. As noted earlier, about one-fifth were on sites related to American Indian history or religion.

¹⁷ This process is mandated in section 106 of the National Historic Preservation Act.

¹⁸ Federal law does not specifically give the state archaeologist jurisdiction over suspected or known burial sites on federal land.

¹⁹ An undetermined number of plans involved both state and federal agencies and are thus reflected in both figures.

Identifying and Authenticating Burial Sites

Table 1.3 shows the division of responsibilities for identifying and authenticating burial sites. As the table shows:

- **State law gives the Office of the State Archaeologist sole authority to identify and authenticate burial sites, including those of American Indians.**

Table 1.3: Roles and Responsibilities for Investigating Burial Sites

Archaeologist's Office

- Identify and authenticate suspected burial sites on non-federal public or private land¹
- May turn over identified Indian remains to another archaeologist for further study before returning remains to tribal leaders²

Indian Affairs Council

- May turn over identified and authenticated Indian remains to another archaeologist for study before returning remains to tribal leaders¹
- Approve or disapprove all requests to relocate identified and authenticated Indian burials on non-federal public or private land

Archaeologist's Office and Indian Affairs Council

- Determine specific tribal identity of Indian remains on non-federal public or private land
- Approve archaeologists to help identify or authenticate Indian burials on state sites
- Establish procedures to return "culturally-unidentified" Indian remains
- Return identified Indian remains to contemporary tribal leaders

¹Federal law does not specifically authorize the state archaeologist to investigate burial sites on federal land.

²The federal Native American Graves Protection and Repatriation Act sets forth additional requirements for returning American Indian remains.

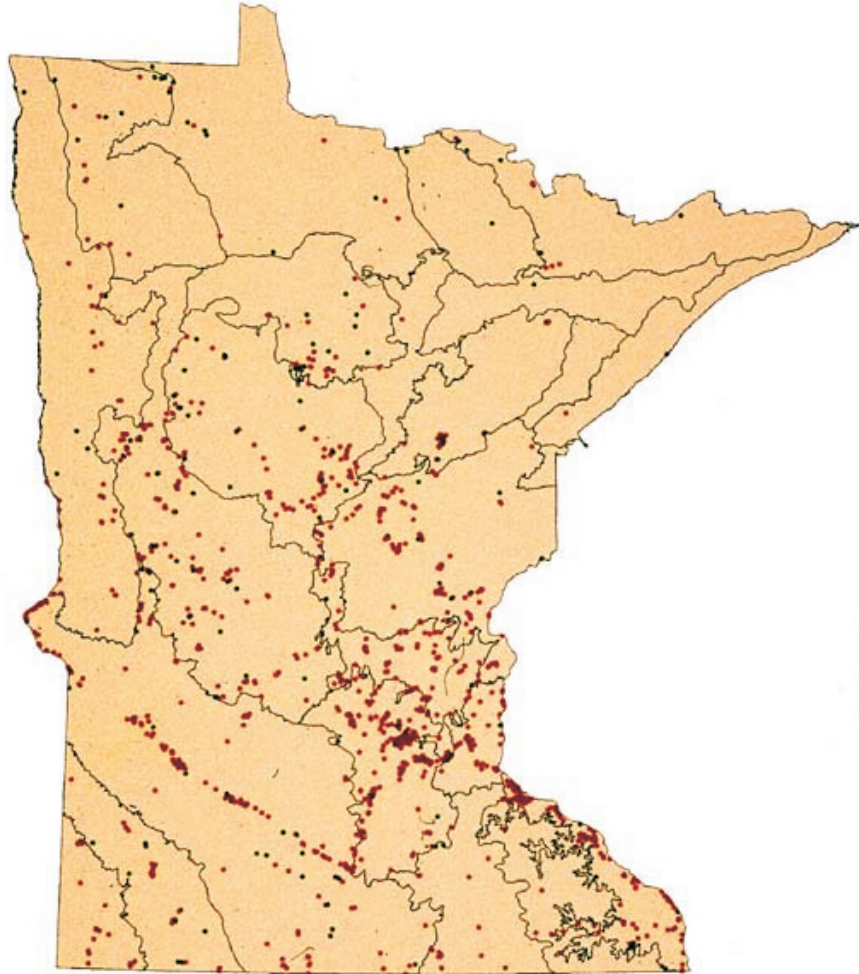
SOURCE: Office of the Legislative Auditor.

The Private Cemeteries Act makes it a felony to knowingly disturb marked or unmarked human burial sites. As shown in Figure 1.2, there are hundreds of known or suspected human burial sites that are located outside of platted or recorded cemeteries. Developers, landowners, and government agencies are encouraged to contact the archaeologist's office to ensure that burial sites will not be uncovered during land development. While developers generally contact the state archaeologist during project planning, contact can also occur during construction. To prevent costly delays, it is important that the state archaeologist's office respond promptly. Staff in the archaeologist's office told us that the office responds to hundreds of requests for burial site information each year.

To answer inquiries about the location of burial sites, the Office of the State Archaeologist mainly uses maps originally developed in the late 1800s that identify the location of suspected Indian burial sites. It also uses its own burial site database that pinpoints the location of known or suspected burial sites. If

Figure 1.2: Location of Unplatted Earthworks and Burial Mounds in Minnesota

Minnesota has hundreds of known or suspected burial sites.



SOURCE: Office of the State Archaeologist.

these sources suggest the possibility of a burial, the archaeologist's office uses a variety of on-site methods that are objective and replicable to determine whether a burial exists in a given location. These methods may include using soil coring, augers, hand excavation, remote-sensing devices, or mechanical excavation. Verifying the likelihood that a site contains a burial is often difficult because land development, agriculture, and natural processes may have partially or totally destroyed many of the physical features of burials. Once the state archaeologist determines that a site is likely to contain human remains, the archaeologist's office determines the heritage of the remains, for example American Indian or Euro-American heritage. This process is often referred to as "identification and authentication."



Headstone at Okaman Cemetery.

If the archaeologist's office determines that burial remains are Indian in origin, the office must work with the Indian Affairs Council to determine the exact tribal identity (for example, Dakota or Ojibwe). If the identity can be determined, the remains may be returned to the tribe at the discretion of both the archaeologist's office and the council. During this time, either the Indian Affairs Council or the state archaeologist may give the remains to a qualified professional archaeologist for study prior to returning them to the individual tribe. If tribal identity cannot be determined, the remains must be dealt with according to provisions jointly developed by the archaeologist's office and the Indian Affairs Council.²⁰ The Indian Affairs Council has the sole authority to determine whether authenticated Indian burial remains will be relocated, regardless of whether the remains were found on non-federal public or private land.

Staff from the archaeologist's office told us that they typically notify Indian Affairs Council staff when their office has been asked to authenticate a suspected Indian burial site. Because of time concerns, the archaeologist's office notifies council staff by telephone or by fax. To help ensure a timely response to authentication requests, the archaeologist's office and the Indian Affairs Council have jointly authorized six individuals to assist in authenticating Indian burial sites.²¹ In addition, the state archaeologist has authorized another seven individuals, including council staff and tribal representatives, to enter private property on behalf of the archaeologist's office to assess reported burial site disturbances.

²⁰ In January 1998, the federal government adopted Minnesota's model for dealing with "culturally unidentifiable" Indian remains. The model requires returning human remains to the tribal community presently living in the area where the remains were found.

²¹ *Minn. Stat.* (2000) §307.08, subd. 4.

Overall:

- **The Office of the State Archaeologist verified most of the suspected burial sites that it investigated in 1999.**

During 1999, the Office of the State Archaeologist was directly involved in investigating 87 suspected burial sites. The state archaeologist confirmed that 63 of these sites were burial sites, although some of the sites had been destroyed over time by development, agriculture, or other human or natural processes. Of the 63 burial sites, 42 sites were identified as American Indian and 21 as Euro-American. The state archaeologist used mechanical excavation techniques on four of these sites—two American Indian sites and two Euro-American sites. Mechanical excavations typically involve removing earth using machinery such as belly scrapers, graders, or bulldozers. In the remaining 24 cases, the office determined that the suspected sites did not involve human burials; the state archaeologist used mechanical excavation techniques on one of these sites.

CONFLICTS

In the process of identifying and authenticating burial sites, conflicts have arisen between staff at the Office of the State Archaeologist and the Minnesota Indian Affairs Council. To better understand the nature of the problems, we asked council staff as well as tribal leaders and their cultural resources staff to provide examples of recent cases involving significant discord. We also asked about instances of successful collaboration. To help identify the source of conflict, we talked with people involved in some of the “controversial” and “non-controversial” cases, including state and local government representatives, developers, and American Indians. As a result of these conversations, as well as other interviews and our analysis of roles and responsibilities, we identified three major problems that create tension between staff at the state archaeologist’s office and the Indian Affairs Council:

There have been conflicts between staff at the archaeologist’s office and Indian Affairs Council.

1. Differences of opinion regarding archaeological methods and definitions,
2. Gradual changes in the structure and authority of the archaeologist’s office, and
3. Poor communication and mistrust.

Government officials and private developers told us that they support the protection and preservation of Minnesota’s archaeological resources, although it can represent “extra” costs. The Minnesota Department of Transportation estimates that it spends approximately \$1 million per year on cultural resource preservation activities related to highway construction. But conflicts among the archaeologist’s office, the Indian Affairs Council, other state and federal agencies, individual tribal governments, or developers can create additional costs, construction delays, and overall frustration. For example, conflicts about the

archaeological effects of rerouting Highway 55 in Minneapolis in 1999 resulted in the district court requiring additional archaeological testing, which ultimately produced negative results.²²

Differences of Opinion Regarding Archaeological Methods and Definitions

We found that:

- **Differences of opinion about the appropriateness of some archaeological methods and definitions have created tension between staff at the archaeologist's office and the Indian Affairs Council.**

Most of the tension between staff at the Office of the State Archaeologist and the Minnesota Indian Affairs Council stems from disagreements over archaeological methods, specifically the use of mechanical excavation. As noted earlier, mechanical excavations typically involve removing earth using machinery such as belly scrapers, graders, or bulldozers. Statutes prohibit anyone from knowingly disturbing human burials, and staff at both the archaeologist's office and the Indian Affairs Council agree that it is preferable to use the least invasive methods possible, such as mapping, "walking the site," soil coring, or measuring soil composition, when authenticating burial sites. In the last few years, the archaeologist's office has been asked to verify the existence of suspected burials where there is no overt, physical evidence of a burial or where sites have been significantly disturbed by natural or human processes. In some of these cases, at times after trying less invasive methods first, the archaeologist's office has used mechanical excavation to gradually excavate a suspected site, removing soil a few inches at a time.²³ As noted earlier, the archaeologist's office used mechanical excavation in 5 of the 87 suspected burial sites that it investigated in 1999.

Indian Affairs Council staff object to mechanical excavation of suspected burial sites.

Indian Affairs Council staff generally object to mechanical excavation, believing that the method may desecrate sacred ground and may also destroy evidence that a burial exists. Staff prefer instead to rely on maps of burial sites developed in the late 1800s and less invasive methods such as soil coring and shovel testing—methods that generally take longer, may be less effective and more subjective, and may lead to extra costs for private developers. According to council staff, the previous state archaeologist considered burial sites identified in maps to be authenticated cemeteries. In contrast, the current archaeologist often requires additional proof that a burial exists when there is no physical evidence of a burial mound or related features or when a site has been significantly disrupted, regardless of what maps might show.

It was beyond the scope of this study to examine the appropriateness of the various archaeological methods used in trying to verify burial sites. Generally speaking, mechanical excavation of burial sites, when done appropriately, is an accepted practice in field archaeology, although it may be more destructive than other techniques, such as hand excavations. According to Wisconsin's

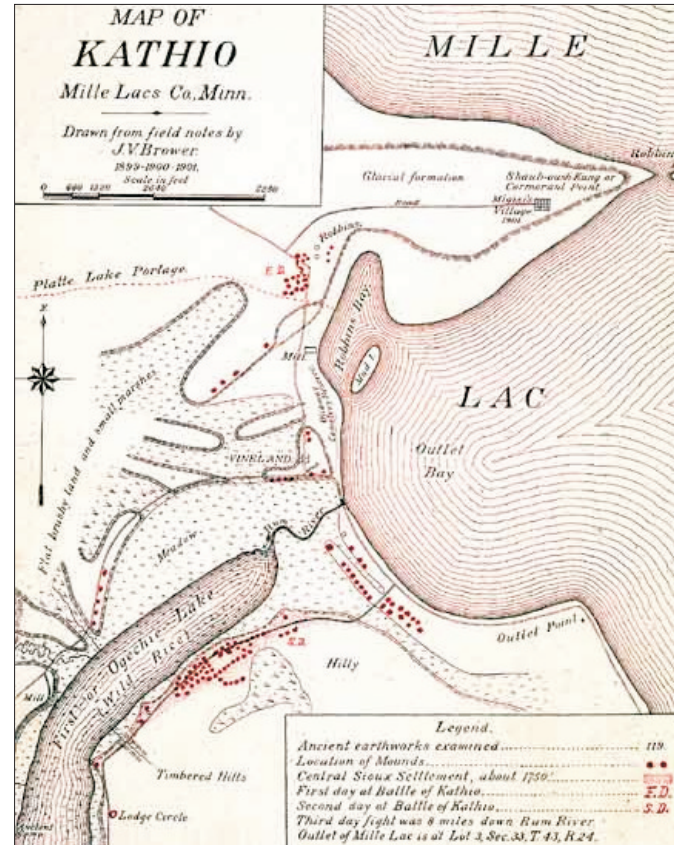
²² The Indian Affairs Council was not directly involved in the dispute.

²³ According to the archaeologist's office, the previous state archaeologist also used mechanical excavation techniques to verify suspected burial sites at times.

archaeological guidelines, mechanical stripping of topsoil to locate suspected burial sites is “. . . recommended when early maps indicate the presence of Indian mounds within the present-day project area but surface indications of those cultural features no longer remain.”²⁴ The Bureau of Criminal Apprehension in

the Minnesota Department of Public Safety “. . . has used controlled mechanical excavation techniques numerous times over the years in unearthing clandestine graves in murder cases.”²⁵ The bureau reported only one incident of bone damage using this technique in the last 19 years.

Minnesota statutes list excavation as an acceptable archaeological method.²⁶ Staff from the archaeologist’s office said that mechanical excavation is closely monitored and halted after every few inches of earth is removed to examine soil conditions and probe the area for indications of human remains. According



Map of burial mounds in Kathio Township drawn from late nineteenth century field notes of Jacob Brower.

to the archaeologist’s office, the technique is especially cost-effective and, at times, the preferred method when burial sites are suspected on land that has already been significantly disrupted over time by development, agriculture, or other human or natural processes or on large tracts of land where exact burial locations cannot be determined.

A 1997 proposal for residential development in suburban Hennepin County provides a good example of the differences of opinion regarding mechanical excavation. Most private land in the Twin Cities area has been in agricultural, residential, or commercial use for over 150 years, leaving little or no visual evidence of burial sites that were mapped in the late 1800s. City officials advised a housing developer who wanted to develop a site where a series of Indian burial sites were previously mapped to contact the Office of the State Archaeologist.

²⁴ Wisconsin Archaeological Survey, *Guidelines for Public Archaeology* (Madison, WI, 1997), 82.

²⁵ Letter from Gary Kaldun, Crime Scene Coordinator, Bureau of Criminal Apprehension to Mark Dudzik, Office of the State Archaeologist, dated February 4, 1999.

²⁶ *Minn. Stat.* (2000) §138.31, subd. 5.

The state archaeologist, in turn, contacted the Minnesota Indian Affairs Council. Using original field notes from the late 1800s, computer-corrected magnetic bearings, and a tape measure, all 11 suspected sites were located although there was no visual evidence of burials. When soil coring, hand excavation, and other techniques at the 11 sites produced no evidence of human remains, the state archaeologist looked for evidence of burials by using controlled mechanical excavation. When this technique also failed to produce evidence of human remains, the archaeologist concluded that the suspected burial sites, even if they did exist, were likely destroyed in the intervening years. Provisions were made to preserve an intact burial mound that had been previously identified, and development proceeded as originally planned.

Concerned about the state archaeologist's use of mechanical methods in cases such as this, the Indian Affairs Council passed a resolution in late 1998 to have the Historical Society remove the current state archaeologist.²⁷ The resolution expressed concerns over the state archaeologist's use of invasive methods without first consulting and getting the agreement of the council. This action added considerable tension between staff at the archaeologist's office and the Indian Affairs Council.

**Indian Affairs
Council staff
object to defining
Indian burials as
artifacts or
objects.**

Finally, staff at the Minnesota Indian Affairs Council object to having mounds and ancient burial grounds defined as "archaeological artifacts or objects" or as "cultural resources." According to council staff, Indian people want to assume responsibility for Indian burial sites and want them excluded from the definition of a "state archaeological site." Many of the tribal leaders and their staff that we talked with also objected to this terminology because it ignores the sacred significance that burial sites and related burial objects have for American Indians.

Gradual Changes in Statute and Practice

We found that:

- **Gradual changes in the Office of the State Archaeologist's structure and authority have further contributed to a poor working relationship between staff at the archaeologist's office and the Minnesota Indian Affairs Council.**

When the Legislature created the Office of the State Archaeologist in 1963, it provided no funding for its operation or staffing. In its first 30 years, the office was headed by only two state archaeologists, both of whom had other full-time jobs while they fulfilled their state responsibilities. The first state archaeologist served from 1963 through 1977, and the second from 1978 through 1992. The position was vacant until late 1994, when the current state archaeologist was hired. The Legislature did not provide funds for the office until 1984, and then it provided only minimal funding until 1994. For fiscal year 2000, the Office of the State Archaeologist had two full-time professional staff and an operating budget

²⁷ Minnesota Indian Affairs Council, *Resolution 111398-02* (St. Paul, November 13, 1998). At the time the resolution was passed, Minnesota law gave the Historical Society, in consultation with the Indian Affairs Council, the authority to appoint the state archaeologist. As mentioned earlier, the Commissioner of Administration currently appoints the state archaeologist.

of \$196,000. Since the office gained funding and full-time staff, it “tightened up” the permit process and began to stress accountability. For example, the office redesigned various permit forms, clarified the terms and conditions of permits, and required that previously permitted archaeologists submit the necessary site forms and project reports before they could renew their permits. In addition, the office focused on providing more timely information to government agencies, private developers, and citizens.

In the last 20 years, the Legislature has reduced the Indian Affairs Council’s role in identifying and authenticating Indian burial sites.²⁸ At the same time, however, the Legislature passed laws that require more consultation between the archaeologist’s office and the Indian Affairs Council. For example, in 1986, the Legislature gave the state archaeologist the sole authority to identify and authenticate Indian burial sites.²⁹ Previously, this responsibility was shared by the two agencies (1976 to 1980) or delegated to an archaeologist approved by both agencies (1980-1986). The 1986 Legislature also required that the Indian Affairs Council be consulted on the appointment of the state archaeologist, and it gave the council review authority over state development plans that could affect American Indian history or religion.³⁰ In 1994, the Legislature required that the state archaeologist inform the Indian Affairs Council of significant archaeological work, file annual reports with the council, and forward certain state development plans to the council for review and recommendations.³¹

Indian Affairs Council staff want to be more involved in authenticating Indian burial sites.

Regardless of statutory requirements, staff at the archaeologist’s office and the Indian Affairs Council have different expectations about the council’s involvement in Indian burial sites. The council’s expectations are partially based on office procedures developed and adopted by the Indian Affairs Council and archaeologist’s office in the late 1980s.³² According to council staff, the procedures, gradually developed over the prior 12 years, are still in effect and give the Indian Affairs Council more authority than it presently exercises. However, the archaeologist’s office told us that the procedures, applied inconsistently over the years by both the archaeologist’s office and the council, are no longer in effect and that they were simply guidelines that did not have the force of law. The archaeologist’s office has not developed more current procedures to help define expectations and relationships when identifying and authenticating burials.

Dissatisfied with the gradual changes in the working relationship between the Indian Affairs Council and the Office of the State Archaeologist, the council worked with legislators to propose significant changes to state law in 1998 and 1999. These changes, which the Legislature did not pass, would have given the council the authority to identify and authenticate American Indian burial sites.³³

28 See Appendix A for a history of statutory changes related to identifying and authenticating Indian burial sites.

29 *Minn. Laws* (1986), ch. 463, sec. 1.

30 *Minn. Laws* (1986), ch. 323, sec. 1-2.

31 *Minn. Laws* (1994), ch. 632, art. 4, sec. 50-51.

32 Office of the State Archaeologist and the Minnesota Indian Affairs Council, *Procedures for the Implementation of MN. ST. 307.08* (St. Paul, 1991).

33 S.F. 2361 and H.F. 2383 in 1998, and S.F. 406 in 1999.

Poor Communication and Mistrust

It was evident from our interviews that:

- **There are significant communication and “trust” problems between staff at the Minnesota Indian Affairs Council and the Office of the State Archaeologist.**

Although staff at the archaeologist’s office and the Indian Affairs Council told us that they communicate with one another, they also said it is not always as timely or useful as is needed. Staff at the archaeologist’s office, other state agency staff, local government officials, private developers, and American Indians told us that the Indian Affairs Council does not respond to their requests for input in a timely manner. The situation is further complicated by the fact that statutes do not set forth deadlines regarding certain regulatory activities. For example, statutes simply require that the archaeologist’s office and Indian Affairs Council review plans “promptly” rather than requiring reviews within a certain time period, for example, 30 days.

The state archaeologist is required by law to consult with the Indian Affairs Council.

At the same time, council staff told us that its input has little effect on the decisions made by the state archaeologist. State law requires that the archaeologist’s office “. . . consult with and keep the Indian affairs council . . . informed as to significant field archaeology, projected or in progress, and as to significant discoveries made.”³⁴ Although the archaeologist’s office believes that it consults with the council and seeks its input on all archaeological work (not just on significant projects), council staff told us that they expect their viewpoints to be given more consideration. Council staff believe that the archaeologist’s office does not consult with them as much as it simply notifies the council of the decisions the office has already made.

In addition, Indian Affairs Council staff believe that the state archaeologist is “disrespectful” and minimizes their role in protecting archaeological resources. Some people told us that the state archaeologist could be “more tactful” in working and communicating with the Indian Affairs Council and other interested parties. According to some observers, part of this problem stems from the state archaeologist’s reading of the statutes and the council’s desire for more input into decisions concerning American Indian burials. At the same time, however, some developers that we talked with appreciated the state archaeologist’s “blunt, no-nonsense” manner because he told them exactly what they had to do to comply with state law.

Finally, it should be noted that the Indian Affairs Council, like the archaeologist’s office, does not have to be consulted on all federal development projects, even if they affect archaeological resources. However, it can be difficult to tell the difference between a federal and a state project, and the council could perceive that it is sometimes being circumvented. As discussed earlier, development projects that occur on federal land, receive federal funds, or need a federal license must consult with individual American Indian tribes rather than the Indian Affairs Council. Both the archaeologist’s office and the Indian Affairs Council generally

³⁴ *Minn. Stat.* (2000) §138.38.



The Grand Mound in Koochiching County in 1900.

only become involved in federal projects that affect suspected or known burial sites. In contrast, the council must be consulted in all projects affecting Indian history or religion that occur on state sites.

Despite their conflicts, there are examples of successful collaboration between the archaeologist's office and the Indian Affairs Council.

Although we have concluded that there are significant communication and trust problems between staff at the Office of the State Archaeologist and the Minnesota Indian Affairs Council, the two agencies have successfully worked together on many identification, authentication, and reburial cases. Overall, there have been many more instances of successful collaboration than instances of significant conflict. For example, in late 1998 a local corporation began planning for a new building on property it owned on the bluffs of the Mississippi River. In compliance with the city's mound management plan, corporate staff consulted with the Historical Society, the Indian Affairs Council, the Department of Natural Resources, and the Office of the State Archaeologist. Several months of site research followed, consisting of maps, field notes, surveys, soil coring, and mechanical excavation. Upon advice from the archaeologist's office, the corporation proceeded to construct a new building while honoring and preserving an ancient Indian burial mound.

At another Twin Cities site, a potential conflict among a landowner, developer, area residents, and American Indians over the construction of eight townhouses was averted in early 2000. On the advice of city officials and local community activists, the builder met with the state archaeologist and Indian Affairs Council staff. Together they created a modified plan for the townhouses while permanently protecting an ancient burial site.

Finally, as noted previously, the archaeologist's office developed a model for dealing with "culturally unidentifiable" Indian remains that was later adopted by the federal government. According to staff at the Indian Affairs Council, the model "sets a national precedent that is bound to help tribes in other states, which are still fighting this issue."³⁵

RELATIONSHIP WITH INDIVIDUAL INDIAN TRIBES

We asked tribal leaders and cultural resources staff on each of Minnesota's 11 reservations and communities to describe their working relationship with the archaeologist's office regarding American Indian burial sites. Statutes do not require that the archaeologist's office work with Indian tribes on an individual basis. Nearly half of the tribal representatives told us that they have had little or no contact with the archaeologist's office in the last year, and that there was generally no reason to have contact. Other tribal representatives communicate with the archaeologist's office in varying degrees, depending largely on how involved tribal governments are in cultural resources issues. For example, there is more frequent communication when tribal governments have historic preservation offices or when they are establishing museums or cultural resource centers in their communities. Also, some tribal governments help support Minnesota Archaeology Week—a major educational activity of the archaeologist's office.

Although not all tribal governments work with the archaeologist's office, all of the tribal leaders and their cultural resources staff had an opinion about the office. We found that, despite the recent tension between staff at the archaeologist's office and the Indian Affairs Council:

- **Three-fourths of Minnesota's Indian tribal leaders and their cultural resources staff report a "fair to good" relationship with the archaeologist's office.**

These data are shown in Table 1.4. Overall, 14 of 22 tribal representatives that we talked with described their relationship with the Office of the State Archaeologist as "good," 4 described it as "fair," and 4 described it as "poor." They rated their relationship with the Minnesota Indian Affairs Council only slightly higher. As the table indicates, 3 tribal leaders and staff described their relationship with the Indian Affairs Council as "excellent," 14 described it as "good," 3 as "fair," and 2 described their relationship as "poor."

In addition, we found that:

- **Most American Indian tribal leaders and their staff are generally satisfied with how Indian burial sites are identified and protected.**

³⁵ David Peterson, "State Will Be First to Repatriate Indian Remains for Reburial," *Minneapolis Star Tribune*, September 19, 1999, sec. B, pp. 1, 8.

Table 1.4 Tribal Representatives' Assessments of Working Relationships with State Agencies and Developers

Rating	Archaeologist's Office	Indian Affairs Council	Historical Society	Natural Resources	Transportation	Private Developers
Excellent	0	3	20	20	0	0
Good	14	14	2	2	13	3
Fair	4	3	0	0	9	18
Poor	4	2	0	0	0	1
Total	22	22	22	22	22	22

SOURCE: Office of the Legislative Auditor telephone interviews, February 2001.

We asked tribal leaders and their staff about the current process for identifying Indian burial sites on non-reservation land. Of the 22 tribal representatives interviewed, 9 said that they were very satisfied with the process used to identify Indian burial sites and another 9 said that they were satisfied; no one expressed dissatisfaction. In addition, 19 representatives said that Indian burial sites on non-reservation land are adequately protected once they are identified.