



OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA

State Archaeologist

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Major Findings:

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



However, the Office of the State Archaeologist in the Department of Administration has a major role in protecting and preserving the state's archaeological resources. Other key players include the inter-tribal Minnesota Indian Affairs

Council, the Minnesota Historical Society, and individual Indian tribes.

- There is a high level of mistrust and tension between staff at the archaeologist's office and the Indian Affairs Council, resulting from differences of opinion regarding what methods should be used to locate human burial sites and a shift of greater state authority to the archaeologist's office.
- On the other hand, three-fourths of Minnesota's Indian tribal leaders and their cultural resources staff report a "fair to good" relationship with the archaeologist's office, and most are satisfied with how the state identifies and protects Indian burial sites.

- States organize their archaeological function in various ways, but almost all receive most of their funding from a state or federal appropriation rather than fees. Compared with other states, Minnesota's archaeologist's office has a relatively small budget and staff.
- Unlike Minnesota, some states have mechanisms to resolve disputes regarding archaeological resources, including burial sites.

Key Recommendations:

- While we think that the Office of the State Archaeologist should continue to receive its funding primarily from a General Fund appropriation, the Legislature should direct the office to determine the feasibility of charging fees to supplement its budget.
- The Legislature should require the Department of Administration, on behalf of the archaeologist's office, to adopt administrative rules for regulating archaeological activities, and require that parties use the contested case provisions of the Administrative Procedure Act to resolve disputes.



Report Summary

Over the last several years, the working relationship between staff at the Office of the State Archaeologist and the Minnesota Indian Affairs Council has deteriorated. This report focuses primarily on the roles and responsibilities of these two agencies in protecting and preserving Minnesota's archaeological resources, including Indian burial sites. The report does not examine the activities of private archaeologists or archaeologists in other state agencies such as the departments of Natural Resources or Transportation.

Roles and Responsibilities for Regulating Minnesota's Archaeological Activities Are Complex

Two state laws, the Field Archaeology Act of 1963 and the Private Cemeteries Act, and two federal laws, the National Historic Preservation Act and the National Environmental Policy Act, help protect archaeological resources in Minnesota. The Office of the State Archaeologist in the Department of Administration plays a major role in protecting and preserving the state's archaeological resources. Other key players include the inter-tribal Minnesota Indian Affairs Council, the Minnesota Historical Society, and individual Indian tribes. According to law, archaeological resources include aboriginal earth-works and mounds, ancient burial grounds (considered sacred by many American Indians today), prehistoric ruins, historical remains, and artifacts.

The involvement of state agencies and individual Indian tribes depends largely on whether a site being considered for development or study might contain an archaeological resource, whether the site is on public or private land, how the development is funded, and the type of

archaeological resource involved. For example, the archaeologist's office and the Historical Society review development plans and issue permits for all archaeological investigations on state land. If the investigation is related to Indian history or religion, the Indian Affairs Council also reviews the plan. Archaeological investigations on federal or private land do not need a state permit. However, the Historical Society reviews development plans on private land if the project receives federal funds or requires a federal license, and individual Indian tribes must be consulted if sites involve Indian history or religion. The state archaeologist reviews these plans only if suspected burial sites could be affected. Finally, the state archaeologist identifies and authenticates all burials sites, including those of American Indians, on non-federal public and private land, and the Indian Affairs Council and the state archaeologist together try to determine the exact heritage of Indian burial remains (for example, Dakota or Ojibwe).

Conflicts Between Staff at the Archaeologist's Office and the Indian Affairs Council Can Affect Development Projects

Created in 1963, the Office of the State Archaeologist has experienced gradual changes in its structure and legal authority over the last several years. Indian Affairs Council staff have been critical of how the current state archaeologist has exercised this authority. This has, in part, contributed to a poor working relationship between the two agencies. Over the last 20 years, the Legislature has reduced the council's role in identifying and authenticating Indian burial sites, while requiring more consultation between the archaeologist's office and the Indian Affairs Council. However, council staff want greater involvement, based partly on office

The Minnesota archaeologist's office, Historical Society, and Indian Affairs Council are all involved in regulating archaeological activities.

The archaeologist's office and Indian Affairs Council disagree about using mechanical excavation.

procedures developed in the late 1980s and the practices of the previous state archaeologist.

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 the two offices. For example, council staff generally object to using mechanical excavation to verify Indian burial sites. They believe that the method may desecrate sacred ground and destroy the evidence that a burial exists. Instead, council staff prefer to rely on maps of suspected 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 developers. According to council staff, the previous state archaeologist considered burial sites identified in these maps to be authenticated burial sites. In contrast, the current state archaeologist requires additional proof that a burial exists in cases where there is no overt, physical evidence of a burial mound or related features, especially when the site has been heavily disturbed.

Concerned about the gradual changes in its working relationship with the archaeologist's office and the use of mechanical excavation, the Indian Affairs Council passed a resolution in late 1998 to have the current state archaeologist removed from office. In addition, the council worked with legislators to propose significant changes to state laws in 1998 and 1999 that would have given the council, rather than the state archaeologist, the authority to identify and authenticate Indian burial sites.

However, despite the recent tension between staff at the two state agencies, most of Minnesota's Indian tribal leaders and their cultural resources staff

report a "fair to good" working relationship with the archaeologist's office—only slightly lower than how they rate their relationship with the council. Furthermore, most tribal leaders and their staff are generally satisfied with how Indian burial sites are identified and protected.

While States Vary in How They Regulate Archaeological Activities, None Relies Significantly on Service Fees

States locate their archaeologist's offices in a variety of agencies, including historical societies, universities, and natural resource departments. Budgets and staffing vary, depending on the functions assumed by the state archaeologist. For fiscal year 2000, estimated expenditures in 25 comparison states ranged from \$53,000 to \$1.7 million. Estimated median expenditures were \$250,000, compared with \$196,000 in Minnesota. Unlike Minnesota, several states charge fees for such things as record searches, classes, materials, curation, site inventory, permits, or underwater archaeology. However, fees account for only a small percentage of budgets. Finally, the estimated number of full-time professional staff in 37 comparison states for fiscal year 2000 ranged from 1 to 30 with a median of 5, compared with a staff of 2 in Minnesota.

Like Minnesota, most states issue archaeological permits, identify and authenticate burial sites, and have some type of review process for selected development projects. In addition, many states, including Minnesota, require that the state consult either with an inter-tribal American Indian council or with individual tribal leaders regarding archaeological projects involving American Indian burial sites. To help resolve some of the conflicts that are likely to occur when

The Department of Administration should formally adopt rules to clarify its role in regulating archaeological activities.

archaeological, economic, and cultural positions clash, some states, such as Kansas, New Mexico, and Wisconsin, have established “burial” or “site preservation” boards. Minnesota does not have a formal dispute resolution process to help address problems related to archaeological preservation.

The State Could Explore a Variety of Alternatives to Address Problems and Issues

The Legislature should consider various options to help address issues related to the funding and organization of the archaeologist’s office as well as options to help address the conflicts between the archaeologist’s office and the Indian Affairs Council. While the archaeologist’s office should continue to receive its funding primarily from a General Fund appropriation, the Legislature should direct the office to determine the feasibility of charging fees to supplement its current budget. In addition, the Legislature should require the Department of Administration, on

behalf of the archaeologist’s office, to adopt administrative rules to help clarify agency roles, responsibilities, and procedures for regulating archaeological activities. Although differences of opinion regarding archaeological methods might continue, rules would help clarify when various methods can be used and how decisions are made. In addition, rules could further define what it means to “consult” with other parties and could set forth timelines for reviewing development plans and investigating suspected burial sites. To minimize the costs and bureaucracy that a separate dispute resolution board would entail, the Legislature should direct parties to resolve their disputes using the contested case procedures set forth in the Administrative Procedure Act.

The full evaluation report, *State Archaeologist* (#pe01-06), including the agency responses, is available at 651/296-4708 or:

www.auditor.leg.state.mn.us/ped/2001/pe0106.htm

Summary of Agency Responses:

In response to the report, Mark Dudzik, State Archaeologist, wrote that the report “clearly and concisely documents the many challenges and opportunities which the Office of the State Archaeologist (OSA) faces” and that implementing the report’s recommendations will result in “improved delivery of program services.” In a separate letter, Commissioner of Administration David Fisher expressed support for the work of the archaeologist’s office and said that the department “is prepared to address any legislation enacted this session affecting changes in” OSA.

Nina Archabal, Director of the Minnesota Historical Society (MHS), expressed agreement with the report’s findings and recommendations. While she did not object to studying whether fees might supplement General Fund appropriations to OSA, she said that charging fees for archaeological services would “not raise a great deal of money” and “could tend to discourage consultation with the OSA, particularly in the case of potential burial sites on private land.”

Joe Day, Executive Director of the Minnesota Indian Affairs Council (MIAC), supported most of the report’s recommendations, but urged moving OSA to MHS. He also said the report contains “factual inaccuracies and unsubstantiated legal conclusions,” such as the conclusion that state law has shifted responsibility for verifying human burial sites away from MIAC in recent years. In a rejoinder, Legislative Auditor Jim Nobles quoted the changes in state law that have reduced the role of MIAC in identifying burial sites.