

ANNUAL REPORT, FISCAL YEAR 1996

OFFICE OF THE STATE ARCHAEOLOGIST



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St. Paul, Minnesota
July, 1996

Submitted to the Minnesota Historical Society and the Minnesota Indian Affairs Council
per Provisions of MN Statutes 138.31-138.42

INTRODUCTION

This report covers a sixteen month period of operations for the Office of the State Archaeologist beginning February 27, 1995 and ending June 30, 1996 (the end of fiscal year 1996).

Overview of the Program

Established in 1963, the Office of the State Archaeologist (OSA) is charged with sponsoring, conducting and directing research into the prehistoric and historic archaeology of Minnesota; protecting and preserving archaeological sites and objects; disseminating archaeological information through the publication of reports and articles; identifying, authenticating and protecting human burial sites (MN Statutes 307.08); reviewing and licensing archaeological fieldwork conducted within the state; and enforcing provisions of MN Statutes 138.31-138.42.

The position of State Archaeologist was created under provisions of MN Statutes 138.31-138.42. The State Archaeologist is a professional archaeologist appointed by the Minnesota Historical Society (MHS). Previously an unfunded position, the Legislature allocated \$104,000 to underwrite salary and related program needs beginning in fiscal year 1995. Prior to this funding, the Legislature had, in recent years, provided \$54,000 biennially as a pass-through grant administered by MHS. OSA funding is \$104,000 per year for the current biennium; in addition, approximately \$50,000 of unspent fiscal year 1995 dollars were carried over into the 1996/1997 biennial budget.

Prior to February 27, 1995, the State Archaeologist position had been vacant since October, 1992. During this period Robert Clouse, Archaeology Department Head for MHS, continued to review and approve archaeology projects for licensure. Since filling the vacancy, OSA has been headquartered at the Fort Snelling History Center of MHS. Mr. Bruce Koenen has assisted OSA on a full-time basis since June of 1995. MHS has graciously provided space, personnel and administrative services during this period. As of July 1, 1996, the beginning of fiscal year 1997, responsibility for administrative, personnel and related OSA support services is transferred to the Department of Administration per Executive Order (Reorganization Order No. 175).

Overview of Relevant Statutes

Under MN Statutes 138.31-138.42 (the Field Archaeology Act), licensure through OSA and MHS is required for field archaeology undertaken on all lands or waters owned, leased by, or subject to the paramount right of the state or its subdivisions, as well as on lands impacted by publicly-funded development projects. Proposed projects are reviewed to assess the appropriateness of research methodology and to assist in identifying strategies for mitigating potential adverse effects to known cultural resources. Only professional archaeologists meeting the *Secretary of the Interior's Standards for Archaeology* (36 CFR Part 61) may be licensed to conduct such investigations in the state of Minnesota.

Minnesota's Private Cemeteries Act (MN Statutes 307.08) affords all human remains and burials older than 50 years, and located outside of platted, recorded or identified cemeteries, protection from unauthorized disturbance; this statute applies to burials on

either public (including most federal and tribal lands) *or* private lands or waters. Authentication of burial sites is conducted under the sole auspices of OSA per this statute. In the event that a burial is either known or suspected to be associated with American Indian peoples, OSA works in concert with the Minnesota Indian Affairs Council (MIAC) to ensure the integrity of such burial sites. Guidelines for the protection of burials covered under this act have been developed jointly by OSA and MIAC. OSA maintains a database of identified burial sites in the state.

OSA also maintains a database of the state's identified archaeological sites in collaboration with the Minnesota State Historic Preservation Office (SHPO).

MN STATUTES 138.31-.42: LICENSURE UNDER PROVISIONS OF THE FIELD ARCHAEOLOGY ACT & RELATED ISSUES

Under provisions of MN Statutes 138.31-.42, the review of archaeological projects and the qualifications of prospective licensees is one of the central functions of the position. As noted above, the Field Archaeology Act covers state and state subdivision lands and waters as well as areas impacted by public construction or demolition work (138.35, subd. 2d; cf. also 138.40, subd. 2 & 3). Although derived from a tradition of academic research, in the last several decades archaeology has increasingly become driven and defined by the needs and objectives of cultural resource management (CRM). During the period covered by this report, over 99% of licensed archaeology projects and related dollars spent were CRM-related.

In response to requests by prospective licensees and other interested parties (e.g., developers, engineering firms), OSA has developed a more streamlined process of license application and greatly reduced the turnaround time for issuing licenses. Previously, the issuance of licenses took a "*minimum* of three weeks" for uncomplicated applications (Hohman-Caine 1992:5). Presently, licenses are generally issued within 10 days after receipt of application materials (14 day *maximum*; as little as five minutes for applications submitted via the new Multiple Project format). Improved turnaround has been especially critical for completion of time-sensitive construction projects. The revamped, expedited licensing process has been extremely well received.

The following indicates the number of licenses issued for each of the past five calendar years (note: the convention of reporting license figures on a calendar year basis rather than a fiscal year basis has been adopted since it better reflects activities during the annual "archaeological field season", which extends from approximately April through October of any given year); 1995 also includes the number of project proposals reviewed:

| | |
|-------------|------------------------------------|
| <i>1995</i> | 183 licenses / 491 project reviews |
| <i>1994</i> | 82 licenses |

| | |
|-------------|-------------|
| <i>1993</i> | 53 licenses |
| <i>1992</i> | 46 licenses |
| <i>1991</i> | 43 licenses |

The dramatic increase in the number of licenses issued in 1995 over prior years can be attributed in large part to the dismantling of the highway archaeology programs at MHS. The many projects undertaken by these two programs annually were covered by single, blanket-type licenses.

Eight individuals were contacted by OSA after having initiated or completed archaeological field investigations without having first obtained required licensure; copies of such correspondence are forwarded to the Office of the Attorney General as a matter of course.

Professional Qualifications

Per MN Statutes 138.36, subd. 2, the State Archaeologist approves individuals "qualified" to engage in field archaeology for licensure by MHS. No objective standards for determining such prerequisites were developed or otherwise referenced by previous State Archaeologists. To mitigate this situation, OSA presently references the federal standard of professional qualifications, *The Secretary of the Interior's Professional Qualification Standards for Archaeology*, CFR 36, Part 61, Appendix A. State law requires that the State Archaeologist personally meets this standard (138.35, subd. 1). The standard is universally recognized by the professional archaeological community and is, in any event, a minimum standard for projects conducted under the federal Section 106 review process (this includes most of the archaeological research projects in the State and all MnDOT projects).

Additionally, OSA has expanded and clarified "Terms and Conditions" of licensure adopted previously. In brief, these terms and conditions outline provisions for reporting the results of activities performed on behalf of the State or its subdivisions under provisions of the Field Archaeology Act.

Site Forms

Timely review and processing of site forms is crucial to the development of a coherent and comprehensive state site database. All members of the archaeological community depend on an up-to-date system. A major achievement of the program has been the review of 2359 site forms during the past 16 months. More typically, one could expect that approximately 300 site forms would be processed in a given year. This effort was achieved in collaboration with the Minnesota State Historic Preservation Office (SHPO). At least 250 of these site forms had previously been submitted to OSA (some dating as far back as 1991) but were never reviewed. Approximately 453 were forms completed, reviewed and processed by OSA and/or SHPO on behalf of archaeologists licensed under provisions of MN Statutes 138.31-138.42 who, in recent years, had failed to complete and submit site forms for sites which they had initially identified.

In an effort to improve reporting compliance, OSA initiated two strategies. First, a new three-plus page site reporting form was developed in concert with SHPO, replacing a rather cumbersome six-plus page form used previously. The form was designed for ease of completion and to better conform with SHPO's site database needs. The unwieldiness of the earlier form was felt to contribute, in part, to the poor compliance rate for completion. In addition, the "Terms and Conditions" of licensure now reaffirm the need to submit these materials in a timely fashion. Compliance has improve dramatically in the past 16 months.

Site numbers (Smithsonian trinomial site designation) are now generally available within one week after OSA receipt of completed site forms, (previously, site numbers were not issued for months and even *years* at a time!).

MN STATUTES 307.08: BURIAL CASES & RELATED ISSUES

The Private Cemeteries Act (MN Statutes 307.08) includes provisions for the protection of burials 50 years and older which occur outside of platted cemeteries on either public or private lands. Such areas variously include prehistoric and early historic American Indian burials, abandoned township cemeteries, unmarked homestead burials, etc. Activities conducted under provisions of section 307.08 include the identification or authentication of burials and burial areas, the recovery of human remains unearthed by natural or cultural activities, and responses to requests for general and locational burials information. *Authentication* is a process of identifying, clarifying and otherwise affirming the status of known or suspected burials/cemeteries and/or relocating burials whose exact locations have become obscured due to changing land-use practices or other circumstances. Per MN Statutes 307.08, authentication of burial sites is conducted under the sole auspices of OSA. The process of authentication is a collaborative one involving diverse interests (e.g., developers, agencies of state and local government, landowners, other archaeologists, etc.) and requiring especially close coordination with MIAC in those situations which involve American Indian burial sites.

Burial case investigation components variously include, but are not limited to, archival research, assessment of photodocuments, and in-field studies (both by and under the auspices of OSA). Investigations during the period have included assessment of both American Indian and EuroAmerican remains and/or burial sites. Specific cases within the past 16 months have included, among others: investigation of the "find" of an isolated skull in cooperation with federal investigative agencies; the identification of a glacial feature previously misidentified as a burial mound; the excavation of an historic burial eroding out of a lakeshore bank; relocation of an historic cemetery under active cultivation; and the identification of prehistoric burial mounds and related features in advance of residential, commercial and highway construction.

The process of burial site investigation, including authentication-related activities, can be extremely resource-intensive in terms of both time and dollars spent. *Several recent initiatives by OSA have served to decentralize the process of burial site investigation, thereby*

improving the response time to burial authentication and other burial intervention requests, and significantly reducing the total number of cases requiring direct OSA involvement:

- At present, OSA has authorized six new individuals to assist in the authentication process; five of these individuals have been co-authorized by MIAC to assist OSA in the authentication of American Indian burials (this process is defined in statute). Previously, only one individual had been approved by the State Archaeologist to assist in the process of burial site authentication.
- Non-intrusive field investigations to identify or relocate burials occurring on private lands are actively encouraged.
- Several individuals, including five representatives of tribal communities, have been authorized by OSA to access private property for the purpose of conducting an initial assessment of reported burial site disturbances on behalf of OSA. It is hoped that all tribal communities will have at least one such designee in the near future.

Hohman-Caine (1992:6) noted that a backlog of approximately 70 burial authentication cases had developed by the time of her resignation from the State Archaeologist position in October of 1992; some of these cases date as far back as 1985. At present, the number of outstanding cases is 92; as noted below, these cases date to 1993 or earlier. Cases currently over two years old are considered relatively "non-urgent"; *a number of these cases require no more than a site visit and the completion of a site form, while others may simply be monitored.* The current breakdown of outstanding cases (i.e., no follow-up initiated) by fiscal year is as follows:

| | | | | | |
|-------------|-----------|-------------|-----------|-------------|----------|
| <i>1996</i> | <i>0</i> | <i>1992</i> | <i>21</i> | <i>1988</i> | <i>2</i> |
| <i>1995</i> | <i>0</i> | <i>1991</i> | <i>13</i> | <i>1987</i> | <i>1</i> |
| <i>1994</i> | <i>0</i> | <i>1990</i> | <i>8</i> | <i>1986</i> | <i>0</i> |
| <i>1993</i> | <i>41</i> | <i>1989</i> | <i>5</i> | <i>1985</i> | <i>1</i> |

OSA presently concentrates on responding promptly to newly-reported cases, while at the same time working steadily to reduce the extant backlog. Insofar as many recent, less complicated cases have been addressed and reconciled via the above initiatives, the bulk of OSA-managed cases have focused on resolution of the more urgent and/or more complex investigations, which frequently require intensive, long-term case management. In the past 16 months, OSA has been directly involved in the management of 83 burial site authentication/investigation cases; 14 of these cases are on-going.

During this period, OSA has additionally responded to hundreds of requests by landowners, developers, members of tribal communities, agencies of government, CRM professionals, legislators, and other interested parties for general or locational burial site information. The vast majority of burial-related inquiries do not represent authentication cases.

Burials Related Litigation

At present, only one burial case is in litigation. The case, involving burial site 21-GD-0017, was authenticated by OSA in 1995. Like other, similar cases, this litigation revolves around the issue of "takings", that is, the State's right to constrain certain activities on private property which has the alleged effect of reducing the usefulness or value of the parcel. The current landowners are pursuing the possibility of purchase of all or part of the parcel by the State. The Office of the Attorney General is actively managing this case in concert with OSA. Such claims may be more frequent in the future due to the continuing growth of the "landowner's rights" movement.

The Native American Graves Protection Act & MN Statutes 307.08

Until recently, excavated or other human remains associated with Minnesota's prehistoric and early historic Indian peoples have been systematically reinterred, ostensibly under provisions of MN Statutes 307.08. Enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) in November of 1990 effectively superseded State law, and precluded repatriation and reburial under 307.08. Unfortunately, this aspect of NAGPRA was not previously evident to concerned parties. Since 1995, however, all such remains have been treated in a manner consistent with the Act, and the process of repatriation and reburial continues under the joint supervision of MIAC and OSA.

A large number of human remains in the collection of MIAC were uninventoried as of November 15, 1995, the inventory completion deadline mandated by NAGPRA. On behalf of MIAC, OSA requested an inventory extension and developed a grant proposal (≈\$73,000) to underwrite costs associated with MIAC's inventory process. The National Park Service (NPS) has approved the requested extension and informally approved the grant proposal (Sam Bull, NPS, Archaeological Assistance Division); formal approval of the proposal awaits signature by Secretary of the Interior Bruce Babbitt (confirmation/notification expected by late August). OSA serves as NAGPRA Compliance Advisor to MIAC per this grant proposal.

PUBLIC EDUCATION

OSA responds to public telephone inquiries about the archaeology of the State on a daily basis. In addition, OSA has had the opportunity to provide public education through print media (*Star Tribune* and *Pioneer Press* [Twin Cities]; *Worthington Globe*; *Post Bulletin* [Rochester]; and *Republican Eagle* [Red Wing]), and local radio (MN Public Radio, interview with Joaquin Estus).

During this period, OSA has also made the following public presentations (among others):

Topics in Preservation: Rock Art Identification and Documentation. Department of Anthropology, Hamline University, St. Paul.

History Underfoot: Archaeology for Kids. Eden Prairie Heritage Preservation Commission, in conjunction with Minnesota Archaeology Week, Eden Prairie, MN.

Mortality and Burial Practices. Session Chair, First Historic Archaeology Conference of the Upper Midwest (HACUM), Red Wing, MN.

North American Rock Art: A View From the Mid-continent. Minnesota Humanities Commission Scholar Pair Lecture (joint presentation with J. Steinbring) in conjunction with Minnesota Archaeology Week, Marshall, MN.

Rock Art In and Around Minnesota. Public education program (joint presentation with C. Stiles-Hanson), Institute for Minnesota Archaeology, Minneapolis.

RELATIONS WITH CONSTITUENT & ALLIED AGENCIES

The success of OSA depends heavily upon the success of its interactions with other agencies of government, universities, and private agencies. The following provides a brief overview of activities in cooperation with certain of these agencies:

Minnesota Indian Affairs Council (MIAC) - OSA works in partnership with MIAC on issues of concern to Indian peoples, especially as they relate to burial sites. MIAC has co-authorized five individuals to assist OSA in the authentication of American Indian burials per provisions of MN Statutes 307.08. On behalf of MIAC, OSA has obtained an extension to the NAGPRA inventory of human remains under MIAC's jurisdiction, and has submitted a grant proposal to the National Park Service to underwrite completion of this inventory.

OSA Advisory Team - OSA operates as a highly autonomous agency of State government. In an effort to get regular feedback and counsel regarding program initiatives, OSA has developed an advisory team made up of a cross-section of individuals and agencies which are involved in activities relating to archaeological research and resource management in the State. The first meeting of the group discussed a variety of issues including: OSA's budget needs and plans; legislative initiatives; licensure and professional qualifications; and the Minnesota Government Data Practices Act vis-à-vis archaeological database confidentiality needs. This group will meet regularly through the year. Consideration of budget issues and amendments to MN Statutes 138.31-138.42 and 307.08 will be primary foci prior to the next legislative session.

State Historic Preservation Office (SHPO) - As noted above, SHPO and OSA have worked in concert to review and process almost 2400 site forms during the past 16 months. OSA meets with SHPO regularly to review archaeology field projects, to discuss issues of mutual concern, and to develop common policies impacting on the provision of services to various audiences. Collaborative efforts to further develop the SHPO/OSA database are on-going.

Minnesota Forest Resources Council (MFRC) - As a member of the MFRC's Historic and Cultural Resources Team, OSA is charged with providing comment and direction to assist the Council in the development of management practices which have the potential to impact on the identification and protection of cultural resources in forested areas state-wide.

Frederick R. Weisman Art Museum & the Department of Anthropology (Wilford Archaeology Laboratory), University of Minnesota - OSA has met with representatives of these departments on a number of occasions to provide review and comment on their respective NAGPRA programs.

Legislature - OSA regularly provides information and/or intervention in response to requests by individual legislators on behalf their constituents.

Osteology Laboratory, Hamline University - The Osteology Laboratory works directly with OSA in the process of burial site investigations and related analyses. OSA provides review, comment and direction relative to the lab's NAGPRA-related activities.

County Historical Societies - OSA has provided review, comment and direction relative to local historical societies' NAGPRA and curation programs, and has written in support of a recent proposal by the Goodhue County Historical Society to the Legislative Commission on Minnesota Resources.

Cultural Resource Management Firms - In addition to the process of developing a program which is responsive to the needs of the archaeological/CRM community at large, OSA has also written letters in support of Legislative Commission on Minnesota Resources grant proposals submitted by CRM firms (IMA Consulting and BRW, Inc.).

FUTURE PROGRAM ACTIVITIES

The processes of licensure, project review (both pre- and post-project), burials-related investigations, and related concerns will continue to be focal program issues for OSA. Efforts in the upcoming year to address outstanding burial investigation and authentication cases will further reduce the extant backlog.

Program activities planned for fiscal year 1997 include:

- o **budget - OSA anticipates a need for funding to increase significantly over the current \$104,000/year base figure in order to provide long-term support for an additional full-time assistant, to defer burial investigation costs, to underwrite modest research projects, and to support other program needs; this will require legislative lobbying in support of the request.**
- o **burial site database - The need for wider and more immediate access to burial site location information, especially by land managers and building permitting authorities, is becoming increasingly evident. The paramount threat to such sites is no longer the looter who desecrates individual burials, rather, it is the relentless pace of development in and along the margins of Minnesota's towns, cities, reservations, lakes and rivers which endangers hundreds and, perhaps, even thousands of such burial areas. OSA, SHPO and MIAC will further discuss the possibility of making this information available to such agencies via electronic access to the OSA/SHPO burial site database. If agreed, OSA, MIAC and SHPO will pursue efforts to develop this system in fiscal year 1997.**
- o **administrative - As noted above, administrative support for OSA has been transferred from MHS to the Department of Administration effective July 1, 1996. OSA will continue to work with DOA to facilitate this process.**
- o **legislation - During the upcoming six months, and prior to the upcoming legislative session, OSA, in concert with MIAC, MHS and the Office of the Attorney General, and with input from the OSA Advisory Team, will be reviewing MN Statutes 138.31-138.42 and 307.08 to make recommendations for amendments, as needed. Lobbying legislators on behalf of program issues will continue through the period.**

REFERENCES

Hohman-Caine, C.A.

1992 *State Archaeologist's Annual Report, July 1991 - June 1992 and July 1992 - October 1992.* Copy on file, Office of the State Archaeologist, St. Paul.