



## WISCONSIN LEGISLATIVE COUNCIL

### PRESERVATION OF BURIAL SITES

Room 412 East  
State Capitol

September 8, 2016  
10:05 a.m. – 4:25 p.m.

[The following is a summary of the September 8, 2016 meeting of the Study Committee on Preservation of Burial Sites. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.wisconsin.gov/lc>.]

#### Call to Order and Roll Call

Chair Loudenbeck called the committee to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Amy Loudenbeck, Chair; Rep. Robert Brooks, Vice-Chair; Rep. Dave Considine; Sen. Jon Erpenbach; and Public Members William Green, David Grignon, Kira Kaufmann, Justin Oeth, E. Glen Porter, Bill Quackenbush, and Robert Shea.

COMMITTEE MEMBERS EXCUSED: Public Members Conrad Goodkind and Chad Wuebben.

COUNCIL STAFF PRESENT: Anna Henning, Senior Staff Attorney, and Amber Otis, Staff Attorney.

APPEARANCES: Robert "Ernie" Boszhardt, Archaeologist; Edith Leoso, Tribal Historic Preservation Officer for the Bad River Band of Lake Superior Chippewa Tribe; George Garvin, Ho-Chunk Nation Repatriation Researcher; and Jarrod Burks, Ph.D., Ohio Valley Archaeology, Inc.

## **Approval of the Minutes of the August 2, 2016 Meeting of the Study Committee**

*Vice-Chair Brooks moved, seconded by Public Member Oeth, to approve the minutes from the committee's meeting held on August 2, 2016. The committee approved the motion by unanimous consent.*

### **Presentations by Invited Speakers**

#### **Robert "Ernie" Boszhardt, Archaeologist**

After a brief description of his background and experience, Mr. Boszhardt provided an overview of Native American burial practices throughout Wisconsin's archaeological history. He identified the major prehistoric eras comprising the 13,000 years that humans have been present in Wisconsin. He explained that each prehistoric period is marked by particular burial practices, depending on the geographical, technological, and social aspects of the era.

Mr. Boszhardt noted that effigy mounds are a burial practice unique to Wisconsin (and nearby areas of bordering states). He addressed whether all effigy mounds signify burial of human remains. Mr. Boszhardt cited a 2011 study by Amy Rosebrough, Ph.D., for the conclusion that approximately 87% of mounds contain human remains. He identified various factors that may have contributed to the absence of human remains in some of the mounds studied.

Mr. Boszhardt answered questions from committee members regarding: his past experience on the Burial Sites Preservation Board; the data relied upon in the 2011 Rosebrough Study; the probability of human remains existing in effigy mounds; the evolution of archaeological excavation techniques; the significance and unique nature of effigy mounds in Wisconsin; the extent to which mounds in Wisconsin have been excavated or destroyed; and the standard by which an archaeologist deems a burial site "significant."

#### **Edith Leoso, Tribal Historic Preservation Officer for the Bad River Band of Lake Superior Chippewa Tribe, and George Garvin, Ho-Chunk Nation Repatriation Researcher**

Ms. Leoso introduced herself and commented on the importance of preserving the graves of Native American ancestors. She stated that the tribes have a very good relationship with the Department of Transportation (DOT) after recently revising the protocol for inadvertent discoveries. She suggested that the protocol be codified to apply to all landowners, and not only to inadvertent discoveries by DOT. Ms. Leoso also emphasized the necessity for public education regarding Native American culture and history, including the importance of oral history as a method of preserving tribal heritage.

Mr. Garvin provided his background in repatriation. He suggested removing from current law the distinction between cataloged versus uncataloged sites and instead protecting all sites in the same manner. He cited Iowa's law as a model example. He also suggested stricter penalties for those violating the preservation law. With regard to reinterment, he noted that consultation with Native American tribes is critical.

Ms. Leoso and Mr. Garvin responded to questions from committee members regarding: the aspects of the current law that work well; the tribes' positive working relationship with the Wisconsin Historical Society (WHS); ideas for public education; and the creation of a tribal committee that could incorporate oral history and advise on dispositional decisions. Ms. Leoso indicated that she would submit to the committee chair a list of recommendations made in past conversations with WHS.

**Jarrold Burks, Ph.D., Ohio Valley Archaeology, Inc.**

Dr. Burks described his current work as an archaeological consultant for private clients, such as developers. Dr. Burks provided a basic overview of geophysics, including how various instruments work and the types of properties they can detect. Dr. Burks discussed three types of geophysics instruments: the magnetometer, ground penetrating radar (GPR), and the electrical resistance meter.

Dr. Burks noted that the instruments do not detect graves directly. Rather, the instruments detect anomalies in the ground, i.e. discrete areas with geophysical values distinct from their surroundings. Dr. Burks described how data is collected and analyzed using computer equipment, and how anomalies are identified through this process.

Dr. Burks stated that geophysical instruments may be useful for detecting burials in mounds. However, he cautioned that a lack of anomalies does not prove that a burial does not exist, because many graves may not be detectable. At a minimum, he suggested that more than one type of instrument should be used in mound surveys.

Dr. Burks responded to questions from committee members regarding: the level of confidence in the recommendations provided to his clients; the extent to which he consults written and oral history in his analysis; the extent to which GPR is relied upon in his field; the types of minimally-invasive testing that may occur if an anomaly is detected; the rate at which technology is evolving in his field; other forms of technology that may assist in detecting human remains; and his experience with the federal law regarding archeological preservation.

**Discussion of Committee Assignment**

Chair Loudonbeck led committee discussion regarding topics raised by committee members during the August meeting and summarized by Legislative Council staff in Memo No. 1.

The committee discussed whether the current required width of at least five feet of "sufficient contiguous land" necessary to protect a burial site should be amended to reflect WHS's current practice of seeking 15-foot widths. Members stated that major problems may not exist under the current scheme, though it may be confusing. Members suggested that DOT should be consulted to determine how the width requirement, and any potential change, affects their work. A member suggested adding a distinction to the definition of "disturb" for application to a burial site versus contiguous land.

The committee discussed whether the procedural timelines set forth in WHS administrative rules and internal policies should be statutorily codified or modified. Members reached general consensus that this issue did not warrant further discussion.

The committee discussed methods for providing information to land purchasers regarding burial sites on property. Committee members suggested adding a mandatory disclosure to real estate forms and creating a searchable online database.

The committee discussed whether the distinction between cataloged and uncataloged burial sites should remain and, if so, whether different terms should apply to that distinction. Members discussed that the distinction was intended to allow for sites with more documentation to be cataloged. Some members expressed that no distinction should exist and all burial sites should be subject to the same procedure for disturbance.

The committee discussed the scope of the registry of interested persons. Specifically, members discussed that current law requires WHS to maintain a registry of those with an interest in a **cataloged** burial site, yet also requires WHS to determine whether “the registry shows that any person has an interest” in an **uncataloged** site for which a disturbance is proposed. The committee reached general consensus to clarify that discrepancy.

The committee discussed whether the provisions for removing a burial site from the catalog should be codified, and if so, modified. Some members suggested the removal procedure be modified to shift the burden of proof to WHS. Some members noted the removal provisions were not included in the statute due to the law’s purpose of preservation. It was further suggested that any problems with the removal standard could be addressed by changing the standard for cataloging a burial site.

Finally, the committee discussed landowner compensation. Members discussed whether a cataloging decision would be interpreted as an unconstitutional taking of property. Members further discussed ideas as to the form of compensation. Members asked Legislative Council to research whether other states’ laws allow for archaeological easements.

Chair Loudonbeck indicated that at the next meeting the committee would resume its discussion with the topic of “Foundational Concepts and Definitions” in Legislative Council staff Memo No. 1.

### **Plans for Future Meetings**

The committee’s future meeting dates are scheduled for **Wednesday, October 5, 2016** and **Thursday, November 10, 2016**.

### **Other Business**

There was no other business brought before the committee.

## **Adjournment**

The meeting was adjourned at 4:25 p.m.

AO:ty