



WISCONSIN
HISTORICAL
SOCIETY

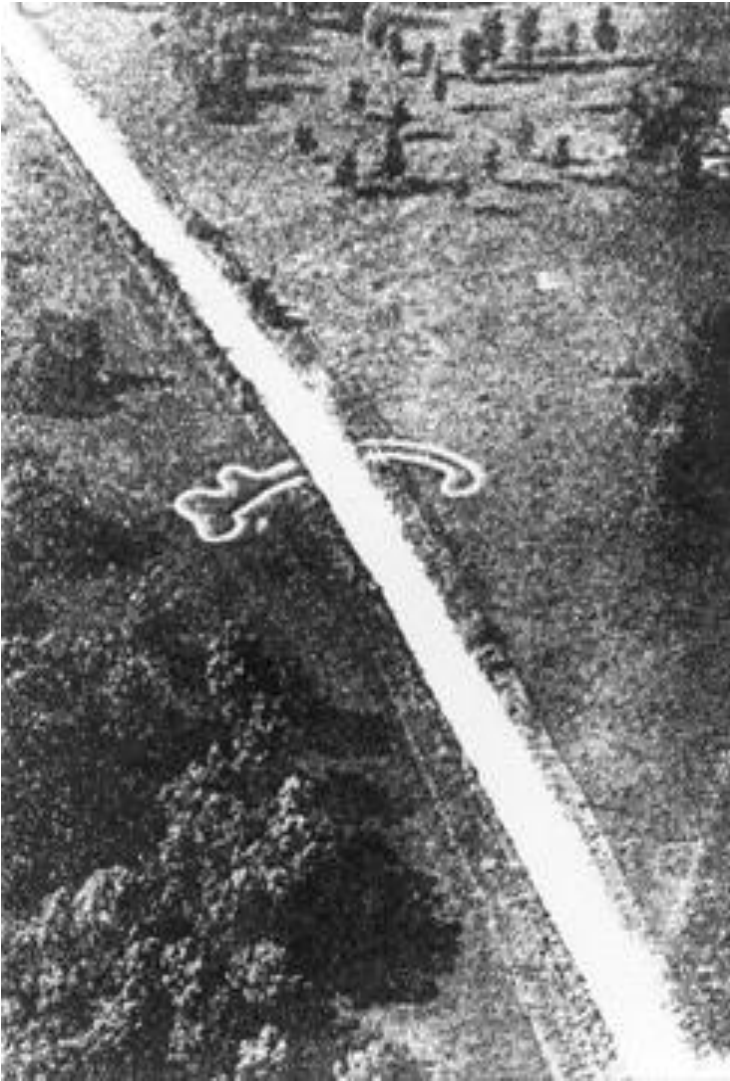
Cemeteries, Burial Sites, and Wisconsin State Law



Burial Sites and the Law

- **Wis. Stats. 157.70 - No human burial site may be disturbed without prior authorization from the Wisconsin Historical Society**
- **DeWitt vs. Ferries – Wisconsin Supreme Court makes a distinction between ‘cemeteries’ and ‘human burial sites’.**

1985 Wisconsin Act 316



“Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction...Over 80% of known prehistoric burial sites in many parts of this state have been damaged or destroyed.”

1985 Wisconsin Act 316

“The legislature intends by this act to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliation.”



Act 316 was codified into State Statutes as Wis. Stats. 157.70, supplemented by provisions of Administrative Code.

Clam Lake Burial Mound – ca. AD 900-1000



Wis. Stats. 157.70

- Creates Burial Sites Preservation Board
- **Directs the Wisconsin Historical Society to catalog human burial sites**
- Forbids disturbance of any human burial site without prior authorization from the Wisconsin Historical Society.
- Specifies procedures for handling requests to disturb burial sites, including avenues for appeal
- Forbids municipalities/towns, etc. from selling or transferring human burial sites to private hands without authorization



Wis. Stats. 70.111

Provides property
tax exemptions
for catalogued
human burial
sites



Brisbois gravesite

What is a Cemetery?

According to [Wis. Stat. § 157.065](#), no cemetery may be used for burials except any of the following: A cemetery in use on April 4, 1864, or a cemetery organized and operated by any of the following:

- A municipality
- A religious organization
- A fraternal or benevolent society
- An incorporated college of a religious order
- A cemetery association created under [Wis. Stat. § 157.062](#)
- A corporation organized under [Wis. Stat. ch. 180](#) or [ch. 181](#)
- A limited liability company organized under [Wis. Stat. ch. 183](#)

What is a Human Burial Site?

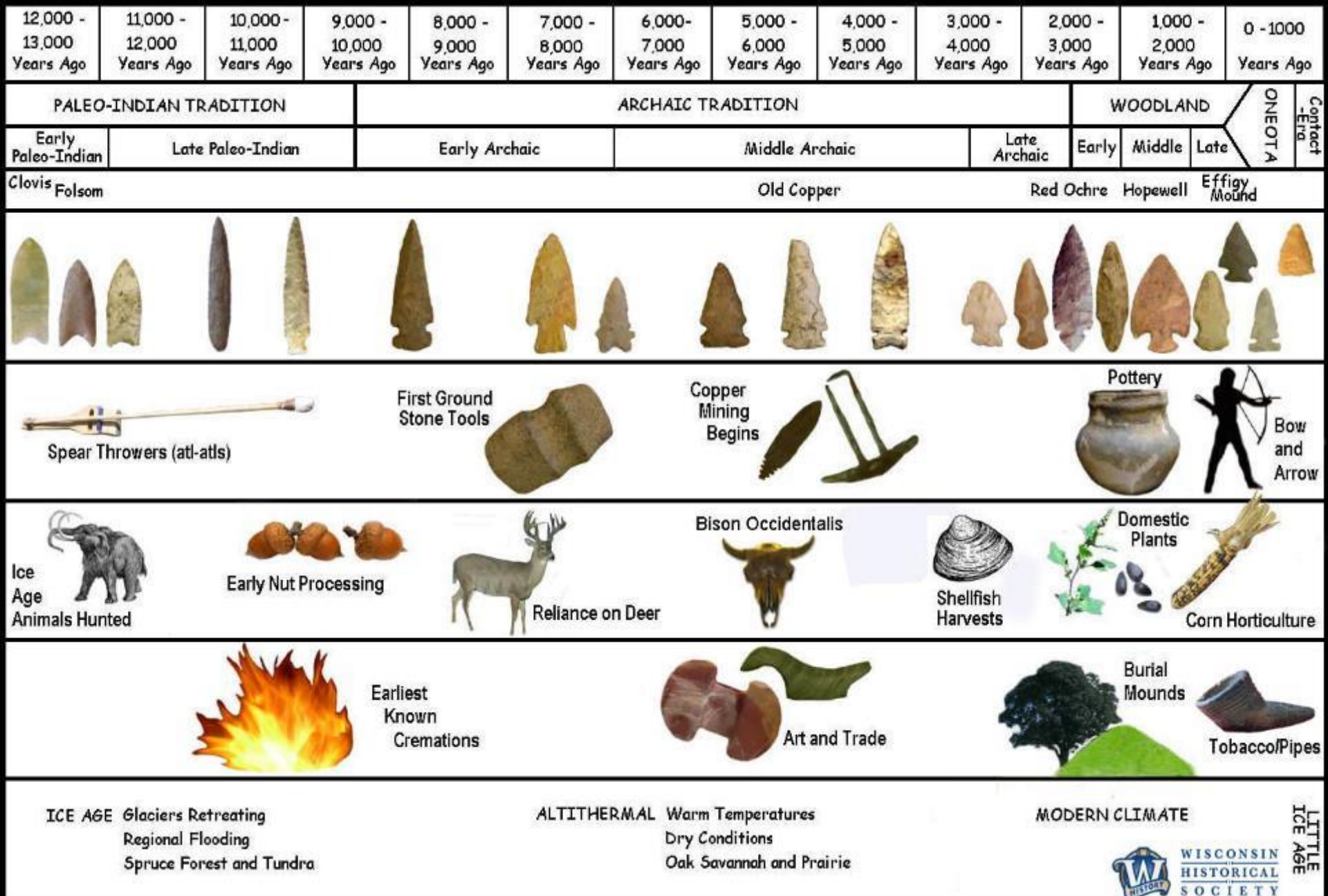
“any place where
human remains
are buried
(Wis. Stats.
157.70(1)(b).”

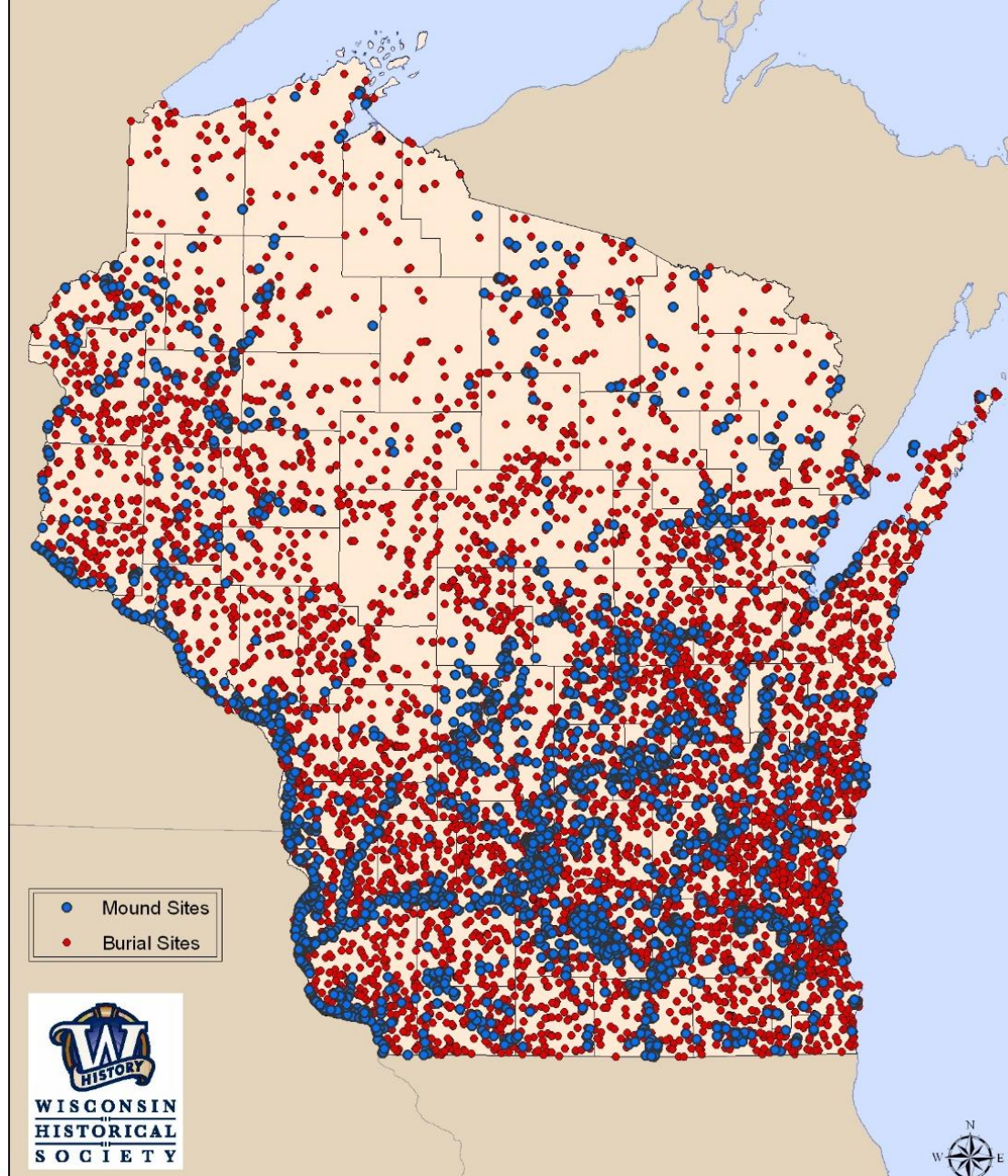


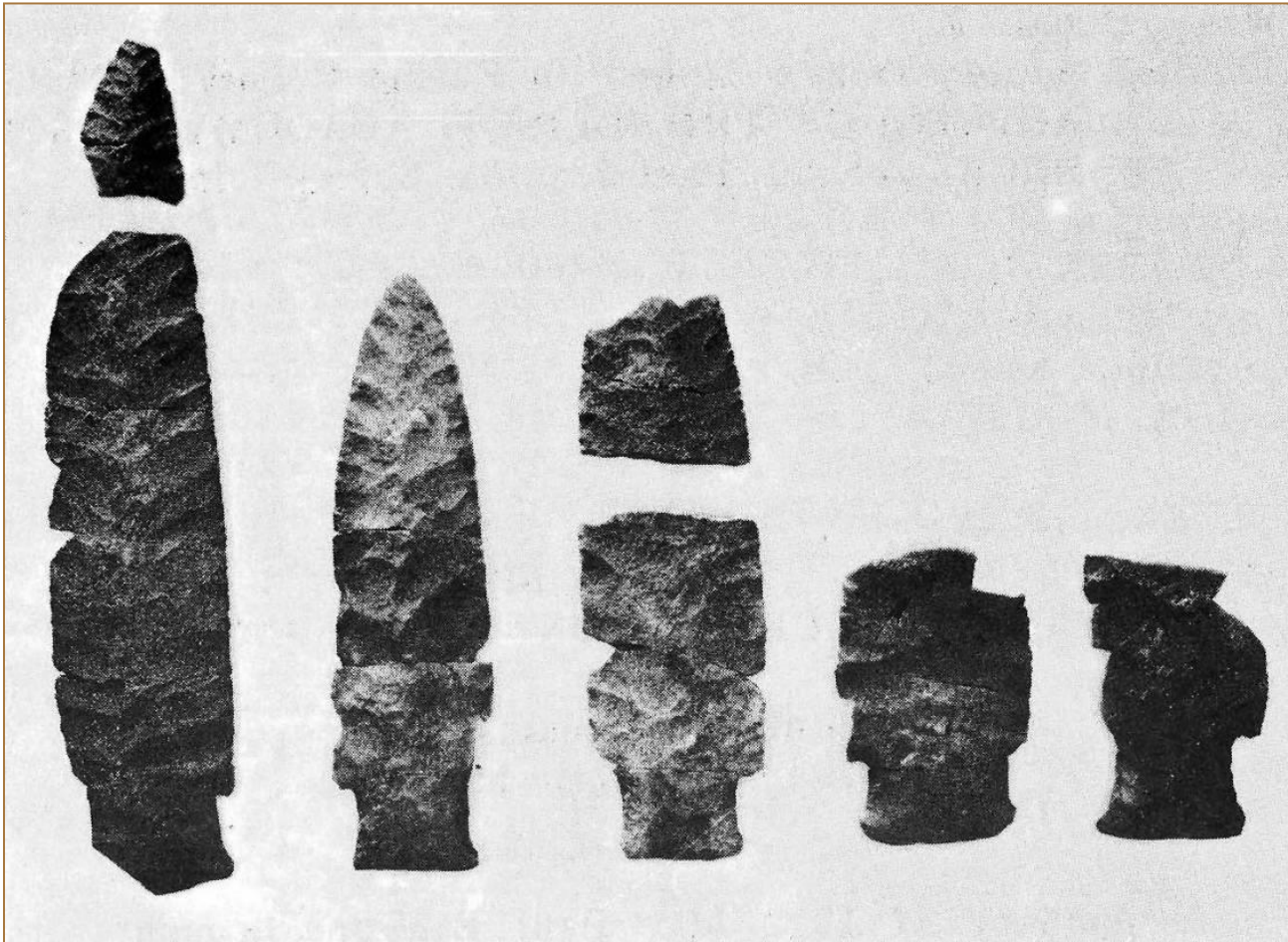


A burial site can be a cemetery, as defined in *DeWitt et al. vs. Ferries* 2018 WI 117: legally platted and recorded with ROD per regulations for cemetery establishment.

But does not have to be...







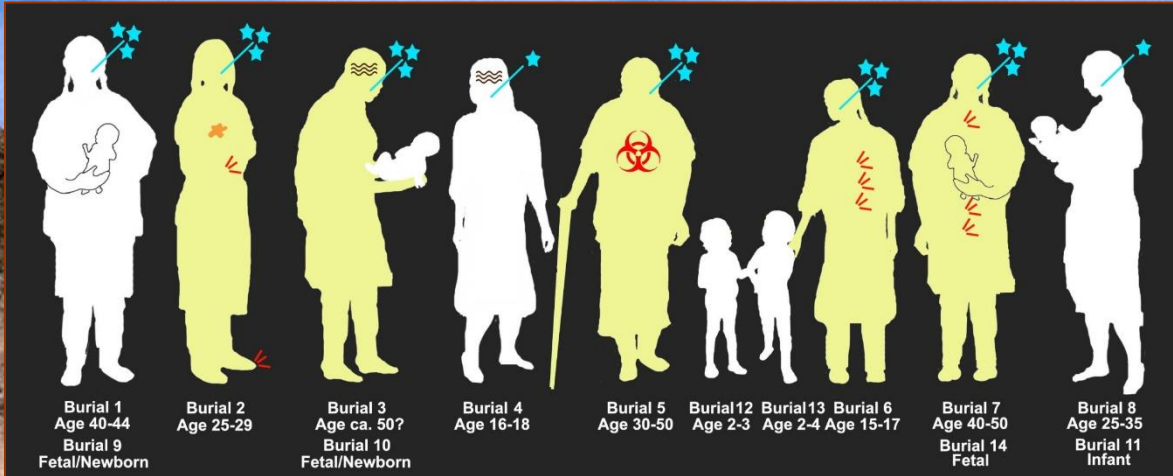
**Pope Site Cremation
Waupaca County
ca. 11,000 BC**

Rockshelter in Iowa Co. ca 3000 BC-AD 1000





**Burial mounds at Farwell's Point, Madison,
ca. AD 500**



Hanson Mass Burial, Door CountyCa. AD 1650-1700

Spirit Houses at Powers Bluff, Wood Co. ca. AD 1905-1930



Bonesteel Family Cemetery, Green Lake Co.

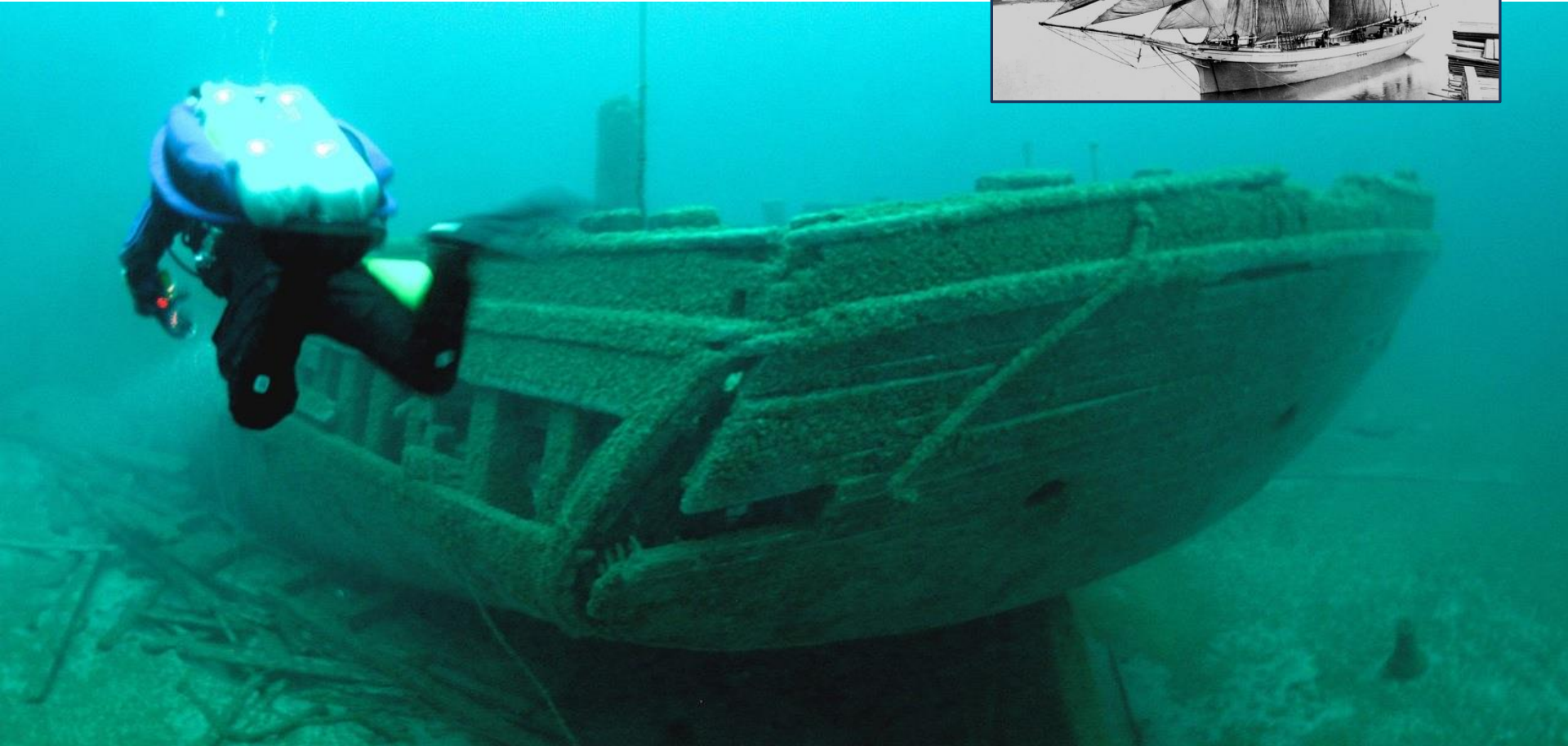
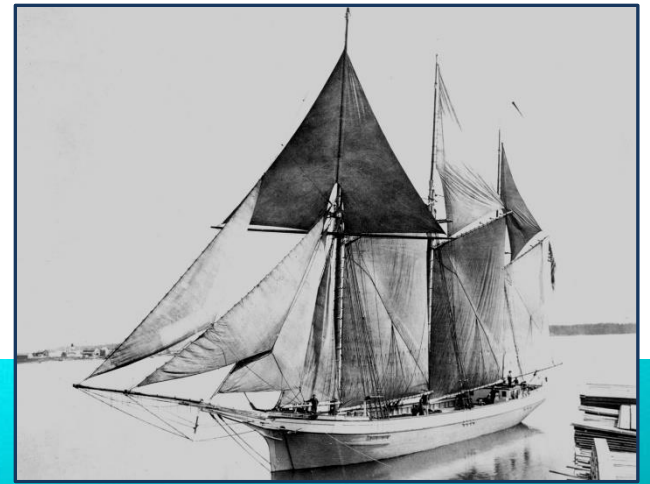




Old Schoolhouse Cemetery, Dane Co.

Wreck of the *Rouse Simmons*, Lake Michigan.

16 lives lost, November 22, 1912.





Kakake Home Burials, Sawyer Co.

Home Burials

- Home, Family, and Green burials are becoming popular again
- Wisconsin State Law does not define or limit these types of burials except...
- ...these are all human burial sites subject to 157.70
- Please report home burials to WHS for documentation and cataloging

Home Burials: A Guide

1. Are there local or county ordinances that would prevent the burial?
2. Are there local or county ordinances that would affect the burial?
3. Have them contact the Wisconsin Historical Society so that they can be **catalogued**
4. Definitely an unsettled issue. State-level conversations are going on now (?)

Cataloging Burial Sites

“The Director shall...identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded...”



Cataloging Burial Sites

“Director’s Duties. The Director shall...

- Cause a catalogued burial site to be recorded by the **register of deeds** of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording...” (Wis. Stats. 157.70 (2)(i)).



Catalogued Sites Are:

- Places where human burials are present or likely to be present:
 - Marked cemeteries (tombstones, spirit houses, etc.)
 - Dedicated formal/legal cemeteries (even if not marked)
 - Mound groups (all types of mounds)
- Eligible to be exempt from property taxes
- Subject to specific legal processes under Wis. Stats. 157.70.



Burial mounds & gravestones

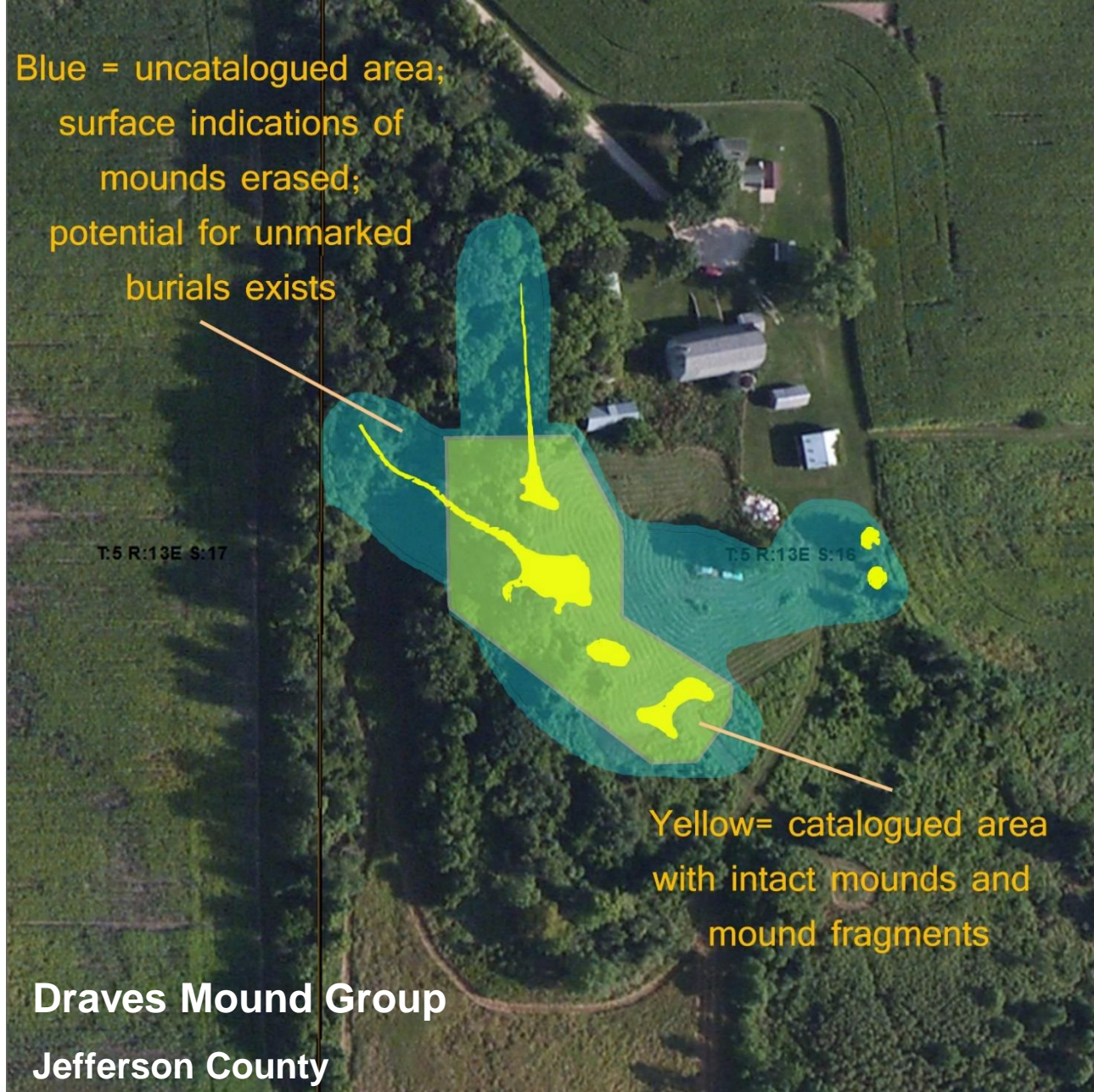
Fleck McDonald Cemetery, Vernon County

Uncatalogued Sites Are:

- Destroyed, lost, or not mapped.
 - Plowed down or flattened mounds
 - “lost” cemeteries
 - Places where human remains are present, but that have not been mapped or documented yet
- Not eligible to be exempt from property taxes
- Subject to a different set of processes under Wis. Stats. 157.70



Blue = uncatalogued area;
surface indications of
mounds erased;
potential for unmarked
burials exists



Draves Mound Group
Jefferson County

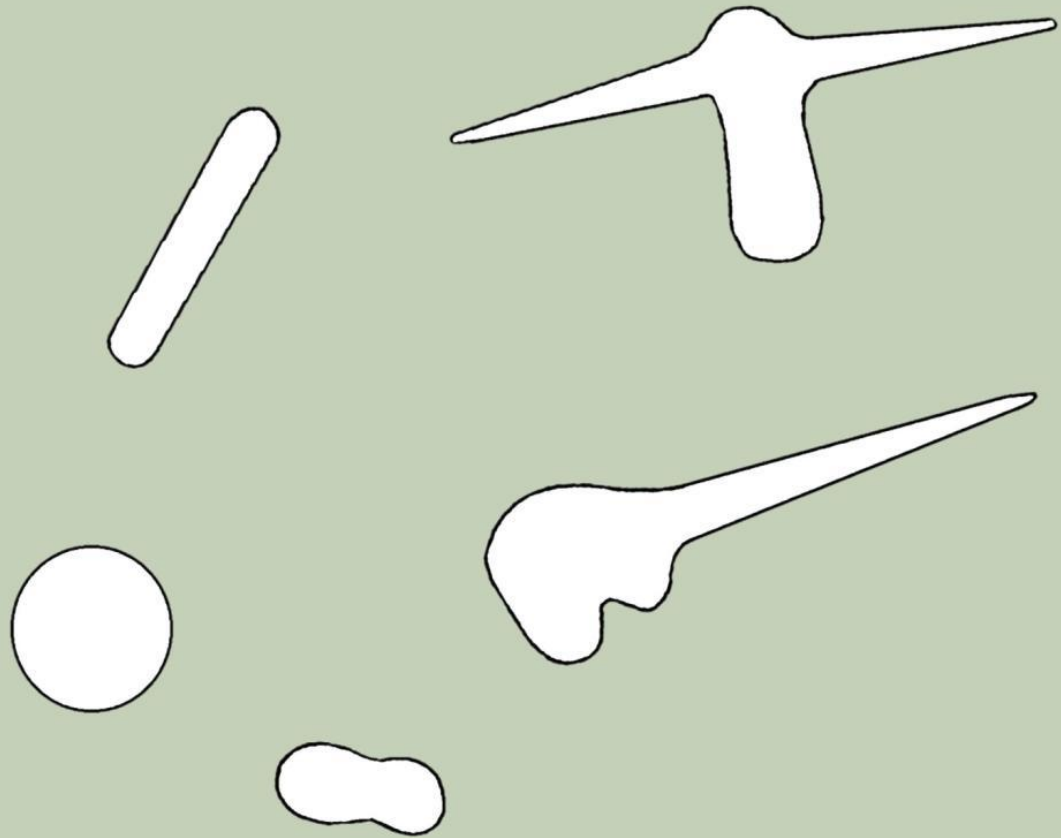


CURVE NO.	RADIUS LENGTH	CHORD LENGTH	CHORD BEARING	CENTRAL ANGLE	TANGENT BEARING
1-2	2814.93'	204.63'	83°53'-58"E	4°09'-58"	S81°49'-00"E
3-4	267.64'	166.88'	S63°33'-03"E	36°19'-54"	S81°48'-59"E
5-6	391.89'	130.33'	S55°03'-25"E	19°08'-36"	S45°29'-06"E

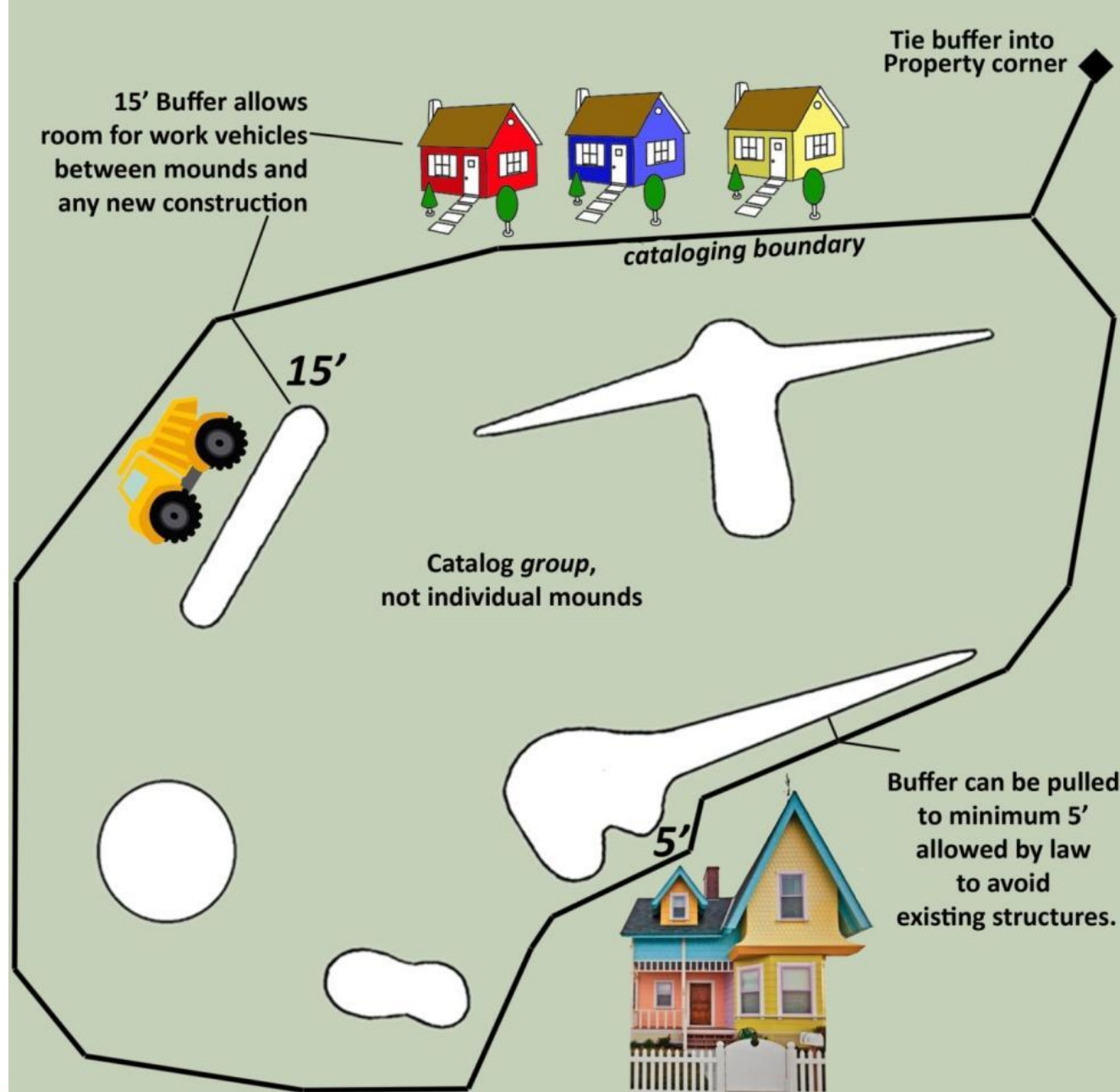
- - SET 1"x24" IRON PIPE WEIGHING 1.13 LBS./LINEAL FT.
- - FOUND 1" IRON PIPE
- ⌀ - SET 2" IRON PIPE
- PROPERTY LINE
- ||||| FENCE LINE

A diagram consisting of a vertical line. In the center of the line is a stylized letter 'N'. To the left of the 'N', there is a horizontal line segment enclosed in square brackets, with the letter 'W' to its left.

Most burial
sites have
not been
professionally
surveyed



Cataloging balances the needs of the burial site with the needs of landowners and takes accuracy of available information into account.



Schaeffer Bird Effigy (RI-0039, BRI-0160)

This mound group is located in the SE ¼ of Section 35, Township 9 North, Range 1 West, Civil Town of Eagle, Richland County, Wisconsin.

Ownership Information: Wisconsin Department of Natural Resources

Parcel ID: 01038111000

Description:

From a point of beginning on the northeast corner of parcel 01038111000 (where the east line of the parcel intersects the southern right-of-way of STH 60), thence 140 feet due south along the east parcel line, thence 175 feet due west, thence 140 feet due north, thence 175 feet due east, returning to the point of beginning.

Catalogued Boundary

Parcel Boundary

Schaeffer bird effigy, Richland Co.



Notices of Location

DOCUMENT # BWHS-19-09-262
STATE SITE #/BURIAL # DA-0115/BDA-0260
SITE NAME West Point Mound Group
OWNERS NAME
OWNERS ADDRESS 5117 St Cyr Rd
Middleton WI 53562

WHEREAS, the legislature intends by 1985 Wisconsin Act 316 to assure that all human Burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations; and WHEREAS, Ws. Stats. § 157.70(2)(a) provides that the Director of the Wisconsin Historical Society shall identify and record in a catalog, burial sites in this state, together with sufficient contiguous land necessary to protect the burial site from disturbance; and WHEREAS, § 7011(13), Ws. Stats. provides a property tax exemption for land containing a burial site, which is entered in the state catalog of burial sites and that this makes the property tax treatment of burial sites consistent with the property tax treatment of cemeteries; and WHEREAS, § 157.70(5)(b), Ws. Stats. provides that no person may intentionally cause or permit the disturbance of a cataloged burial site without a permit from the Director of the Wisconsin Historical Society. Now therefore be it known that the following described lands contain a cataloged burial site and are subject to the protection and provisions of 1985 Wisconsin Act 316.

RETURN TO:
Amy L. Rosebrough
Burial Sites Preservation
Wisconsin Historical Society
816 State Street
Madison, Wisconsin 53706-1482
Parcel Identification Numbers
066-0709-064-9030-8

West Point Mound Group BDA-0260

These Native American mounds are located in Government Lot 2, in the SW ¼ of the SE ¼ of Section 6, Township 7 North, Range 9 East in the Town of Westport, Dane County, Wisconsin.

Mound 1: From the northeast corner of Lot 7, Block 2 of West Point, thence South 0° 0' 8" East for 352.19 feet, thence North 19° 3' 27" East for 39.66 feet to the point of beginning. From the Point of Beginning, thence South 44° 13' 17" West for 46.5 feet, thence South 65° 21' 19" West for 15.16 feet, thence South 75° 26' 12" West for 77.7 feet, thence North 55° 15' 29" East for 151.31 feet, thence North 88° 5' 20" East for 8.6 feet, thence North 1° 35' 23" East for 10.35 feet, thence North 47° 15' 46" East for 25.4 feet, thence South 16° 48' 21" East for 12.9 feet, thence returning due South to the point of beginning.

This cataloging supercedes and replaces the cataloging of May 9, 2017, Filed with the Dane County Register of Deeds on July 7, 2017, Document 5339960.

THIS INSTRUMENT DRAFTED BY dated this _____ day of _____ 2020
Signature of _____

Amy L. Rosebrough

Diana J. Penkhus
~~Diana J. Penkhus~~
State Historic Preservation Officer
Wisconsin Historical Society

ACKNOWLEDGMENT STATE OF WISCONSIN, DANE COUNTY
Personally came before me this _____ day of _____ 2020
to me known to be the person(s) who executed the
foregoing instrument and acknowledge the same.
Signature of _____

Ian Goff
My Commission Expires July 30, 2023

- New notices may be filed for sites if new information affecting site boundaries comes to light.
- Copies of ROD notices are forwarded to the landowner, local historical society, and local unit of government, and originals kept at WHS.



Location of McClenegan Mound Group (destroyed) Rock Co.



“Notice of Removal”

The Director shall...propose that land be removed from the catalog if the director determines that no burial site is present on the land... (Wis. Stats. 157.70(2j)(a))

What is a Disturbance?

- Any activity that disturbs the surface characteristics of the burial site
- Normal cemetery activities are excluded.



What is The Registry of Interested Persons

- People who have registered an interest in a burial site with the Wisconsin State Burial Board.
 - Direct Kinship
 - Cultural, Tribal, or Religious Affiliation
 - Scientific, Environmental, or Educational interest
 - Land Use
 - Historic Preservation
 - Commercial Purpose not Related to Land Use
 - Other

Requesting to Disturb

- No disturbance may take place within the bounds of human burial sites without authorization from the Wisconsin Historical Society
- Requests to disturb catalogued sites may be denied by the Wisconsin Historical Society or objected to by members of the Registry of Interested Persons
- All parties have the option to go before the Burial Board or take the dispute to the court system
- Violation of Wis. Stats. 157.70, particularly for commercial gain, may result in strong penalties.



Why Catalog?



Forgotten burial sites are endangered burial sites....

Indian Lake U.S. Near Camp 2 - 1904



Why Catalog?

Indian Lake Cemetery
1904



Indian Lake Cemetery
1987

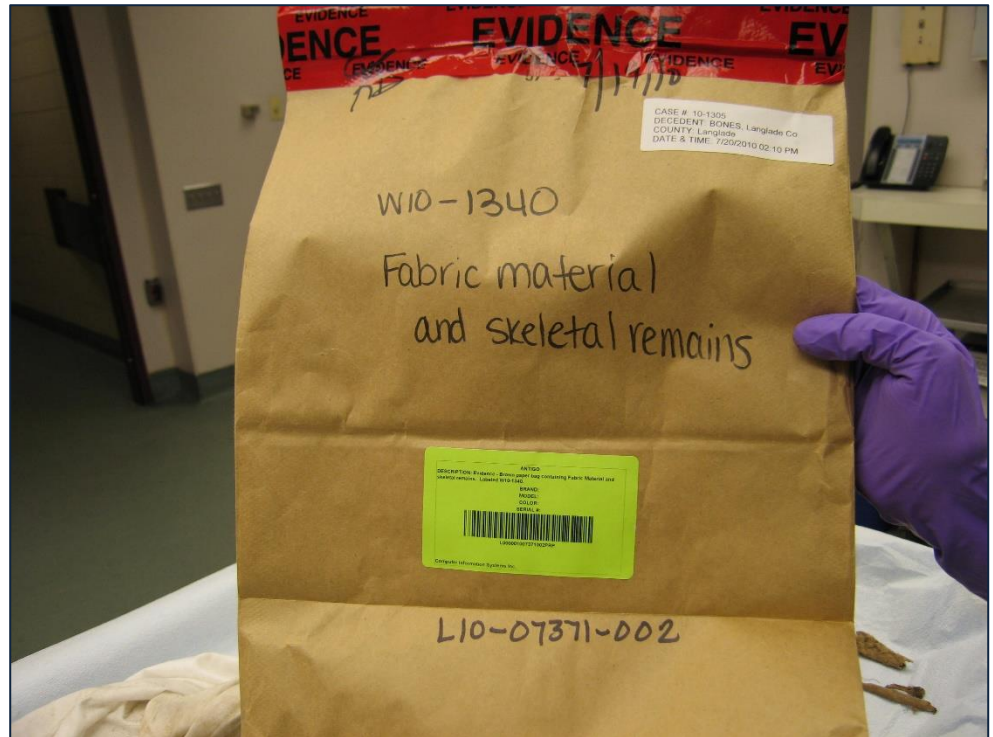


**Cataloging provides a permanent record.
This used to be a burial mound....**

“I Didn’t Know!”

Accidental damage to burial sites is distressing to landowners, workers, and descendant communities.

Every recorded burial site is a burial site that hopefully won’t be forgotten.





Report all Disturbances to WHS

Ground disturbance must stop immediately, and
may not resume without authorization.



_MG_2525.jpg Case Number: W10-1340 Work Order Number: W10-1340-1 Date: July 20, 2010
Overall photographs of a scene located at _anglade County, Wisconsin
Photographed on July 19, 2010 by Forensic Imaging Specialist Lawrence J. Ventura (LJV) Forensic Imaging Unit
Wisconsin State Crime Laboratory, 7100 Stewart Avenue, Wausau, WI 54401



Wisconsin Historical Society



Allison Geyer- Isthmus





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Thank you!

To learn more visit
wisconsinhistory.org

