

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 31, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

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**Appeal Nos. 2015AP1632  
2015AP1844  
STATE OF WISCONSIN**

**Cir. Ct. No. 2014CV002262**

**IN COURT OF APPEALS  
DISTRICT IV**

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**WINGRA REDI-MIX, INC. D/B/A WINGRA STONE COMPANY,**

**PETITIONER-RESPONDENT-CROSS-APPELLANT,**

**V.**

**STATE HISTORICAL SOCIETY OF WISCONSIN,**

**RESPONDENT-APPELLANT-CROSS-RESPONDENT,**

**HO-CHUNK NATION,**

**INTERVENOR-CO-APPELLANT-CROSS-RESPONDENT.**

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APPEAL and CROSS-APPEAL from orders of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Reversed.*

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. This appeal is the second case concerning two Native American effigy mounds called the Ward Mound Group (the Ward Mounds), which were added to the catalog of burial sites by the Director of the State Historical Society in 1991 pursuant to WIS. STAT. § 157.70(2) (2015-16).<sup>1</sup> The Ward Mounds are on three acres, surrounded by a large quarry, all owned by Wingra Stone Company, formerly known as Wingra Redi-Mix, Inc. Wingra Stone petitioned the Director for permission to “disturb” the Ward Mounds pursuant to WIS. STAT. § 157.70(5), for purposes of mining sand and gravel near and, apparently, under the Ward Mounds. The Director referred the petition to the division of hearing and appeals (DHA), which conducted a contested case hearing and denied the petition. Wingra Stone sought judicial review of DHA’s decision in the circuit court, which reversed and remanded the case for additional fact finding consistent with the circuit court’s ruling.

¶2 The State Historical Society and the Ho-Chunk Nation appeal and Wingra Stone cross-appeals the circuit court’s decision. The relief Wingra Stone seeks in its cross-appeal is not fully clear. In its cross-appeal brief Wingra Stone requests that we vacate, modify, or remand the decision of DHA for further proceedings consistent with this court’s conclusions. We are uncertain whether Wingra Stone’s cross-appeal arguments are additional arguments in support of the circuit court’s decision, or instead in support of this court issuing an opinion directing DHA to grant Wingra Stone the permit, or both. We need not resolve

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<sup>1</sup> We today also release our decision in the companion appeal, *Wingra Redi-Mix v. State Historical Society*, No. 2014AP2498, concerning Wingra Stone’s petition to remove the Ward Mounds from the catalog of burial sites.

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

this uncertainty. For the reasons below, we reject all of Wingra Stone's arguments challenging DHA's denial of the permit. Also, for this reason, we need not distinguish between the arguments Wingra Stone makes in its response brief in the appeal and in its cross-appeal briefs. We simply identify and reject each of Wingra Stone's arguments. Accordingly, we reverse the circuit court's decision and affirm DHA's decision denying Wingra Stone's petition for a permit to disturb the Ward Mounds.

### **BACKGROUND**

¶3 In the companion appeal, *Wingra Redi-Mix v. State Historical Society*, No. 2014AP2498, we summarize the events that occurred prior to and after Wingra Stone submitted its petition to the State Historical Society seeking to remove the Ward Mounds from the catalog of burial sites. For additional context, we refer the reader to that opinion. Here, our background summary repeats a few of those procedural facts and adds only the information needed to put the arguments below in context.

¶4 The Ward Mounds were added to the catalog of burial sites in February 1991. In September 2010, Wingra Stone sent a letter to the Director requesting that the Ward Mounds be removed from the catalog, and in the alternative, that it have permission to disturb the mounds.

¶5 The Director treated the part of the letter related to the request to disturb the Ward Mounds as a petition, pursuant to WIS. STAT. § 157.70(5). As required by § 157.70(5)(c)1. the Director of the State Historical Society referred Wingra Stone's petition to disturb the Ward Mounds to DHA.

¶6 A contested case hearing was held on Wingra Stone’s petition to disturb, and DHA considered post-hearing briefs from the parties. DHA denied Wingra Stone’s petition for a permit to disturb the Ward Mounds and Wingra Stone sought judicial review in the circuit court. The court reversed and remanded the case for additional fact finding. The circuit court’s order was broad and appeared to direct DHA to conduct a new contested case hearing and consider anew Wingra Stone’s permit application.

### DISCUSSION

¶7 On appeal, Wingra Stone challenges DHA’s decision denying Wingra Stone’s petition seeking a permit to disturb the Ward Mounds burial site pursuant to WIS. STAT. § 157.70(5)(c)2. The appeal arises under WIS. STAT. ch. 227. In reviewing an administrative agency’s decision under WIS. STAT. ch. 227, we “review the decision of the administrative agency and not the decision of the circuit court.” *Plevin v. DOT*, 2003 WI App 211, ¶11, 267 Wis. 2d 281, 671 N.W.2d 355. Wingra Stone’s appellate briefs mostly speak in terms of the correctness of the circuit court’s decision. However, because we review DHA’s decision de novo, we refer only to DHA’s decision in our discussion.

¶8 We are required to affirm DHA’s decision unless we find a “ground for setting aside, modifying, remanding or ordering agency action.” WIS. STAT. § 227.57(2). We must set aside or remand an administrative agency’s decision if it is based on findings of fact that are not supported by substantial evidence in the record. WIS. STAT. § 227.57(6). We will uphold the agency’s factual findings if they are reasonable. *Kitten v. DWD*, 2002 WI 54, ¶5, 252 Wis. 2d 561, 644 N.W.2d 649.

¶9 WISCONSIN STAT. § 157.70(5) governs the procedure for a person or entity to obtain a permit from the Director of the State Historical Society to disturb a cataloged burial site or the cataloged land contiguous to a cataloged burial site. WISCONSIN STAT. § 157.70(5)(c)2., states in full:

If a hearing is requested or determined to be necessary under subd. 1., the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2)(e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and aesthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the board deems to be in the public interest.

¶10 After reviewing the evidence presented as to the interests enumerated in the statute, DHA found that: (1) direct kinship does not apply here; (2) the interest in a cultural, tribal, or religious affiliation weighs against

disturbance of the site; (3) the benefits of interests in a scientific, environmental, or educational purpose are mixed such that these interests weigh neither in favor nor against permitting disturbance of the site; (4) the historical value of the Ward Mounds is significant such that this interest weighs against permitting the disturbance; (5) the interest in Wingra Stone's use of its land weighs in favor of granting the permit to disturb; (6) the interest in commercial purpose is sufficiently limited as to mining and remote in time as to future development that it cannot be meaningfully weighed either way; and (7) the public interests asserted by Wingra Stone in roads and jobs will not be harmed by denying the permit to disturb because the quarry has fifty years of useful life and is sufficient to keep Wingra Stone employees busy "for a long time whether or not Wingra can mine the [Ward Mounds] site." Based on these findings, DHA concluded that, "Wingra Stone Company has not satisfied its burden of proof to show that the benefits to it in disturbing the Ward Mound Group site outweigh the benefits to all other persons that have an interest in not disturbing the site." More generally, the DHA decision is reasonably read as concluding that there may come a day when granting a petition to disturb will be appropriate, but the balancing of the various factors does not favor disturbing the Ward Mounds at this time.

¶11 As indicated, because Wingra Stone challenges DHA's decision, and we review that challenge de novo, and because we reject each of Wingra Stone's arguments, we need not distinguish between the arguments Wingra Stone makes in its response brief in the appeal and in its cross-appeal briefs. We address and reject each argument below.

### 1. *The “Public Interest”*

¶12 Wingra Stone argues that (1) the statute requires DHA to consider the public interest, (2) “that interest is entitled to a priority,” and (3) DHA erred in neither considering the public interest nor giving it a priority. As far as we can discern, the gravamen of Wingra Stone’s argument is simply that DHA did not properly weigh the public interests that it asserted, namely roads and jobs. However, DHA’s decision shows that it did consider those public interests and reasonably found on the record before it that denying the permit would not harm those interests. Wingra Stone fails to show that DHA’s finding of no harm is unsupported by substantial evidence. It also fails to point to anything in the decision suggesting that DHA gave greater weight to a lower “priority” interest as listed in the statute. Accordingly, we reject its argument.

### 2. *Cultural, Tribal, or Religious Affiliation*

¶13 DHA found that the Ho-Chunk Nation established that it has “a religious and tribal affiliation” with the Ward Mounds. WIS. STAT. § 157.70(5)(c)2.b. We address Wingra Stone’s two separate but related arguments against this finding in turn.

¶14 First, Wingra Stone reads WIS. STAT. § 157.70(5)(c)2. as requiring DHA to weigh the interests of the Ho-Chunk Nation in not disturbing a *specific* burial site, rather than effigy mounds in general, and that here, at best, the evidence showed only that the Ho-Chunk Nation has an interest in effigy mounds generally, but not the Ward Mounds specifically. According to Wingra Stone, the Ho-Chunk Nation presented no evidence of any affiliation with the Ward Mounds specifically. Therefore, according to Wingra Stone, DHA’s conclusion that the

Ho-Chunk Nation has an interest to be weighed under the statute should be reversed.

¶15 The State Historical Society responds that Wingra Stone's interpretation of the statute is too narrow and that the evidence presented at the hearing was sufficient to support DHA's weighing of that evidence under the statute.

¶16 We need not weigh in on whether a reasonable reading of WIS. STAT. § 157.70(5)(c)2. required the Ho-Chunk Nation to show that it has an affiliation with the Ward Mounds specifically, rather than an affiliation with the effigy mounds in the Four Lakes region generally, because we conclude that there was substantial evidence to support DHA's conclusion that the Ho-Chunk people have "[a] cultural, tribal or religious affiliation" with the Ward Mounds specifically.

¶17 At the permit hearing, the Ho-Chunk Nation presented testimony from Dennis Funmaker Jr., a Ho-Chunk Elder and Clan Leader, and Ho-Chunk Tribal Historic Preservation Officer William Quackenbush. Preservation Officer Quackenbush testified that the Ward Mounds are located in the heart of the ancestral homelands of the Ho-Chunk people, the Four Lakes region in southern Wisconsin. Clan Leader Funmaker testified that the Ho-Chunk people claim a cultural and tribal affiliation with all of southern Wisconsin, and that all of the effigy mound sites in the Four Lakes region, including the Ward Mounds, are revered by the Ho-Chunk people as sacred locations with which they claim a cultural, tribal, and religious affiliation. He testified that the Ho-Chunk people believe that they have resided in southern Wisconsin for up to 5000 years and that all mounds and lands in the Four Lakes region of southern Wisconsin are sacred to



them. Preservation Officer Quackenbush testified likewise, and further testified that they claim an interest in any disturbance of native burials within this ancestral area, implying that this includes the Ward Mounds because they are located in the Four Lakes region.

¶18 Both witnesses testified about Ho-Chunk religious and spiritual beliefs concerning burial of the dead and that, according to Clan Leader Funmaker, the Ho-Chunk believe that one of the purposes of effigy mounds is to provide spiritual “protection” to the dead interred within them. Clan Leader Funmaker testified that Ho-Chunk people believe that when the remains of a dead person are disturbed, “the spirit ... goes wandering and it gets lost. They’re never at rest, they’re never at peace.” Based on this belief, disturbing the dead after they have been buried is spiritually forbidden. Clan Leader Funmaker testified that, for the above reasons, the Ho-Chunk people consider the proposed disturbance of the Ward Mounds by Wingra Stone a desecration of those burial sites. The implication from Clan Leader Funmaker’s testimony is that protection of the Ward Mounds, as one of an unspecified number of effigy mounds in southern Wisconsin, has spiritual and religious significance because the desecration of the effigy burial sites goes against the Ho-Chunk people’s beliefs regarding the after-life of the Ho-Chunk dead.

¶19 Based on the above testimonies, DHA concluded that the Ho-Chunk people “have a legitimate tribal and religious affiliation with the [Ward Mounds] and an interest in preserving the site.” DHA then concluded that the Ho-Chunk Nation’s interest in preserving the Ward Mounds burial sites “weighs in favor of denying Wingra’s application for a permit to disturb the site.”

¶20 We are satisfied that DHA’s decision is based on substantial evidence. There was testimony that the Ho-Chunk people consider as sacred all of the effigy mounds throughout the Four Lakes region, which include the Ward Mounds, and believe that desecration of burial sites in general, and the Ward Mounds specifically, is spiritually forbidden for the reason that the remains of Native American people who have died will wander, get lost, and not rest in peace if the burial sites are disturbed.

¶21 Second, Wingra Stone argues that DHA erred in concluding that the Ho-Chunk Nation presented sufficient evidence to show that it has an “affiliation,” within the meaning of WIS. STAT. § 157.70(5)(c)2.b., with the Ward Mounds, because the evidence showed that the Ho-Chunk people established at most a “mere affinity” with the effigy mounds in general in the Four Lakes region. In support, Wingra Stone relies on the following dictionary definitions for the words “affiliate” and “affinity” from MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary> (Nov. 18, 2015): (1) “to affiliate” defined as “to closely connect (something or yourself) with or to something (such as a program or organization) as a member or partner;” and (2) “‘affinity,’ defined as ‘a feeling of closeness and understanding that someone has for another person because of their similar qualities, ideas, or interests.’” Wingra Stone then attempts to draw a distinction between “affiliate” and “affinity,” arguing that “[a]n affiliation involves an actual connection to a group (or in this case, a tribe), whereas an affinity is simply a feeling ... of connection to something or someone.”

¶22 In light of this asserted distinction, Wingra Stone argues that “[t]he record clearly demonstrates that the Ho-Chunk have, at best, a mere *affinity* for all effigy mounds built by Native Americans.” (Emphasis added.) Wingra Stone points to testimony by its archaeology expert and from the two witnesses from the

Ho-Chunk Nation as speaking about religious and tribal affiliation with the effigy mounds in general terms, as opposed to the Ho-Chunk's people's affiliation with the Ward Mounds site specifically.

¶23 Accepting for purposes of this opinion Wingra Stone's proffered dictionary meaning of "affiliate," we conclude that DHA's conclusion that Ho-Chunk Nation established a "cultural, tribal or religious affiliation" with the Ward Mounds is supported by substantial evidence. The evidence showed that, not only have the Ho-Chunk people established an affiliation with effigy mounds located in southern Wisconsin in general, but there was testimony by Clan Leader Funmaker that their affiliation extends to the Ward Mounds by virtue of the Mounds' location in the Ho-Chunk Nations' ancestral home, southern Wisconsin. In other words, using Wingra Stone's stated definition of "affiliate," the evidence established that the Ho-Chunk people have a close connection with effigy burial sites in southern Wisconsin, and in particular the Ward Mounds.

### *3. Oral History Evidence*

¶24 Wingra Stone argues that DHA's conclusion that the Ho-Chunk people have established an affiliation with the Ward Mounds is "suspect," because DHA's decision relies on oral history evidence, without archaeological and scientific support. Wingra Stone argues that the oral history testimony is hearsay that lacks the statutorily required "guarantees of trustworthiness" under the hearsay statute, WIS. STAT. § 908.03(24).

¶25 The State Historical Society argues that Wingra Stone's argument fails for at least two reasons. First, the State Historical Society argues that WIS.

ADMIN. CODE § HS 2.03(2)(c)<sup>2</sup> expressly states that oral history evidence is competent evidence for purposes of documenting a burial site. Second, the State Historical Society argues that WIS. STAT. § 908.03(20), an exception to the hearsay rule, expressly provides that evidence of “[r]eputation in a community, arising before the controversy, as to ... customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located[.]” is not excluded by the rule. The oral history testimony by the two Ho-Chunk leaders falls within this exception because, as the State Historical Society states, “it relates to popular opinion in the Ho-Chunk community regarding customary beliefs about lands in the Ho-Chunk’s ancestral territory and about events of general history important to the Ho-Chunk community.”

¶26 Wingra Stone does not contest the Society’s arguments in its reply brief, and therefore, we deem Wingra Stone to have conceded this issue. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

#### 4. *Land Use*

¶27 Wingra Stone argues that DHA erred by imposing an incorrect “heightened” burden of proof on Wingra Stone when weighing Wingra Stone’s interest in land use, by incorrectly requiring affirmative proof that, unless Wingra Stone is permitted to disturb the Ward Mounds, the quarry will go out of business.

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<sup>2</sup> WISCONSIN ADMIN. CODE § HS 2.03(2) states in pertinent part: “Documentation of a burial site under sub. (1)(c) may include, but is not limited to, the following: ... (c) Oral depositions, affidavits, or oral histories[.]”

Even though in its decision DHA weighed this interest in favor of granting the permit, Wingra Stone contends that by applying this heightened burden, DHA gave Wingra Stone's interest in land use less weight than it was entitled. This argument is meritless.

¶28 Wingra Stone acknowledges that DHA weighed land use in favor of granting the permit to Wingra Stone. Wingra Stone does not fully explain how the purported "heightened" burden of proof tilted DHA's overall decision against Wingra Stone. Wingra Stone's arguments on this topic are conclusory and amount to complaining about DHA's factual findings, which we conclude are supported by substantial evidence.

#### *5. Commercial Purpose*

¶29 Wingra Stone argues that DHA erred by not giving proper weight and sufficient consideration to Wingra Stone's commercial interest in future residential development. Wingra Stone presented testimony by an expert appraiser demonstrating that future commercial use of the Ward Mound site as residential development was best served by granting the permit to disturb. The appraiser testified that denying the permit would result in a mesa overlooking the quarry exceeding 100 feet and that the mesa would not fit into a development plan. DHA found that Wingra Stone's interest in this future commercial use was difficult to weigh "in any meaningful way" because the projected use of the site after quarrying activities are completed are too "remote and speculative." Wingra Stone argues that DHA's reasoning was itself speculative and ignored the undisputed testimony of the appraiser.

¶30 We first reject Wingra Stone's unsupported assertion that DHA chose to ignore the appraiser's testimony regarding the future commercial interest

Wingra would benefit from if granted a permit to disturb. DHA's decision expressly reflects its view of the appraiser's testimony.

¶31 The crux of Wingra Stone's complaint is that DHA did not give what Wingra Stone argues was appropriate weight to its evidence regarding the commercial benefits of granting it a permit to disturb. But DHA heard evidence by the appraiser that the quarry will remain in full operation for decades and that, although challenging, a residential development could then be constructed without disturbing the Ward Mounds. DHA's finding that Wingra Stone could reapply for a permit to disturb the Ward Mounds if such construction was shown not to be possible was not unreasonable in light of that testimony.

#### *6. Scientific, Environmental, or Educational Purpose*

¶32 Wingra Stone argues that DHA's conclusion that the "scientific, environmental or educational purpose" interest set forth in WIS. STAT. § 157.70(5)(c)2.c. does not weigh for or against permitting the disturbance of the Ward Mounds is not supported by substantial evidence. Instead, Wingra Stone argues that the evidence demonstrates that this interest weighs in favor of granting a permit to disturb the Ward Mounds. Wingra Stone points out that granting a permit to disturb will allow Wingra Stone to "carefully excavate the site and preserve any artifacts located at the [Ward Mounds]," thereby providing scientific and educational benefits to the public. Wingra Stone asserts that the above scientific and educational benefits outweigh the "speculative educational interest put forth by [the State Historical Society]." Wingra Stone also argues that there is no dispute that the mesa on which the Ward Mounds sit will gradually deteriorate over time, diminishing any scientific or educational purpose the mounds may have.

¶33 In its decision, DHA determined that the “benefits of this interest is mixed.” In balancing the interests in excavating the Ward Mounds and preserving the mounds, DHA acknowledged that excavating the Ward Mounds would confer some valuable scientific and educational information, but that once the site is excavated, the Ward Mounds would be permanently destroyed, and therefore, the scientific and educational value in being able to view an existing effigy mound would be eliminated. The DHA then found that the interest in disturbing the mounds or preserving the mounds did not weigh in favor of or against granting the permit to disturb the Ward Mounds.

¶34 We conclude that DHA reasonably weighed the prospect of finding scientifically and educationally valuable artifacts in the mounds against the loss of the scientific and educational value of the existence of the mounds that likely contain those artifacts, and found that the two interests balance out each other. As is clear from the DHA decision, just because the Ward Mounds are now inaccessible to the public does not mean they will remain so in future. The mounds are likely about 1000 years old and it was reasonable to infer from the evidence that it is more than possible that the mounds will be accessible to the public several decades hence.

### 7. *Historical Significance of the Burial Site*<sup>3</sup>

¶35 Wingra Stone argues that substantial evidence does not support DHA’s finding that the historical value of the Ward Mounds is significant and weighs against granting the permit to disturb. Wingra Stone contends that the evidence presented related only to the historical significance of effigy mounds in general, and not of the Ward Mounds in particular. Once again, this argument is meritless.

¶36 In its decision, DHA pointed to evidence that effigy mounds, which are a unique feature in the Midwest and especially prevalent in southern Wisconsin, were constructed by Native Americans between 900 and 1300 years ago, and that only approximately 20% of those effigy mounds remain. DHA acknowledged in its finding the historical significance of the remaining effigy mounds as a link to Wisconsin’s prehistoric past, and noted that only effigy mounds that have been cataloged as burial sites have some legal protection from disturbance. DHA drew its finding that the Ward Mounds are historically significant from these facts.

¶37 Implicit in its finding is the inference that, because effigy mounds generally have undisputed historical significance, effigy mounds that are cataloged as containing burial sites, like the Ward Mounds, share that historical significance. Wingra Stone articulates no rationale for taking away from the Ward Mounds the

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<sup>3</sup> The statute directs DHA to consider interests in the “[h]istorical and aesthetic significance of the burial site.” WIS. STAT. § 157.70(5)(c)2.cm. Here, DHA found that “[t]here is no apparent aesthetic significance to the site,” and Wingra Stone does not challenge that finding. Accordingly, we discuss only DHA’s consideration of interests in the historical significance of the Ward Mounds.



undisputed historical significance that attaches to the relatively few remaining effigy mounds generally; rather, the fact that the Ward Mounds are cataloged even more narrowly as effigy mounds that contain burial sites only enhances their historical significance.

¶38 We conclude that substantial evidence supports DHA’s finding that the Ward Mounds have historical significance that weighs against disturbing the site. We note that our conclusion does not foreclose the possibility that in any particular case DHA could find that the historical significance of a cataloged burial site is outweighed by other interests, so as to support granting a permit to disturb the site. Here, however, DHA found that of the three interests that weighed one way or the other (*see supra* ¶10), the interests in cultural, tribal, or religious affiliation together with the interests in historical significance, both in favor of denying the permit to disturb, outweighed the interests in land use in favor of granting the permit to disturb. Having rejected Wingra Stone’s arguments that DHA’s findings as to the three interests are either not supported by substantial evidence or otherwise suspect, we will not disturb DHA’s ultimate weighing of the three interests.

*8. DHA Properly Excluded Alleged Evidence that No Human Remains are in the Ward Mounds*

¶39 Wingra Stone argues that DHA erred by excluding from the permit hearing “the issue of whether human remains are present in the [Ward Mounds] ....” for the purpose of establishing whether the Ward Mounds were correctly cataloged as a human burial site. This argument is without merit.

¶40 The issue of whether there are human remains in a burial site does not fall within the scope of a permit to disturb proceeding under WIS. STAT.

§ 157.70(5)(c). Under the statute, DHA’s authority is limited to “determin[ing] whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under [§ 157.70](2)(e) to have an interest in not disturbing the burial site or the land.” § 157.70(5)(c)2. The authority to determine whether human remains exist in a cataloged burial site lies with the Director of the State Historical Society under the procedure established under WIS. ADMIN. CODE § HS 2.03(6).

### CONCLUSION

¶41 Based on the foregoing reasons, we reverse the circuit court and affirm DHA’s decision denying Wingra Stone’s petition for a permit to disturb the Ward Mounds, pursuant to WIS. STAT. § 157.70(5)(c)2.

*By the Court.*—Orders reversed.

Not recommended for publication in the official reports.

