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Catching up: Ward Mound Group to remain after court rulings deny permission to excavate

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A group of Native American effigy mounds that stands as an island within a working quarry, the subject of extensive litigation in recent years, will remain after recent state appeals court rulings denied permission to excavate the mounds and to have them removed from state protection.

The Ward Mound Group stands within the Wingra Stone quarry in the town of Blooming Grove, just southeast of Madison. Wingra has owned the site since 1962. The mounds were unprotected until a 1986 state law gave the director of the State Historical Society of Wisconsin the authority to preserve burial sites, and the mounds were cataloged as a burial site in 1990.

There were more mounds at the site at one time, but the remainder now consists of a bird effigy and a remnant that was a dog or a fox.

In recent years, Wingra has asked that the site be de-cataloged so that it can mine sand and gravel beneath them. In 2013, Wingra filed a lawsuit contending that there is no evidence of human remains beneath the mounds. Dane County Circuit Judge Ellen Berz ruled in 2014 that the Historical Society's director properly interpreted the state law to deny a request to remove the site from the burial site catalog.

On July 31, the state 4th District Court of Appeals ruled that Wingra failed to provide sufficient evidence that the mounds don't contain human remains, and rejected Wingra's argument that the state Burial Sites Preservation Board ignored its evidence.

"The board's decision shows a careful, thorough, and detailed analysis of all the evidence presented by Wingra Stone," Judge Paul Higginbotham wrote.

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In 2014, Wingra also sued after being denied permission to “disturb” the mounds so that it could mine beneath them. Circuit Judge John Albert sent the case for more fact finding back to the state Division of Hearing and Appeals, which had denied Wingra’s mining request.

Wingra and the state Historical Society, along with the Ho-Chunk Tribe, which has been a party in the cases, appealed Albert’s decision. In another ruling issued on July 31, the same three-judge panel of the state 4th District Court of Appeals ruled against Wingra on a number of grounds.

Lawyers for Wingra said the company has asked the state Supreme Court to review the appeals court rulings.

Legislation proposed to make changes in the law preserving burial sites has also found little traction. In 2015, two Republican state legislators proposed changes to state law that would allow property owners to hire qualified professionals to excavate burial sites for evidence of human remains.

The bill never came up for a vote.

Earlier this year, the Joint Legislative Council’s Study Committee on the Preservation of Burial Sites proposed a bill that makes changes to the current procedure for the addition of burial sites to the state catalog and the

preservation of those sites. The bill, which appears to have stalled in the Assembly, has the support of the Ho-Chunk and Menominee tribes, according to state ethics disclosures.

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