

FILED  
06-25-2021  
CIRCUIT COURT  
DANE COUNTY, WI  
2021CV001505  
Honorable Valerie L.  
Bailey-Rihn  
Branch 3

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH

DANE COUNTY

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 FRIENDS OF BLUE MOUND STATE  
PARK.
4350 Mounds Park Rd Blue Mounds, WI  
53517,

Petitioner,

WISCONSIN NATURAL RESOURCES  
BOARD AND WISCONSIN  
DEPARTMENT OF NATURAL  
RESOURCES

101 S. Webster Street Madison, WI 53707,

Respondents.

Case No.

Case Code: 30607

Administrative Agency Review

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**PETITION FOR JUDICIAL REVIEW**


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The Friends of Blue Mound State Park (the “Friends Group” or “Petitioner”), by its undersigned attorneys Perkins Coie LLP, hereby petitions this court pursuant to Wis. Stat. §§ 227.52 and 227.53 for judicial review of the Wisconsin Department of Natural Resources’ (“WDNR”) and the Natural Resources Board’s (the “NRB”) final decision approving the master plan (the “Plan”) and Environmental Analysis (“EA”) for Blue Mound State Park (the “Park”) on May 26, 2021.

Petitioner further states as follows:

**CHALLENGED DECISION**

1. On May 26, 2021, the NRB approved the Plan and EA for the Park. A copy of the Plan and EA is attached as Exhibit 1.

2. As described more fully herein, in the Plan and EA the WDNR and NRB decided to construct a new snowmobile trail in a sensitive ecological area of the Park. This decision was short-sighted, unjustified, counter to the WDNR’s and NRB’s own admission that snowmobile use

is declining in the region and, most importantly, it was unlawful. This is particularly true given that there is already a snowmobile trail cutting through the Park.

3. The WDNR's and NRB's stated justification for building a new snowmobile trail through one of Wisconsin's most beloved State Parks is that "based on public comments" "many snowmobilers" consider the existing trail to be "undesirable" "ditch-riding." *See* Plan and EA at 6. The WDNR and NRB, however, based this conclusion on a small sample size of public comments; these public comments do not demonstrate that "many snowmobilers" feel this way; nor do they demonstrate that a new snowmobile trail is warranted, particularly given that the WDNR's and NRB's Plan and EA admit that snowmobiling is declining as a recreational use in the region.

4. In fact, the WDNR just five years ago rejected a proposal to establish a new snowmobile trail in the Pleasure Valley portion of the Park—the same area where the new snowmobile trail approved in the Plan is located—citing the "sensitive ecological landscape unique to the park"; the prohibitively high cost of maintaining water control measures, culverts, and flood management structures; and a high level of disturbance that "may cause user conflicts and reduce ecological sustainability." WDNR, Master Plan Amendment – Blue Mound State Park, 8 (Jan. 2016). The WDNR and the NRB have not justified their change of position since 2016 (nor can they).

5. The new snowmobile trail will also unreasonably interfere with other, more popular recreational uses at the Park, including snowshoeing, hiking, and winter biking, which have been identified as having a "High Need Level" in this area in the Statewide Comprehensive Outdoor Recreation Plan ("SCORP"). *See* Plan and EA at 51.

6. At base, the WDNR and NRB have not adequately analyzed the environmental impacts associated with constructing a new snowmobile trail, nor have they justified that such a new snowmobile trail is either safe or needed.

### **PARTIES**

7. Petitioner, The Friends of Blue Mound State Park, is a “Friends Group,” a small nonprofit 501(c)(3) organization dedicated to supporting and assisting WDNR in providing recreational, interpretive, scientific, historical, educational, and related visitor services to enhance Blue Mound State Park (the “Park”). Its address is 4350 Mounds Park Rd, Blue Mounds, WI 53517.

8. The NRB and WDNR are “agencies” of the State of Wisconsin, as that term is defined by Wis. Stat. § 227.01(1) and used throughout Wis. Stat. Ch. 227. The WDNR’s and the NRB’s principal offices are located at 101 S. Webster Street, Madison, Wisconsin 53707.

### **JURISDICTION AND VENUE**

9. Petitioner has its principal office at 4350 Mounds Park Rd, Blue Mounds, WI 53517, which straddles the Dane and Iowa County line, and is therefore a resident of Dane and Iowa County.

10. Dane County Circuit Court is the proper venue for this action as specified in Wis. Stat. § 227.53(1)(a)(3).

11. The Plan and EA are final agency actions subject to judicial review under Wis. Stat. §§ 227.52 and 227.53.

12. This petition is timely filed.

## **BACKGROUND**

13. This petition concerns Blue Mound State Park (the “Park”), a state park consisting of 1,153 acres atop the highest point in southern Wisconsin. The Park straddles Dane County and Iowa County.

14. Regionally, the Park plays an important role in WDNR’s recreation and natural resources management efforts. The Park’s topography, scenic beauty, proximity to Madison and variety of trail-based recreational offerings make it a popular recreation destination, particularly for silent sport recreationists.

15. State law, including Wis. Stat. § 1.11 and Wis. Admin. Code NR Ch. 150, requires the WDNR and NRB to assess the environmental impacts of all significant proposed actions, including the issuance of a “master plan.”

16. A “master plan” is a WDNR-developed plan that describes the authorized land management, resource protection, facility development, and management of recreational use on a department property.

17. WDNR first developed a master plan for the Park in 1985. The Plan that the NRB adopted on May 26, 2021 is a revision of the 1985 master plan and replaces the 1985 master plan and its variances, which were adopted in 2000, 2012, and 2014.

18. The Plan proposes continuing much of the Park’s current recreation management but also proposes some important and undesirable changes, including the development of a new snowmobile trail through the Pleasure Valley Hardwoods Management Area. Of note, there is already a snowmobile trail in the Park, which follows existing roads.

19. The proposed Pleasure Valley Hardwoods Management Area was designated as an ecologically important “primary site”—only one of two areas so designated in the Park—in the Blue Mound State Park Rapid Ecological Assessment, which is attached as Exhibit 2. *See* Exhibit

2 at 5. Primary sites “warrant high protection and/or restoration consideration during the development of the property master plan,” *see id.*, yet the impacts of the proposed snowmobile trail on this area are not discussed in the Plan and EA.

20. Further, as discussed above, in the January 2016 Draft Master Plan Amendment – Blue Mound State Park, the WDNR rejected an alternative that proposed to establish snowmobile use in the Pleasure Valley portion of the Park, the same area where the new snowmobile trail is planned. WDNR, Master Plan Amendment – Blue Mound State Park, 8 (Jan. 2016).

21. WDNR issued the Draft Plan on December 9, 2020. In the Draft Plan, WDNR proposed a snowmobile trail that would cross the Pleasure Valley portion of the Park but did not address the significant impacts of the snowmobile trail that it had found determinative when it rejected a snowmobile trail in the same area approximately five years earlier.

22. On January 8, 2021, Petitioner provided the WDNR with a detailed comment letter reminding WDNR of the scientific rationale the agency had cited in rejecting the proposed snowmobile trail through the Pleasure Valley portion of the Park and providing other reasons why a new snowmobile trail should not be constructed. Petitioner’s comment letter is included as Exhibit 3.

23. Notwithstanding the numerous legal and factual deficiencies in the Plan and EA, the NRB adopted the Plan and EA on May 26, 2021.

24. If the snowmobile trail is constructed as planned, it will significantly harm the sensitive ecological landscape that is unique to the Park, create undue strain on other recreational uses at the Park, and decrease the attractiveness of the Park to silent sport recreationists.

25. The WDNR and NRB failed to adequately analyze the environmental impacts associated with the proposed new snowmobile trail prior to approving the Plan and EA.

### **INTEREST OF THE PETITIONER**

26. The Friends Group is not normally a litigious group; in fact, this is the first time in its thirty-plus years of existence that it has felt the need to resort to litigation to protect the Park.

27. The Friends Group and its individual citizen members have worked tirelessly to enhance the Park. The Friends Group's activities and initiatives have raised nearly \$1 million to benefit the Park, and Petitioner's volunteers annually contribute significant volunteer hours. The Friends Group built the Friends Shelter, a 2,400 square foot ADA accessible all-season shelter and learning center at the trailhead area of the park and funded the installation of solar panels on the Friends Shelter and Park administrative office. The Friends Group has also contributed to and/or fully funded the purchase of recreational equipment and infrastructure, including the swimming pool renovation, playground equipment, mountain bike trail construction and renovation, and ski grooming equipment. In addition, the Friends Group hosts several annual events, including candlelight ski events, a trail run fundraiser, and the Horribly Hilly Hundreds Bike Event fundraiser. The Friends Group also champions and supports educational efforts at the Park and hosts cleanup events to ensure the Park remains clean and in good repair.

28. The Friends Group and its members are substantially aggrieved by the Plan's inclusion of an additional snowmobile trail, which has been rejected twice previously. Petitioner has many members that live near the Park who have and will continue to recreate in the Park.

29. For example, Karl Heil (Barneveld), Gail Van Haren (Blue Mounds), Willi Van Haren (Verona), Greg Weigand (Mt. Horeb), Tom Hawes (Blue Mounds), David Zoromski (Mt. Horeb), and Paul Zoske (Mt. Horeb) are all members that live near and/or recreate in the Park on a regular basis.

30. The Friends Group and its members' uses of the property will be disturbed if a snowmobile trail is constructed in the Park. The trails and other Park areas Petitioner and its

members utilize are likely to be damaged by the new snowmobile trail. Increased snowmobile use could create a dangerous situation for silent sport recreationists at trail crossings, create a nuisance, and impact habitat for native plant and animal species.

31. The Friends Group's and its members' substantial interests are injured in fact, threatened with injury, and are adversely and irreparably affected by the WDNR's and NRB's issuance of the Plan and EA.

### **GROUNDNS FOR REVERSAL**

32. WEPA, Wis. Stat. § 1.11, is the state counterpart of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., a procedural law that requires federal agencies to follow established environmental review procedures, which include reviewing and documenting the environmental impact of their actions. *See* 42 C.F.R. § 137.287 (describing NEPA).

33. Wis. Stat. § 1.11 and Wis. Admin. Code NR Ch. 150 describe the WEPA requirements applicable to the WDNR and the NRB in this case.

34. Under WEPA, an action must (1) be categorically excluded from environmental review; (2) require a more limited environmental assessment ("EA"); or (3) require an environmental impact statement ("EIS").

35. The Plan and EA, however, do not comply with WEPA and are patently unlawful. The EA portion of the document cannot reasonably be found to constitute an assessment of anything. Among other deficiencies, it does not sufficiently identify or evaluate alternatives, it fails to fully and adequately analyze the snowmobile trail's many likely environmental harms, and it gives short shrift to the public comments received. In fact, the WDNR admits that the snowmobile trail could cause the loss of trees and other vegetation in a management area where it is also proposing to "encourage large tree growth." *See* Exhibit 1 at 30, 87. Rather than study these potential impacts, however, the WDNR merely notes that "Maintenance of canopy coverage in the

forest block areas would be considered during trail siting on DNR lands.” *Id.* at 87. This is not the type of rigorous environmental analysis that is required by WEPA.

36. The WDNR’s and NRB’s inclusion of the snowmobile trail in the Plan is also arbitrary, capricious, an abuse of discretion, and otherwise unlawful for numerous other reasons.

37. For example, the WDNR and NRB have not justified their change of position since 2016 when they rejected a snowmobile trail in the same area, which makes WDNR’s proposal and the NRB’s approval arbitrary, capricious, and an abuse of discretion.

38. The WDNR and NRB have also failed to abide by their master planning rules and state law regarding master planning for state properties when including the snowmobile trail in the Plan. *See* Wis. Admin. Code NR § 44.04(2).

39. The WDNR’s and NRB’s inclusion of the new snowmobile trail in the Plan also fails to comply with the planning procedures in Wis. Admin. Code NR § 44.04(8). For example, the Plan does not adequately analyze the use, capability, and demand of existing recreation uses when evaluating the need for a new snowmobile trail. The Plan also does not account for the full economic impacts of the proposed snowmobile trail and lacks an analysis of the costs associated with building the trail.

40. The proposed snowmobile trail is not compatible with the Park’s ecological capability.

41. The proposed snowmobile trail will cause unnecessary public safety risks, which the WDNR and NRB have not adequately evaluated. For example, an increase in trail crossings would put non-motorized trail users at risk for collisions, and there is little analysis of the safety impacts of the different snowmobile trail alternatives.



42. The Plan and EA also do not account for the potential economic impacts of the proposed snowmobile trail. The Plan and EA infer that snowmobile clubs would bear the cost of trail construction but do not state so definitively. *See, e.g.*, Plan and EA at 76 (“Snowmobile trail construction costs *are generally born* by local snowmobile clubs. *It is expected* that local snowmobile clubs would fund the construction and maintenance of the snowmobile trail.”) and 91 (“Local snowmobile clubs *would be tasked* with funding the construction and maintenance of the trails under all alternatives.”) (emphasis added). In addition, the Plan and EA do not account for the cost to re-route a section of the Weeping Rock winter hiking/snowshoe trail that would be displaced by the proposed snowmobile trail. *See* Plan and EA at 97. According to the Plan, the creation of a new trail can cost as much as \$25,000 per mile. *Id.* at 75.

43. The WDNR’s and NRB’s siting of a snowmobile trail in a Type 3 recreational use setting was also arbitrary, capricious, an abuse of discretion, and otherwise unlawful pursuant to Wis. Admin. Code NR §§ 44.06 and 44.07.

44. The WDNR’s and NRB’s analysis of the snowmobile trail alternatives in the draft EA was also unlawful and woefully deficient under Wis. Stat. § 1.11 and Wis. Admin. Code NR § 150. The analysis failed to adequately consider cultural resources, health and safety, and economic impacts or impacts to rare, endangered, and protected species. Moreover, the evaluation of alternatives is conclusory and not supported by facts. This is not a sufficient “hard look” under WEPA.

45. The WDNR’s and NRB’s purported justification for the new snowmobile trail was also unfounded, arbitrary, capricious and an abuse of discretion. As previously described, the WDNR’s and NRB’s stated justification for building a new snowmobile trail through the Park is that “based on public comments” “many snowmobilers” consider the existing trail to be

“undesirable” “ditch-riding.” *See* Plan and EA at 6. The WDNR and NRB, however, based this conclusion on a small sample size of public comments; these public comments do not demonstrate that “many snowmobilers” feel this way; nor do they demonstrate that a new snowmobile trail is warranted, particularly given that the WDNR’s and NRB’s Plan and EA admit that snowmobiling is declining as a recreational use and is not designated as a “High Need Level” recreation activity in the SCORP. *See* Plan and EA at 51.

46. The WDNR’s and NRB’s failure to prepare a full environmental impact statement (EIS) was unlawful. The WDNR and NRB should have prepared a full EIS because the construction of the snowmobile trail may result in deleterious effects on especially important, critical, or sensitive environmental resources; involves broad public controversy; and may result in substantial risk to the safety of Park users.

47. In violation of state law, the WDNR and NRB also failed to adequately evaluate the adverse environmental effects of snowmobile uses in the Park, which cannot be avoided if the Plan is implemented (including impacts to, among other things, wildlife and vegetation). *See* Wis. Stat. § 1.11(2)(C)(1). For example, the Plan notes that the Park lies within a high potential zone for the rusty patched bumble bee, a federally endangered species, yet WDNR apparently made no effort to investigate whether the species is, in fact, found in the proposed snowmobile trail area. The proposed snowmobile trail also cuts through Pleasure Valley Woods, which was designated as an ecologically important “primary site”—only one of two areas so designated in the Park—in the Blue Mound State Park Rapid Ecological Assessment.

48. In violation of state law, the WDNR and NRB failed to adequately evaluate the tradeoffs between local short-term uses of the snowmobile trail and the maintenance and enhancement of long-term productive uses. *See* Wis. Stat. § 1.11(2)(C)(4). In fact, on page 92,

the Plan notes that general participation in snowmobiling is expected to decrease 10 percent by 2030, and a 39 percent decrease in snowmobiling is expected once the impacts of climate change are factored into the analysis. Building a snowmobile trail to the detriment of other more productive and popular long-term uses such as snowshoeing, hiking, and winter mountain biking is short-sighted, a waste of valuable natural resources, and is arbitrary and capricious.

49. In violation of state law, the WDNR and NRB also failed to adequately describe any irreversible and irretrievable commitments of resources that would be involved in the proposed snowmobile trail. *See* Wis. Stat. § 1.11(2)(C)(5). The Plan states there will be no irretrievable commitments of resources without stating why.

50. In violation of state law, the Plan and EA also inadequately analyze reasonable alternatives to the new snowmobile trail. *See* Wis. Stat. § 1.11(2)(e). There are very few details regarding the width and length of the snowmobile trails proposed under the various alternatives and no information about how much forest or vegetation is expected to be cleared to construct the proposed alternative trails. There is also very little information about the full economic impacts of the snowmobile trail alternatives.

51. As discussed above, the WDNR's actions injure or threaten to injure the substantial interests of the Petitioner and its members, and the injury to the Petitioner and its members is different in kind and degree from the injury to the general public. The Petitioner and its members' use and enjoyment of the Park will be disturbed if a new snowmobile trail is constructed. The Petitioner and its members have invested substantial time and financial resources making the Park a premier destination for silent sports recreation, and the development of a new snowmobile trail will greatly impact their investment by harming plant and animal species and impeding the overall experience of the Park, among other things.

**RELIEF REQUESTED**

WHEREFORE, Petitioner requests judgment in its favor as follows:

1. Setting aside the new proposed snowmobile trail portion of the Plan and EA as unlawful;
2. Declaring that the WDNR and NRB are required to undertake the necessary environmental review of the new snowmobile trail pursuant to WEPA;
3. Remanding the snowmobile trail portion of the Plan and the EA to the WDNR and NRB and directing the WDNR and NRB to amend the relevant portions of the Plan, conduct further analysis, and perform additional consultation as necessary;
4. Ordering such interlocutory or final relief as is necessary to preserve the interests of Petitioner and other members of the public; and
5. Other relief as the court may deem just and equitable, including payment of all of Petitioner's attorney fees.

DATED: June 25, 2021

PERKINS COIE LLP

By: electronically signed by Brian H. Potts  
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