

Stockbridge Bowl Harvesting Project – SBA Proposed Course of Action

The Stockbridge Bowl Association (the “SBA”) believes that it should be possible to get the necessary approvals to be able to harvest between 15 – 20 acres on Stockbridge Bowl in a growing season, which would be a significant increase in the amount of harvesting currently permitted. This could be achieved by filing a Notice of Intent (“NOI”) as a water dependent limited project under 310 CMR Sec. 10.53(3)(l) of the Wetland Protection Act.

The SBA is willing to pay for the expenses incurred to prepare such an NOI, including the fees associated with pursuing this alternative path to increase the amount of harvesting permitted, as outlined below. The SBA would provide the NOI and other necessary materials to the Town of Stockbridge (the “Town”), at which point the Town would be able to submit the documents as presented or to make such revisions to the draft NOI as the Town deems necessary prior to submission. While the Town would not be required to submit the NOI, the SBA is looking for the Town to provide a non-binding preliminary indication that it is open to seriously consider proceeding in this manner prior to the SBA expending time and incurring costs as necessary in connection with the preparation of the NOI.

The SBA believes that the foregoing could be accomplished if the Town were to proceed to file the NOI, as follows:

1. File an NOI for a limited project under Section 310 CMR Sec 10.53(3)(l)
 - a. The Town previously filed for an NOI for up to 10 acres under 310 CMR Sec 10.60(3)(e). The SBA is recommending that an NOI be filed instead under Section 310 CMR Sec 10.53(3)(l), as there is no acreage limitation under the limited project provision set forth in this section. However, the limited project provision states that there may be no adverse effect on specified habitat sites of Rare Species.
 - b. Thus, it will be necessary to obtain a no adverse impact letter from National Heritage and Endangered Species Program (“NHESP”).
2. Apply to NHESP for approval
3. Ask the Stockbridge Conservation Commission (the “Commission”) to waive the wildlife habitat evaluation, since the NHESP approval overrides Section 10.60. And, there are no threshold limits under the limited project provision that trigger 10.60.
 - a. Section 10.60 requires a determination that certain work will have no adverse affect on wildlife, including work that exceeds the thresholds identified in Sections 10.54 (Bank); 10.57 (Land Subject to Flooding); and 10.58 (Riverfront Area). Section 10.60 also identifies the threshold requirements in 10.56(4)(a)(4) (Land Under Water) as one that cannot be exceeded without a wildlife assessment. This threshold is 10% or 5,000 square feet, whichever is less.
 - b. However, the DEP has decided that under the state Wetlands Protection Act regulations, the issuing authority (here, the Commission) can waive the wildlife

assessment for a limited project in a Riverfront Area, which has a similar threshold that otherwise triggers the wildlife evaluation in Section 10.60. So, if the NOI is filed under the limited project provisions, the Commission may waive the requirement for a wildlife evaluation.

- c. Thus, under the limited project section of the regulations, the Commission could determine that no wildlife habitat evaluation is required.

Adverse effects are defined to mean the alteration will, after two growing seasons, “substantially reduce its capacity to provide the important wildlife habitation functions listed in the regulations, essentially food, shelter and breeding areas for wildlife.

4. If the Commission nevertheless requires a wildlife habitat evaluation, obtain one that states that harvesting of 15-20 acres will have no adverse effect after two growing seasons. If a wildlife habitat evaluation is necessary, the SBA would pay for the expense associated with obtaining such evaluation.