

CHAPTER 40

STOCKBRIDGE-MUNSEE TRIBAL LAW LAND ORDINANCE

Relating to the Regulation and Utilization of Tribal Land

Statement of Purpose: An ordinance to provide for the common benefit of the members of the Stockbridge-Munsee Band of Mohican Indians through the establishment of procedures governing the assignment of land to individual Tribal members.

Section 40.1 Interpretation

This ordinance shall be deemed a reasonable and proper exercise of the sovereign power of the Stockbridge-Munsee Tribe for the protection of the Tribe's land, welfare, health, peace and culture. All provisions of this ordinance shall be liberally construed for the accomplishment of these purposes.

Section 40.2 Definitions

In this ordinance, unless the context otherwise requires:

(A) "Agreement" means Grant of Land Assignment, will, trust agreement or any other agreement or contract.

(B) "Dwelling" means a habitable structure which is designed for residential purposes.

(C) "Grantee" means an enrolled Tribal member who has received an approved land assignment from the Stockbridge-Munsee Tribe.

(D) "Land Assignment" means any tribal land which, through the written consent of the Stockbridge-Munsee Tribal Council, is designated for the use by an enrolled Tribal members for non-commercial/business purposes.

(E) "Land Committee" means the members of the Stockbridge-Munsee Tribe serving as an investigatory and advisory body to the Stockbridge-Munsee Tribal Council in reviewing land assignment applications.

(D) "Married" means legally married persons, but does not mean common law marriage or other informal living arrangements.

(E) "Subdivision " means the Ah Toh Wuk residential area, the Koo Yi Kun residential area, the Koan Tuk, Taconic, the former Beyer property in Red Springs, and the Tribal Housing residential area including the area along Camp 14 Road from Moheconnuck Road to Murphy's

Road, the roadways, and the general area in between, including Birch, Oak, Maplewood, Cherry, Poplar and Elm Streets. Subdivision area also includes unnamed future residential areas/neighborhoods where the Tribe has subdivided lots/assignments and has installed or will install infrastructure such as roads, sewer, water, gas, electricity or other similar infrastructure.

(F) "Tribal Council" means the authorized, governing body of the Tribe.

(G) "Tribal Land" means any land within the boundaries of the Stockbridge-Munsee Reservation as established by the Treaty of 1856, 11 Stat. 679, where the Title is held in trust for the benefit of the Stockbridge-Munsee Tribe and any land owned by the Tribe.

(H) "Tribe" means the Stockbridge-Munsee Band of Mohican Indians.

Section 40.3 General

(A) Only enrolled members of the Tribe who are eighteen years of age or older are eligible for land assignments.

(B) Assignments of land shall be made by the Tribal Council on the basis of need for residential or recreational purposes.

1) Beginning with land assignments issued after January 2, 2006 in subdivisions, land assignments will revert back to the Tribe unless the assignee has substantially completed a dwelling on the land assignment within two years after the Grant of Land Assignment is executed. Tribal Council action is necessary before the land assignment reversion is effective.

(a) The assignee may petition the Land Committee and Tribal Council to request a one-time, two-year extension. The assignee must show good cause for the extension. If the extension is granted by Tribal Council, the assignee must have substantially completed a dwelling on the land assignment within two years after the Tribal Council action, or the land assignment will revert back to the Tribe.

(b) If a land assignment reverts back to the Tribe, the Tribal Member must wait one year to apply for another land assignment.

(c) If a land assignment is relinquished to another Tribal Member, the new assignee must have a substantially completed dwelling on the land assignment within the relinquisher's original timeline(s), except in extenuating circumstances if approved by Tribal Council.

(C) No assignment will be made in excess of five acres if such application for an assignment is dated after June 15, 1979.

(D) Grant assignments approved and issued prior to June 15, 1979 are hereby declared valid

notwithstanding the five acre limit imposed by s. 4 (c) of this ordinance.

(E) Enrolled members may hold either a residential or a recreational assignment of Tribal land.

Section 40.4 Land Committee

(A) Committee.

(1) The Tribal Council shall establish a five member land committee from among the enrolled members.

(2) In no event shall a member of the land committee serve as a member of the Tribal Council during the term of his/her appointment as a land committee member.

(3) Except to establish staggered terms in 2005, all appointments shall be for a two year term. In October of 2005, two appointments to the land committee will be a one-year term, and the other three appointments will be for a two-year term. In October of 2006, the two expiring one-year term appointments will be for a two-year term. Thereafter, in odd-numbered years three appointments will be made to the land committee and in even-numbered years, two appointments will be made to the land committee.

(4) The Tribal Council retains the authority to remove any appointed committee member at will for just cause and to appoint another Tribal member to fill the vacant seat.

(B) Powers and Responsibilities of the Committee. The Land Committee shall exercise the following powers and responsibilities:

(1) Accept land applications, voluntary relinquishments, and requests for permits of temporary use. Investigate and review all applicable resources and information to determine the suitability of the request;

(2) Present data, along with the committee's recommendation to the Tribal Council on grant or denial of the application;

(3) Present committee's recommendations to Tribal Council regarding voluntary relinquishments.

(4) Advise the Tribal Council in matters relating to Tribal land use;

(5) Submit recommendations and reports to Tribal Council on land-related issues. All such recommendations and reports shall be in writing, bearing the signatures of at least three Land Committee members.

(6) Perform any other land-related duties or functions prescribed by the Tribal Council.

Section 40.5 Land Assignments

(A) Grants of land Assignments are hereby acknowledged to be a valid contract between the Tribe and the Grantee. Land Assignments issued prior to the effective date of this ordinance are hereby reaffirmed and reacknowledged as valid contracts between the Tribe and Grantee. Land assignments made after July 2, 2002 shall be identified as either residential or recreational assignments.

- (1) Residential assignments shall be in conformance with Chapter 43, the Land Use Code.
- (2) Recreational assignments are not intended to be residences for the grantee. Examples of recreational uses include: camping, vacationing, picnicking, and temporary hunting camp.
 - (a) Recreational assignments are only available in commercial forest and multi purpose designations as defined in Chapter 43, the Land Use Code.
 - (b) Recreational assignments are not be used to circumvent other provisions of Tribal law.
 - (c) Grantees may not build permanent structures on recreational assignments.
 - (d) Recreational assignments are not permitted to have electricity unless electricity can be obtained from an existing electric line within 50 feet or less.
 - (d) New wells and new septic are not permitted on recreational assignments.
- (3) Business/commercial uses of land are covered by individual leases and/or other applicable contracts with Tribal Council.

(B) In addition to the terms and conditions imposed by this ordinance, all assignments shall be subject to all terms and conditions contained in Chapter 43, the Land Use Code and other applicable codes.

(C) All grantees shall be required, upon the written request of the Tribal Council, to comply with any soil, water, or timber conservation program that may be initiated by the Tribal Council.

(D) Structures shall be built in accordance with Chapter 43, the Land Use Code and other applicable codes

(E) Except for valid Land Assignment grants, no person shall have the right to occupy or use Tribal land or Tribal resources thereon, without the written approval of the Tribal Council, or other permitted uses from Chapter 43, the Land Use Code and other applicable codes. Written approval may be evidenced by the terms of the land assignment and/or any applicable Tribal permits.

(F) The grantee may designate in writing his/her named beneficiaries to such land assignment. Such reassignments shall be issued following an application for reassignment and a Tribal Council determination that the land subject to the assignment is available and not required for a

Tribal public purpose. Such reassignments are also subject to the restrictions set forth in this ordinance.

(G) Notwithstanding any other agreement, if a grantee is married to a non-member of the Tribe and dies, the surviving non-member spouse shall be entitled to occupy the residential assignment, not to exceed five acres for his/her lifetime or until marriage to a non-member of the Tribe, whichever occurs first. If the surviving non-member spouse does not wish to reside on the assignment, said spouse shall be entitled to receive compensation from the new grantee for the value of all improvements placed by the deceased grantee and not otherwise disposed. Upon termination of the surviving non-member spouse's right to use and occupy said assignment, such surviving non-member spouse shall have a reasonable period of time, not to exceed six (6) months to vacate said assignment.

(H) Notwithstanding any other agreement, if a grantee is married to a member of the Tribe and the grantee dies, the land assignment, not to exceed five acres, shall revert to the surviving tribal member. If the surviving tribal member has an existing valid residential land assignment, the surviving tribal member must relinquish one land assignment. If the surviving member spouse does not wish to reside on the assignment, said spouse shall be entitled to receive compensation from the new grantee for the value of all improvements placed by the deceased grantee and not otherwise disposed. Upon termination of the surviving member spouse's right to use and occupy said assignment, such surviving member spouse shall have a reasonable period of time, not to exceed six (6) months to vacate said assignment.

Section 40.6 Temporary Permits

(A) Permits for temporary use and occupancy of Tribal lands may be granted by Resolution of the Tribal Council, at its discretion.

(B) Said temporary permits shall be subject to any terms, conditions, and qualifications designated under this ordinance, Chapter 43 the Land Use Code and any other applicable Tribal ordinance, rule, regulation, or policy.

Section 40.7 Violation: Jurisdiction

(A) Except for duties and responsibilities of the land committee and Tribal Council, the Land Department has day to day responsibilities associated with land assignments.

(B) Any person who violates any provision of this ordinance or any rule or regulation authorized thereunder, shall be guilty of a Tribal Civil offense punishable by a fine of not more than five hundred dollars (\$500.00).

(C) The Stockbridge-Munsee Tribal Court shall have jurisdiction over all violations of this ordinance and over all persons who are recipients of a temporary permit issued pursuant thereto, and may, in addition to the penalty described in Section 40.8 (A), grant such other relief as is necessary and proper for the enforcement of this ordinance.

LEGISLATIVE HISTORY

Ordinance No. 11-A Lands, as adopted by the Stockbridge-Munsee Tribal Council Nov. 21, 1939 and returned by BIA for lack of signature space. (10/15/40 BIA Letter to Chairman); Ordinance No. 1 Lands as adopted by the Stockbridge Munsee Tribal Council on Sept. 27, 1940 and approved by the Department of the Interior, June 30, 1941 and as amended by Stockbridge-Munsee Resolution No. 0663 (June 15, 1979). See also Tribal Agricultural Land Standard Assignment (Form approved by the Secretary of the Interior June 30, 1941) and Grant of Standard Assignment (Form approved June 30, 1941 as amended by Stockbridge Munsee Resolution No. 0988, July 15, 1986); and Tribal Council meeting minutes of January 2, 1975, June 15, 1979, and April 1, 1986.

A new land ordinance approved for adoption by Tribal Council on March 3, 1987, by Resolution No. 0988, as presented herein.

Legislative attorney's note: Sections 40.3(B) (deleting the word exclusive), 40.5(B)(4) (reflecting the time frame for improvements be three years), 40.6(A) (deleting Secretary of Interior Approval), and 40.6(F) (deleting the word exploit) amended by Tribal Council on June 12, 1987, Resolution No. 1037. However, the amendment had not been incorporated into the Ordinance. Upon this discovery, the amendment was incorporated into the Ordinance on July 27, 2000 by the Legal Department.

Section 8 (B) which is now Section 40.8 (B) amended by Resolution 1552-95 on Nov. 7, 1995 by replacing Tribal Council with Tribal Court.

Several amendments and other modifications adopted by Tribal Council on August 20, 2002, by Resolution No. 045-02. Section 40.1, Short Title is deleted, resulting in the other sections being renumbered. Other sections deleted were Section 40.5 [now 40.4] (B)(3), (B)(4), (B)(7), (B)(8), and Section 40.6 [now 40.5] (D), (G), (J). Sections amended were 40.2 [now 40.1], 40.3 [now 40.2] (A), (B), 40.4 [now 40.3] (A), (B), (C), (D), (E), 40.5 [now 40.4] (A)(1), (A)(3), (A)(4), (B)(1), (B)(2), (B)(5) [now (B)(3)], (B)(6) [now (B)(4)], (B)(9) [now (B)(5)], 40.6 (now 40.5) (A)(1), (A)(2), (B), (E) [now (D)], (H) [now (F)], (I) [now (G)]. Approved by BIA on September 18, 2002.

On May 3, 2005, Tribal Council by Resolution No. 028-05 amended Chapter 40 by creating Sections 40.2(A),(B),(E); Section 40.4(A)(3); Section 40.5(H); and by amending Section 40.5(A), 40.5(A)(1), 40.5(A)(3); 40.5(E); 40.5(G). Approved by BIA on February 24, 2006.

On November 22, 2005, Tribal Council by Resolution No. 07-06 amended Chapter 40 by creating sections 40.2(B); 40.2(F); 40.2(G); 40.3(B)(1)(a),(b),(c); 40.4(B)(3); 40.5(A)(2)(a),(b),(c),(d); 40.7(A) and technical changes to sections 40.5(B),(D)(E)(H); and 40.6(B). Approved by BIA on April 10, 2006.