

**CHAPTER 43**  
**STOCKBRIDGE-MUNSEE TRIBAL LAW**  
**MOHICAN LAND USE CODE**

**Section 43.1 TITLE**

This law shall be known as the Mohican Land Use Code.

**Section 43.2 AUTHORITY**

The Mohican Land Use Code is enacted by the Stockbridge-Munsee Band of Mohicans Tribal Council pursuant to its general duty and authority under Article VII of the Constitution, as an exercise of its governmental powers to govern the use, management and administration of lands on the Stockbridge-Munsee Indian Reservation.

**Section 43.3 PURPOSE AND LEGISLATIVE INTENT**

(A) The purpose of this code is to protect the health, safety, and welfare of the members of the Tribe and to protect and preserve the environment and all natural resources including land, forests, wildlife, air and waters, through appropriate uses of Mother Earth.

(B) This Code incorporates and implements the 1999 Land Use Plan, the 1999 Land Use Impact Review, and the 1996 Forestry Management Plan.

(C) The Tribal Council's intent in adopting this Chapter is to preserve and protect the political integrity and the economic survival of the people of the Stockbridge-Munsee Community by exercising the Tribe's inherent powers of self-government, and as a means of regulating and directing the overall impact of reservation land development.

**Section 43.4 JURISDICTION**

The Mohican Land Use Code shall apply to all lands within the exterior boundary of the Treaty with the Stockbridge and Munsee of 1856, that are owned in fee by the Tribe, held in trust for the Stockbridge-Munsee Community, proclaimed lands, or lands held in trust by individual members of an Indian Tribe. However, Tribally owned fee lands may be subject to state and/or local zoning laws or may be subject to terms of an agreement between the Tribe and local units of government. This Code shall apply to all persons and activities within the jurisdiction, to the extent such Code is not inconsistent with applicable federal law, or Tribal law.

## **Section 43.5 DEFINITIONS**

**Access Road:** A means of vehicular approach, entry to, or exit from property.

**Accessory Use:** A building or infrastructure use which is subordinate to and serves a permitted use and is located on the same land as the permitted use without Land Use Review Board Approval.

**Assignment:** An area of tribal land set aside for a tribal members use and occupancy as established by the Tribal Land Ordinance.

**Building:** Any structure built for the supporting or sheltering of any use or occupancy.

**Building Plan Review Permit:** A permit that allows construction to commence as approved by Land Management. The “Building Plan Review Permit” requires a plan to be submitted to Land Management for review for any new building, which includes home construction, modular home, mobile home (new/used), any structure that is built as a four seasons room, or any type of building used as a business.

**Camping:** Temporary occupancy of any site utilizing tents, camper trailers or other vehicle designed for recreational purposes. Temporary under this definition means 30 days with right to apply for 3 subsequent 30-day renewals.

**Commercial Farming:** Activities related to the growing and harvesting of food, feed, other crops, animals, and animal products which are sold or traded, and which utilizes more than five acres of land.

**Conditional Use Permit:** A permit that authorizes the recipient to make use of property in accordance with the requirements of this Code as well as any additional requirements imposed. Only conditional uses identified in the Code shall be permitted.

**Days:** Except where specifically designated, days means calendar days.

**Designation:** The term used to describe that certain lands be used for certain defined purposes.

**Dwelling:** Any building or portion thereof which is designed, designated or used for residential purposes.

**Forestry Permits:** Permits issued by the Forestry Department that authorize the recipient to gather and use forest products in accordance with the requirements of the Tribal Forest Resources Ordinance.

**Four Seasons Addition or Structure:** Any structure that can be utilized as part of a dwelling but excludes garages, barns, sheds, pole buildings, porches, decks, or other similar structures.

**General Land Use Permits:** Permits issued by the Land Management Department or the Forestry Department that authorize the recipients to make use of property in accordance with the requirements of the Land Use Code or other Tribal laws. The following types of permits are included under this definition: Building Plan Review Permit, to include New Construction, Installation of a Modular Home, Installation of a New or Used Mobile Home, Construction of a Four Seasons Addition, Sanitation, Free-Use, Agricultural, Camping, and Tree Removal.

**Heavy Manufacturing:** Industrial operation where more than one building is involved, where a great deal of activity and storage occurs outside of buildings, and whose effects (such as smoke, noise, light, heat, and odors) can be detected beyond property lines.

**Home Business Use :** Any use of a private home dwelling as a business venture which is clearly secondary to the main use of the home as a dwelling place, does not change the character thereof, has only limited exterior evidence of such secondary use, and is conducted only by family members residing in the home. This would include businesses operated on one's home land assignment, but not using the home.

**Junkyard/Recycling Center:** a collection or storage of any unsightly material or objects that is considered foreign to the natural landscape of the area, such as, but not limited to: unlicensed and inoperable vehicles, scrap materials, or any other collection of objects or materials.

**Kennel:** a place where four or more dogs over the age of 3 months are boarded, bred, or offered for sale.

**Land Management Specialist:** a person in the Tribal Land Management Department who administers the programs of the Department.

**Land Management Technician:** a person in the Tribal Land Management Department who maintains the technical aspects of the Department such as GIS, GPS, and surveying of land.

**Land Use Review Board:** the group of persons appointed under this Code to make recommendations and/or decisions regarding land use. The Land Committee functions as the Land Use Review Board.

**Light Manufacturing:** Industrial operation where all or nearly all activity is contained within a single building, does not require extensive loading and unloading facilities or outside storage, whose effects (such as smoke, noise, light, heat, and odors) cannot be detected beyond the boundaries of the property.

**Low Density:** a minimal or low per capita ratio of dwellings per fixed measure of land area.

**Manufactured home:** a factory built structure that is manufactured or constructed under the authority of the National Manufactured Home Construction and Safety Standards Act to be used for human habitation. A manufactured home is not a mobile home.

**Medium Density:** Contains a low per capita ratio of dwellings per fixed measure of land (0.8 to 2.49 acre lots) and its function is to better accommodate community sewer and water.

**Mobile home:** a transportable single-family dwelling intended for permanent occupancy that by original design is capable of being moved on public streets and highways.

**Modular Home:** a manufactured or factory built home that conforms to standard building codes and is not equipped with any wheels or axles allowing it to be moved, other than for purposes of moving to a permanent site.

**New Construction:** the erection of a new structure or other permanent fixture on unused land.

**Permitted Use:** A use of land that is allowed within a designation.

**Person:** Individuals, tribal government, firms, organizations, corporations, associations and any other similar entity.

**Reservation and/or Tribally Regulated Lands:** Means the lands identified in section 43.4 in this ordinance.

**Structure:** anything constructed or erected that requires location on the ground or attached to a location on the ground, but not including fences.

**Tribal Council:** the governing body of the Stockbridge-Munsee Community, Band of Mohican Indians.

**Travel Trailer:** a structure built on a chassis with or without a complete kitchen or toilet, and designed to be used for temporary habitation for travel or recreation.

**Uniform Dwelling Code:** Notwithstanding any other law, Uniform Dwelling Code means Wisconsin Comm Chapters 16, 20, 21, 22, 23, 24, 27, 82, 83, 84, 85, and 86 (electrical, plumbing, manufactured homes, septic, and building codes) including future amendments to the Wisconsin Administrative Code Commerce Chapters, except the Stockbridge-Munsee Community retains exclusive jurisdiction regarding all permits, inspection and other enforcement.

**Unnecessary hardship:** any circumstances which were not self-created and which affect a particular land assignment or lot, making strict adherence to the requirements of this code as to area, density setbacks, or frontage burdensome or unreasonable.

Variance: An exception or waiving of the provisions of this Code for standards for yard setbacks, minimum lot requirements, or density requirements where it would cause unnecessary hardship to adhere to the Code.

Yard: an open space on the same lot with a building and unoccupied by structures.

Front yard: a yard extending the full width of the lot or assignment and that is between a building and the road-right-of-way.

Rear yard: a yard extending the full width of the lot or assignment and that is between a building and the rear lot property line or assignment line.

Side yard: a yard on each side of a building extending from the building side wall to the side lot property line or assignment line.

### **Section 43.6 ESTABLISHMENT OF LAND USE DESIGNATIONS**

A. The Stockbridge-Munsee Tribal Council, by adoption of the Preliminary Mohican Land Use Plan in October 1999, approved designating areas of tribal land to be used for certain purposes. That plan, as revised, and future amendments are incorporated by reference. The Stockbridge-Munsee Forestry Management Plan as approved in 1996 and any future amendments are also incorporated by reference.

**B. Newly acquired lands:** After seeking input from the Core Planning Committee, the Land Management Department will make a recommendation to the Land Use Review Board regarding designations of newly acquired lands. The Land Use Review Board, following a 30-day posting and public hearing, will make a recommendation to the Tribal Council, for approval.

All reservation lands are divided into designated areas as follows:

<u>Designation</u>	<u>Abbreviation</u>
43.7.A Housing/Residential	H/R
43.7.B Commercial/Enterprise	C/E
43.7.C Industrial/Manufacturing	I/M
43.7.D Government Facilities/Public Use	G/P
43.7.E Commercial Forest	CF
43.7.F Reserve	R
43.7.G Parks and Recreation	PR
43.7.H Utilities/Infrastructure/Transportation	U/T
43.7.I Historic/Cultural	H/C
43.7.J Agricultural	A
43.7.K Multi-purpose/Mixed Use	M/M

The requirements set for each designation shall be minimum requirements and shall apply uniformly to each except as provided by the procedures set forth in this chapter.

A map of land use designations on tribal lands and entitled "Mohican Land Designation Map" is incorporated as a part of this Code and is adopted by reference and declared to be a part of this Code. No changes of any nature shall be made to the Map, Land Use Plan, or Forest Management Plan except by Tribal Council Resolution. The most recent map shall be identified by the signature of the Tribal President together with the date of adoption of said map.

## **Section 43.7 STATEMENT OF PURPOSE AND PERMITTED USES**

The following sections specify the purpose, intent, and permitted uses for each class of land use designation identified under Section 43.6 of this Code.

### **43.7 (A) HOUSING/RESIDENTIAL**

This designation is intended to provide lands for low to medium single-family dwellings for human habitation, and for certain private and public facilities or services that are compatible with neighborhood surroundings.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary land use permit:

- (a) Single-family dwellings.
- (b) Duplex (2-family, 3-family, 4 family) dwellings.
- (c) Multi-family (more than 4 families) dwellings.
- (d) Manufactured, modular, mobile homes to be used as dwellings.
- (e) Parks and playgrounds and related structures.

(2) Permitted Accessory Uses.

- (a) Private garages/private storage of motor vehicles.
- (b) Accessory uses customarily incidental to the permitted uses.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a conditional use permit:

- (a) Governmental facilities uses.
- (b) Churches and religious sites.
- (c) Public recreational facilities.

- (d) Home Business use. (Home business use may differ if the home is in a subdivision where homes are in closer proximity, depending on what type of business involved.)
- (e) Public and private schools.
- (f ) Farming, orchards, nurseries for private use.
- (g) Travel trailers used as dwellings and not in a permitted mobile home park or trailer court.
- (h) Mobile home parks/trailer courts.
- (i) Rental of land and/or home on tribal land. This excludes fee land owned by individual tribal members. The Tribal Council reserves the right to tax or require paid lease for non-enrolled persons living in rented homes on tribal land to compensate for snow removal, garbage pickup, and other services provided.

(4) Prohibited Uses. All other uses are prohibited.

(5) Cluster Development. The following provisions apply to areas that are developed as planned communities for housing:

- (a) A development plan shall be drafted and approved by the Tribal Council for number of sites and size of sites.
- (b) A “footprint” of where each dwelling will go shall be pre-determined in the development plan, utilizing above density requirements to the extent practical.
- (c) There shall be a designated park area for each cluster development that has at least ten (10) housing sites.
- (d) The plan shall include road patterns and standards for their development.
- (e) The plan shall include other infrastructure such as wastewater treatment, water accessibility, electricity, and telephone.
- (f) Individual lots cannot be further subdivided or made smaller for additional home lots located in subdivisions except as provided for in Section 43.8(6).

(6) Additional Requirements. The following provisions apply for mobile homes within the Housing/Residential Designation:

- (a) It is strongly recommended that a mobile home be placed on a cement pad to provide for adequate drainage and support against settling and frost heave in order to provide for longevity of the mobile home.
  - (b) A mobile home shall be in intact condition with a good exterior appearance. There shall be no minimum age requirement.
  - (c) Skirting shall be placed and maintained around the base of all mobile homes.
  - (d) It is strongly recommended that all mobile homes shall be secured by the use of the appropriate tie-down mechanism.
  - (e) Mobile homes must pass inspection before permits are granted or the trailer allowed to be moved onto the assignment. Placement of a mobile home on a land assignment prior to obtaining the required inspection and permits may lead to enforcement actions against the assignment holder.
- (7) The minimum lot requirement for a mobile home shall be one (1) acre.

#### **43.7 (B) Commercial/Enterprise**

This designation is intended to provide lands for the location of businesses with good access to major roadways.

- (1) Permitted Principal Uses: The following principal uses are permitted under this designation upon issuance of any necessary land use permit:
- (a) Retail and wholesale sales: grocery, hardware, general merchandise, handicraft, other sales to consumers.
  - (b) Professional and semi-professional offices such as doctor, dentist, attorney, real estate.
  - (c) Eating and drinking establishments.
  - (d) Personal services such as barber shops, hair stylists, etc.
  - (e) Theaters.
  - (f) Business services including any warehousing and storage services.
  - (g) Automobile gas stations and parking.
  - (h) Churches.
  - (i) Motels and hotels.



(j) Indoor and outdoor recreational uses.

(k) Laundromats.

(L) Automobile Sales

(2) Permitted Accessory Uses.

(a) Parking of trucks and delivery vehicles.

(b) Activities and uses which are customarily associated with the principal uses.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a conditional use permit:

(a) Hospitals, nursing homes, community-based residential facilities.

(b) Light manufacturing clearly incidental to a retail business lawfully conducted on the premises.

(c) Community centers.

(d) Automotive sales and repair service.

(e) Adult Day Care.

(f) Youth Day Care.

(g) Automobile dismantling, wrecking, or junkyards, provided it is fully screened or fenced so that the storage and operation is not visible from any public roadway or other property. If fence barrier is not provided within 45 days, Tribe may provide at owner's expense.

(h) Burial Grounds, Cemeteries, Individual Burials, except in any lowlands.

(i) Drive-in theaters, race tracks, or other outdoor commercial amusements of a permanent nature involving a large assembly of people.

(j) Mining, including quarrying, mineral extraction, explorations, and conversion facilities.

(k) Sanitary landfill.

(4) Prohibited Uses. All other uses are prohibited.

### **43.7 (C) Industrial/Manufacturing**

This area is intended to provide for light manufacturing where all or nearly all activity is contained within a single building, does not require extensive loading and unloading facilities or outside storage, and whose effects such as smoke, noise, light, heat, and odors cannot be detected outside property boundaries; and heavy manufacturing where more than one building is involved, where there is a great deal of activity with storage outside of buildings, and effects such as noise, smoke, dust, heat, light, and odors can be detected beyond property lines. These areas shall be located on roads suitable for industrial traffic and compatible with nearby land uses.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary land use permit.

- (a) Agricultural supplies, machinery and equipment sales.
- (b) Building contractor, equipment and material storage.
- (c) Carpentry, cabinetmaking, woodworking.
- (d) Electric light and power company yards.
- (e) Express mail and packages warehousing.
- (f) Fish or meat wholesale, storage, curing.
- (g) Commercial Kennels.
- (h) Manufacturing, processing, packaging or treatment of such products such as drugs, bakery good, food, candy, beverages, dairy products, cosmetics and toiletries.
- (i) Manufacturing, assembling, or treatment of articles or merchandise from bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, metal, paper, plastics, precious and semi-precious minerals, shells, textiles, tobacco, wood, yarns, and paints.
- (j) Radio, television, and communications transmitting station and tower.
- (k) Sawmill and lumber yard.
- (l) Storage warehouses.

(2) Permitted Accessory Uses. Uses customarily incidental to any of the above listed.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a Conditional Use Permit, because of the consideration of odor, dust, smoke, noise, fumes, or hazard. All environmental codes shall be met.

- (a) Acid manufacturer.
- (b) Asphalt manufacture, mixing, refining.
- (c) Blast furnaces or coke ovens.
- (d) Cement, lime, gypsum, or plaster of paris manufacture.
- (e) Explosives, storage or manufacture.
- (f) Reduction of disposal of garbage or similar refuse.
- (g) Rock crushers.
- (h) Rubber reclaiming.
- (i) Tanneries.
- (j) Wineries.
- (k) Manufacturing of industrial or household adhesives, glues, or cements or component parts thereof.
- (l) Automobiles, mobile homes, motorized vehicles sales and services.
- (m) Bus line depot, garage and repair.
- (n) Fuel distributors.
- (o) Mining, including quarrying, mineral extraction, explorations, and conversion facilities.
- (p) Slaughter houses.
- (q) Solid waste transfer station.
- (r) Large-scale laundries.
- (s) Automobile dismantling, wrecking, or junkyards, provided it is fully screened or fenced so that the storage and operation is not visible from any public roadway or other property. If fence barrier is not provided within 45

days, Tribe may provide at owner's expense.

(t) Burial Grounds, Cemeteries, Individual Burials, except that burial grounds, cemeteries, and individual burials are not permitted in any lowlands.

(u) Drive-in theaters, race tracks, or other outdoor commercial amusements of a permanent nature involving a large assembly of people.

(v) Sanitary landfill.

(4) Prohibited Uses. All other uses are prohibited.

#### **43.7 (D) Government Facilities/Public Use**

This designation is intended to provide land for Tribal governmental services.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary Land Use Permit:

(a) Governmental services office.

(b) Fire, police, and ambulance services.

(c) Community activities and gatherings.

(d) Educational facilities such as schools, colleges, libraries.

(e) Health care facilities.

(f) Churches.

(g) Burial grounds, Cemeteries, Individual Burials, except that burial grounds, cemeteries, and individual burials are not permitted in any lowlands.

(h) Elderly care and activities.

(i) Recreational activities, both indoor and outdoor.

(j) Child care facilities.

(k) Homeless shelters.

(l) Emergency shelters.

(2) Permitted Accessory Uses.

(a) Garages.

(b) Storage buildings.

(c) Other uses customarily associated with principal uses.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a Conditional Use Permit:

(a) Housing/residential.

(4) Prohibited Uses. All other uses are prohibited.

#### **43.7 (E) Commercial Forest**

This designation is intended to identify that portion of the forests which shall be managed by the Tribe pursuant to Chapter 22, to produce quality saw timber and pulpwood for sale.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary Land Use Permit:

(a) Growing and harvesting of forest products and all operations associated with such uses; timber production.

(b) Fish and game management.

(c) Harvesting of wild crops for non-commercial use.

(d) Camping

(2) Permitted Accessory Uses.

(a) Hunting, fishing, and trapping

(b) Gathering of firewood

(c) Low impact recreational activities like hiking, bridle trails, picnicking.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a Conditional Use Permit:

(a) Lumber milling utilizing portable mills.

(b) Gravel, clay, fill extraction, and explorations.

(c) Sanitary landfill.

(4) Prohibited Uses. All other uses are prohibited.

**43.7 (F) Reserve**

This designation prohibits any development but is to remain open for low impact recreation and for hunting subject to the permitted uses below and applicable ordinances, including Chapters 21 and 22..

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary Land Use Permit:

- (a) Fish and wildlife management.
- (b) Harvesting of wild crops, personal use only.
- (c) Low impact recreational activities like hiking, bridle trails, picnicking, canoeing.
- (d) Nature trails.
- (e) Camping

(2) Permitted Accessory Uses

- (a) Hunting, fishing, trapping.
- (b) Swimming.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a Conditional Use Permit:

- (a) Educational field trips.
- (b) Scientific research.
- (c) Selective timber harvesting when Forestry Committee determines necessary to control insects or disease.
- (d) Burial Grounds, Cemeteries, Individual Burials, except that burial grounds, cemeteries, and individual burials are not permitted in any lowlands.

(4) Prohibited Uses. All other uses are prohibited.

#### **43.7 (G) Parks/Recreation**

This designation is intended to provide lands for outdoor enjoyment of the environment.

(1) Permitted Principal Uses The following principal uses are permitted under this designation.

- (a) Outdoor recreational activities such as baseball, softball, football, basketball, soccer, volleyball.
- (b) Picnicking.
- (c) Playgrounds and playground equipment.
- (d) Nature trails.
- (e) Campgrounds.
- (f) Swimming.
- (g) Boating/Canoeing.
- (h) Camping.

(2) Permitted Accessory Uses

- (a) Picnic tables, grills.
- (b) Structures, such as picnic shelters and public restroom facilities.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a conditional use permit:

- (a) Housing/Residential.

(4) Prohibited Uses. All other uses are prohibited.

#### **43.7 (H) Utilities/Infrastructure/Transportation**

This designation is intended to set aside the necessary lands that provide services to the community such as water and sanitation systems, and to specify which lands are suitable for transportation links.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary land use permit:

- (a) Water tower.

- (b) Public sewage treatment facilities.
- (c) Electrical power substations; hydro, fuel/gas, wind.
- (d) Telecommunications (towers, boxes).
- (e) Roads.
- (f) Airstrips.

(2) Permitted Accessory Uses. Uses customarily associated with principal uses.

(3) Prohibited Uses. All other uses are prohibited.

#### **43.7 (I) Historic/Cultural**

This designation is intended to set aside lands that shall enable historic and cultural traditions to be practiced.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary land use permit:

- (a) Pow-wow grounds.
- (b) Maple sugaring.
- (c) Historical exhibits.
- (d) Conduct of religious or cultural activities.
- (e) Cultural and ceremonial activities.
- (f) Education and recreation related to tribal cultural activities.

(g) Camping(2) Permitted Accessory Uses.

- (a) Parking areas.
- (b) Hunting, fishing, trapping.
- (c) Harvesting wild crops, non-commercial use only.
- (d) Other uses customarily associated with principal uses.

(3) Prohibited Uses. All other uses are prohibited.



### **43.7 (J) Agricultural**

This designation is intended to set-aside lands that are suited for purposes of farming, animal range, orchards, gardens and related activities.

(1) Permitted Principal Uses. The following principal uses are permitted under this designation upon issuance of any necessary land use permit:

(a) Farming, including the use of land and buildings for the purpose of obtaining a profit or subsistence by raising, harvesting, and selling crops, or by the breeding, feeding, management and sale of livestock, poultry or honeybees, or for dairy products or any other agricultural or horticultural use or animal husbandry and any combination thereof. Farming includes the preparation, processing, and storage of the products raised on such land for human or animal use and the disposal by marketing or otherwise, and buildings to conduct such activities.

(b) Tree farms.

(c) Horticultural nurseries.

(d) Pasture and grazing.

(e) Private and commercial kennels.

(f) Temporary seasonal roadside stands to sell agricultural products.

(2) Permitted Accessory Uses: Uses customarily associated with principal uses.

(3) Conditional Uses. The following uses are allowed in accordance with requirements for and upon the issuance of a conditional use permit:

(a) Rental for agricultural uses.

(b) Recreational facilities.

(c) Housing/Residential.

(d) Public parks and playgrounds.

(e) Concentrated Animal Feeding Operations.

(f) Burial Grounds, cemeteries, individual Burials, except that burial grounds, cemeteries, and individual burials are not permitted in any lowlands.

(g) Mining, including quarrying, mineral extraction, explorations, and conversion facilities.

(h) Sanitary landfill.

(4) Prohibited Uses. All other uses are prohibited.

#### **43.7 (K) Multi-purpose/Mixed Use**

This designation is set aside for more than one purpose or to be used in the future for one of several purposes. In order to regulate the effects of differing land uses and assure compatibility, any use desired in this designation shall be allowed only under a Conditional Use Permit.

Any of the uses listed in this Code under the following designations is allowed in accordance with requirements for and upon the issuance of a conditional use permit:

- (1) Housing/Residential
- (2) Commercial/Enterprise
- (3) Industrial/Manufacturing
- (4) Government Facilities/Public Use
- (5) Commercial Forest
- (6) Wilderness
- (7) Parks and Recreation
- (8) Utilities/Infrastructure/Transportation
- (9) Historic/Cultural
- (10) Agricultural

#### **Section 43.8 DENSITY PROVISIONS**

These provisions apply to any dwelling for human habitation and to any other type of structure.

(1) Minimum Set-back Requirements:

- (a) Front: The minimum setback from the centerline of the Tribal or Town Roads shall be 63 feet, and 75 feet from the centerline of County Roads.
- (b) Side: The minimum side-yard setback shall be 25 feet.

(2) Maximum Set-back Requirements:

- (a) Front: The maximum setback from the centerline of the roadway shall be 300 feet. The structure must be within the 300 feet setback.

(3) Minimum Lot Size: The minimum lot size shall be one (1) acre for any dwelling, except for any mobile home approved under Section 43.8(6).

(4) Waterway setback: Exterior boundary of 100-year floodplain or minimum of 300 feet to nearest navigable waterbody, whichever is greater.

(5) Maximum of one dwelling per land assignment unless approved under (6).

(6) Assisted Family Member Clause:

(a) A mobile home may be used as a second residence to be temporarily placed on a lot and used as a dwelling for a family member of a person who has a land assignment. The needy family member must be an enrolled member or a parent of an enrolled member who is currently residing on the land assignment. The tribal member, or parent of an enrolled member who is in need of care will be defined as one who is mentally or physically disabled, an elder, who is in need of verifiable care. Each allowance will be made on a case by case basis with the Land Use Review Board making a recommendation to Tribal Council for a final decision.

(b) The mobile home to be added to the site must first meet proper inspection before placed on to land assignment, and sewer and septic must be inspected to be sure the sewer and septic can handle an additional home site. The mobile home may be connected to the existing water and sewer sanitation systems but then must be properly disconnected when no longer needed and the mobile home then must be moved off the site. All costs involving installation and connection will be paid by the holder of the land assignment. When care is no longer needed the connection must be removed within six (6) months.

#### **Section 43.9 CONFORMANCE WITH CODE**

No land shall hereafter be used or occupied, and no structure shall hereafter be erected, converted, constructed or structurally altered unless in conformity with all the regulations specified in this Code, including the Uniform Dwelling Code.

#### **Section 43.10 CONFORMANCE WITH OTHER LAWS**

Uses of land under this ordinance shall comply with all applicable Tribal laws and policies, including but not limited to, Chapters 16, 20, 21, 22, 33, 34, 35, 37, 40.

#### **Section 43.11 NONCONFORMING USES OF STRUCTURE AND LAND**

Use of lands, waters, or buildings which lawfully existed at the effective date of this Code but which do not comply with the regulations of this Code may be continued but their designated use of the land may not be changed except to a permitted use or to a conditional use if approved by the Land Use Review Board as identified in Section 43.14 and 43.16. For purposes of this section, “use” means occupied and/or maintained for a certain purpose, and does not apply to land that is vacant and is not being used.

#### **Section 43.12 DETERMINATION OF USES NOT LISTED**

In any designation, whenever a use is neither specifically permitted nor denied, the use shall be considered to be prohibited. In such a case a recommendation may be made by

the Land Management Department to the Land Use Review Board for approval of other appropriate land for such use. The Tribal Council shall have final approval of such recommendation. If the use is approved, the applicant shall be granted a Conditional Use Permit.

### **Section 43.13 GENERAL LAND USE PERMITS**

(A) Activities Not Requiring Permits. With the exception of Section 43.13(B) any land use permitted outright in any designation, may be conducted without permit provided it is conducted in accordance with this Code and other tribal laws.

(B) Activities Requiring Permits. Any person shall apply for and receive the appropriate Land Use Permit before starting any new construction, before bringing in any type of manufactured or mobile home, before installation of any well and septic system, before harvesting of certain forest products, before using any agricultural lands, before camping, and before any tree removal. The following types of permits are available: Building Plan Review Permit, Driveway/Culvert Permit, Sanitation Permit, Forestry Products Permit, Agricultural Permit, Camping Permit, and Tree Removal Permit.

(C) Processing of Permits. Permits shall be processed in accordance with Section 43.16, Permit Process, of this Code, except camping permits, forestry products permits and tree removal permits.

(D) Camping Permits. Camping permits shall be issued by the Assets Department under a policy approved by the Tribal Council. The Casino will issue permits for camping at the Casino RV Park.

(E) Forestry Products Permits and Tree Removal Permits. Forestry products permits and tree removal permits shall be issued by the Forestry Department.

### **Section 43.14 CONDITIONAL USE PERMITS**

(A) Purpose. While certain compatible uses are permitted outright within a designated area, certain other uses may be acceptable but may need their impact carefully evaluated before their use is allowed. Such uses are classified as conditional uses. The Land Use Review Board shall approve Conditional Use Permits.

(B) General Provisions. A conditional use permit may be issued only for conditional uses listed in this Code under each specific land use designation, or a use not listed but approved under Section 43.12.

(C) Applying for a Conditional Use Permit. Application forms for a conditional use permit shall be available at the Land Management Department. The applicant shall complete the form and return it to the Land Management Department who shall review it for completeness.

(D) Processing of Permit. The permit shall be processed in accordance with Section 43.16, Permit Process, of this Code.

(E) Expiration. A Conditional Use Permit shall expire if the use is discontinued for a period of twelve (12) months.

#### **Section 43.15 STAND-ALONE ACCESSORY USES.**

(A) No accessory uses shall be permitted on a lot or land assignment except in conjunction with an accompanying principal use, without the Land Use Review Board's approval.

#### **Section 43.16 PERMIT PROCESSES.**

(A) The permitting process is used to inform public decision makers and persons of the environmental and economic effects of actions that have been proposed, and initiate exchange of information among interested parties. The following requirements shall be followed for General Land Use Permits and Conditional Use Permits. These requirements do not apply to permits issued by the Forestry Department under the Forest Products Resources Ordinance.

(1) Receipt of applications. All applications for permits shall be received by the Land Management Department. The Department shall be responsible to develop application forms and assure that all the necessary information for each type of permit can be found on the form.

(2) Who May Submit Applications. Applications for permits shall be accepted only from persons who are tribal members and/or who are owners or assignees or beneficiaries of property, or their agents, or who represent a division or subdivision of the Tribe or a Tribal organization.

(3) Land Use Impact Review.

(a) Before a permit is issued for any purpose except camping, forestry products permits, or tree removal, or before any variance is approved, the request for permit or variance shall go through the Land Use Impact Review.

(b) The Land Use Impact Review requires that all departments and committees or boards with land-use related responsibilities review any proposed action to utilize or disturb tribal land in any way. This is to assure that all interested entities are aware of all proposed uses of tribal lands so that planning is integrated and conflicts are avoided. These departments are:

Environment, Enterprises, Assets, Land/Enrollment, Land Management, Roads, Forestry, Land Committee, Housing/Utilities, Repatriation, and Legal/Tribal Council.

(c) The Land Use Impact Review is processed through the Land Management Department, which shall require that requests for review by departments are completed and returned within 35 days. A reasonable extension may be granted at the request of any participant. If impact reviews are not returned within 35 days it is assumed that the department has approved the use.

(d) At the request of any Department participating in the Land Use Impact Review, results of the Land Use Impact Review shall be forwarded to the Core Planning Group, a representative entity of the departments as listed in (b) of this subsection, for recommendation for approval or denial of general land use permits identified in Section 43.13 of this Code.

(e) The results of the Land Use Impact Review shall be forwarded to the Land Use Review Board for their use in determination to grant or deny a Conditional Use Permit as identified in Section 43.14.

(B) Land Use Review Board Action

(1) Conditional Use Permits. The Land Use Review Board shall determine whether the application complies with applicable requirements of this Code, and whether the use shall significantly adversely affect the environment, cultural resources, or endanger public health or safety.

(2) The Land Use Review Board may attach additional requirements to the issuance of a Conditional Use Permit to assure harmony with existing or reasonable expected future development of the proposed area.

(3) The Land Use Review Board shall comply with Section 43.19, Hearing Procedures, of this Code when making a determination to approve or deny a Conditional Use Permit.

(C) Issuance of Permits.

(1) If no departments object to issuance of a General Land Use Permit through the Land Use Impact Review Process, the Land Management Department shall issue such permit or notify the applicant of denial of the application. If the Impact Review has been sent to the Core Planning Group, upon their recommendation to approve or deny a General Land Use Permit, the Land Management Department shall issue such permit or notify the applicant of denial of the application.

(2) Upon recommendation by the Land Use Review Board to approve or deny a Conditional Use Permit, the Land Management Department shall issue such permit or notify the applicant of denial of the application.

(D) Expiration of Permits. A permit shall expire automatically if, within one year after its issuance, the use authorized by the permit has not commenced, unless the permittee can provide evidence of any action pending which will result in the authorized use.

## **Section 43.17 VARIANCES**

(A) A variance involves an exception to the Code requirements for certain standards for yard setbacks, minimum lot requirements, density requirements, and other dimensional standards. It is not used for construction or installation of a nonconforming structure within a land designation, nor can it be used to allow uses not expressly listed as permitted or conditional uses within a designation.

(B) An applicant for a variance shall show that the following conditions exist:

(1) The property cannot be put to a use listed because of limitations in the dimensions of the land or building.

(2) The applicant has unique exceptional circumstances related to the land in question which are not of his own making, and which would cause practical difficulties or unnecessary hardships if the code was applied.

(3) The requested change shall not alter the environment or character of the land or surrounding neighborhood.

(4) The requested change shall not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood.

(C) All applications for a variance shall be received by the Land Management Department. The Department shall be responsible to develop an application form and assure that all the necessary information for a variance request can be found on the form.

(D) Applications for a variance shall be accepted only from persons who are owners or assignees of property, or their agents, or who represent a division or subdivision of the Tribe or Tribal organization.

(E) The Land Use Review Board shall hold a public hearing within 30 days of the application for the variance, at which persons may present their views orally or in writing.

(F) A variance may be issued for an indefinite period or for a specified period only, as determined by the Land Use Review Board.

(G) The Land Use Review Board shall recommend approval of all variances, with final approval by the Tribal Council.

(H) The Board or the Tribal Council may attach conditions necessary to protect the best interests of the surrounding property and the Tribe as a whole.

(I) The Land Management Department shall issue the variance upon receipt of a directive from the Tribal Council.

### **Section 43.18 ADMINISTRATION OF THIS CODE**

#### **(A) Tribal Staff Responsibilities, Land Management Department:**

(1) The Land Management Specialist shall be responsible for the following duties in the administration and enforcement of this Code:

(a) Receive and review all applications for permits and variances required under this Chapter, except those permits issued by the Forestry Department, including providing assistance to all persons in preparation of their applications.

(b) Forestry-related permits shall be issued by the Tribal Forestry Department.

(c) Determine completeness and adequacy of all applications based on the requirements of this chapter.

(d) Record all applications with accompanying documents.

(e) Submit all applications for Land Use Impact Review.

(f) Approve permits as authorized in this Code.

(g) Forward all applications that require Board action to the Land Use Review Board.

(2) The Land Management Technician shall be responsible for the following duties in the administration and enforcement of this code:

(a) Maintain records pertinent to this code including maps, surveys, permits issued, land status, structures, field notes, and photographs.

(b) Receive complaints, inspect, investigate, and prepare violation reports. The violation report should be sent to the person who has committed the violation, with a notice to correct the action within a time certain or be



subject to penalties and enforcement action. Copies of violation reports along with any recommendation for sanction shall be forwarded to the Tribal Prosecutor's office and any other appropriate departments or agencies.

(c) Issue citations for violations of this Code when individuals fail to correct their violations after receiving the notice of violation report.

(3) Both the Land Management Specialist and the Land Management Technician are authorized by this Code to issue citations to individuals for failure to abide by the terms of this Code. Fines for violations of this Code may be up to \$100.00 per day.

(B) Land Use Review Board. The Tribe hereby creates and establishes the Land Use Review Board as a governmental arm of the Tribal Council. The currently established Land Committee shall function as the Land Use Review Board.

(C) Powers and Duties of Land Use Review Board:

(1) Hear appeals from denials of any permits issued by the Land Management staff, under this Code.

(2) Consider applications for Conditional Use Permits and Variances, and take appropriate actions.

(3) Recommend approval of Conditional Use Permits and Variances to the Tribal Council when appropriate.

(4) Hold regular meetings.

(5) Hold public hearings to determine approval or denial of applications for permits and variances, and to hear appeals and Code amendment proposals.

(6) Administer oaths for taking sworn testimony.

(7) Classify undesignated lands for Tribal Council approval.

#### **Section 43.19 HEARING PROCEDURES.**

(A) Before making a decision on an application for a Variance, Conditional Use Permit, any appeal, or any amendments to this Code, the Land Use Review Board shall hold a hearing on the application, appeal, or amendment. At least one member of the Board shall preside over the hearing, except that the Review Board may designate a hearing officer to conduct the hearing in lieu of a Board member.

(B) Any hearing mandated under this Code shall be held within 60 days of receipt of application for variance, permit, or amendments to Code.

(C) The hearing shall be an open meeting to any Tribal member.

(D) At least 48 hours notice shall be given of the hearing(s).

(E) The Board may place reasonable and equitable limitations on the presentation of evidence and arguments so that the matter at issue may be heard and decided without undue delays.

(F) The Board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information until the final decision is made.

(G) It shall be the responsibility of the Board to assure that a taped recording shall be made of all hearings and that such recording shall be kept for at least two years. A permanent written record shall also be made of the hearings and the records shall be stored in the Land Management Office.

(H) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of evidence shall be made a part of the record of the proceedings and shall be kept by the Tribe for at least two years. The evidence shall be kept by the Land Management Office.

#### **Section 43.20 ENFORCEMENT AND PENALTIES**

##### **(A) Investigation of Compliance, Reporting Violations**

(1) The Land Management Department is responsible for the necessary inspection and investigation to assure compliance with this Code and is responsible for documenting the presence of violations and issuing citations for these violations.

(2) Any person may file a complaint with the Land Management Department concerning a potential violation of this Code. Upon receiving a complaint, Land Management Department personnel, with the assistance of a law enforcement officer if deemed necessary, shall investigate and gather facts about the complaint.

(3) If good cause is found, then the Department has authority to issue a notice of violation to the individual, informing the individual of the penalties and giving them a time-frame for correcting the violation. If the individual fails to correct the violation in the time-frame provided in the notice, then the Department has authority to issue a citation to the individual. The citation must be submitted to the Tribal Court within three business days of service of the citation upon the individual. A copy of the citation shall be delivered to the Tribal Prosecutor at the same time.

(4) The Department may turn this case over to the Tribal Prosecutor for action. Upon determination by the Tribal Prosecutor of probable cause that a violation of this Code exists, the Tribal Prosecutor may:

- (a) Communicate informally with the alleged violators to remedy the violation;
- (b) Take court action as permitted under this Code;
- (c) Order more investigation and fact gathering;
- (d) Bring a forfeiture action against the alleged violator;
- (e) Take any other action consistent with the purpose of this Code that common sense and good judgment would allow.

(5) If a violation is believed to be causing harm to the Community or jeopardizing health and safety of any person or the Community, the Tribe may expend its own funds to remedy such violation. If the Tribe expends its own funds to remedy a violation, the person responsible for the violation must reimburse the Tribe for the expenditure. The Prosecutor has the authority to bring an action in order to recover tribal funds expended to remedy the violation.

(B) Prosecution, Injunctions, and Penalties.

- (1) It shall be the duty of the Department and/or the Tribal Prosecutor to expeditiously pursue all violations of this Code.
- (2) Persons convicted of violations to this Code shall be subject to the penalties herein described.
- (3) In addition to forfeiture actions the Tribal Prosecutor may seek enforcement of any and all parts of this Code by court actions seeking injunctions or restraining orders. The Tribal Prosecutor may seek an emergency order from the Court to restrain or enjoin any violation that is jeopardizing the health or safety of any person or is causing environmental damage. Such an order may be sought and issued ex parte if the Tribe shows a good faith effort to serve notice on the necessary parties.

(C) Penalties

- (1) Any act constituting a violation of the provisions of this Code or a failure to comply with any of its requirements, including commencing actions for which permits are required without first having obtained a permit, and including violations of any conditions and safeguards established in connection with the grants of variances, Conditional or Special Use Permits, shall subject the offender

to a civil penalty of up to \$100.00 per day.

(2) In lieu of or in addition to monetary civil penalty, any person found guilty of violating this Code may be required by the Court to provide community service assisting in activities useful to the protection of or enhancement of Tribal Lands and related uses.

(3) The Tribal Council has the power to cancel any person's land assignment or spousal life estate or other interest in tribal land upon a finding of substantial and continuing violations of this Code. Before such an action may be taken, the person with the interest must be given adequate notice and an opportunity to be heard by not less than a quorum of the Tribal Council. The Council may designate procedures for such hearings.

### **Section 43.21 APPEALS**

(A) An applicant may appeal a denial of a permit by the Land Management Department to the Land Use Review Board. An appeal is initiated by filing with the Land Management Department and the Review Board a written Notice of Appeal specifying the grounds of the appeal. A Notice of Appeal shall be considered filed when delivered to the Land Management Department, and the date and time of filing shall be entered on the Notice by the staff

(B) An appeal shall be filed within 30 days after the date of the decision.

(C) The Land Management Specialist or designee shall without delay submit to the Land Use Review Board all records on file that are relating to the appeal filed.

(D) The Land Use Review Board may reverse or affirm the denial of any permit provided for under this code.

(E) Appeals from any Tribal Court order shall be made consistent with the provisions of the Stockbridge-Munsee Tribal Court Rules of Procedure.

### **Section 43.22 JUDICIAL REVIEW**

(A) Any party to a proceeding before the Land Use Review Board or the Tribal Council who is aggrieved by the decision or final order of the Board or Council is entitled to limited judicial review thereof in the Stockbridge-Munsee Community Tribal Court. All other remedies shall first be exhausted. Preliminary or procedural actions of the Board or Council are not subject to such review.

(B) An aggrieved party may appeal a final decision or order within 20 days of it becoming final. Upon the filing of an appeal, the final order or decision is automatically stayed during the appeal.

(C) The Tribal Court may not review the matter as an original action, nor may it hear new evidence. The Tribal Court shall give due deference to the Land Use Review Board and Tribal Council.

(D) The Court may only disturb a final order or decision if it is found to be arbitrary and capricious. Arbitrary and capricious means unreasonable and without regard for facts and law.

(E) Upon a finding that a final order or decision is arbitrary and capricious, the Court may only:

- (1) Return the decision to the Land Use Review Board or Tribal Council for further proceedings;
- (2) vacate the order or decision;
- (3) issue an injunction to maintain the status quo during further proceedings.

### **Section 43.23 AMENDMENTS TO CODE**

(A) Authority. The law imposed and the land use designations created under this Code may be amended from time to time whenever the public necessity and convenience and the Tribal general welfare requires. Such a change shall be proposed by the Land Management Department, the Land Use Review Board, the Tribal Council, or any tribal member.

(B) Initiation of Amendment. The proposed change may be initiated by petition to the Land Management Department with the following information:

- (1) Description of property affected.
- (2) Existing land designation
- (3) Proposed land designation.
- (4) Any change proposed to text of this Code.
- (5) Petitioner's name, address, and phone number.

(C) Petition. The petition shall be forwarded to the Land Use Review Board who shall, within 30 days of receipt of the petition, schedule a public hearing on the proposed amendment.

(D) Standards for Land Designation Change. The burden of proof shall be with the petitioner to establish:

- (1) Conformance with all applicable Codes.

- (2) Public need for the change.
- (3) That there is no other available property that could better serve the need.
- (4) Proof of change of circumstance or mistake in original land designation.
- (5) Any other legitimate concern.

(E) Enactment. The Stockbridge-Munsee Tribal Council may, after the public hearing is held, enact a resolution amending this Code or by motion deny the proposed amendment. Such amendments are not subject to the approval of the Secretary of the Interior.

#### **Section 43.24 SEVERABILITY**

If a court of competent jurisdiction finds any portion of this Code illegal, the remaining portions of this Code shall remain unaffected and remain in force.

#### **Section 43.25 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Code shall provide or be interpreted to provide a waiver of the Stockbridge-Munsee Community or any of its governmental officers' and/or agents sovereign immunity from suit.

#### **Section 43.26 EFFECTIVE DATE**

This Code shall take effect upon notice of its approval by the Secretary of the Interior.

#### **Legislative History:**

Public Hearing held April 29, 2002.

Adopted by Tribal Council on May 23, 2002, Resolution No. 024-02.

Approved by BIA on June 7, 2002.

On May 19, 2004, Resolution No. 023-04, Tribal Council adopted changes affecting the following sections that were newly created or amended: Section 43.5 "Building Plan review," "General Use Permits," "Land Use Review Board," "Medium Density," "Mother-in-law Clause"; Section 43.7(A), (A)(6)(e), (C)(1)(j); Section 43.8(1)(a), (5); Section 43.10; Section 43.11; Section 43.13(A), (B), (C); Section 43.14(D); Section 43.15(E); Section 43.16(A)(3)(b), (A)(3)(c), (A)(3)(d), (A)(3)(e), (B)(4); Section 43.18(B).

On April 5, 2005, Resolution No. 019-05, Tribal Council adopted changes affecting the following sections: "Four Seasons Addition or Structure" was created in Section 43.5;

“Uniform Dwelling Code” was created in Section 43.5; and “including the Uniform Dwelling Code” was added to the end of Section 43.9.

On June 5, 2007, Resolution No. 033-07 Tribal Council adopted changes affecting the following sections: amending section §43.4; §43.5 (Accessory Use, Camping, Days, Junkyard, Land Use Review Board, Reservation, Uniform Dwelling Code); §43.7(A)(6)(a); §43.7(A)(6)(b); §43.7(A)(6)(d); §43.7(A)(6)(e); §43.7(D)(1)(g); §43.7(F); §43.8(3); §43.8(4); §43.10; §43.13(E); §43.15; §§43.16(A)(3)(b-e); §§43.16(B)(2-3); §§43.16(C)(1-2); §43.17(E); §43.18(A)(2)(b); §§43.18(C)(1-3); §43.19(A); §§43.19(C-D); §§43.20(A)(1-4); 43.20(B)(1); §43.21(A); §43.21(D); and creating §43.6; §43.7(A)(5)(f); §§43.7(B)(3)(g-k); §§43.7(C)(3)(0), (s-v); §43.7(3)(d); §§43.7(J)(3)(f-h); §43.8(6); §43.13(E); §43.18(A)(2)(c); §43.18(A)(3); §43.21(E).