

## **CHAPTER 22**

### **STOCKBRIDGE-MUNSEE COMMUNITY FOREST RESOURCES ORDINANCE**

Formerly: Stockbridge-Munsee Forestry Committee Policies and Procedures - 1980

#### **Section 22.1 Tribal Council Purpose**

The Tribal Council finds that:

- (1) One of the most important short and long term resources to the Community is its forest resources.
- (2) Properly managed forest resources will provide economic value to the Tribe.
- (3) Properly managed forest resources will provide an excellent environment for natural habitat such as fish, game, natural herbs, and wild flowers.
- (4) The Tribe's ownership of fee land, forest crop fee land, managed forest fee land, and the United States' ownership of federal trust and proclaimed lands for the benefit of the Tribe implicates Tribal, federal, and state law depending on the ownership of the land.
- (5) The Tribe's increasing land base and reforestation efforts necessitate increasing involvement and management of the forest resources by the Forestry staff, Forestry committee, and the Tribal Council.

#### **Section 22.2 Forestry Committee Mission Statement**

The Stockbridge-Munsee Forestry Committee was created to aid in the protection and conservation of the forest resources of the Stockbridge-Munsee Band of Mohican Indians. The purpose of the Committee is to act as an advocate for and make recommendations to the Stockbridge-Munsee Tribal Council in all forestry related matters.

#### **Section 22.3 Forest Committee Objectives**

(A) The Forestry Committee's objectives are:

- (1) Protection of any and all of the forest assets of the Tribe
- (2) Preservation and maintenance of our forests for future generations
- (3) Maintenance of logging roads
- (4) Assurance of proper logging practices

(5) Consideration of wildlife and wildlife habitat

(6) To set aside 100% of Proceeds of Labor monies (stumpage) from sales on fee and trust land for future land acquisition.

## **Section 22.4 Forestry Committee By Laws**

### **ARTICLE I – NAME AND PURPOSE**

- A. **Name.** The name of the committee shall be the Stockbridge-Munsee Forestry Committee.
- B. **Purpose.** The Stockbridge-Munsee Forestry Committee is vested with authority to make recommendations to the Stockbridge-Munsee Tribal Council regarding forestry management on lands held in trust for the Tribe and lands owned by the Tribe in accordance with Chapter 22, the Forest Resources Ordinance, as amended.

### **ARTICLE II - MEETINGS**

- A. **Regular Meetings.** The regular monthly meeting of the Stockbridge-Munsee Forestry committee shall be held by the first fifteen days of each month. Meetings shall be held at the Stockbridge-Munsee Tribal Offices or at a location designated by the Stockbridge-Munsee Tribal Council.
- B. **Special Meetings.** Special meetings of the Stockbridge-Munsee Forestry Committee may be held at any time to implement the provisions of the approved Stockbridge-Munsee Forest Management Plan. Committee members shall be paid a stipend in the amount of allocated in the approved budget. These meetings will include regular, on-site, and emergency meetings. All such meetings shall be open to Tribal members.
- C. **Quorum.** At least four (4) members of the Forestry Committee shall constitute a quorum to conduct business and exercise the powers of the committee.
- D. **Notice of Meetings.** A written notice stating the place, day, and hour of regular meetings of the Forestry Committee shall be delivered not less than five (5) working days before the date of the meeting to the members of the Forestry Committee and shall be posted to the public. Notice of any special meetings shall be given to Committee members, as well as posted to the public, at least 48 hours in advance. This notice will be done by the Stockbridge-Munsee Forestry staff. He/she will post notice at Library, Clinic, Tribal Office, Headquarters, Housing, Elderly Center, and Casino.

### **ARTICLE III – THE FORESTRY COMMITTEE**

- A. **General Powers.**
  - 1) The Stockbridge-Munsee Forestry Committee is authorized to oversee forest policy on the Stockbridge-Munsee Indian Reservation in accordance with this ordinance and Forest Management Plan.
  - 2) The Stockbridge-Munsee Forestry Committee may develop and recommend to the Stockbridge-Munsee Tribal Council other rules and regulations of forestry which shall not violate the provisions of the Tribal Constitution, this ordinance, the Forestry Management Plan, or any other Tribal law.

- 3) The Stockbridge-Munsee Forestry Committee may exercise those powers authorized under this Ordinance, and as directed by the Tribal Council.

**B. Composition and Qualifications of the Forestry Committee.** The Forestry Committee shall be composed of seven (7) adult (21 years or older) enrolled members of the Stockbridge-Munsee Community.

- 1) The Forestry Committee will follow all applicable Tribal law including Chapter 51, Code of Conduct.
- 2) The term of appointment shall be for five years.

**C. Duties and Responsibilities of the Committee.** The Forestry Committee shall:

- 1) Meet on a regular basis and submit their meeting minutes to Tribal Council.
- 2) Make recommendations to Tribal Council regarding approval or denial of permits as outlined in this ordinance.
- 3) Make recommendations to Tribal Council regarding amendments to this ordinance.
- 4) Make recommendations to the Tribal Council regarding forest resource policy issues.
- 5) Make recommendations to Tribal Council regarding the Forest Management Plan.
- 6) Seek approval from Tribal Council for any proposed actions outside the scope of an approved Forest Management Plan.
- 7) Have at least one member review all proposed management areas in a timely manner before taking any official action.
- 8) Request forestry staff to assist as needed.
- 9) Shall compile and regularly update a list of loggers.
- 10) Submit list of Approved Loggers to Tribal Council by July 1, every year.

**D. Political Office.** In no event shall a member of the Forestry Committee serve as a member of a Tribal Council during his/her term as forestry committee member.

**E. Removal.** The committee may make a recommendation to the Tribal Council for the removal of any Committee member for neglect of duty as a Committee member, including but not limited to, failure to appear at three (3) consecutive regular meetings without a valid reason, performing a duty that constitutes a conflict of interest. All such charges must be documented.

**F. Conflict of Interest.** In carrying out the duties of the forestry committee, no member shall make or participate in making decisions which involve personal or family financial interest.

#### **ARTICLE IV**

**A. Number.** The officers of the Forestry Committee shall be a Chairperson, Vice-chairperson, and Secretary. Each shall be elected by the Committee itself.

**B. Elections.** Length and term of office shall be staggered appointments for continuity.

**C. Chairperson.** The Chairperson shall preside at all meetings of the Committee. At each meeting the Chair shall submit such recommendations and information as may be considered proper concerning the business affairs and operational policies of the Committee. The Chairperson shall not vote except in cases of a tie.

**D. Vice-Chairperson.** The Vice-Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson.

- E. **Secretary.** The Secretary shall keep the records of the Committee and shall act as the recorder of all meetings of the Committee. The Secretary shall keep minutes of every Committee meeting in a journal kept for such purpose and shall perform all duties incident to the office of Secretary, including sending meeting minutes to Tribal Council.
- F. **Removal of Officers.** Any officer elected by the Committee may be removed from office by Tribal Council.

## **ARTICLE V – AMENDMENTS**

These bylaws may be altered, amended, or repealed upon resolution of the Stockbridge-Munsee Forestry Committee, with final approval of the Stockbridge-Munsee Tribal Council.

### **Section 22.5 Forestry Staff**

(A) The Forestry Department/staff is a department of the Tribal Government is responsible for carrying out the functions and policies of the Tribe relating to the forest resources that are consistent with this ordinance.

(B) The Forestry staff shall have authority to enforce the provisions of this Ordinance utilizing authorized law enforcement personnel, the Tribal Prosecutor, and the Stockbridge-Munsee Community Court. The Forestry staff shall also provide assistance as necessary and needed in order that the Bureau of Indian Affairs can enforce provisions of this ordinance and/or federal law on trust land.

(C) The Forestry Department shall work with the Fish and Game Board, Conservation Department, and Environmental Department to insure that water quality, fish stocks and fish spawning areas are not harmed by activities controlled, regulated, or authorized by the Forestry Department.

### **Section 22.6 Right to Beneficial Usage**

All enrolled members of the Stockbridge-Munsee Community Band of Mohican Indians shall have the right to share in the beneficial use of the forest resources as provided in this ordinance.

### **Section 22.7 Harvesting of Wild Crops**

Harvesting wild crops, such as berries, mushrooms, ginseng, greenery, wild flowers, moss, wild vegetables, sumac, medicines, etc., for personal use, does not require a permit. Harvested wild crops used for personal use may not be sold or exchanged for cash, goods, or other services. Wild Crops for sale are prohibited.

### **Section 22.8 Forestry Permits**

(A) Permits are required for nearly all activities relating to forest resources. Depending on the activity and the location of the activity, approval levels vary between Tribal staff, Forestry

Committee and Tribal Council, and the Bureau of Indian Affairs. Additionally, all activities must be in accordance with the Forest Management Plan, Chapter 43 Land Use Code, and other applicable law.

(B) There will be no cutting of standing timber within 300 feet of a river without prior approval of the Forestry Department. For the purposes of granting forestry permits, rivers are defined as the Red River, the West Branch of the Red River, and Silver Creek.

## **Section 22.9 Implied Consent**

With the exception of lands enrolled in Managed Forest Law or Forest Crop with the State of Wisconsin, any person, department, entity, or business who enters Tribal fee lands, trust lands, or proclaimed lands; or who removes or damages any forest resources is deemed to have consented to the jurisdiction of the Tribal Court.

## **Section 22.10 Disease or Infested Trees**

Insects, disease, or infestation may require or limit cutting conditions or requirements. Cutting, pruning, or trimming a live oak tree cannot be done between April 1 to October 1 of each year, except under the domestic home use clearing permit on tribal trust or fee land in Section 22.12(C) and subject to the restrictions listed under that permit.

## **Section 22.11 Tribal Forestry Staff Approved Permits**

The following activities require permits and can be authorized and issued by the Tribal Forestry Staff.

### **(A) FREE-USE PERMITS:**

(1) FIREWOOD PERMIT: Adult Tribal Members may obtain a permit from the Forestry Department to cut fuel wood for personal use. Personal use means use by the tribal member holding the permit and his or her immediate household. There is no stumpage charge. No products cut for personal use may be sold, given away, or exchanged for cash, goods, or other services. The prohibition on giving away wood does not apply wood donations to an enrolled Stockbridge-Munsee tribal member or for Stockbridge-Munsee cultural practices.

- (a) Thirty (30) single face cords of fuel wood shall be the maximum allowable cut per calendar year, per household. Additional cordage may be requested after the allowable limit is used, and may be granted at the discretion of the Forestry Committee.
- (b) The Tribal Member must provide a copy of their Tribal Enrollment Card, and indicate if the firewood is leaving the 1856 reservation boundary. The Forestry Staff will issue a Free-Use Firewood Permit and a copy of this ordinance. A firewood permit is valid from January 1<sup>st</sup> through December 31<sup>st</sup> and is valid on all Tribal trust land and Tribal fee land.

- (c) Non-enrolled spouses will be allowed to cut fire wood for the household of the enrolled S/M permittee. In a case where a household on trust land consists of dependent enrolled children under 18 and a single head of household who is non-enrolled, a special permit may be issued to the non enrolled head to allow fire wood to be cut for household. In all other cases, non-enrolled individuals may assist the permittee, so long as the permittee is on site, except in the case of elderly or disabled Tribal members.
  - (d) Firewood can only be cut from dead or down trees.
  - (e) The use of tractors, skidders or other type of machinery to remove firewood must be approved in advance with the Forestry staff. If approved, precaution must be exercised to prevent damage to the forest.
  - (f) Scaling is not required. However, the Forestry staff and authorized law enforcement personnel have the right to verify that the volume of firewood is within the permit limits.
- (2) DOMESTIC/ LAND ASSIGNMENT MAINTENANCE PERMIT: Adult Tribal members may obtain a permit from the Forestry Department to remove forest products for safety or aesthetic reasons on their land assignment.
- (a) The Forestry Staff will issue a Domestic Yard/Maintenance Permit and a copy of this ordinance.
  - (b) The Tribal Forestry staff will approve and mark all trees prior to cutting.
  - (c) A Domestic Yard/Maintenance permit is valid from January 1<sup>st</sup> through December 31<sup>st</sup> and is valid on all Tribal trust land and Tribal fee land.
  - (d) The Tribal member may cut the forest products or may choose anyone to cut the forest products.
  - (e) Downed trees, trees damaged from disease, storms and other causes may be cut on the Tribal member's land assignment without obtaining a permit. However, the Tribal member must notify the Forestry staff as soon as reasonably possible.
  - (f) Scaling is not required. However, the Forestry staff and authorized law enforcement personnel have the right to verify that the volume of firewood is within the permit limits.

## **Section 22.12 Tribal Council Approved Permits**

The following activities require the activity to be brought to the Forestry Committee and approval by the Tribal Council before the permit can be issued by the Tribal Forestry staff. All timber, except firewood, removed from tribal boundaries will be scaled by the forestry staff. This section does not apply to lands enrolled in State of Wisconsin Managed Forest Law or Forest Crop Law.

(A) DOMESTIC PERMIT ON TRIBAL TRUST OR TRIBAL FEE LAND: Adult Tribal members may obtain a permit to harvest forest products, such as cedar, white birch, white pine, etc., for their own personal use and benefit, such as fences or storage buildings. There is no stumpage charge. No products cut for personal use may be sold, given away, or exchanged for cash, goods, or other services. Applicant shall state what materials are needed and amount needed. The prohibition on giving away wood does not apply wood donations to an enrolled Stockbridge-Munsee tribal member or for Stockbridge-Munsee cultural practices.

1. All products harvested under this permit are to stay within the 1856 reservation boundary.
2. The maximum allowable cut will be up to five full cords.
4. The Enrolled Member will put in a written request to the Forestry Committee notifying them of the quantity, type of wood to be harvested and how the wood will used. Depending on the size of the project the Forestry Committee will asked for submission of detailed plans.
5. The Forestry Staff will determine the availability of the forest product and designate where the wood will be harvested, should the permit be issued.
6. The Forestry Committee will make a recommendation to the Tribal Council.
7. If Tribal Council approves the request, the Forestry Staff will issue the permit. The permit will be valid for a specified time, not to exceed one year.
8. The Tribal member, with assistance from others, may cut the forest products.
9. Personal use means use by the tribal member holding the permit and his or her immediate household.
10. The Forestry staff will track and prepare an annual estimate of the total amount of wood and value of such wood cut from trust lands under this type of permit. This information will be provided to the Bureau of Indian Affairs at the end of each fiscal year.

(B) DOMESTIC PERMIT ON TRIBAL TRUST OR TRIBAL FEE LAND FOR HOME BUILDING OR OTHER SIMILAR LARGE BUILDINGS. This permit allows the permit holder to cut timber that will be used for the construction of the building identified in the permit.

1. The Tribal member must submit a permit application that includes detailed plans of the building including a realistic timeline for construction completion.
2. The project can only be for Tribal member's personal use within the 1856 reservation boundary.
3. If the Committee approves the request, the recommendation to Tribal Council will include a time limit on the project and the amount of timber to be cut.

4. If Tribal Council approves the permit and the project is not completed within the specified time, the Tribal member will owe the Tribe the stumpage fee. The Tribe has the authority to seek a judgment in Tribal Court and seek attachment of per capita if necessary.

5. If the permit is approved by Tribal Council, the Forestry staff will designate the area to be cut and mark the trees. The Forestry staff will also scale the cut timber and record the stumpage.

**(C) DOMESTIC HOME USE CLEARING PERMIT ON TRIBAL TRUST OR FEE LAND:**

Adult Tribal members may obtain a permit to cut timber and/or forest products for the purpose of clearing a specific limited area for a dwelling, garage, or business on their land assignment, lot, or leased land.

1. The Tribal member must submit a permit application to the Forestry staff that includes detailed plans of the proposed building site. If the building site is located on tribal trust land, the Tribal member will also be required to obtain any applicable Bureau of Indian Affairs permits, such as a forest products harvesting permit.

2. The Tribal member is responsible for the cost of service to cut the forest products and is responsible to pay stumpage fees as determined by the Forestry staff.

3. The permit request should indicate the species and expected volume to be cut. The Forestry staff will coordinate with the Tribal member by assisting in staking the proposed cutting area.

4. The Forestry Committee will make a recommendation to the Tribal Council. A positive recommendation will be made contingent on a successful perc test. No cutting, except to perform the perc test, can occur unless the site has a successful perc test.

5. If Tribal Council approves the permit request, the Forestry staff will issue the permit and mark the trees that will be cut. The permit will be valid for a specified time, not to exceed one year from date of issuance.

6. The Forestry staff will provide a list of loggers/vendors to the Tribal member if the Tribal member needs assistance.

7. The Forestry staff will scale the timber or forest products.

8. If a live oak tree is cut between April 1 and October 1 under this permit, the resulting oak stump must be burned or buried within 48-hours of the tree being cut.

**(D) TIMBER SALE PERMIT/CONTRACT ON TRIBAL FEE LAND, INCLUDING MANAGED FOREST LAW AND FOREST CROP LAW LANDS.**

(1) The Tribal Forestry Staff will advertise all timber sales on the open market on Tribal fee lands.

(2) The advertisement will identify area to be cut, acreages to be cut and insurance requirements.



- (3) Tribal bidding preference, Section 22.22 will apply.
- (4) Sealed bids are to be sent to the Tribal Secretary.
  - (a) Bids will be opened on the record.
  - (b) The Forestry Committee will make a recommendation to Tribal Council regarding the bid.
  - (c) If the Tribal Council awards a bid, a contract will be prepared by the Forestry Staff and Legal Staff.
- (5) A validly executed contract will be considered the Timber Sale Permit.
- (6) The Forestry staff will mark all trees and supervise the entire timber sale.
- (7) The Forestry staff will scale the timber and forest products.
- (8) Tribal fee lands enrolled in the State of Wisconsin Managed Forest Law or Forest Crop.
  - (a) Tribal fee lands enrolled in the State of Wisconsin Managed Forest Law or Forest Crop program may have requirements for timber sales that differ from this ordinance. If there is a conflict, the state law will apply. In all other cases, this ordinance shall apply.

#### (E) EMERGENCIES

- (1) Emergencies generally include blow down, disease, flood and other acts of the Creator.
- (2) The Forestry staff will present a plan to address the emergency to the Forestry Committee.
- (3) The recommendation may be in excess of the Annual Allowable Cut.
- (4) The Forestry Committee will make a recommendation to the Tribal Council.
- (5) If the Tribal Council awards a bid, a contract will be prepared by the Forestry Staff and Legal Staff.
- (6) A validly executed contract will be considered the Timber Sale Permit.
- (7) The Forestry Staff will oversee all aspects of the sale.

#### (F) TEMPORARY USE PERMIT ON TRIBAL TRUST LAND OR TRIBAL FEE LAND:

- (1) Non-Tribal members may apply for a permit to temporarily enter tribal trust lands or fee lands for a specific purpose, such as removing wood from their property, or gaining temporary access to a land-locked property.

- (2) The applicant must submit detailed written plans of the proposed purpose; including area needed, reason needed, and the expected length of time the permit is needed.
- (2) The Forestry Committee will make a recommendation to the Tribal Council regarding the temporary permit request.
- (3) The Tribal Council may instruct the Forestry Staff to issue a temporary use permit subject to the conditions the Tribal Council desires.

### **Section 22.13 Forestry Practices on Tribal Trust Lands**

The following activities require the activity to be brought to the Forestry Committee and approval by the Tribal Council. In addition, the activity needs approval and a permit by the Bureau of Indian Affairs pursuant to 25 C.F.R. §163.26(a). Except for the provisions specifically listed below, the Bureau of Indian Affairs controls all aspects of the contract. Additionally, federal enforcement and penalties may be used in addition to Tribal penalties.

#### **(A) TIMBER SALE CONTRACT:**

- (1) The BIA Forester presents a proposed sale to the Forestry Committee.
- (2) The Forestry Committee makes a recommendation to Tribal Council.
- (3) The BIA Forester will advertise all timber sales for trust land areas.
- (4) All Timber Sale advertisements will be advertised on the open market.
- (5) Tribal bidding preference, Section 22.22 will apply.
- (6) The advertisement will identify area to be cut, acreages to be cut and insurance requirements.
- (7) Timber sale contracts are sent to and awarded by the Tribal Council and the Bureau of Indian Affairs.
- (8) Except as specifically identified in this ordinance, the Bureau of Indian Affairs will oversee all aspects of the timber sale.

**(B) FOREST PRODUCT FOR SALE PERMIT.** Adult Tribal members may obtain a permit from the Bureau of Indian Affairs to harvest and sell or trade forest products, such as cedar, white birch, firewood, moss, flora, etc., but not ginseng.

- (1) The Tribal member must present a plan to the Forestry Committee identifying the purpose, designating the amount of forest product to be removed and the area where the forest product will be harvested from.
- (2) The Forestry Committee will make a recommendation to the Tribal Council.

- (3) If the Tribal Council approves the request, the request will be forwarded to the BIA Forester.
- (4) The Forest Product for Sale Permit will be awarded and managed by the Bureau of Indian Affairs.
- (5) The Tribal member is responsible to pay stumpage as determined by the Bureau of Indian Affairs.
- (6) Except as specifically identified in this ordinance, the Bureau of Indian Affairs will oversee all aspects of Forest Product for Sale Permit.

#### **(C) EMERGENCY PERMITS**

- (1) Emergencies generally include blow down, disease, flood and other acts of the Creator.
- (2) The BIA Forester will present a plan to address the emergency to the Forestry Committee when the emergency is on trust land and the Tribal Forester will present the plan when the emergency is on tribal land owned in fee simple.
- (3) The recommendation may be in excess of the Annual Allowable Cut.
- (4) The Forestry Committee will make a recommendation to the Tribal Council.
- (5) Emergency timber sale contracts are sent to and awarded by the Tribal Council and the Bureau of Indian Affairs.
- (6) Except as specifically identified in this ordinance, the Bureau of Indian Affairs will oversee all aspects of the emergency timber sale.

#### **Section 22.14 Tribal-Departmental Permits**

Tribal departments, entities, committees must apply for permits as provided for in this ordinance in the same manner and process as other allowable permits.

#### **Section 22.15 Denial of Permit(s)**

- (A) Anyone owing any forestry related debt to the Tribe shall not be granted any permit.
- (B) Reasons for denying permits or contracts:
  - (1) poor past logging practices,
  - (2) stumpage debts owed,
  - (3) timber trespass(es),
  - (4) past violations, misuse of process, procedures, or permits,

(5) proposal denied under the Tribe's Land Impact Review process;

(6) inconsistent with the Tribe's Forest Management Plan.

#### **Section 22.16 Tribal Court Jurisdiction**

The Stockbridge-Munsee Tribal Court shall have jurisdiction over violations by Tribal members that occur on Tribal fee lands. The Stockbridge-Munsee Tribal Court shall have concurrent jurisdiction with federal court for any violations for all matters relating to this ordinance that occur on Tribal trust land or proclaimed lands.

#### **Section 22.17 Timber Infraction(s) - General.**

(A) Each day or portion of a day during which a violation occurs or exists is a separate violation.

(B) Each violation of this ordinance shall be considered a separate violation.

(C) For any Timber Infraction defined under this Chapter the Tribal Court may invoke, all or in part, the provisions of this Ordinance.

(D) The Tribal Court shall inform the Forestry Department in writing of any permit(s) or privilege(s) revoked or suspended as the result of an adjudicated proceeding before the Court.

(E) The imposition of the civil penalties provided herein shall not be a defense by any person to any civil or criminal charge brought against such person by the United States Government as trustee of the forest resources of the Stockbridge-Munsee Tribe.

(F) All permits are subject to immediate suspension by the Forestry Staff if the Forestry staff and/or BIA Forester reasonably believe that a violation of this ordinance has occurred and it is in the best interests of the Tribe to immediately stop the activity.

#### **Section 22.18 Enforcement**

(A) Stockbridge-Munsee Law Enforcement and Game Wardens/Conservation Officers or "Authorized Enforcement Personnel" have authority to investigate and enforce the provisions of this ordinance. Forestry Staff have authority to report violations of this ordinance to the Game Wardens/Conservation Officers and other law enforcement agencies. Game Wardens/Conservation Officers may consult with other law enforcement agencies on a case by case basis as needed.

(B) Authorized law enforcement officers are authorized to issue citations for violations of this ordinance. Such authorization does not affect the federal enforcement that may be available for enforcement purposes.

(1) Authorized law enforcement may issue citations to individuals or entities who violate this ordinance.

(2) Authorized law enforcement have authority to confiscate and seize equipment, timber or other forest products, vehicles or any other equipment used in violating this ordinance.

(a) If equipment, vehicles or weapons are confiscated and seized, such equipment, vehicles or weapons shall be considered evidence and properly recorded and secured with Public Safety.

(b) Unless ordered by the Court, if the alleged violator pays the amount of the citation before the court hearing date, the confiscated and other evidence shall be returned to the ordinance violator.

(C) 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.

(1) The Tribal Prosecutor shall use his or her discretion to prosecute violations of this ordinance.

(2) Persons convicted of violations to this ordinance 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 ordinance 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. 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.

(4) If the court finds the person not guilty of the alleged violation, any property or equipment seized by the Game Warden/Conservation Officer shall be returned to the person.

#### (D) Penalties

(1) Any person found guilty of this ordinance shall be assessed of a fine ranging from \$100.00 to \$5,000 as specified in Sections 22.18(C)(5), (6), or (7). In assessing the fine, the Court shall consider the severity of the offense, the acceptance of responsibility by the charged person, the number of previous convictions, and deterrence to others.

(2) In lieu of or in addition to any other penalty, the Tribal Court may also order that equipment or property seized by Authorized Law Enforcement not be returned to the violator and the equipment or property to become permanent property of the Conservation Department to be used of or disposed of at the Tribal Council's discretion.

- (3) In lieu of or in addition to any other penalty, any person found guilty of violating this ordinance may be required by the Tribal Court to provide community service.
- (4) The Tribal Court may also order suspension of wood cutting privileges not to exceed five years.
- (5) Civil remedial money penalties are:
  - (a) Class A Infractions, not less than \$200 nor more than \$5,000.00.
  - (b) Class B Infractions, not less than \$150 nor more than \$5,000.00.
  - (c) Class C Infractions, not less than \$100 nor more than \$5,000.00.
- (6) When any person is found guilty of a violation, and such person has been convicted of a previous violation of this Ordinance within a period of one year, there shall be a mandatory revocation of all privileges regulated under this Ordinance for a minimum of two years, and the Infraction penalties may be enhanced as follows and other remedies as the court deems appropriate:
  - (a) For a Class A Infraction, \$5,000.00.
  - (b) For a Class B Infraction, not less than \$1,000.00 nor more than \$5,000.00.
  - (c) For a Class C Infraction, not less than \$500.00 nor more than \$5,000.00.
- (7) For a third violation of this Ordinance within a period of one (1) year the penalty shall be \$5,000.00 and a mandatory lifetime revocation of all privileges regulated under this Ordinance and other remedies as the court deems appropriate.

#### **Section 22.19 Parties to a Violation-Attempt to Violate.**

- (A) Whoever is concerned in the commission of a violation of this ordinance is a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.
- (B) A person is concerned in the commission of a violation if the person:
  - (1) Directly commits the violation; or
  - (2) Aids and abets the commission of it; or
  - (3) Is a party to a conspiracy with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

(C) Any person who attempts any violation of this ordinance shall be subject to the same class of infraction if they had completed all the steps for a violation. An attempt to commit a violation requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation and that the actor does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that the actor formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

#### **Section 22.20 Infractions Defined.**

(A) Violating the terms and/or conditions of any permit issued pursuant to this Ordinance shall be deemed a Class A Infraction.

(B) Harvesting, cutting, and/or taking forest resources without the requisite permit shall be deemed a Class A Infraction.

(C) Fraud in the procurement of any permit shall be deemed a Class B Infraction.

(D) Exceeding the amount of wood or wood products authorized for harvest under a permit issued pursuant to this Ordinance shall be deemed a Class A Infraction.

(E) Refusal of any person engaged in harvesting, cutting and/or taking of forest resources, to display the proper permit or identification upon request of any authorized law enforcement personnel shall be deemed a Class C Infraction.

(F) Placing or causing to be placed into the waters of any creek, stream, river or lake any tree or plant or portion thereof; or placing or causing to be placed into the waters of any creek, stream, river or lake any soil or timber resource debris resulting from any activity regulated by this Ordinance shall be deemed a Class B Infraction.

(G) Removing wood or wood products cut on the Reservation without first having it scaled by the BIA Forester assigned to the Tribe, or the Forestry Staff shall be deemed a Class A Infraction.

(H) Except for firewood, cutting any tree(s) within three hundred (300) feet of any River shall be deemed a Class A Infraction.

(J) Any other violation of this ordinance shall be deemed a Class A infraction.

#### **Section 22.21 Civil Damages**

In addition to an action to impose civil remedial money penalties, the Tribe may also seek civil action for recovery of damages against any person or entity who violates this ordinance.

## **Section 22.22 Tribal Timber Sale Bid Policy**

### **A. Purpose**

The purpose of this Policy is to refine the bidding process for Bureau of Indian Affairs (“BIA”) timber sales and other Tribal timber sales for the Stockbridge-Munsee Community. The intent of this Policy is to facilitate the Tribe in obtaining the best possible BIA Timber Sale, consistent with federal law while encouraging Tribal loggers to participate in the bidding process in a meaningful manner.

### **B. Definitions**

- (1) “Advertisement for bids” means an invitation by the BIA for soliciting bids for a Tribal Timber sale.
- (2) “Approved Enterprise Agreement” means an agreement between the Tribe and the Tribal Forest Enterprise, which has been approved by parties, and the BIA.
- (3) “BIA” means the United States Bureau of Indian Affairs.
- (4) “Bid documents” means collectively, the bidding requirements and the proposed contract documents, including addenda issued prior to receipt of bids.
- (5) “Complete bid” means a complete properly signed offer submitted in accordance with the Advertisement for bid requirements, by a logger to contract or perform the work designated, or portion thereof for the amounts stipulated therein. It shall be comprehensive enough that the offer requires no further inquiry explanation, or clarification.
- (6) “Emergency” means a situation usually caused by catastrophic events such as tornadoes, floods, storms, and other similar events that requires tree removal immediately.
- (7) “Enrolled Member” means a person who is an enrolled member of the Stockbridge-Munsee Community.
- (8) “Enterprise” means any business, corporation, partnership, sole proprietorship, or joint venture.
- (9) “Indian Tribe” means a federally recognized Indian Tribe.
- (10) “Preference” means the Tribal logger will be selected for contracting according to a priority list so long as the Tribal logger is responsibly qualified.
- (11) “Tribal Forest Enterprise” means a Tribal enterprise that is initiated and organized by the Tribe.
- (12) “Tribal logger” means any enterprise that is at least 51% owned by one or more enrolled member(s) of the Stockbridge-Munsee Community.
- (13) “Tribe” means the Stockbridge-Munsee Community.



### C. Coverage and Scope

- (1) This Policy applies to all Tribal/BIA timber sales, except for emergencies.
  - (a) In emergencies, the Tribal Forestry Department shall make reasonable efforts to notify all current Approved Tribal Loggers.
    - (i) Approved Tribal loggers must meet the requirements of Sections 5(G)-(H).
    - (ii) Approved Tribal loggers shall be required to meet appropriate bid deadlines, project completion dates, and other applicable conditions and requirements of the project.
- (2) Certain federal laws, including 25 C.F.R. 163, or other contracts and grants may supersede or contain provisions that are inconsistent with this Policy. If the federal law/contract/grant provisions are mandatory, those provisions of the contract/grant contract shall control, and the remaining portions of this Policy shall be adhered to.
- (3) If the Tribe has a Tribal Forest Enterprise and an Approved Enterprise Agreement, the Tribe reserves the right to have Tribal timber sales negotiated directly to the Tribal Forest Enterprise at appraised rates as per 25 C.F.R. 163.13(c).
- (4) This Policy does not apply to change orders or change directives, which are added work or services within the general scope of an on-going project.
- (5) This Policy does not prohibit the Tribe retracting any invitation for bids.

### D. Approved Tribal Loggers

- (1) The Forestry Committee shall compile and regularly update a list of Tribal loggers. The Forestry Committee shall submit the list of Approved Tribal loggers to Tribal Council by July 1 every year.
- (2) The criteria for determining Approved Tribal loggers include the ability to obtain and maintain comprehensive and worker's compensation insurance, ability to obtain and maintain bonding, experience, reliability, previous references, background/portfolio of the enterprise, technical ability, financial ability, applicable certification and/or licenses, proof of ownership of equipment, tax numbers or other factors the Forestry Committee deems important.
  - (a) The Forestry Committee reserves the right to remove an enterprise from the Approved Tribal logger's list for non-compliance with Section 4(B).
- (3) If the Forestry Committee determines that a Tribal logger is ineligible to be an Approved Tribal logger, the Tribal loggers must be notified in writing regarding what the specific deficiencies are and/or what must be corrected to become an Approved Tribal logger.

### E. Tribal Logger Preference

- (1) The Forestry Committee shall apply preference when an Approved Tribal logger's submitted bid at least meets the BIA's minimum bid rates, and,
- (2) The Approved Tribal logger's submitted bid is within 10% of the highest submitted bid.

(3) An Approved Tribal logger whose bid is within 10% of the highest submitted bid, shall be required to match the highest submitted bid, with the understanding that the Tribe will rebate the matched dollar (with no interest) amount upon successful completion of the timber sale.

(a) The BIA may require that the Tribal Logger, in writing or fax, affirmatively agree to match the highest submitted bid by 3pm, the next business day.

(4) For example:

Timber Company ABC bids	\$100,000
S-M Tribal logger bids #1	\$ 92,000
S-M Tribal logger bids #2	\$ 94,000
S-M Tribal logger bids #3	\$ 87,000

S-M Tribal logger #3 bid is too low to be considered for preference. The bid is below the 10% maximum difference to be considered for the sale.

S-M Tribal logger bid #2 is the highest preference bid with the 10% maximum difference. S-M #2 would be required to match the \$100,000 bid, but will receive a rebate of \$6,000 upon the successful completion of the timber sale.

S-M Tribal logger bid #1 is within the 10% maximum difference. However, S-M Tribal logger bid #2 is the higher bid between the eligible S-M Tribal loggers'. Therefore, S-M Tribal logger Bid #1 does not receive the timber sale contract.

Timber Company ABC would not get the timber sale contract because S-M Tribal logger bidder #2 would be awarded the timber sale contract. Because S-M #2's bid is within 10% of the highest bid (Timber Company ABC), and S-M #2 would match the \$4,000 difference, Timber Company ABC and S-M#2 are essentially bidding at \$100,000.

(5) Preference shall not be adhered to if there are no Approved Tribal loggers' bids within 10% of the highest bid.

(6) Although this Policy is intended to aid Tribal loggers in obtaining timber sales contracts, no legal rights or remedies are created by this Policy.

(7) Applicant(s) for Indian preference will be required to provide certification of membership from the Tribe, the Stockbridge-Munsee Community.

(8) An applicant seeking preference has the burden to demonstrate that the enterprise is eligible for preference, by proving proof of at least 51% ownership.

#### F. Compliance

(1) The Stockbridge-Munsee Forestry Department and Committee are bound by this Tribal Timber Bid Sale Policy and shall fully comply with all terms of this Policy. The Stockbridge-Munsee Forestry Department and Committee shall not divide projects, or take other actions to avoid being subject to this Policy.

(2) Stockbridge-Munsee Legal Department shall review all contracts before the Tribe signs the contract.

### **Section 22.23 Severability**

In the event that any provision of this ordinance is ruled illegal by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain unaffected.

### **LEGISLATIVE HISTORY**

1. Conservation Code was adopted by Tribal Council at a meeting held November 14, 1978 (Resolution #0637).
2. Sent to BIA - Great Lakes Agency approved on 11/17/78 by the Superintendent.
3. Letter from Elmer T. Nitzschke, Field Solicitor to Edwin Demery, Area Director of Minneapolis Area Office on comments dated January 24, 1979.
4. Memo from Minneapolis Area Office Director to Superintendent of Great Lakes Agency enclosed was the Solicitor's review of the S/M Conservation Code dated Feb. 9, 1979.
5. Letter to Tribal Chairman from Acting Superintendent of Great Lakes Agency which stated the approval of the Code and Field Solicitor's comments to the Area Director dated February 15, 1979.
6. Resolution #0641 making changes to the Conservation Code (Section 22.01) dated January 29, 1979.
7. Resolution #0730 is adopting Forestry Committee's Policies and Procedures to govern the forestry resources dated November 8, 1980.
8. Resolution #0746 making changes to Section 22.01 and 23.02 of the Conservation Code dated May 2, 1981.
9. Resolution #0766-1 making changes to Section 13.02 and 13.03 of the Conservation Code dated August 8, 1981. Resolution #0766 making changes to Section 32.04 and 32.04(a)(b) of the Conservation Code dated August 8, 1981.
10. Resolution #1026 adding a new section titled "Denial of Permit(s)" and adding new provisions to appropriate sections dated June 2, 1987. It was approved on June 16, 1987 by Council.
11. Ordinance Committee approved to go to Tribal Council for review at the November 28, 1988 Committee meeting with appropriate changes.

12. Tribal Council action to post at January 3, 1989.
13. Tribal Council approved on February 7, 1989 - Resolution #1127.
14. Recommended changes by the BIA passed by Tribal Council Resolution #1161 on July 18, 1989.
15. Section 20.16 (W) and 20.23 (C) added by Council resolution 102-97, January 8, 1997.
16. Amended by Council motion of Council, July 15, 1997. New provisions include allowing minor-aged direct descendants to hunt during tribal season, shortening of deer gun season; adding turkey season guidelines; changing brook trout and bass bag limits; prohibiting 4-wheel drive vehicles on logging roads during spring break up; closing road south of Richard's Bridge; mandatory registration; wildlife count.
17. Ordinance amended by Tribal Council on February 7, 2006, Resolution No. 021-06. All sections updated, including adding committee by-laws and adding preference section, 22.17 into ordinance. (Section 22.17 originally approved as a policy by Council Motion, 4-3-01).
18. Amended by Tribal Council on February 7, 2006 and June 6, 2007 by incorporating the existing forestry committee by laws, existing policies including the Tribal preference policy, and many updates throughout the existing Chapter 22, including amending 22.6, Resolution No's 021-06 and 045-06.
19. On May 6, 2008, Tribal Council repealed existing Chapter 22 and adopted a new Chapter 22 that renumbered and had changes clarifying numerous sections and incorporated enforcement and other relevant sections of Chapter 20. This was done by Resolution No. 031-08. BIA reviewed Chapter 22 revisions and had comments, but did not approve the 2008 revisions.
20. The proposed 2008 revisions were amended by the Tribal Council on September 18, 2009 through Resolution No. 083-09. The revisions include amending Sections 22.4 (Article I.B), 22.4 (Article II.A), 22.10, 22.12(A), 22.12(B), 22.12(C)(1), and 22.13 (C)(2); creating new Sections 22.12(A)(9), 22.12(A)(10), and 22.12(C)(8); deleting Section 22.12(B)(3); and renumbering Sections 22.12(B)(4-6).

Approved by the BIA on April 16, 2012, except for Section 22.24, and with the correction of a typo in the citation to 25 CFR in Section 22.13. Section 22.24, regarding the need for BIA approval of future amendments, was deleted.