

TITLE 7. LAND CLEARING REGULATION

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History

<u>Revision</u>	<u>Authorizing Actions</u>	<u>Description</u>
	TCR060806-08 of 14	Adopted Land Clearing Policy Regulation as Tribal Law
20-Jun-14	LU-14-079	Codification as Title 7 of Land Use Regulations
11-Jan-16	TCR121715-01 of 08	Approved sale of timber resources when authorized by Resolution

TITLE 7. LAND CLEARING REGULATION**CHAPTER 1. POLICY, PURPOSE AND DEFINITIONS****§ 1. Declaration of Policy**

It is declared to be the policy of the Mashantucket Pequot Tribal Nation (MPTN) to provide for sound regulation and control of the land clearing in order to conserve the wooded character of the Mashantucket Pequot Tribal Reservation for the benefit and enjoyment of future generations of tribal members. This policy provides for the regulation of forest resources in a manner that ensures the health, safety and general welfare of all residents of the MPTN, its employees and patrons, and protects natural resources and the overall condition of the environment.

§ 2. Purpose

It is the purpose of this policy to:

- (1) help conserve the wooded character of the Mashantucket and protect forest resources by regulating the cutting of native woody vegetation;
- (2) protect specimen trees and significant forest communities from excess damage or removal during site development;
- (3) promote land development and site planning practices that are responsive to the scenic character of the area without preventing the reasonable development of land;
- (4) protect archaeological and/or historic resources; and,
- (5) formalize a more streamlined process for the approval of land clearing.

§ 3. Definitions

a. As used in this Land Clearing Policy, all terms not defined herein will have the meaning given them in the Bureau of Indian Affairs Manual 53.

b. Definitions

- (1) “Applicant” means any person proposing to engage in or has engaged in any non-exempt land clearing on Tribal Land.
- (2) “BIA regulated activities” means the harvesting of timber resources on reservation lands that are forested and have otherwise not been developed or designated by Tribal Council Resolution for exclusive nonforest use.
- (3) “Beneficial woody plants” means woody plants that can support berries or nuts beneficial to wildlife as forage.
- (4) “Commercial application” means any application for a land clearing permit for which a residential application would not be applicable.
- (5) “Cutting” means felling or removal of native woody vegetation, or any procedure in which the natural result will lead to the death or substantial destruction of a tree or covered (or protected) vegetation. Such acts include but are not limited to the severe cutting back of limbs to stubs larger than three inches in diameter. Cutting does not include normal pruning within the bounds of accepted arboricultural practices.

- (6) “Development” means all site improvements, including buildings, structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities.
- (7) “Diameter/diameter-breast-height” (DBH) means the diameter of any tree trunk, measured at 4.5 feet above existing grade. DBH shall be the standard measure used to determine the trunk size of a tree.
- (8) “Dripline” means an area encircling the base of a tree which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.
- (9) “Essential Root Zone” means an area located on the ground between the tree trunk and 10 feet beyond the dripline of a tree which is required for protection of a tree's root system.
- (10) “Forester” means a person who by reason of special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of forestry.
- (11) “Forest Land” means an ecosystem of at least one acre in size, including timberland and woodland, which:
 - (a) is characterized by a more or less dense and extensive tree cover;
 - (b) contains, or once contained, at least ten percent tree crown cover; and,
 - (c) is not developed or designated by Tribal Council Resolution for exclusive nonforest use.
- (12) “Filling” means the act of transporting or placing (by any manner or mechanism) material from, to, or on any soil surface or natural vegetation.
- (13) “Grading” means any excavating, filling, clearing, or the creation of impervious surface, or any combination thereof, which alters the existing surface of the land.
- (14) “Grubbing” means removal of stumps by means other than grinding in-place.
- (15) “Hazardous tree” means a tree with a structural defect or disease, or which impedes safe sight distance or traffic flow, or otherwise currently poses a threat to life or property.
- (16) “Invasive plant” means non-native plants that are disruptive in a way that causes environmental or economic harm, or harm to human health as listed by the Connecticut Invasive Plants Council.
- (17) “Land Clearing” means the removal or causing to be removed, through either direct or indirect actions, native woody vegetation from a site. Actions considered to be clearing include, but are not limited to, causing irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage.
- (18) “Landscaped vegetation” means vegetation intentionally planted at a particular location to enhance the visual/aesthetic qualities of the property and/or structure or to enhance some other quality such as the energy efficiency of a structure and etc.
- (19) “MPTN” means Mashantucket Pequot Tribal Nation.
- (20) “MPTN cultural resource entities” means the Tribal Department of Cultural Resources and the MPTN Museum and Resource Center.
- (21) “Native Woody Vegetation” means woody vegetation which is endemic to the area surrounding the Mashantucket Pequot Tribal Reservation and which would normally be identified with a healthy and productive range condition occurring as a result of the natural vegetative process of this area.
- (22) “Natural Resources Protection Program” or “NRP” shall mean the tribal government department (formerly the NRPD) assigned the responsibility to monitor and protect natural

- resources and all staff within that department with experience and qualifications suitable for executing the duties necessary to fulfill that responsibility.
- (23) “Nonforest Land” means Land that has never supported forests, or land formerly forested but either currently is, or has been designated by Tribal Council as, nonforest (e.g., cropland, pasture, residential areas, marshes, swamps, highways, and industrial or commercial uses).
- (24) “Person” shall mean any Tribal Member, Tribal employee, individual, partnership, firm, company, contractor or subcontractor, corporation, association, organization, estate, governmental entity or any other legal entity or its representative, agents or assigns. Use of the singular shall also include the plural.
- (25) “Protected tree/vegetation” means a tree or area of understory vegetation identified on an approved landscape plan to be retained and protected during construction.
- (26) “Qualified Arborist” means a professional who possesses the technical competence through experience and related training to provide for or supervise the maintenance of trees and other woody plants in the residential, commercial, and public landscape.
- (27) “Regulated property” means the Mashantucket Pequot Indian Reservation (as defined at Title 25 U.S.C. § 1752(7), Pub.L. 98-134, § 3, Oct. 18, 1983, 97 Stat. 852.) and all property owned by the Mashantucket Pequot Tribal Nation where land clearing is not otherwise regulated under other local ordinance.
- (28) “Residential Application” means an existing area of housing development when the proposed activity is to occur within one designated lot.
- (29) “Secretary” means the Secretary of the Interior or his or her authorized representative.
- (30) “Specimen tree” means a native, introduced or naturalized tree which is important because of its impact on community character, its significance in the historic/cultural landscape or its value in enhancing the effects of wildlife habitat. Any tree with a DBH of 6" or larger is eligible to be considered a specimen tree. Trees that have a small height at maturity or are slow growing, such as flowering dogwood or american holly with a DBH of 4" or larger are eligible to be considered specimen trees.
- (31) “Significant design change” means any change to a design that may result in an increase in, or geometry change to, the area of land clearing required.
- (32) “Significant forest community” means unfragmented forests including forest types that provide habitat for rare species, unusual ecological processes, highly diverse forest communities, rare forest types, and those forest types which maintain connections between similar or different habitat patches.
- (33) “Significant land clearing activity” means an activity which requires a land clearing permit to clear:
- (a) an area one-tenth of an acre or more that has some beneficial woody vegetation;
 - (b) will result in the cutting of twenty or more trees with a DBH greater than 4 inches; or,
 - (c) will result in the cutting of a specimen tree or culturally significant shrubs.
- (34) “Shrub” means beneficial woody plants that are not trees, or other woody plants greater than 0.5 m in height that generally exhibit several erect, spreading, or prostrate stems; and have a bushy appearance.
- (35) “THPO” means the Mashantucket Pequot Tribal Historic Preservation Officer.
- (36) “Timber products” means timber and all marketable products including, lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material.

- (37) “Tree” means a woody perennial, usually single stemmed plant that has a definite crown shape and reaches a mature height of at least 4 meters. The distinction between woody plants known as trees and those called shrubs is gradual. Some plants grow as either trees or shrubs.
- (38) “Trespass” means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.
- (39) “Understory vegetation” means small trees, shrubs, and groundcover plants, growing beneath and shaded by the canopy of trees.
- (40) “Woody” means Containing lignified plant tissue.

CHAPTER 2. APPLICABILITY

- a. No person shall undertake on regulated property land clearing without first obtaining a permit to do so from the NRP unless specifically exempted from doing so by Chapter 2 paragraph c. of this regulation.
- b. The requirements of this regulation do not apply to tree cutting which is reviewed pursuant to any other provision of Mashantucket Pequot Tribal Nation Code.
- c. The provisions of this regulation shall not apply to the following activities:
 - (1) removal of hazardous trees, as defined herein, and so deemed by either a qualified arborist, forester, Director of NRP, or the Director of MPTN Public Works;
 - (2) routine maintenance of vegetation including the removal of dead or diseased limbs or other necessary pruning or climbing vine removal to maintain the health of the plant;
 - (3) removal of invasive plants;
 - (4) removal to remedy a potential fire condition as determined by the MPTN Fire Chief and/or the Director of NRP;
 - (5) removal, without grubbing, of non-beneficial and non-flowering trees with a DBH less than four (4) inches located on a residential lot;
 - (6) removal, without grubbing, of non-beneficial and non-flowering shrubs located on a residential lot; and
 - (7) removal of landscaped vegetation provided that it is done with the permission of the person responsible for landscaping the area (e.g. homeowner or MPTN Public Works Department).
- d. Trespassers shall be assessed penalties in accordance with Title 25 CFR § 163.29 and Title 25 U.S.C. § 3106.
- e. Nothing in this Title exempts or excuses any person from complying with any applicable laws and ordinances of local towns or other governmental jurisdictions.

CHAPTER 3. NOTIFICATION OF SIGNIFICANT LAND CLEARING ACTIVITY

§ 1. Residential

Persons planning a project that will require a residential land clearing permit for which significant land clearing activities may occur shall:

- (1) setup a site walk with NRP staff to discuss proposed site layout prior to finalizing plans; and,

- (2) work with NRP staff in order to best comply with the management practices detailed with 8 L.U.R., Environmental Conditions for Site Development.

§ 2. Commercial

a. Persons planning a project that will require a commercial land clearing permit for which significant land clearing activities may occur shall:

- (1) notify NRP at the commencement of concept site design;
- (2) include NRP in review of each significant design change; and,
- (3) at each review step NPR shall provide written comments regarding compliance with the best management practices detailed with 8 L.U.R., Environmental Conditions for Site Development.

b. Persons failing to comply with these provisions shall be held responsible for all project impacts that may result from a denial or untimely issuance of a land clearing permit, provided that the reasons for denial or delay are the result of issues of compliance with 8 L.U.R.

CHAPTER 4. APPLICATIONS

§ 1. Land Clearing Activities on Non-Forest Land

a. Residential Applications

NRP will make available a standard form to be completed by the resident applicant or NRP staff upon verbal communication with the resident. Such forms will include at minimum:

- (1) the applicant's name, address and phone number;
- (2) the property holder's or property user's name, address and phone number, if different from the applicant's;
- (3) the street address or legal description of the property upon which the trees to be cut are located;
- (4) the number, size and species of the trees to be cut;
- (5) a statement of the reason for cutting or removal;
- (6) the schedule and method of cutting or removal, including whether stumping is to occur;
- (7) a statement of compliance with TCR060398-03 of 05 which states that ¼ of the property must stay in a natural state;
- (8) proposed use or disposal method for timber product;
- (9) proposed mitigation if required pursuant to this regulation or pursuant to any other applicable environmental regulation, information concerning the proposed planting of new trees to replace the trees to be cut; and,
- (10) any other information reasonably required by NRP.

b. Commercial Applications for Non-Significant Land Clearing

NRP will make available a standard form to be completed by the applicant. In addition to the information specified within paragraph a. of this section such forms will include:

- (1) a clear delineation of the vegetation to be cut either by the marking individual trees or delineation of the area with flagging;
- (2) a copy of notice sent to MPTN cultural resource entities announcing the availability of resources to be cut; and

- (3) a statement that the Director of Public Works has been notified of the proposed clearing and offered all those timber products resulting from the proposed cut that will not be utilized directly by the project or delivered to MPTN Cultural Resource entities.
- (4) Not that the statement of compliance with TCR060398-03 of 05 is not relevant to Commercial Applications.

c. Commercial Applications for Significant Land Clearing

In addition to the form required in paragraph b. of this chapter, the Applicant shall provide:

- (1) a copy of the Tribal Council Resolution authorizing the project location and thus designating non-forest use lands;
- (2) proof of compliance with the notification required in Chapter 3, § 2;
- (3) a record of all significant design changes and/or responses to NRP regarding compliance with 8 L.U.R.;
- (4) Any other information reasonably required by NRP.

§ 2. Land Clearing Activities on MPTN Forest Land

a. Free-use Harvesting Permits

NRP will make available a standard form to be completed and signed by the applicant tribal member. Such forms shall be authorized by the secretary and will include at minimum:

- (1) the applicant tribal member's name, address and phone number;
- (2) the street address or legal description of the property upon which the trees to be cut are located;
- (3) the schedule and method of cutting or removal, including whether stumping is to occur;
- (4) species and types of forest products to be removed specified;
- (5) the reason for cutting;
- (6) the estimated value of the timber;
- (7) a statement that the that forest products removed under this authority will be used for the sole benefit of the applicant tribal member and will not be sold or exchanged for other goods or services;
- (8) a statement that the cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc;
- (9) a statement indicating that the estimated value to be harvested; and
- (10) a plan for natural and/or artificial reforestation or the area.

b. Forest product harvesting permits

- (1) Except as provided in Section 5(d)(1) removal of forest products that are not under formal contract, pursuant to 25CFR163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only through Tribal Council Resolution, for harvest of forest products from Indian forest land, as authorized in 25CFR163.20. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.
- (2) Timber cutting permit form BIA 5-5331 shall be used for paid permit harvesting.

CHAPTER 5. REVIEW OF APPLICATION

§ 1. General

- a. NRP shall review applications for conformance to the provisions of this regulation and either accept as complete and in conformance, return for revisions, or deny the application within three business days.
- b. Applications that involve Significant Land Clearing for which compliance with Chapter 3 cannot be demonstrated are to be considered incomplete. The applicant may either withdraw the application or continue working with NRP to document compliance with 8 L.U.R. However, no time frame is specified for action by NRP on incomplete applications. NRP is not responsible for project delays resulting from non-compliance with Chapter 3.
- c. Upon receipt of a complete application NRP shall immediately notify by e-mail the Tribal Historic Preservation Officer, and transmit a copy of the permit application via email and/or traditional mail services.

§ 2. Review Standards

- a. Permit applications for land clearing consisting of solely dead or dying vegetation.
 - (1) A permit shall be issued if the NRP determines that the vegetation is dead or dying, except for instances where the retention of dead or dying trees located in wetlands, natural areas, stream corridors, parks or open space areas, in order to provide for wildlife habitat and natural processes, unless the tree presents a potential hazard to persons or property.
 - (2) For the purposes of this section:
 - (a) "Dead" means the vegetation is lifeless; and,
 - (b) "Dying" means the vegetation is in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees.
- b. Permit applications for a non-significant land clearing permit.
 - (1) A permit shall be issued if the NRP determines that removal of the vegetation will:
 - (a) not result in the removal of a unique habitat for wildlife;
 - (i) For the purposes of this section "unique" means:
 1. the presence of an active nest that cannot be relocated; or,
 2. existing in a number or quality not present within the immediate surrounding area.
 - (ii) For the purpose of this section "habitat" means:
 1. beneficial woody vegetation;
 2. significant indication of past nesting, perching or other wildlife activities; or,
 3. presence of cavities suitable for wildlife roosting.
 - (b) not exacerbate issues of erosion, soil stability, soil structure, flow of surface waters, water quality, health of adjacent trees and understory vegetation, or existing windbreaks; and,
 - (c) not alter significantly the character, aesthetics, property values or surrounding property uses.
 - (2) A permit may also be granted if the NRP determines that all prudent and feasible alternatives have been assessed and suitable and appropriate mitigation can be agreed upon.

- (3) In addition, a Residential application shall not be approved unless found to be in compliance with TCR060398-03 of 05 which states that $\frac{1}{4}$ of the property must stay in a natural state.
 - (4) A permit for a significant residential land clearing shall be issued if NRP determines that the design incorporates the BMPs specified in 8 L.U.R. Note: compliance with 8 L.U.R. may be accomplished through a mutual agreement between the applicant and NRP which specifies an appropriate mitigation. Mitigation cannot substitute for impacts deemed negative and easily avoidable by NRP.
- c. Permits applications which include grubbing:
- (1) require compliance with all applicable requirements of 8 L.U.R. Note: for Residential Applications, compliance with 8 L.U.R. may be accomplished through a mutual agreement between the applicant and NRP; and,
 - (2) require compliance with the policies and procedures of the THPO (See 6 L.U.R.).
- d. Permit applications for a significant land clearing permit.
- (1) A permit shall only be issued if the NRP determines that the entire project will be in compliance with the applicable best management practices specified in 8 L.U.R. (Note: for Residential Applications, compliance with 8 L.U.R. may be accomplished through a mutual agreement between the applicant and NRP).
 - (2) Mitigation
 - (a) Commercial applications shall require an adequate mitigation plan be submitted as a condition of approval for the permit.
 - (b) Residential applications may require an adequate mitigation plan be submitted as a condition of approval for the permit.
 - (c) Mitigation cannot substitute for impacts deemed negative and easily avoidable by NRP.
- e. Permit applications for harvesting within MPTN forest land.
- (1) Free-use harvesting
 - (a) A permit shall be issued, with a Timber Cutting Form BAI 5-5331 with "Free-Use" inserted above the title of the document, if the NRP determines that:
 - (i) removal of the vegetation will not adversely affect associated resources such as riparian zones, areas of special significance, etc;
 - (ii) the forest products will be used for the sole benefit of the applicant tribal member and will not be sold or exchanged for other goods or services unless authorized by Tribal Council Resolution;
 - (iii) the plan for natural and/or artificial reforestation is sufficient; and,
 - (iv) the estimated value harvested by the applicant tribal member within the current fiscal year will not exceed \$5,000.
 - (2) Any other BIA Regulated Harvesting Activities
 - (a) Except for the provisions outlined in Section 7f.(1) the harvest of timber on MPTN designated forest land shall be consistent with the current MPTN Forest Management Plan and follow all Bureau of Indian Affairs requirements as specified within 25 CFR 163 and the Indian Forest Management Handbook IAM 4-H.
 - (b) Removal of forest products that are not under formal contract, pursuant to 25CFR163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only through TCR, for harvest of forest products from Indian forest land, as authorized in 25CFR163.20. To be valid, permits must be approved by the Secretary.

Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

- (c) Harvesting timber on MPTN designated forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.
- (d) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate and based on ecological principles.
- (e) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of MPTN and the Secretary and shall be directed toward achieving an approximate balance between net growth and harvest at the earliest practical time.

CHAPTER 6. MITIGATION

a. Mitigation may be required as a condition of a permit issued under this regulation, or if a tree is cut in violation of this regulation. The mitigation plan shall be submitted at the time of application and shall provide for the following:

- (1) Tree replacement shall be determined according to the DBH of the tree to be removed.
- (2) The total DBH of the replanted trees shall equal the DBH of the tree to be removed.
- (3) The DBH of the replacement trees must be the largest reasonable available by local nurseries.

b. The location of the replacement trees shall meet one or more of the following at the discretion of the MPTN NRP:

- (1) In the public right-of-way adjoining the property where the tree to be removed is located, in accordance with this regulation. The MPTN NRP shall consult with the Mashantucket Pequot Tribal Nation Planning Department to avoid conflict with current and future utilities.
- (2) On the property where the tree to be removed is located. Site characteristics shall be taken into consideration.
- (3) If no suitable place exists on the property where the tree to be removed is located or in the adjoining right-of-way, the applicant may plant trees on another property in the neighborhood with the permission of the property owner.
- (4) If no suitable place exists on the property where the tree to be removed is located, the applicant may, in lieu of planting, pay a mitigation fee into the Mashantucket Pequot Tribal Nation's tree fund in accordance with the value typical nursery stock of the same species.

c. When the MPTN NRP determines that the above mitigation requirements create an unreasonable burden to a property owner, the MPTN NRP may adjust the mitigation requirements. Mitigation shall not be reduced if it is determined that an intentional violation exists.

d. If any replacement tree dies within three years of the planting, the property owner shall replace the tree. No replacement tree shall be cut without a permit under this Chapter.

e. Any person who fails to enter into a mitigation plan as required by this subsection or who fails to comply with any condition of that agreement, or with any condition of any permit issued under this regulation, shall be subject to the penalties provided for violation of this regulation.

CHAPTER 7. CONDITIONS ON USE OR DISPOSAL OF TIMBER PRODUCTS

§ 1. Permitted Residential Land Clearing

a. Unless a need for a specific species has been identified by MPTN Cultural Resource entities, timber cut under the authorization of a residential land clearing permit may be retained by the homeowner for personal use.

b. If the homeowner does not wish to retain the resource, the timber shall be offered to the MPTN Public Works Department for utilization within their firewood program or to meet other tribal needs.

c. Any timber not desired by the MPTN PW shall be disposed of by the homeowner.

d. Under no circumstances shall a residential permit to clear land be issued based solely on harvesting value from the sale of timber products.

§ 2. Permitted Commercial Land Clearing on Non-Forest Land

a. Unless a MPTN Cultural Resource entity has identified a specific resource for their use, timber cut under the authorization of a commercial land clearing permit may be utilized on-site for erosion control or other project specific uses.

b. Any timber product which will not be utilized on-site shall be offered to the MPTN Public Works Department for utilization within their firewood program or to meet other tribal needs.

c. Any timber not desired by the MPTN PW may be offered or otherwise sold to the contractor to offset project costs, provided that the contractor has been selected following the standard bidding procedures of the MPTN Procurement Department which shall require that each bid include the estimated value of the lumber.

d. Under no circumstances shall a Commercial Non-Forest permit to clear land be issued based solely on harvesting value out of the resource.

e. Any harvesting of resources, outside of the permitted limits, by a contractor who will take control of the resource will be assessed a penalty in accordance with Section 15(f)(3)c.

§ 3. Permitted Free-use harvesting on MPTN Forest Land

The forest products will be used for the sole benefit of the applicant tribal member and will not be sold or exchanged for other goods or services unless specifically authorized within a Tribal Council Resolution.

§ 4. Permitted BIA Regulated Harvesting Activities

The sale of timber on MPTN designated forest land shall be compliance with all Bureau of Indian Affairs requirements as specified within 25 CFR 163 and the Indian Forest Management Handbook IAM 4-H.

§ 5. Unpermitted Activities

The harvest or sale of forest products without permit is a trespass. Trespassers shall be assessed penalties in accordance with Title 25 CFR § 163.29 and Title 25 U.S.C. § 3106”

CHAPTER 8. MONITORING AND INSPECTIONS

a. Prior to commencement of construction, the applicant, contractor and construction crew, shall conduct a meeting with NRP to review the proposed construction phasing and number and timing of site inspections.

b. Initial site inspection of erosion and sedimentation controls and placement of tree protection measures shall occur after installation of barriers around preserved areas and construction of all structural erosion and sedimentation controls, but before any clearing or grading has begun.

c. Routine inspections of preserved areas and erosion and sedimentation controls shall be made at varying intervals depending on the extent of site alteration and the frequency and intensity of rainfall.

d. Effective stabilization of revegetated areas must be approved by NRP before erosion and sedimentation controls are removed. NRP shall complete an inspection prior to removal of temporary erosion and sedimentation controls.

CHAPTER 9. ENFORCEMENT**§ 1. Evidence of Violation or Trespass**

a. If a tree is removed without a tree cutting permit, a violation shall be determined by measuring the stump. A stump that is 4" or more in circumference shall be considered prima facie evidence of a violation of this chapter.

b. Removal of the stump of a tree cut without a tree cutting permit prior to the determination provided in above is a violation of this regulation.

c. Damage to forest resources - damage to trunks, mounding of soil around the trunk, evidence of root damage, and evidence of improper pruning - even damages resulting from but not specifically authorized under permits is a violation of this regulation.

d. Proof of violation of this regulation shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible person.

e. As soon as a violation is determined, the MPTN NRP shall notify the property owner in writing regarding the mitigation requirements of this regulation. Within thirty (30) days of the date of mailing of this notice, the property owner shall submit a tree cutting application in accordance with this regulation and enter into a mitigation plan approved by the MPTN NRP.

§ 2. Penalties

Penalties assessed are not to exceed the greater of:

- (1) value of the resource damaged; or,
- (2) \$1,000.00 per violation for each day during which the violation occurs; or,
- (3) three times the value of the resource(s) if the violation was by a contractor who took control of the resource and it was shown to be an over clearing that included a tree(s) with non-insignificant stumpage value.

§ 3. Hearing, Appeal and Judicial Review**a. Right to Hearing**

- (1) A person may request a hearing before the Land Use Commission if:
 - (a) a permit has been denied;
 - (b) a penalty has been assessed; or,
 - (c) they are seeking relief from a specific permit condition.
- (2) A request for a hearing must be filed with the Commission Administrator within thirty (30) calendar days of the issuance of an Enforcement Order or penalty; denial of a Permit, variance, or Certificate of Completion; or imposition of a Permit condition.

b. Hearing Procedure

The Hearing shall follow the procedures established within Tribal Administrative Procedures Act (40 M.P.T.L), with the Commission serving as the Hearing Official.

c. Right of Judicial Review

A Person dissatisfied with a final decision of the Commission is entitled to Tribal Court review provided that a complaint is filed pursuant to the procedures set forth in the Tribal Administrative Procedures Act.

d. Enforcement Action

- (1) If a Person does not comply with a final decision of the Commission, including the issuance of penalties or an Enforcement Order, the Commission may commence an enforcement action in the Mashantucket Pequot Tribal Court.
 - (a) Prior to filing an enforcement action with the Tribal Court, the Commission must issue the Person who is non-compliant a notice that includes a description of the non-compliance (e.g., failure to pay a penalty) and the date by which the non-compliance must be resolved.
 - (b) Enforcement actions shall be commenced by the Administrator on behalf of the Commission by filing a complaint with the Tribal Court clerk in the Mashantucket Pequot Tribal Court. The complaint shall be filed within sixty (60) calendar days of the expiration of the deadline set forth in the notice issued pursuant to paragraph (1) of this Section.