

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council of the White Mountain Apache Tribe has not previously enacted a Sunrise Trespass Ordinance to prohibit the trespass of Sunrise snowskiers and visitors into areas other than designated open ski areas, and

WHEREAS, these trespasses often result in expenses incurred by the Tribe for the rescue and aid of skiers, and

WHEREAS, Proposed Ordinance No. 131 provides the means by which these expenses and a civil restitution fee shall be imposed on violators of said ordinance, and

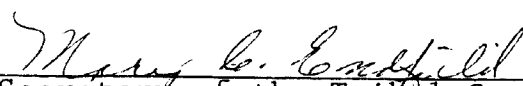
WHEREAS, the Tribal Council has approved the Proposed Ordinance No. 131.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that Proposed Ordinance No. 131 is approved to be posted for ten (10) days on the Fort Apache Indian Reservation as is required by the White Mountain Apache Tribal Constitution and By-Laws as amended.

The foregoing resolution was on May 04, 1983 duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i & q) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

RECEIVED
MAY 11 1983
FORT APACHE INDIAN
AGENCY
APACHE COUNTY ARIZ


Chairman of the Tribal Council


Secretary of the Tribal Council

PROPOSED ENACTMENT OF
THE ORDINANCE NO. _____
OF THE WHITE MOUNTAIN
APACHE TRIBE

An Ordinance prohibiting snow skiers and other visitors on the Fort Apache Indian Reservation at Sunrise Ski Resort, and annexes, from going beyond the boundary ropes which delineate the outer limits of the Sunrise Skiing area; imposing a civil restitution fee not to exceed \$100, and liability for expenses incurred in locating, rescuing, and administering medical care, on the violator of this ordinance.

BE IT HEREBY ENACTED by the Tribal Council of the White Mountain Apache Tribe that Ordinance No. 131 is as follows:

Section 1: Short Title:

This act may be cited as "The Sunrise Trespass Ordinance of 1983."

Section 2: Purpose:

The purposes of this act are to restrict snowskiers and other visitors on the reservation at Sunrise Ski Resort and its annexes, from going beyond the area open for skiing, and to impose civil restitution fees and liability for expenses incurred in locating, aiding and returning the violators of this ordinance to the unrestricted ski areas upon these violators.

Section 3: This act shall be liberally construed to effect their objects and to promote justice.

Section 4: Definitions:

(a) emergency assistance: Any and all assistance rendered by the Tribe, or non-Indian rescue and medical teams which enter the Fort Apache Indian Reservation and render services to locate and aid a violator of this act.

(b) open ski area: The area delineated by a boundary rope at the Sunrise Ski Resort slopes for the purpose of snowskiing and visiting by guests at Sunrise Ski Resort. This area is marked as an accepted skiing slope.

(c) prohibited area: Any and all areas outside of the boundary rope which encompasses the open ski area. These prohibited areas are not for snow skiing. Skiers and visitors of Sunrise may not use these areas for skiing or any other unauthorized purpose.

(c) Sunrise and its annexes: This includes the Sunrise Ski Resort, its skiing areas, lodges, and any additional facility provided for the purpose of snowskiing or any Sunrise Resort-related activity.

(e) Trespassing: In accordance with the Tribal Game and Fish Code, trespassing is the unauthorized entry of a person or any part thereof into an area of the reservation which is not open for the purpose of that entry by that individual or part thereof. "Part thereof" shall include any extension of a person as long as it touches or belongs to that person.

(f) Violator: Any person who acts in abeyance with the provisions of this act and/or the White Mountain Apache Tribal Game and Fish Code.

Section 5: Saving Clause:

The act does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

Section 6: Scope:

This Act shall apply to all snow skiers and other visitors who enter upon the Fort Apache Indian Reservation for the purpose of snow skiing or otherwise using the facilities or premises of the Sunrise Ski Resort and/or any area of annex thereof.

Section 7: All snow skiing and use of resort facilities is restricted to open areas which are clearly within the boundary rope surrounding the ski area.

Section 8: (a) Any person violating Section 7 of this trespass ordinance by trespassing beyond the open ski areas shall be cited and required to pay an amount equaling a civil restitution fee not greater than One Hundred Dollars (\$100.00) and an amount equal to any expenses incurred by the White Mountain Apache Tribe (Tribe) or its agents in locating and removing the violator from the prohibited area.

(b) Any violator of this act requiring emergency assistance from a tribal search and rescue team, or any other agent of the Tribe, including but not limited to any rescue or medical team coming onto the Fort Apache Indian Reservation to provide emergency services to that violator, will be held liable to the full amount of the costs incurred to provide such services. These costs will be assessed in addition to the civil restitution fee imposed by this Act in Section 8 (a) herein.

Section 9: This act is to be enforced in addition to and in conjunction with the White Mountain Apache Game and Fish Code, as amended, including but not limited to the following provisions:

"Trespassing: Violation of this Code by non-members triggers spontaneous revocation of permission to enter the reservation and renders the violator a trespassor. It shall be unlawful for any non-member to trespass on the White Mountain Apache Reservation."
White Mountain Apache Game and Fish Code, as amended, Section 3.10.

Section 10: Failure to pay the fees and expenses described herein; or a repeated trespass and violation of this act may result in further legal action against the violator in the White Mountain Apache Tribal Court.

Section 11. The ratification of a violator's return to the reservation or failure to pay the fees and expenses incurred in no way constitutes a waiver of the Tribe's right to sue for repeated violations nor does it waive the Tribe's right to pursue any other rights or remedies available. The Tribe or any subentity of the Tribe including but not limited to the Sunrise Ski Resort has standing to bring civil suit against the violator in the White Mountain Apache Tribal Court.

Section 12. (a) Neither the use of the Sunrise Ski Resort by non-members nor any provision provided in this Ordinance constitutes consent by the White Mountain Apache Tribe or its sub-organizations to be sued in any Court. This ordinance does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose. The right to protection under the Tribe's sovereign immunity is in no way waived by the Tribe's sub-organizations, Tribal Councilman and Officials, and Tribal Employees.

(b) Nothing in this Code shall be deemed to preclude the federal prosecution under 18 U.S.C. 1164 of non-members who trespass on the reservation. Any authorized officer may follow the procedure provided by the Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Code.

(c) This Code has been enacted to protect the resources of the White Mountain Apache Tribe, and taking or using of tribal property or services contrary to the terms of this Code constitutes theft of tribal assets. Nothing in this Code shall be deemed to preclude federal prosecution of violators under 18 U.S.C. 1163 for theft of tribal assets.

Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Code.

(d) Nothing in this Code shall be deemed to preclude the federal prosecution of violators of this Code under the Lacey Act Amendments of 1981, Public Law 97-79. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Code.

Section 14: Severability Clause

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.