

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

WHEREAS, pursuant to prior Tribal Council Resolution No. 11-90-249, the Tribal Council directed that the Tribal Council Secretary post a proposed ordinance providing for the Preservation and Protection of Religious Sites; and

WHEREAS, the Tribal Council is advised that said proposed ordinance was posted in accordance with the requirements of the Tribal Constitution for a period of at least ten days in each district for purposes of obtaining public comment; and

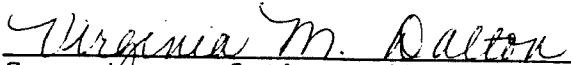
WHEREAS, the Tribal Council concludes that said ordinance should be enacted this date.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts the Preservation and Protection of Religious Sites Ordinance of the White Mountain Apache Tribe effective this date.

The foregoing resolution was on December 13, 1990, duly adopted by a vote of five for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (a) (g) (u) of the Amended Constitution and Bylaws 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).



Chairman of the Tribal Council



Secretary of the Tribal Council

RECEIVED

DEC 17 1990

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA

Ordinance No. 163

RECEIVED

JAN 18 1991

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

BE IT ENACTED by the White Mountain Apache Tribal Council in Council assembled that the Government Code of the White Mountain Apache Tribe be amended as follows:

CHAPTER EIGHT
PRESERVATION OF RELIGIOUS SITES

SECTION 8.1 STATEMENT OF TRIBAL POLICY AND LEGISLATIVE INTENT

The right of religious freedom is guaranteed to Indian people by the American Indian Religious Freedom Act, the First and Fourteenth Amendments of the Constitution of the United States, the Indian Civil Rights Act and Tribal law and custom. Recognizing this right and that the White Mountain Apache People alone have the absolute, inherent, retained sovereign right to use and enjoy the White Mountain Apache Reservation, and to govern its use by members and non-members, the Tribal Council intends that tribal members shall be afforded the greatest possible freedom to practice traditional religion, to have access to religious sites and to protect such sites from desecration and destruction.

SECTION 8.2 PURPOSE

The Tribal Council of the White Mountain Apache Tribe has the obligation and possesses the authority to set aside for the protection of the people of the White Mountain Apache Tribe certain plots of land as religious sites for exclusive use of persons practicing traditional Apache religion. Pursuant to said obligation and authority the Tribal Council of the White Mountain Apache Tribe hereby sets aside certain portions of land described in this Chapter as designated sacred and religious sites for exclusive use by persons practicing traditional Apache Religion.

SECTION 8.3 RESTRICTED USE OF RELIGIOUS SITES

A. It shall be unlawful for any person other than persons practicing traditional Apache religion to enter any area designated as a religious site without the express permission of the White Mountain Apache Tribal Council or the express permission of those persons practicing traditional Apache religion at such sites.

B. It shall be unlawful for any person to excavate, remove, alter or deface any area designated as a religious site or any property found therein.

SECTION 8.4 DESIGNATED RELIGIOUS SITES

A. The following areas shall be designated as sacred and Religious Sites and are hereby set aside for the exclusive use of persons practicing traditional Apache Religion and are subject to the restrictions promulgated by this Chapter:

(1) The area known as the Holy Grounds, more properly described in Apache as "The Place of the Sacred Cane" and legally described below:

A PARCEL OF LAND SITUATED IN THE KINISHBA AREA, WITHIN THE NE $\frac{1}{4}$ SECTION 18 T5N, 522E, G&SRB&M, ON THE FORT APACHE INDIAN RESERVATION, GILA COUNTY, STATE OF ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP LOCATED AT THE EAST QUARTER CORNER OF SECTION 18, T5N, R22E, AND RUNNING;

THENCE N 48°56'30" W FOR A DISTANCE OF 2212.65 FEET TO THE TRUE POINT OF BEGINNING;

THENCE S 63°34'12" E FOR A DISTANCE OF 581.38 FEET; THENCE S 22°29'05" W FOR A DISTANCE OF 465.00 FEET; THENCE N 67°30'55" W FOR A DISTANCE OF 310.00 FEET; THENCE N 38°27'36" W FOR A DISTANCE OF 308.87 FEET; THENCE N 22°29'05" E FOR A DISTANCE OF 355 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 5.99 ACRES MORE OR LESS.

SECTION 8.5 CIVIL REMEDIES

A. Recognizing the White Mountain Apache tradition of using restitution as a remedy for injustice or wrong doing, the Tribal Council hereby declares that this code is civil in nature and that restitution shall be the primary remedy for its violation, except that as to persons subject to the criminal jurisdiction of the White Mountain Apache Tribe, criminal sanctions may also be imposed as provided in Section 8.6 of this Chapter.

B. Except as otherwise provided in this Chapter, all matters arising under this Chapter shall be adjudicated in the White Mountain Apache Tribal Court following the filing of a civil complaint, naming the White Mountain Apache Tribe as plaintiff, by the authorized officer alleging the violation, or by legal counsel for the Tribe.

C. Any violator of this Chapter, who is adjudicated and found guilty by the Tribal Court for violation of this Chapter, may be charged a restitution fee not to exceed Five Thousand Dollars (\$5,000.00) plus all expenses incurred for case investigation, court costs and attorney's fees.

SECTION 8.6 CRIMINAL SANCTIONS

Any person who is subject to the criminal jurisdiction of the White Mountain Apache Tribe and is found guilty of a violation of this Chapter, may be imprisoned for a period of not to exceed one year and be fined in an amount not to exceed Five Thousand Dollars (\$5,000.00) or both.

SECTION 8.7 REPRESENTATION OF THE TRIBE IN ACTIONS ARISING UNDER THIS CHAPTER

The Tribal Prosecutor or, in the case of conflict of interest, such other counsel for the Tribe as the Tribal Council may designate, shall represent the Tribe in all actions arising under this Chapter to which the Tribe is a party, whether such actions are civil or criminal.

SECTION 8.8 TRESPASSING

Violation of this Chapter by non-members of the White Mountain Apache Tribe constitutes immediate revocation of express or implied permission to remain on or enter the reservation and shall be considered a trespass in violation of the laws of the White Mountain Apache Tribe.

SECTION 8.9 FEDERAL PROSECUTION

This Chapter has been enacted to protect the resources of the White Mountain Apache Tribe, and the taking or using of tribal property or services contrary to the terms of the Chapter constitutes theft of tribal assets. Nothing in this Chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. §1165 of non-members who trespass on the reservation. 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 Chapter.


SECTION 8.10 EXCLUSION

Nothing in this Chapter shall be deemed to preclude the use of the remedy of exclusion of nonmembers for violation of this Chapter and any authorized officer may follow the procedure provided by Tribal law to initiate an action for exclusion in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

SECTION 8.11 DISPOSITION OF RESTITUTION AND FINES

Any funds received from fines or restitution shall be utilized for the reconstruction and/or repair of religious sites or property therein.

The foregoing Ordinance No. 163 was on December 13, 1990, duly enacted by a vote of five for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (f), (g), (h), (i) and (q) of the Amended Constitution and bylaws 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)


Chairman of the Tribal Council


Secretary of the Tribal Council

APPROVED:

Superintendent
Fort Apache Indian Agency
Whiteriver, Arizona