



IN REPLY REFER TO:
Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Olympic Peninsula Agency
1216 Skyview Drive, P. O. Box 48
Aberdeen, WA 98520

AUG - 5 1998 RECEIVED
QUILEUTE TRIBE

August 4, 1998

Quileute Tribal Council
Mr. Douglas Woodruff Sr., Chairman
P.O. Box 279
LaPush, WA 98350-0279

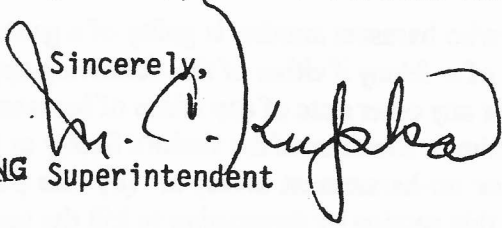
Dear Mr. Woodruff:

Enclosed are two (2) copies of Quileute Resolution No. 98-A-64 and the Quileute Harrassment Ordinance enacted July 30, 1998. This ordinance adds to the present Quileute Law and Order Code No. 74-A7.

Pursuant to the Quileute Tribal Constitution, all ordinances and resolutions thereto, are subject to review by the Secretary of The Interior. Based on my review, I recommend approval.

The Area Office has ninety (90) days to approve or rescind the Superintendent's decision.

Sincerely,


ACTING Superintendent

enclosure(s)

QUILEUTE HARASSMENT ORDINANCE

1.01 Definition-Penalties.

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

- (i) To cause bodily injury, either immediately or in the future, to the person threatened or to any other person; or**
- (ii) To cause physical damage to the property of a person other than the actor, or**
- (iii) To subject the person threatened or any other person to physical confinement or restraint; or**
- (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and**

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

(2) A person who harasses another is guilty of a gross misdemeanor except that the person is guilty of a felony if either of the following applies: (a) The person has previously been convicted in this or any other state of any crime of harassment, as defined in section .05 of this chapter, of the same victim or members of the victim's family or household or any person specifically named in no-contact or no-harassment order; or (b) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

(4) In addition to the criminal penalty provided in subsection (2) of this section, there is hereby created a civil cause of action for harassment. A person may be liable to the victim of harassment for actual damages and penalties of up to ten thousand dollars.

1.02 Malicious harassment.

(1) A person is guilty of malicious harassment if he maliciously and with the intent to intimidate or harass another person because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

- (a) Causes physical injury to another person; or**
- (b) By words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person. Such words or conduct include, but are not limited to,
 - (i) cross burning,****

(ii) painting, drawing, or depicting symbols or words on the property of the victim when the symbols or words historically or traditionally connote hatred or threats towards the victim, or

(iii) written or oral communication designed to intimidate or harass because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry national origin, or mental, physical, or sensory handicap. However, it does not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way unless the context or circumstances surrounding the works or conduct places another person in reasonable fear of harm to his or her person or property or harm to the person or property of a third person; or

(c) Causes physical damage to or destruction of the property of another person.

(2) Malicious harassment is a felony.

(3) In addition to the criminal penalty provided in subsection (2) of this section, there is hereby created a civil cause of action malicious harassment. A person may be liable to the victim of malicious harassment for actual damages and punitive damages of up to ten thousand dollars.

(4) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise under law.

1.03 Telephone calls to harass, intimidate, torment, or embarrass. Every person, who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(1) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(2) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(3) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; shall be guilty of a gross misdemeanor, unless that person has previously been convicted of any crime of harassment, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other sate, in which case the person is guilty of a felony.

1.04 Telephone calls to harass, intimidate, torment, or embarrass—Permitting telephone to be used. Any person who knowingly permits any telephone under his control to be used for any purpose prohibited by 1.03 shall be guilty of a misdemeanor.

1.05 Telephone calls to harass, intimidate, torment, or embarrass—Offense, where deemed committed. Any offense committed by use of a telephone may be deemed to have been committed

either at the place from which the threats were made or at the place from which the telephone call or calls were received.

1.06 Place where committed. Any harassment offense committed as set forth in section 1.03 of this chapter may be deemed to have been committed where the conduct occurred, at the place from which the threat or threats were made or at the place where the threats were received.

1.07 Court-ordered requirements upon person charged with crime-Violation.

(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) An intentional violation of a court order issued under this section is a misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter Quileute Law & Order Code. A certified copy of the order shall be provided to the victim by the clerk of the court.

1.08 Arraignment-No contact order. A defendant who is charged by citation, complaint, or information with an offense involving harassment and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than 30 days after the next regular tribal business day following the issuance of the citation or the filing of the complaint or information. A judge of the court may consider the necessity of imposing a no-contact or no-harassment order or other conditions of pretrial release at any time following the filing of the complaint, citation or information.

1.09 Crimes included in harassment. As used in this chapter, "harassment" may include but is not limited to any of the following crimes: (1) Harassment; (2) Malicious harassment; (3) Telephone harassment; (4) Assault in the first degree; (5) Assault of a child in the first degree; (6) Assault in the second degree; (7) Assault of a child in the second degree; (8) Simple Assault; (9) Reckless endangerment; (10) Extortion in the first degree; (11) Extortion in the second degree; (12) Coercion; (13) Burglary in the first degree; (14) Burglary in the second degree; (15) Criminal trespass in the first degree; (16) Criminal trespass in the second degree; (17) Malicious mischief in the first degree; (18) Malicious mischief in the second degree; (19) Malicious mischief in the third degree; (20) Kidnaping in the first degree; (21) Kidnaping in the second degree; (22) Unlawful imprisonment; (23) Rape in the first degree; (24) Rape in the second degree; (25) Rape in the third degree; (26) Indecent liberties;

(27) Rape of a child in the first degree; (28) Rape of a child in the second degree; (29) Rape of a child in the third degree; (30) Child molestation in the first degree; (31) Child molestation in the second degree; (32) Child molestation in the third degree; and (33) Stalking.

1.10 Order restricting contact-Violation. The victim shall be informed by the tribal police or the tribal prosecutor of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section is a gross misdemeanor. The written order shall contain the court's directives: Violation of this order is a criminal offense under chapter 13.24.6 Quileute Law & Order Code and will subject a violator to arrest.

1.11 Non-liability of peace officer. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of harassment brought by any party to the incident.

1.12 "Convicted," time when. As used in sections .01, .03 & 13 of this chapter, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, post-trial motions, and appeals.

1.13 Stalking.

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly follows another person to that person's home,

school, place of employment, business, or any other location, or follows the person while the person is in transit between locations; and

(b) The person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed or of another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person being followed; or

(ii) Knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that;

(a) the stalker was not given actual notice that the person being followed did not want the stalker to contact or follow the person; and

(b) the stalker did not intend to frighten, intimidate, or harass the person being followed.

(3) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(4) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a felony if any of the following applies:

(a) The stalker has previously been convicted in the Quileute Tribal Court of any crime of harassment as defined in section .09 of this chapter, of the same victim or members of the victim's family or household or any other person specifically named in a no-contact order or no-harassment order;

(b) the person violates a court order issued pursuant to section .07 of this chapter protecting the person being stalked; or

(c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person.

1.14 Effective date— , This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the government and its existing public institutions, and shall take effect July 30, 1998.

1.15 Severability— If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Rec'd 8-03-98
T. OPS-OPA