

## **ORDINANCE NO. 7 - 1998**

### **AN ORDINANCE RESTRICTING USE OF PERSONAL WATERCRAFT WITHIN THE EXTERIOR BOUNDARIES OF SAN JUAN COUNTY AND ESTABLISHING FINES AND PENALTIES FOR THE VIOLATION THEREOF.**

#### **BACKGROUND**

WHEREAS, on January 30, 1996, the San Juan County Board of County Commissioners (the "Board") after numerous public meetings and hearings and discussions regarding the growing problem with the use of personal watercraft, adopted San Juan County Ordinance No. 3-1996 which ordinance prohibited recreational use of personal watercraft or "jetskis" from San Juan County, subject to certain exceptions for a period of two years; and

WHEREAS, the purpose of the ordinance enacted in 1996 was to protect the County's special marine environment, its tourist-driven economy, and the peaceful use of the San Juan Islands by residents and visitors. In the commissioners' judgment, it also maximizes the opportunities for compatible recreational use by boaters; and

WHEREAS, on April 23, 1996, the National Marine Manufacturers Association on behalf of the Personal Watercraft Industry Association, together with other petitioners filed a declaratory judgment action in Whatcom County challenging the constitutionality of the ordinance; entitled Weden, et al. v. San Juan County; and

WHEREAS, San Juan County filed a counterclaim seeking a declaration that Ordinance 3 - 1998 was a lawful and valid ordinance; and

WHEREAS, on July 9, 1998, in a 7-2 decision, the Washington Supreme Court upheld the position of San Juan County and declared that Ordinance 3 - 1996 was a valid exercise of the County's power as a local, reasonable, ordinance that does not conflict with other state laws; and

WHEREAS, the Supreme Court's ruling became effective upon issuance of the Mandate on September 15, 1998; and

WHEREAS, San Juan County commissioned a study of the use of personal watercraft in San Juan County by Aquatic Resources Conservation Group. The study, dated September 7, 1998, consisting of 82 pages plus appendices, is a review of the conditions of San Juan County, the operation of personal watercraft and a survey of national, regional, state and local response to increasing personal watercraft use. The study confirmed for the Board the basis for the findings set forth in Ordinance 3 - 1996. In light of that report, those findings are repeated below; and

WHEREAS, after a notice was duly published in the official county newspaper, the Board of County Commissioners considered readopting an ordinance nearly identical to Ordinance 3 - 1996; and

WHEREAS, a public hearing was held on the proposed ordinance on September 8, 1998; and continued to September 28, 1998, at which time public testimony was closed and deliberations conducted by the Board of County Commissioners; and deliberations continued to September 29, 1998.

NOW, THEREFORE IT IS HEREBY ORDAINED:

***Section 1. LEGISLATIVE FINDINGS***

**Physical Characteristics of San Juan County**

1. The exterior boundaries of San Juan County are described in RCW 36.04.280 as follows:

Commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and Haro Strait to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning.

2. San Juan County is an archipelago in the northwest corner of Washington State. The County contains approximately 179.3 square miles of land mass. The county consists of 172 named islands with over 750 visible land masses at extreme low tide. Approximately 375 miles of shoreline encompass the 150 largest islands at high tide, and about 440 square miles of marine waters are included within its boundary.

3. Tidal height in and around the islands varies fourteen (14) feet. Tidal current varies by location and time of day from one to six knots. Water temperatures range from 45 degrees in winter to 52 degrees in summer.

4. Boating dangers include powerful currents, choppy or heavy seas, floating logs and debris, partially submerged and surface rocks, fog banks and unpredictable weather.

**Transportation to and from the Islands**

5. Transportation to, from and between the islands comprising the county is provided by public and privately owned and operated ferries, and aircraft, including float planes, and commercial and recreational vessels. Public ferry lanes exist throughout the county, and public ferry service from the Washington State Ferry System is provided to San Juan, Orcas, Lopez and Shaw islands and to Sidney, British Columbia. Float planes customarily land in Friday Harbor and Roche Harbor on San Juan Island and at West Sound and Rosario Resort on Orcas Island and Fisherman Bay on Lopez Island. Ferry lanes include Spieden Channel between Spieden and San Juan islands, San Juan Channel north between Roche Harbor and Friday Harbor, San Juan Channel south between Friday Harbor and Cattle Point, Strait of Juan de Fuca, Wasp Passage between Crane and Shaw islands, Harney Channel between Shaw and Orcas islands, Lopez Sound, passage between Lopez and Blakely islands, and Thatcher Pass between Blakely and Decatur islands.

### **Marine Life in San Juan County**

6. San Juan County marine waters contain large and predictable populations of whales, porpoises and pinnepeds (e.g, seals) which frequent certain areas where food is plentiful. Orca whales in particular are found to follow salmon migrations along Haro Strait and the Strait of Juan de Fuca, south and west of San Juan Island.

7. The marine waters of San Juan County have many species of threatened and endangered species of marine mammals and birds as visitors, migrants or residents that are sensitive to vessel traffic in and among the San Juan Islands. Sensitive species that have been designated as "threatened" or "endangered" under the Endangered Species Act, 16 USCA §§ 1531 - 1543 include Stellar's (Northern) Sea Lion, Harbor Porpoise, Humpback Whale, Marbled Murrelet, Common Loon, Bald Eagle and Peregrine Falcon. There are at least eight (8) other species of marine mammals sensitive to vessel traffic in the San Juan Islands, that are protected by the Marine Mammal Protection Act, 16 USCS §§ 1361 - 1384, including the Orca (Killer Whale). In addition at least thirty-three (33) other species of marine birds that may be sensitive to vessel traffic are known to visit or reside in the county. Finally, there are many species of crustaceans, invertebrates and fish in the marine waters.

8. Because of the richness of the environment, San Juan County contains many state and federal and local wildlife protected areas, many of which are accessible only by water. The wildlife refuges consist of 84 small islands, rocks and reefs each with a 200 yard buffer zone. The National Park Service controls approximately 1.6 miles of shoreline. Of course, the fragile marine environment does not stop at the boundaries of legally protected areas.

Even shorelines in private ownership, which comprise most of the 375 miles, may be used by marine mammals and people and deserve protection from unwanted noise and activity.

9. The refuges and other protected areas offer habitat for birds to nest and rest and seals to rest and nurture their young. Birds disturbed or panicked by vessels trample eggs and chicks, knock chicks from nests onto waves and rocks, and expose vulnerable offspring to sun, rain, and predators. Newborn seal pups may become separated from their mothers, crushed by a herd of panicked adults, or be forced into cold or swift water prematurely. If the disturbances are continued entire refuge areas may be abandoned by wildlife.

10. San Juan County is a part of the Northwest Straits. On August 20, 1998, the Murray-Metcalf Northwest Straits Citizens Advisory Commission Report to the Conveners identified the ecological significance of the area and the need for prompt action to protect it. The Report at pages 2 - 4 states: "1) The Northwest Straits is a uniquely beautiful and ecologically rich area which is of international significance and warrants regional and national recognition. 2) Disturbing trends in the Northwest Straits area call for immediate action to avoid serious degradation of natural systems."

### **Use of Marine Waters**

11. The marine waters of San Juan County are used by thousands of people for a variety of recreational purposes. The exterior boundaries of the county are established shipping lanes. There is a high volume of commercial and recreational vessels that use the marine waters of the county ranging in size from multi-ton seagoing vessels to one-person kayaks.

12. The marine waters are used for many recreational activities including fishing, scuba diving, sailing, windsurfing, swimming and recreational boating. Recreational boating in San Juan County has traditionally been outboard and inboard drive power boats, fishing boats, sail boats, and kayaks.

### **Other Factors of San Juan County**

13. Shoreline and waterfront property has historically been used and is currently used for residential homes, camping, fishing, sightseeing and tideland seafood gathering.

14. Tourism is a major economic factor in the county. San Juan County is heavily dependent on visitors who seek the peaceful quiet and tranquility of the islands and opportunities to view marine life and habitat. This is confirmed by the Labor and Market Economic Analysis Branch of the Washington Employment Security Report (1995) which states: San Juan County has gained a statewide — even national — reputation for its pristine beauty, which has drawn tourists for the past one hundred years.

The driving force behind growth [in San Juan County] is something economists rarely take into account as an explicator; its natural beauty. The islands are spectacularly scenic and attract great numbers of people. Consequently, tourists come in droves, and many people choose to retire there. These are the well springs of the economy.

There has been significant growth, an average level of unemployment, and overall, a high level of income, all occurring while the quality of the islands ambience has been maintained. The San Juans remain a tranquil oasis in the midst of Puget Sound's hurly-burly. And most residents lead lives of quiet prosperity far from the maddening crowd.

15. In 1995, the National Park Service conducted a survey of visitors. That report concluded that eighty-seven percent (87%) of the respondents stated that visitors come to the San Juans to "view the scenery."

16. At the direction of the United States Congress, in November 1992, the National Oceanic and Atmospheric Administration published a discussion paper entitled, *National Marine Sanctuary, A Partnership for Protection*, which nominated all of the marine waters of San Juan County as a part of the Northwest Straits Marine Sanctuary with the desire to protect its unique value to citizens nationwide. The study by NOAA recognized the unique national value of the county and emphasized the need to protect the marine resource before the damage occurs. The discussion paper says:

For the many diverse groups involved in the study process there is one clear source of agreement — the scenic beauty and wealth of marine resources found in the Northwest Straits deserve continued protection.

What is more difficult to determine are the threats to the nationally significant marine resources of the area. Population growth, increased vessel traffic, and loss of habitat are just some of chronic, slowly developing, long term cumulative impacts threatening the nature of the Northwest Straits area. By their nature, these impacts become most apparent after ecological damage has occurred. ... The Northwest Straits Study represents an opportunity to address problems before they become crises.

### **Characteristics of Personal Watercraft**

17. Personal Watercraft (hereafter "PWC") are vessels less than sixteen feet long propelled by machinery and which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than being operated by a person sitting or standing inside the vessel. They are sold under a variety of trade names and commonly referred to as jetskis, waterbikes, water scooters, and fun craft or "thrill craft."

18. PWCs are capable of high speeds, up to 60 mph, and have a high degree of maneuverability. Operation typically includes rapid changes of direction, rare travel in straight lines, and frequent operation in multiple numbers in a confined area. Operators are expected to be in contact with the water either by spray or falling overboard. PWCs are small and have a shallow draft which allow them to be operated at high speeds close to shore.

19. The high speed of a PWC, the rapidity with which it can change direction and the waves and noise it produces cause disruption to other vessels, swimmers and divers, and the natural environment. If the operators violate the law, they are almost impossible to apprehend because of the high speed and high maneuverability. Because they rarely travel in straight lines, the vessel speed cannot be easily determined.

### **Effects and Concerns on the Use of Personal Water Craft**

20. The noise from PWCs interferes with the historical and current uses and enjoyment of the shoreline property. Although unmodified PWC are no louder than other types of boats, modifications to PWCs are more common than to other vessels. PWCs commonly operate with other PWCs close together for reasons of safety, fun and convenience. As a general rule, additional PWCs operated in the same area will cause the overall noise level to increase. PWC, frequently operate in a small area causing conflict with shoreline users. Finally, part of the fun of PWC use is rapid acceleration, deceleration and the jumping of wakes. These operations create an uneven noise, that is louder when the PWC is out of the water, that is objectionable, and has been compared in pitch to the sound of a mosquito. These characteristics are not shared by other vessels operated to reach a destination.

21. The operational characteristics of PWCs make them hazardous and incompatible with destination commercial and recreational vessel traffic in and through San Juan County. The maneuverability and ability of PWCs to travel close to shore make them able to harass wildlife and bird life unlike destination power vessels. These attributes are also inconsistent with the protection and preservation of the wildlife which inhabit the waters and refuges of the County. These attributes are also inconsistent with the tranquil lifestyle quality desired by the tourists and residents of the County.

22. The operation of PWCs is less safe and more damaging in San Juan County

marine waterways than in other waters because of cold water temperatures, changeable and unpredictable currents, variable tidal heights exposing rocks at different times, floating deadheads, rocks and reefs, and populations of marine life.

23. Useful accident statistics for PWCs are not yet available for San Juan County, largely because PWC use is only emerging. Two studies have taken a comprehensive analysis of PWC safety issues. One study was prepared by the National Transportation Safety Board entitled "Safety Study — Personal Watercraft Safety" NTSB Report No. 88-98-01 adopted May 19, 1998 (the NTSB study). The second study is a report by the Center for Disease Control published August 27, 1997, in the *Journal of the American Medical Association* (CDC study). The NTSB study finds that there is a high risk of injury associated with PWC use. The CDC study concluded that emergency department treated injuries related to PWC accidents was about 8 ½ times higher than the rate of those from motorboats. These reports show that safety is a concern for PWC operators, passengers, nearby PWCs, as well as other power boats, sailboarders, waterskiers, canoes, kayakers, swimmers, divers, and even people on docks and beaches in the vicinity of PWC use.

24. One study has demonstrated that humpback whales are displaced by the operation of parasail boats near jetski platforms in Hawaii. See, M. Green, The Impact of Parasail Boats on the Hawaiian Humpback Whale (*Megaptera novaeangliae*) (1991) and M. Green and R. Green, Short Term Impact of Vessel Traffic on the Hawaiian Humpback Whale (*Megaptera novaeangliae*) (1990). Given this effect, Marsha Green has recommended that "the prudent course of action would be to stop harassing the whales." This information was sent to the Hawaii State Legislature in March of 1990, and in 1991 they passed a bill banning the operation of parasail boat and jetskis in West Maui and two (2) other coastal areas from December 15 to May 15 each year during whale season.

25. The high-speed, high-pitched sound and ability to operate close to shore are characteristics that are unique to PWCs. While the effect of such operation on marine life in San Juan County is unknown, it cannot be beneficial and appears most likely to be harmful. Although most wildlife is believed to be quick enough to avoid collisions with powerboats, it is unknown whether all marine life of San Juan County can react quickly enough to avoid PWCs. Without additional evidence to support the safety of PWCs, and given the harmful impact that could result to the county from destruction of its marine life it is found that the best policy is one of "prudent avoidance" and prohibition of PWCs within San Juan County.

**Existing Laws and Regulations regarding Personal Watercraft**

26. The Washington State Legislature has enacted regulations regarding the operation of PWCs, which are inadequate for the unique conditions in San Juan County. Under RCW 88.12.145, among other restrictions, operators of PWCs must: wear personal floatation devices, be at least 14 years old, attach a lanyard cut-off switch, and avoid reckless operation including weaving in traffic and jumping the wake of another vessel too close. RCW 88.12.025 makes it unlawful to any person to operate a vessel in a reckless manner.

27. Existing regulations do not address the location of operation of PWCs, nor do they deal with distances from machine to shoreline, speed zones, time of operation and operator safety training. The regulations also do not provide sufficient funding for enforcement, education and training. Existing laws present problems for enforcement, and create uncertainties with respect to the impact of the PWCs on marine sea life.

28. Although noise is regulated by RCW 88.12.085, that regulation does not address the cumulative noise of vessels operating in the same area, the annoying impact of vessels that are not destination-bound, and other noise characteristics unique to PWCs.

***Section 2. AUTHORITIES***

This ordinance is enacted pursuant to the police power found Section 11, Article XI of the Washington State Constitution, the Shoreline Management Act, Chapter 90.58 RCW and Weden, et al. v. San Juan County, 135 Wn. 2d 678 (1998).

***Section 3.*** There is hereby added a new section to San Juan County Code chapter 10.28 as follows:

**Definitions.**

"Personal watercraft" means a vessel of less than sixteen feet (16') in length, as manufactured, that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

***Section 4.*** There is hereby added a new section to San Juan County Code chapter 10.28 as follows:

**Restrictions on the Use of Personal Watercraft on Freshwater Lakes.**

Personal watercraft shall not be operated in San Juan County on fresh water lakes with public access, which are: Sportsman Lake, Hummel Lake, Mountain Lake, Cascade Lake, Egg Lake, and Killebrew Lake.

**Section 5.** There is hereby added a new section to San Juan County Code chapter 10.28 as follows:

**Restrictions on the Use of Personal Watercraft on the Marine Waters of San Juan County.**

Personal watercraft shall not be operated on the marine waters of San Juan County.

The provisions of this section shall not apply to:

- a. A personal watercraft engaged principally in commercial operations constituting an act of interstate or foreign commerce and so long as during such use the personal watercraft is operated along the most direct route practicable;
- b. A personal watercraft operating under a permit issued by the United States Coast Guard;
- c. A personal watercraft operating under a permit issued by San Juan County;
- d. For emergency purposes when there is a reasonable belief that such use is necessary to protect or preserve persons, animals or property.

**Section 6.** There is hereby added a new section to San Juan County Code chapter 10.28 as follows:

**Penalties.**

Any violation of this ordinance shall be a civil infraction with the following penalties:

For the first violation a fine of: \$50.00;  
The second violation a fine of: \$100.00; and  
Each subsequent violation a fine of: \$250.00.

**Section 7.** There is hereby added a new section to San Juan County Code chapter 10.28 as follows:

**San Juan County Permit.**

The Director of the Permit Center of San Juan County is hereby authorized and directed to establish application materials, procedures and criteria for the issuance of a permit, in the discretion of the Director, for activity prohibited by this ordinance if the Director finds that the activity will only have negligible short-term adverse effects on the resources and qualities of the waters of San Juan County and will further scientific research related to the waters of San Juan County resources and qualities. In deciding whether to issue a permit the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its affects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance county resources and qualities; and the cumulative effects of the activity. In addition, the Director may consider such other factors as he or she deems appropriate. Any such permit must be revocable, without cause on 20 days notice.

**Section 8. SEVERABILITY**

If any provision of this ordinance or the application thereof to any person or circumstance is held in valid or held unenforceable in any application, including in case of state or federal preemption, this ordinance shall be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable and if rendered invalid or unenforceable due to preemption, such invalidity or unenforceability shall apply only during the period of preemption. This ordinance shall be liberally construed to effectuate it purpose.

**Section 9. EFFECTIVE DATE**

This ordinance shall take effect on the date of publication of this ordinance after its adoption by the San Juan County Board of County Commissioners.

ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY COMMISSIONERS  
SAN JUAN COUNTY, WASHINGTON**

s/s

Darcie L. Nielsen, Chair

s/s

John B. Evans, Member

s/s

Rhea Y. Miller, Member

ATTEST: Si A. Stephens, Auditor  
and Ex-Officio Clerk of the Board

By: s/s  
Lillian Hamel - Deputy 9/29/98

APPROVED AS TO FORM ONLY

RANDALL K. GAYLORD  
San Juan County Prosecuting Attorney

By: s/s