

ORDINANCE NO. 3302

**AN ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
AMENDING CHAPTER 11.36 OF THE MARIN COUNTY CODE
PERTAINING TO THE REGULATION OF BOATING
WITHIN THE BEL MARIN KEYS COMMUNITY SERVICE DISTRICT
AND UPON NOVATO CREEK AND THE REGULATION OF
PERSONAL WATERCRAFT WITHIN ALL SHORELINE WATERS
AND ESTUARIES OF MARIN COUNTY**

The Board of Supervisors of the County of Marin does hereby ordain:

SECTION I: LEGISLATIVE FINDINGS

A. The Western or Ocean Shoreline of Marin County is home to a portion of the Monterey Bay National Marine Sanctuary as well as the Gulf of the Farallones National Marine Sanctuary. In addition, this shoreline is also covered in large part by the Pt. Reyes National Seashore and the Golden Gate National Recreation Area. Each of these entities has banned, proposed banning or significantly restricted the use of “motorized personal watercraft” (PWC), also designated as “thrill craft” within their territory.

B. These regulations were all adopted following public comment processes that resulted in extensive findings by the Agency with respect to the numerous and significant adverse affects PWC have on people, wildlife and the environment generally.

C. For example, following the adoption of Regulations by the Monterey Bay National Marine Sanctuary, the Personal Watercraft Industry Association sued the National Oceanic and Atmospheric Administration (“NOAA”) which promulgated the Regulation. In upholding the Regulation, the federal Court of Appeal for the D.C. Circuit noted:

The record is full of evidence that machines of this sort threatened the Monterey Bay National Marine Sanctuary. NOAA received written comments and testimony from marine scientists, researchers, federal agencies, state agencies, state and local governments, business organizations, and more than a hundred citizens on the issue of regulating these machines. Everyone agreed—personal watercraft interfered with the public’s recreational safety and enjoyment of the Sanctuary and posed a serious threat to the Sanctuary’s flora and fauna. The

concept of a “sanctuary” entails elements of serenity, peace, and tranquility. Yet the commenters described instances of personal watercraft operators harassing sea otters and other marine mammals, disturbing harbor seals, damaging the Sanctuary’s kelp forests, menacing swimmers, divers, kayakers, and other recreational users, and generally disrupting the esthetic enjoyment of the Sanctuary. All concerned recommended either prohibiting personal watercraft outright or restricting them to specific areas in the Sanctuary. No one urged NOAA to do nothing about the problem.

D. Similarly, the proposed Rule for the Gulf of the Farallones National Marine Sanctuary is buttressed by numerous studies and comments. A portion of the background for the proposed Rule is especially on point:

The nearshore waters of the Sanctuary are particularly vulnerable areas where myriad marine invertebrates and algae reside, where bird rookeries and pinniped haulout sites are present, where many critical nursery and food source habitats for wildlife are located, and where many nearshore users of the Sanctuary’s water tend to concentrate. The nearshore waters of the Sanctuary are also those areas most impacted by the operation of MPWC. Lawson’s Landing, a current MPWC launch site, is situated at the largest pinniped haulout in Tomales Bay, and is also within a quarter mile of Walker Creek delta, where the highest concentration of wading and shore birds occurs in the Sanctuary, and where sea otters have been regularly observed.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation, canoeing, rowing, kyaking and swimming. These activities are often conducted very close to shore and may be dependent on calm waters. The ability of MPWC to go very close to shore (due to their shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting these more benign recreational activities. NOAA believes that MPWC operation in nearshore areas creates a user conflict that can be avoided by keeping MPWC offshore.

E. In adopting a complete ban on PWC, the GGNRA also made extensive findings. However, these were summarized succinctly as follows:

This prohibition is necessary to prevent adverse impacts and disturbance to wildlife such as waterfowl, sea birds and marine mammals. The loud, high speed nature and maneuverability of personal watercraft creates impacts to wildlife including interruption of activity, alarm and flights; avoidance and displacement; interference with movement; alteration of behavior; and nest abandonment.

This prohibition is also necessary to avoid conflict with other visitor uses such as fishing, boating, kayaking, and boardsailing. The loud engine pitch and volume

of noise are also disturbing to park visitors and intrude upon the opportunity for a quiet, peaceful park experience.

The degradation of water quality due to unburned fuel emissions (sic) from the two-stroke engines is also a concern.

F. This Board, having reviewed the full administrative record including testimony from the public hearings leading up to the adoption of this ordinance concurs in the findings and conclusions reached by these federal agencies.

G. The situation is just as critical on Marin County's eastern shoreline. The eastern shoreline of Marin County stretches from Sausalito's boundary with the Golden Gate National Recreation Area to the mouth of the Petaluma River. This area combines a remarkable amount of nature with cities and recreation. It is a favorite spot for hikers, kayakers, sailors, birdwatchers, bicyclists, and others to enjoy the outdoors. People from all over the world visit to view the unique and beautiful shoreline. Along with being a mecca for tourists and outdoor enthusiasts, the Marin shore hosts numerous important habitats for endangered, threatened, and sensitive species. The California Department of Fish and Game has identified seven environmental sites of concern along this section of the shoreline. These are 1) The Richardson Bay Marshes; 2) Paradise Cove; 3) The Corte Madera Marshes; 4) The Marin Islands; 5) The McNear's Beach Salt Marshes; 6) The China Camp Marsh; and 7) The Petaluma River Marshes. Among the several species of concern in these areas, several are listed as either endangered or threatened. These include the Brown Pelican; the Salt Harvest Mouse; the California Clapper Rail; the Snowy Plover; the Peregrine Falcon and the California Least Tern.

Wildlife biologists throughout North America have testified on the existing and potential impacts of personal watercraft on birds, marine mammals and fish. PWC pose a unique threat to wildlife and wilderness areas because they are multiple impact machines.

Because PWC's discharge tremendous amounts of unburned fuel and oil containing carcinogens and reproductive toxins, the raw emissions from this craft threaten to seriously damage aquatic ecosystems, and the wildlife that live within them.

PWC's are also a physical threat to wildlife because they:

- typically travel at high speeds
- can travel at high speeds in shallow water near islands and sensitive habitats
- regularly change direction and speed without warning
- emit high-pitched whining sounds
- lack low-frequency, long-distance subsurface sound which would allow wildlife enough time to avoid collisions
- change pitch and sound level with every maneuver

Numerous studies reveal that "behavior habituation" to inconsistent stimuli, such as constantly changing noise or a highly maneuverable object, often does not occur. Richard Osborne, the Curator of Science Services at The Whale Museum on San Juan Island, believes that "it is doubtful that marine birds and mammals would every be able to habituate to, or adopt to this characteristic of PWCs."

H. Personal watercraft (PWC) are responsible for dumping approximately 44 million pounds of hydrocarbon pollution into US waters every year – the volume equivalent of over four *Exxon Valdez* spills.

Two-stroke engines operate on a mixture of gasoline and oil, discharging 25% - 30% of this mixture unburned into the water.

- An average two-hour ride on a PWC may dump three gallons of gas and oil into the water.
- The California Air Resources Board reports that a seven hour ride on a 100 horsepower PWC emits the same amount of pollution as driving more than 100,000 miles in a 1998 passenger car.

Studies from the University of California at Davis and other large universities demonstrate that the pollution from the marine two-stroke motors is a serious threat to the environment. This includes threats to:

- Human health due to pollution of drinking water
- Fish populations (studies show enzymatic disturbances, genotoxicological effects and reproductive disturbances to trout, salmon and herring)
- Zooplankton populations at the base of the aquatic food chain

I. PWC-generated noise is particularly disruptive and irritating to wildlife, marine recreationalists, as well as shoreline residents and wildlife enthusiasts. The intensity and frequency of PWC sound is one component of PWC noise which tends to disrupt nearby wildlife and humans. Personal watercraft produce noise levels in the range of 75-115 decibels per unit, comparable to that of a city street. The American Hospital Association recommends hearing protection for noise decibels exceeding 85 decibels.

J. The California Air Resources Board (CARB) recently concluded that marine two-stroke engines are one of the largest sources of air pollution in California. According to Mark Carlock of the CAARB, on a typical summer weekend day, such craft generate 777 tons a day of hydrocarbon emissions, an amount exceeding that of all 16 million light-duty passenger cars in the State. The majority of those emissions are by a relatively small number of PWC.

Of particular concern, two-stroke motors cause ground-level ozone, which is created by the photochemical reaction of nitrogen and hydrocarbons. Ozone causes smog, in addition to respiratory effects such as coughing, chest pain, asthma, and shortness of breath. It affects people with compromised or developing respiratory systems, such as the elderly and children. Nitrogen itself can also harm human health.

Two-stroke engines also emit extremely high levels of carbon monoxide (CO), a poisonous gas that reduces blood oxygen levels, causes headaches, nausea, and dizziness, PWC riders sometimes complain that after following directly behind another PWC, they feel faint and can lose control of their craft. Some marine engines have CO emissions of up to 1078 grams/kW-hr, a level of over 300 times higher than maximum levels for a new automobile.

Beyond their human health effects, other negative environmental effects are also associated with ozone and nitrogen. For example, ozone injures plants and materials, and the EPA estimates that excess nitrogen from two-stroke motors may be responsible for up to two billion dollars annually in crop damage in the United States. (40 CFR Parts 89, 09, 91 October 4, 1996.) Nitrogen also contributes to the secondary formation of particulate matter in the form of nitrates, acid deposition, and excessive growth of algae in aquatic systems. Particulate matter has recently been implicated as a human carcinogen, and is created at extremely high levels in jet skis.

K. Finally, unlike other forms of recreation, PWC have a negative impact on almost every other activity occurring in the same area. PWC destroy the outdoor experience for other recreationalists such as swimmers, surfers, windsurfers, kayakers, canoers, hikers, birdwatchers, fishers, and tourists by creating noise, hazardous conditions, congestion, and causing wildlife to flee.

L. Although safety concerns are not one of the bases upon which this Board can regulate PWC pursuant to the Harbors and Navigation Code, this Board must share the concern expressed by other agencies:

The safety record of PWCs shows a disproportionate level of PWC accidents and injuries relative to the numbers of this type of vessel. In California in 1996, 16% of all registered vessels were PWCs, yet PWCs were involved in 45% of all boating accidents and 55% of all injuries. In a report released in May 1998, the National Transportation Safety Board noted that while the overall number of

recreational boating fatalities has been declining in recent years, the number of PWC-related fatalities has been increasing. The majority of these accidents are attributed to rider inexperience and lack of skill, operation and use patterns, excessive speed, alcohol use, and conflicts with other vessels in congested use areas.

SECTION II:

Chapter 11.36 of the Marin County Code is hereby amended to read:

CHAPTER 11.36

WATERCRAFT REGULATION

Section 11.36.010	Findings and Purpose
Section 11.36.020	Definitions
Section 11.36.030	Speed limit
Section 11.36.040	Prohibited use of personal watercraft In Special Use Area
Section 11.36.050	State or Federally Funded Facilities
Section 11.36.060	Water skiing
Section 11.36.070	Swimmers
Section 11.36.080	Buoys
Section 11.36.090	Violation-Penalties

SECTION 11.36.010 FINDINGS AND PURPOSE

Local use regulation of watercraft in the waters of this state are authorized by Sections 268 and 660 of the California Harbors and Navigation Code in the areas of time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control.

The provisions of this chapter with respect to boating within the Bel Marin Keys Community Services District and upon Novato Creek are intended to protect and promote the public health, safety and general welfare, to preserve the environment, and to protect the value, worth and enjoyment of the lagoons and waterways within Bel Marin Keys Community Services District and upon Novato Creek from damage due to noise and wave action caused by excessive speed, and to prevent injury to person or property as a consequence of boating activities within said areas.

With respect to the prohibition of the use of personal watercraft within all shoreline waters and estuaries of Marin County, the purpose of this ordinance is to reduce existing conflicts and limit potential conflicts between uses of the shoreline waters and estuaries of Marin County, eliminate adverse impacts to the diverse and unusual species found in the shoreline waters and estuaries of Marin County, promote overall public safety, and decrease hydrocarbon pollution that is disproportionately caused by personal watercraft.

Conflicts between uses have the potential to increase in the future because of increasing use of Marin County's marine waters as well as use and development of shoreline areas. Examples of conflicts that currently occur in addition to fish, marine mammal and wildlife habitat disruption are those between personal watercraft and individuals engaged in water sports such as kayaking, windsurfing, swimming, and canoeing, due to the nature and design of personal watercraft including high maneuverability, high speed, ability to travel in shallow areas, and noise patterns that are unique and annoying.

These same unique characteristics of personal watercraft also cause conflicts between shoreline uses in areas zoned for residential and open space activities.

SECTION 11.36.020 DEFINITIONS

As used herein, the following terms have the following meanings:

1. "Personal watercraft" means a vessel, as defined in California Harbors and Navigation Code §651(s), that is less than 12 feet in length, propelled by machinery, 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.
2. "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

3 "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(a) A seaplane on the water;

(b) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed tract or arm to which the watercraft is attached or by which the watercraft is controlled.

SECTION 11.36.030 SPEED LIMIT

No person shall operate any motorized vessel upon the following areas of the lagoons and waterways in Bel Marin Keys Community Services District and Novato Creek, in excess of five (5) Miles Per Hour:

1. Novato Creek from the Triple Box Culvert at the entrance of the Bel Marin Keys community to one hundred yards downstream from the most easterly of the two locks;

2. Within a minimum of One Hundred Twenty-Five Feet (125) from the shoreline of all of the lagoons south of Bel Marin Keys Boulevard, or within a minimum of Two Hundred Feet from the shoreline of Laguna Bel Marin, and through the narrow channel connecting Sunset and Sunrise Lagoons to the entrance of Sunrise Lagoon.

The board of directors of Bel Marin Keys Community Services District shall post Novato Creek and the lagoons and waterways specified above, with a five mile per hour speed limit notice.

SECTION 11.36.040 PROHIBITED USE OF PERSONAL WATERCRAFT IN SPECIAL USE AREA

(a) Use and operation of personal watercraft in the area designated in subsection

(b) as a special use area is incompatible with competing uses and is therefore prohibited.

(b) For the purposes of this Chapter, the Special Use Area shall consist of all waters within the territory of the County of Marin accessible from a shoreline, or the farthest extension of the shoreline of Marin County as defined by its landmarks. The area is to include the shoreline of the Pacific Ocean from the Sonoma County line to the Golden Gate Bridge and the San Francisco Bay shoreline from the Golden Gate Bridge to the Marin/Sonoma County line at the Petaluma River. The Special Use Area includes but is not limited to all Estuaries (Estero), rivers and bays within Marin County jurisdiction. This Special Use Area shall also include a distance of 7 miles inland from the mouth of the rivers or navigable creeks.

In the event that another regulatory authority has exclusive jurisdiction over any of the shoreline of the Special Use Area, the Special Use Area shall begin at the boundary of the shoreline under the jurisdiction of the County of Marin.

(c) The regulation contained in this Chapter shall not apply to any motorized vessel or personal watercraft owned, operated or controlled by the United States, any California State agency or by any local government agency within Marin County engaged in bona fide emergency or rescue operations or other operations conducted solely to protect public health and safety.

SECTION 11.36.050 STATE OR FEDERALLY FUNDED FACILITIES

If any officer, department or agency of the County constructs a recreational boat launch facility with funds provided pursuant to 26 U.S.C. 9504(b)(2), or other state or federal funds which require that personal watercraft be permitted, the responsible officer, department or agency shall designate, and the Board of Supervisors shall confirm by motion, an access corridor for personal watercraft from the facility and through the special use area. The responsible officer, department or agency shall notify the Office of the County Administrator prior to entering into any commitment to construct any facility covered by this Section.

SECTION 11.36.060 WATER SKIING

The following regulations and limitations shall apply in waters within the territory of the Bel Marin Keys Community Services District to water skiing:

1. No more than three boats shall tow water skiers on Sunrise Lagoon, and no more than four boats shall tow water skiers on Sunset Lagoon, at any time.

2. Boats towing water skiers shall be limited to twenty-two feet overall length, measured from stem to transom, in all lagoons where water skiing is allowed.

3. Water skiing is prohibited in the water surrounding the street of Cavella Cay, the waters bordered by the streets Caribe Isle, Bel Marin Keys Boulevard, and Del Oro Lagoon, and that portion of Laguna Bel Marin south of a line from the west end of the dock at 145 Caribe Isle and the east end of the dock at 60 Montego Key, as indicated on the water safety map which was attached to Ordinance 3028.

All water skiing shall follow a counter clockwise pattern, and shall be limited to the designated ski areas ; as shown on the Water Safety Map, attached as Exhibit A to ordinance 3028, in Laguna Bel Marin, Sunrise and Sunset Lagoons; except that beginner double ski skiing shall be allowed in Unit 4 lagoons designated as Lagoons 4A and 4B on the Water Safety Map attached to Ordinance 3028.

CHAPTER 11.36.060 SWIMMERS

Swimmers in waters within the territory of the Bel Marin Keys Community Services District shall wear international orange swim caps when swimming beyond twenty-five feet from the dock face, or beyond fifty feet from the shoreline. Swimming shall not be allowed in areas which have been designated ski areas.

CHAPTER 11.36.070 BUOYS

No buoy shall be placed in any lagoon or waterway within the territory of the Bel Marin Keys Community Services District except by permission of the Bel Marin Keys Community Services District board of directors.

CHAPTER 11.36.080 VIOLATION-PENALTIES

Any violation of this chapter shall be deemed an infraction punishable upon a first conviction by a fine of not more than One Hundred Dollars (\$100.00), and for a second conviction, within a period of one year, by a fine not exceeding Two Hundred Dollars (\$200.00), and for a third or any subsequent conviction within a period of one year by a fine not exceeding Five Hundred Dollars (\$500.00).

SECTION III. SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid 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 its purpose.

SECTION IV. This ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Classes 7 and 8, (14 Cal Code Regs §§ 15307 and 15308).

SECTION V. This ordinance shall be in full force and effect as of thirty (30) days from and after the date of its passage, and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same in *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 26th day of October, 1999, by the following vote:

AYES: SUPERVISORS Harold C. Brown, Jr., Steve Kinsey, John B. Kress, Annette Rose

NOES: SUPERVISOR Cynthia L. Murray

ABSENT: None

PRESIDENT, BOARD OF SUPERVISORS

ATTEST: _____
CLERK