

FRIENDS

of the San Juans



Protecting San Juan County Shorelines
Summer 2008

From the Director

This time of year our population of 16,000 residents swells with visitors. The impacts of this influx of people are very visible: more traffic, busy markets, long ferry lines, and active waterways. Impacts from population growth along our shorelines are not as easily seen, but scientific research indicates substantial modifications have occurred.

Approximately 50% of shoreline parcels in San Juan County are developed and impacted to some degree by human uses. Voluntary stewardship by shoreline landowners is essential to protecting and restoring the marine ecosystem.

This newsletter is the second in a two part series on "Protecting San Juan County Shorelines." In this issue we highlight our "Blueprint to Protect San Juan County's Shorelines," and share with you details of our on-the-ground efforts to restore degraded shorelines and improve habitat for spawning forage fish, eelgrass and juvenile salmon. Opportunities to protect the environment are also discussed in articles about Code Enforcement and the Critical Areas Ordinance update. Lastly, you will read about current activity in our public interest law program.

I hope that the articles here foster your own connection to FRIENDS work and inspire you to help Protect San Juan County's Shorelines.

You can read about FRIENDS other projects online at sanjuans.org.

Stephanie Buffum Field
Executive Director

Leave a conservation legacy...

By including FRIENDS of the San Juans in your estate planning, you can support our vital conservation programs while also achieving your financial objectives. Giving options include naming FRIENDS as a beneficiary in your will, making a bequest, donating real estate or a gift that pays you income for life. Contact FRIENDS to find out more about protecting the San Juan Islands for future generations.



photo: Mark Gardner

FRIENDS of the San Juans

MISSION: To protect the land, water, sea, and livability of the San Juan Islands through science, education, policy, law and citizen action.

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One woman's quest to ban Styrofoam in San Juan County

Doris Estabrooks, a San Juan Island resident, is on a crusade to ban polystyrene (Styrofoam) in San Juan County, one business and governmental office at a time. A self-described animal lover and former antique appraiser, Doris was inspired to begin her Styrofoam ban after conducting research into scientific studies on Styrofoam. She learned that Styrofoam debris can harm fish and wildlife, and the chemicals in Styrofoam are carcinogenic and may leach into our water and food. Styrofoam is also a petroleum based product, and difficult to recycle.

Doris began lobbying business and governments to ban the use of Styrofoam in San Juan County two years ago. She routinely visits service clubs, business leaders, restaurant owners, and grocery stores. Her first major success was the voluntary phase out of Styrofoam from the Mullis Senior Center.

Her next success came in 2007 when the Town of Friday Harbor passed a resolution banning Styrofoam from Town Hall and encouraging local businesses to voluntarily ban Polystyrene Styrofoam food containers. "Styrofoam enters storm drains and watersheds, thereby harming the natural environment and if ingested by marine animals, fish, or birds, frequently causing death," the Town's resolution states.

In response, many businesses such as Rocky Bay Cafe, King's Market, Marketplace, Golden Triangle, Ray's Cafe, the Bowling Alley, and others, have signed onto Doris' "to go" green challenge.

One of her greatest disappointments is that San Juan County has been unresponsive to her requests to ban Styrofoam. The 1996 Solid Waste Management Plan for San Juan County: A Joint Project of the Town of Friday Harbor and San Juan County, adopted by SJC Resolution 25-1996 recommendation 4.0.1C states that, "Solid Waste staff will explore the possibility of a ban on polystyrene food packaging in the Town and County as allowed under RCW70.95C.100 and will prepare a recommendation for the Board of County Commissioners in 1997." This recommendation was never explored.

To date, Doris has collected 453 signatures to encourage the San Juan County Council to support a countywide



Photo caption: Doris Estabrooks with her Tiffin "take out" tins. The "Tiffin Box" is traditionally used in India to carry meals conveniently packed into multiple compartments.

Styrofoam ban, starting with voluntary phase out in businesses and governmental offices. At 86, Doris says that she is not able to gather signatures as quickly as she would like to and that she would love some help.

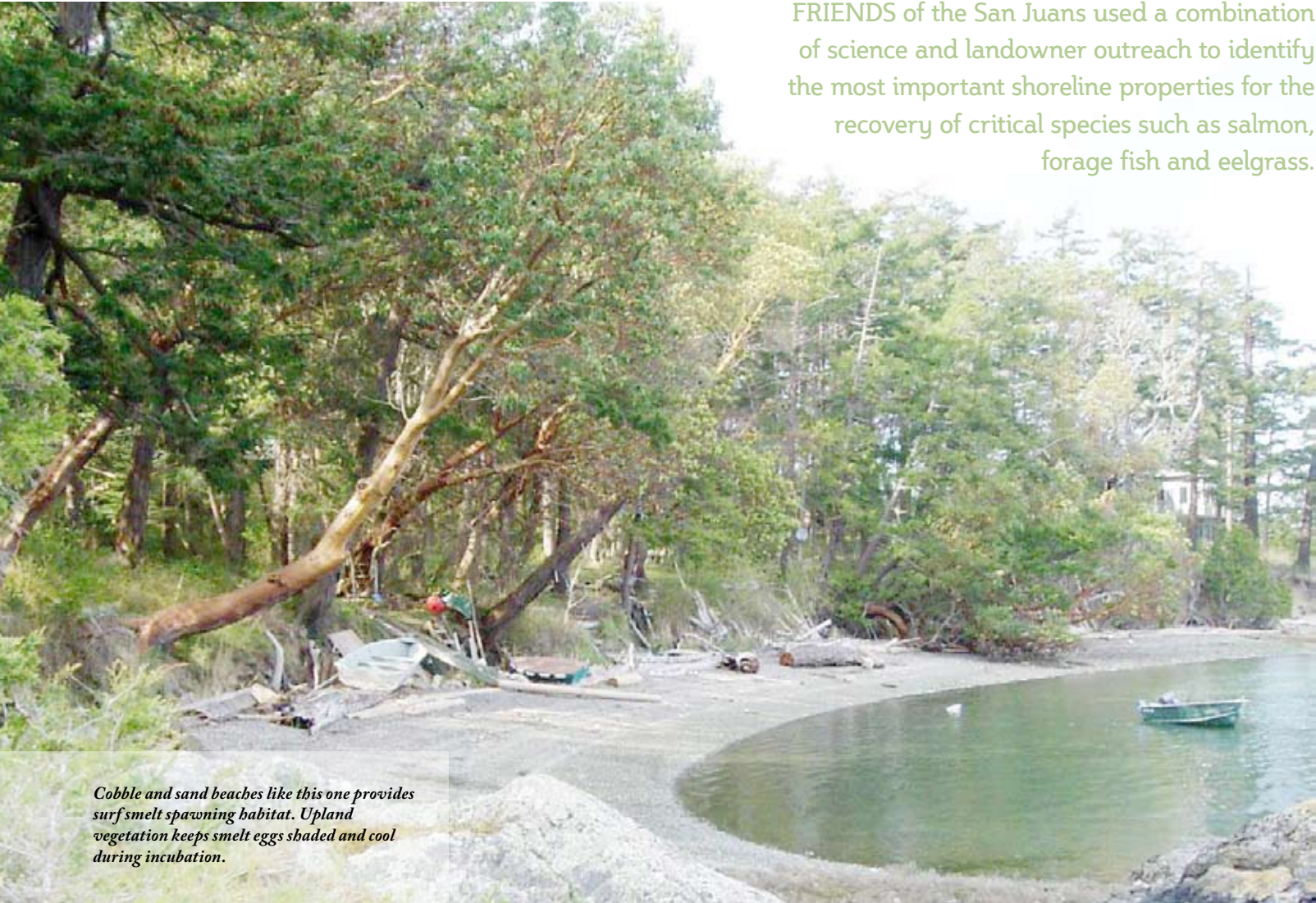
She plans on speaking to the County Council next spring about the Styrofoam ban. Meanwhile, she continues to encourage businesses to voluntarily give up the use of Styrofoam. FRIENDS applauds Doris' efforts to protect our environment.

Doris' Top 6 Things You Can Do to Help Limit Styrofoam in San Juan County:

1. Support businesses that don't use Styrofoam;
2. Ask restaurants to stop using Styrofoam take out containers. If costs are a concern, recommend that they add a "to go" surcharge;
3. Bring your own "take out" container to help reduce your waste stream;
4. Make others aware of the problem;
5. Sign the Styrofoam ban petition in the FRIENDS office;
6. Help collect signatures for a County-wide Styrofoam ban. Call 378-2319 and request a copy of the petition.

A Blueprint to Protect San Juan County's Shorelines

FRIENDS of the San Juans used a combination of science and landowner outreach to identify the most important shoreline properties for the recovery of critical species such as salmon, forage fish and eelgrass.



Cobble and sand beaches like this one provides surf smelt spawning habitat. Upland vegetation keeps smelt eggs shaded and cool during incubation.

The Imperative for Shoreline Protection

During the past two decades, San Juan County's population has grown by over 40%. This unprecedented growth has already resulted in negative impacts to our sensitive nearshore ecosystems, threatening some of the most pristine shorelines remaining in the Puget Sound. Because forage fish and juvenile

salmon depend on beach and shallow water habitats for their breeding and survival, they are vulnerable to the impacts of shoreline development.

Significant harm to critical marine resources can be caused by individual activities such as home and dock construction, shoreline vegetation removal, bulkheads and other armoring, sedimentation, failing septic systems, and improperly designed moorings that scour eelgrass

beds. The cumulative impacts of these incremental, small-scale projects can be extensive. Currently, regulatory solutions for shoreline protection are being outpaced by development pressures, resulting in ongoing habitat loss. For example, new shoreline modifications such as docks in eelgrass habitat and bulkheads along forage fish spawning beaches continue to be approved despite prohibitions by state law and county code.

Nearshore habitat protection is the top strategy identified for San Juan County in the Puget Sound Salmon Recovery Plan. Recognizing that current regulations are not able to achieve long-term protection of remaining high quality shoreline habitat, FRIENDS of the San Juans partnered with the San Juan County Land Bank and the San Juan Preservation Trust to create a Shoreline Protection Blueprint. This Blueprint improves opportunities for voluntary marine shoreline conservation one shoreline landowner at a time.

Why are San Juan County's Shorelines so Important?

With over 400 miles of shoreline located at the confluence of Puget Sound, Georgia Strait and the Strait of Juan de Fuca, San Juan County shorelines provide critical habitat for salmon and salmon prey. All 22 Puget Sound salmon stocks as well as multiple Fraser River and Georgia Basin salmon stocks utilize the diverse shallow water habitats of the San Juan Archipelago for feeding, resting, and migration. Forage fish including Pacific sand lance and surf smelt spawn and incubate eggs in the upper intertidal portions of sand and gravel beaches. Pacific herring, another key prey item in marine food webs spawn in shallow subtidal waters, primarily on eelgrass. Nearly 200 species of fish, birds, marine mammals and squids rely on the marine food web supported by shoreline habitat in the San Juans.

With approximately 50% of shoreline parcels still undeveloped, nearshore habitat protection remains the most important salmon recovery strategy for San Juan County. As the vast majority of shoreline property in San Juan County is privately owned, voluntary participation by shoreline landowners is an essential part of protecting and restoring the marine ecosystem.

Habitat Protection Toolbox

In San Juan County, a number of voluntary conservation options are available to interested landowners including: the donation of land, placement of a conservation easement on your land or enrollment of your property in Washington State's Open Space tax incentive program.

A conservation easement is one of the more flexible options available for property owners and can be tailored to protect the unique resource values of your land. The easement is recorded with the county auditor just like any other formal document that affects title to land. The owner can sell the land, or give it away; but no matter who owns the land, the easement always remains in effect. The protective restrictions apply "in perpetuity".

To achieve the most efficient and effective use of our limited marine conservation resources, it is imperative to have improved information on which properties provide the highest values toward achieving shoreline habitat protection goals. FRIENDS Shoreline Protection Blueprint will help San Juan County's marine conservation efforts be more strategic and successful.

Shoreline Protection Blueprint

The Shoreline Protection Blueprint used both landowner participation and science to achieve its goals. FRIENDS communicated with shoreline landowners through informational mailings, a shoreline landowner survey, and community workshops. FRIENDS identified at-risk, high quality habitat sites, through analysis and mapping of existing biological, physical and land use data. Current development status, risk of future shoreline modification, and nearshore habitat value were then combined to identify priority sites for protection (see Table 1 and 2).

Landowner Willingness

A Living with the Shoreline Stewardship Guide and a shoreline property owner survey were mailed to all shoreline property owners last spring. Nearly 800 completed surveys were returned and results are being used to improve local habitat protection efforts. Information provided by participating landowners included physical characteristics of the site, habitat changes the landowner has observed over time, and interest in long-term protection of tideland and shoreline habitat. Landowner willingness was used in the Shoreline Protection

Table 1: Shoreline Parcel Characteristics	# shoreline parcels	% shoreline parcels	shoreline miles
Shoreline Parcels in San Juan County	5,701	100%	400+ miles
Non-Impacted Shoreline Parcels (parcels without shoreline modifications)	3,009	53%	240 miles
Protected Shoreline Parcels (conservation ownership or easement)	254	4%	50 miles
At-Risk Shoreline Parcels (no shoreline modification, not protected)	2,755	48%	202 miles

Blueprint analysis to help prioritize parcels for protection. Over 130 landowners expressed high interest in learning more about long-term protection programs for their shoreline property, with another 169 expressing moderate interest in shoreline conservation easements. In addition, over 150 landowners were interested in protecting their tidelands in perpetuity.

Non-Impacted Sites

All parcels without a major shoreline modification such as a dock, bulkhead, seawall, jetty, boat ramp or marine railway were identified and mapped. Of the 5,701 shoreline tax parcels in San Juan County, 3,009 (53% of parcels, representing 240 miles of shoreline) do not currently have a major shoreline modification and were classified as ‘non-impacted sites’ for the purposes of the Shoreline Protection Blueprint Project.

Protected Status

Shoreline parcels already protected by conservation ownership, a conservation easement, or enrollment in the open space tax-incentive habitat protection program were identified and mapped. ‘Protected’ status was assigned to 254

Table 2: Very High Priority Habitat Categories	# of Parcels
Parcels with Forage Fish Spawning and Coastal Wetlands	119
Parcels with Juvenile Salmon and Coastal Wetlands	205
Parcels with Forage Fish Spawning Beaches, Coastal Wetlands and Juvenile Salmon	38
Parcels with Feeder Bluffs and Forage Fish Spawning Beaches	121
Parcels with Feeder Bluffs and Juvenile Salmon	305
Parcels with Forage Fish Spawning Beaches, Feeder Bluffs and Juvenile Salmon	33
Parcels with Eelgrass or Bull Kelp and Juvenile Salmon	1346
Parcels with Eelgrass or Bull Kelp and Forage Fish Spawning Beaches	488
Parcels with Eelgrass or Bull Kelp and Juvenile Salmon and Forage Fish Spawning Beaches	204

shoreline parcels, representing 50 miles of shoreline, based on ownership by the University of Washington or the Nature Conservancy; ownership or easement with the Land Bank or Preservation Trust; or enrollment in the County’s open space tax incentive program. Four percent of shoreline tax parcels are currently protected.

At-Risk Sites

‘At-risk sites’ were defined as non-impacted sites that are not in protected status. ‘At-risk sites’ include 2,755 shoreline parcels, which is 48% of shoreline tax parcels in San Juan County, covering 202 miles of shoreline.

Prioritization of At-Risk Sites

At-risk sites were then used as the foundation for extensive additional analysis and prioritization based on multiple factors including nearshore habitat value, physical condition, and landowner interest. Nearshore habitat value was broken into very high, high and moderate priority categories based on the presence of the following known important habitat features: forage fish spawning beaches, Pacific herring spawning grounds, eelgrass prairies, kelp beds, coastal wetlands, coastal streams, accretionary beaches, feeder bluffs, seal haulouts, eagle nests, seabird sites and juvenile salmonids (see Table 2). Additional factors incorporated into the analysis of at-risk sites with priority habitats included: parcel size, waterfront length, adjacency to existing protected sites, development status of parcel, parcel



This eelgrass provides excellent habitat for many important marine species, especially juvenile salmon.

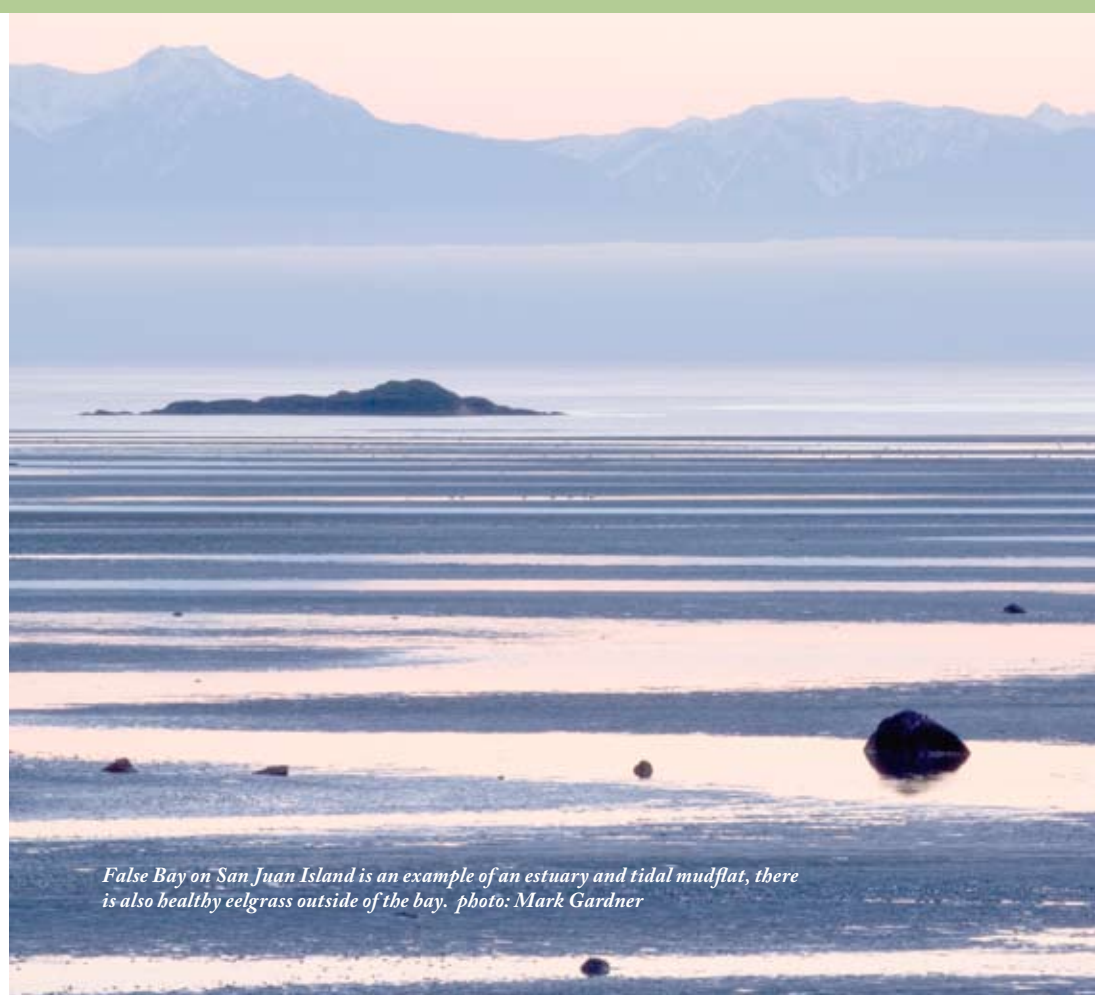
value, and landowner interest in long-term protection of shoreline habitat based on survey results.

Key Findings

Project results directly support strategic conservation efforts because of the detailed information they provide on species and habitats, site characteristics and landowner willingness. For example, the highest ranked shoreline sites for protection were defined as: at risk parcels with very high priority nearshore habitat values, and with a shoreline landowner who has expressed interested in long term habitat protection. This highest level of protection prioritization includes just two parcels on Shaw Island and one on Orcas Island. Of these, one is greater than 10 acres, none have been developed with houses yet, all three have waterfront lengths of less than 1,000 feet and all three are adjacent to a shoreline parcel that is already protected.

The next layer of analysis identified at risk sites with high priority habitat and landowners interested in long-term protection strategies. This high level of protection prioritization includes 119 shoreline parcels, 5 of which have waterfront lengths of over 1,000 feet and 9 of which are greater than 10 acres. Ten of these high priority shoreline sites are located adjacent to shoreline parcels that are already protected. Of these high protection priority parcels, 73 have not yet been developed with houses (and as a result are candidates for acquisition or easement) and 43 have homes on the site but no shoreline structures and would be good candidates for voluntary long-term protection through a conservation easement or participation in the Open Space tax incentive program.

The Shoreline Protection Blueprint gives conservation groups the ability to objectively focus limited resources on those properties that have the highest near-shore habitat values and the highest likelihood of successful long-term protection. The Shoreline



False Bay on San Juan Island is an example of an estuary and tidal mudflat, there is also healthy eelgrass outside of the bay. photo: Mark Gardner

Protection Blueprint can also be used to monitor effectiveness of protection efforts over time as the computer models created allow analyses to be updated as new information becomes available. Species and habitat specific information supports development of management plans and easements that focus on the most important elements of that individual site.

The Land Bank and the Preservation Trust are both applying results to internal planning processes. The Shoreline Protection Blueprint will help them and other conservation

entities become more strategic in shoreline protection efforts.

To learn more about how you can help support salmon, seabirds and marine mammals through protecting critical shoreline habitats, please contact FRIENDS of the San Juans, the San Juan County Land Bank or the San Juan Preservation Trust.

Funding for this project was provided through the Washington State Salmon Recovery Funding Board and the Charlotte Martin Foundation.

FRIENDS Shoreline Protection Blueprint Project was managed by Tina Whitman, our Science Director.

If you value the incredible work done by our Science Program, please send a donation today!

Donation envelope on page 8.



Restoring Our Shorelines

Nearshore dependant juvenile Chinook and Coho, as well as Chum and pink salmon, are known to utilize the shallow waters of the San Juans for feeding, refuge and migration. Forage fish, key prey items for salmon as well as other fish species, seabirds and marine mammals, require beach and shallow water habitats to spawn. A recent scientific study showed that shoreline modifications such as bulkheads can reduce forage fish egg survival by 50%.

Many shorelines in San Juan County have been impacted by modifications such as bulkheads, tide gates, roads and docks. Often, these beach structures are not serving any current purpose or are in a degraded condition. To improve habitat conditions for spawning forage fish, eelgrass and juvenile salmon, FRIENDS of the San Juans is working with interested private and public landowners to restore shoreline properties that are being impacted by unnecessary shoreline modifications.

Shoal Bay, Lopez Island

The nearshore marine environment of Shoal Bay includes forage fish spawning habitat, eelgrass prairies, shellfish beds, a sand spit and a coastal lagoon. Healthy eelgrass, juvenile salmonids, Pacific herring and surf smelt spawn have all been documented in the lagoon and Shoal Bay. FRIENDS is implementing two restoration projects in this critical region...



Shoal Bay Tide Gate Removal and Shoreline Restoration Project Site

Shoal Bay Tide Gate Removal: Improving water quality and fish passage

The Shoal Bay lagoon is rated as a Category One, high quality estuarine wetland. A large cement and metal tide gate is located within the tide channel waterward of the lagoon. This derelict structure is constricting tidal flow, impeding fish passage at low tides, creating water quality problems within the lagoon, and eroding the associated upper beach and estuarine wetland habitat. Removal of the derelict tide gate will reconnect nearly 5 acres of high quality coastal lagoon habitat to the marine environment, restoring the tidal channel and associated nearshore habitat. This project will provide improved feeding and refuge habitat for juvenile salmon and salmon prey species. The tide gate removal is scheduled for fall 2009.

Shuffleboard Court Removal: Restoring surf smelt spawning habitat

At a nearby Shoal Bay site an old concrete and creosote log 'shuffleboard court' is located adjacent to documented surf smelt spawning habitat. This derelict modification is interrupting the natural transport of sediment and over time will change the size and composition of the gravel on the beach, reducing forage fish spawning habitat. This project will restore over 600 square feet of upper beach habitat and remove a barrier to natural geologic processes along this important beach. Removal of the 35-50 creosote soldier piles will also provide both environmental and human water quality benefits, as creosote is toxic to fish, other marine organisms and humans. Removal of the derelict structure is planned for fall 2008.



Shoal Bay Shuffleboard Court Removal and Forage Fish Habitat Restoration Project Site

Blind Bay, Shaw Island

Blind Bay on Shaw Island is recognized as a priority nearshore habitat region of the county for its eelgrass beds, year-round surf smelt spawning activity and Pacific herring spawning grounds. Much of the existing impact to the shoreline habitats along Blind Bay is a result of rock armoring associated with roads.

Smuggler's Cove Road: Forage fish habitat restoration

Shoreline armoring associated with roads has been identified as the largest impact to forage fish spawning habitat in San Juan County. The Smuggler's Cove Road site along Blind Bay has extensive armoring, with rock directly covering surf smelt spawning habitat. Recently, San Juan County Public Works rebuilt the road protection structure, reducing the area of beach habitat it covered. Next fall, a beach nourishment project will be implemented along this public beach, restoring the small substrate size required by surf smelt to incubate their eggs. This project is the first county road project that incorporates restoration of forage fish spawning habitat. FRIENDS is also working with Public Works to identify and reduce infrastructure impacts to shoreline habitats across the county.



Generous in-kind and funding support for the shoreline restoration projects was provided by: U.S. Fish and Wildlife Service, The Russell Family Foundation, National Fish and Wildlife Foundation Community Salmon Fund, the Washington State Salmon Recovery Funding Board, Puget Sound Acquisition and Restoration Funds, Private landowners Patty and Gary Bergren, Nick and Sarah Jones, and the Ruckelshaus Family, San Juan County Public Works and San Juan County Beach Watcher volunteers.



Turn Point, San Juan Island

On the southeastern side of San Juan Island, Turn Point supports suitable forage fish spawning substrate, extensive eelgrass beds, areas of dense marine riparian vegetation and salt marshes. The nearshore habitat types in the Turn Point region provide high quality feeding and resting areas for outmigrating juvenile salmon.

Salt Marsh Restoration

The Turn Point Salt Marsh Restoration Project will remove an unnecessary rockery from mid and upper beach habitat along the front of a coastal wetland. The rockery blocks tidal exchange between the salt marsh and the marine environment and buries potential forage fish spawning habitat. Removal of the 200 foot long rockery will restore upper beach habitat and wetland hydrology, naturally improving the condition and function of the salt marsh, an important and rare coastal habitat type within San Juan County.

FRIENDS Grants Manager, Shannon Davis, raised the grant funds to make these shoreline restoration projects a reality.

Matching funds are still needed!

Please support the costs of this exciting on-the-ground work with a donation today.





Beach seine on Mackaye Harbor/Barlow Bay Nearshore Education Day.



Neighbors help Dr. Tina Wyllie-Echeverria haul in the net.



Above, winnowing down the collection. Below, Dr. Wyllie-Echeverria identifies fish and invertebrates collected in the seine before releasing the catch.



Restoration Planning

The Mackaye Harbor/Barlow Bay Community Shoreline Restoration Project

Located at the southwest end of Lopez Island, the shorelines of Mackaye Harbor and Barlow Bay are both beautiful and important for the health of the region’s fish, mammals and birds. Mackaye Harbor and Barlow Bay’s nearshore supports eelgrass prairies, documented surf smelt and Pacific sand lance spawning beaches, extensive coastal wetlands, and outmigrating juvenile salmon.

Historically, Mackaye Harbor was used for industrial marine-based activities. Today, the shorelines are primarily residential, but include a private marina and a public boat ramp. Both past and present shoreline development has degraded the bay’s coastal wetlands, upper beach, and intertidal habitat. Structures include derelict piers and piles, metal and concrete beach debris, public roads and associated armoring, as well as tide gates and culverts.

In 2006, multiple potential beach restoration projects in the Mackaye Harbor / Barlow Bay region of Lopez Island were identified as a high priority. Detailed analysis is needed to identify those projects that provide the most habitat benefit and are feasible from both the engineering and social perspectives. With funding from the National Fish and Wildlife Foundation, FRIENDS has partnered with Coastal Geologic Services, San Juan County, The Tulalip Tribe and the south Lopez community to complete a feasibility analysis for restoring the area’s coastal habitats. Historical land use, habitat analysis, and engineering surveys are underway, and members of the community are involved in identifying initial priorities for the project. A draft restoration plan for the intertidal, beach and wetland habitats in the region will be completed and shared at community meetings this fall to get feedback for a final plan. For more information on the project, please contact FRIENDS at 360-378-2319.

Besides keeping the FRIENDS office running efficiently, FRIENDS Office Manager, Jana Marks, is helping with outreach for the Mackaye Harbor Community Restoration project.

Help us educate and involve the community in shoreline protection activities with a gift today.



Code Enforcement Improvements on the Horizon?

In San Juan County a parking ticket will cost you more than a land use violation.

Given the millions of dollars spent toward habitat restoration and preservation, scientific research, and environmental education in San Juan County, FRIENDS is continually dismayed and frustrated at the ongoing habitat losses that result from the absence of effective county code enforcement.

Staff and geography are limiting factors that make code enforcement challenging in San Juan County. San Juan County has one code enforcement officer and over 300 active code enforcement cases spread throughout the islands. This is about three times the work load of an average code enforcement officer. Neighboring Island County has two full time enforcement agents and one enforcement manager.

FRIENDS staff and board routinely receive complaint calls about potential code violations. Once contacted, FRIENDS helps concerned citizens determine the appropriate next steps and often notify the County and other permitting agencies like the Department of Ecology, Fish and Wildlife, or the Army Corp of Engineers. FRIENDS continues to track progress on active cases and address impacts to habitat. But it is not the state agencies or FRIENDS job to enforce San Juan County Code – it is the County's responsibility.

One of the few tools in the County's enforcement toolbox is a stop work order and the notice of correction. Neither tool penalizes the violator nor repairs habitat damage. Often,

the end result to a violation is that the County will help the violator become in compliance and reward them with an after-the-fact permit. In effect, the County spends our tax dollars processing illegal actions instead of helping those residents who are following proper procedures and regulations.

We need an institutional change to reduce future incidents by rewarding good practices; providing technical assistance to landowners, realtors and contractors; and penalizing violators.

Ticketing Ordinance on the Horizon

In an unprecedented joint departmental project, the San Juan County Community Development and Planning Department and the Prosecuting Attorney's Office are working on a ticketing ordinance for land use violations. The goal of the ordinance is to prevent violations, and recover the cost of enforcement when action is necessary. Penalties are seen as one of the most effective prevention tools. The Town of Friday Harbor imposes civil penalties up to \$250 per day for civil infractions. In Island County the fines are up to \$500 for each day that the violation continues, and the civil penalties are up to \$5,000 for any critical areas or shoreline violation. The County Council will hold a hearing on the ordinance this fall.

FRIENDS supports the County's land use violation ticketing ordinance as a necessary first step in improving the effectiveness of code enforcement efforts.

You can help protect San Juan County's environment by encouraging your County Councilor to make sure the new code enforcement ordinance...

Improves prevention through education & outreach.

Prioritizes complaints so that actions that threaten human safety or critical habitats receive immediate attention.

Creates a schedule for a timely administrative notice and order.

Punishes violators by criminal fines or civil penalties.

Requires contractors to have copies of permits on site.

Serves enforcement orders and fines or penalties on both the property owner and operator of the source of the violation.

Develops an inter-agency response team to respond to complaints in a timely manner.

Ensures that destroyed habitat is restored.



photo: Mark Gardner

Critical Areas Ordinance Update

Puget Sound's marine nearshore environment is one of most biologically productive and economically important systems in the state. As such, our shoreline is one of the most popular places for human habitation. Proper planning under the Growth Management Act's Critical Areas Ordinance (CAO) should be one of the most significant contributions we make to protect our homes, water, fish and wildlife.

The precursor to the San Juan County CAO is the Environmentally Sensitive Areas Ordinance which the County adopted in 1990 as an interim ordinance. This ordinance has not been updated to reflect the last two decades of science or case law, including local concerns such as endangered salmon and orca.

As the CAO Citizen Committee begins to craft the ordinance, FRIENDS is encouraging the County to follow two essential guiding principles: Use Best Available Science and Follow the Law.

Use Best Available Science

The Growth Management Act (GMA) requires use of "best available science" in designating critical areas, protecting their functions and values, preserving

and enhancing anadromous fisheries, and identifying the risks associated with alternative approaches for accomplishing these goals.

The GMA does not define best available science; however there are adopted guidelines on how to identify and include best available science in CAO updates. These guidelines stipulate that scientific information must be produced through a "valid scientific process." This is defined as the product of research conducted by qualified individuals, using documented methodologies, with findings and conclusions peer-reviewed by qualified experts, and criticism addressed by proponents of the research.

The guidelines also delineate procedural and substantive limits on local governments' ability to adopt regulations that deviate from best available science. Local governments must justify use of political, anecdotal or other non-scientific information. Any divergence from best available science must be transparent and scientifically defensible. Local governments must also identify any risks to critical areas and establish measures to limit those risks.

Where cities and counties lack scientific information, the guidelines encourage local governments to do two things. First, the county should take a

precautionary or "no risk" approach in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved. Second the county should employ an effective adaptive management program to evaluate how well regulatory and non-regulatory actions are achieving their objective of protecting habitats and if unsuccessful, make changes before resources are placed at risk.

Finally, Washington State Administrative Code mandates that local governments adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

Follow the Law

San Juan County is one of the last counties in Puget Sound to update our Critical Areas Ordinance (we are now three years behind schedule). One of the benefits of this late timeline is that other counties' ordinances and decided case law creates a model for our County to follow.

Regulation of Pre-existing Uses: Skagit County learned that even if a provision of the GMA precludes the prohibition of pre-existing uses in



As a member of the CAO Citizen Committee, FRIENDS Executive Director, Stephanie Buffum Field, is working hard to apply science and law to improve protections for San Juan County's shorelines.

Please support FRIENDS efforts to update the CAO with a generous donation today.

critical areas, the GMA still requires the County to reasonably regulate existing activities shown through best available science to be damaging to critical areas and their buffers.

Shoreline Buffers: Shoreline buffers are mandatory development setbacks that retain natural shoreline vegetation to protect juvenile salmon habitat and spawning grounds. When Jefferson County, Island County and Pierce County attempted to reduce buffer protections beyond what best available science recommended, the courts held that best available science requires shoreline buffers to be a certain size.

Groundwater Quality: Jefferson County learned that it must protect its groundwater quantity and quality consistent with best available science. Goal 10 of the GMA imparted the County with the overriding responsibility to protect groundwater quality whether it had officially designated seawater intrusion areas as critical aquifer recharge areas or not.

Overall, scientific evidence plays a major role in designating and protecting critical areas. Utilizing the best available science, we must consider the goals of the GMA and promote its strong environmental and natural resource protections.

Conclusion

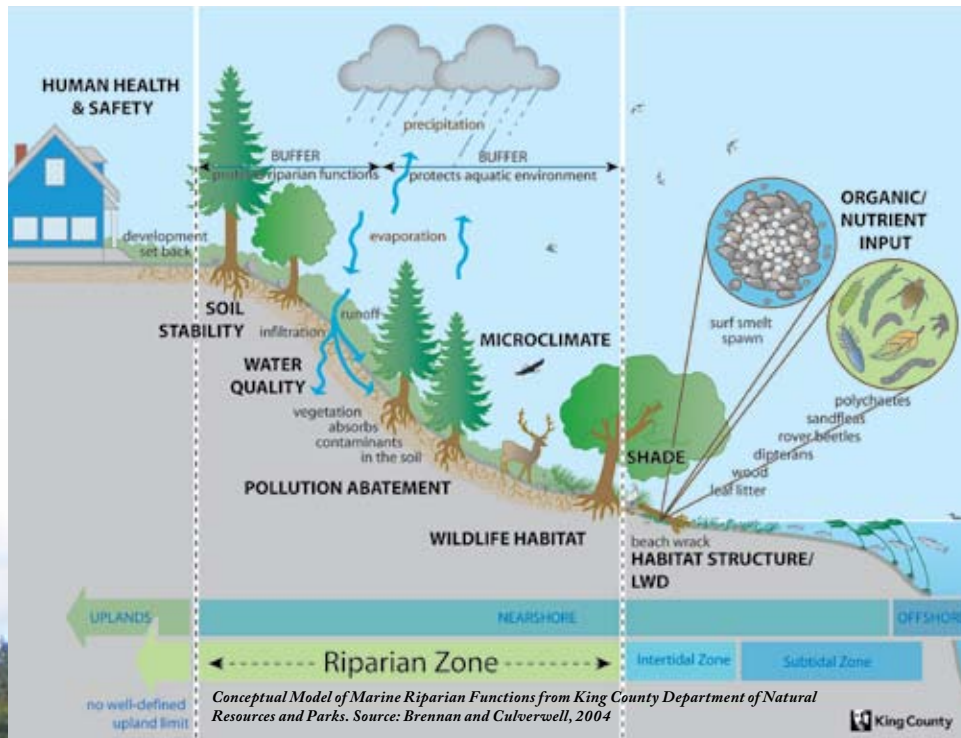
When FRIENDS was founded nearly 30 years ago, people demanded that the County slow development. Citizens were concerned about urbanization changing their quality of life and harming ecological communities. These stresses still exist in the County today and the CAO provides a way to improve long-term protection of our most important places.

Our rural land use decisions have always been contentious. Today, FRIENDS is hearing support for a CAO that uses

science and follows the law. This is coming from both old and new islanders, some of whom want to develop their land and protect the environment. These two actions are not mutually exclusive if done properly.

In the interest of preserving the County's most ecologically fragile areas, protecting human health and property, and not wasting any more time or tax payer money, please encourage the County Council to develop and approve an updated Critical Areas Ordinance that is legally and scientifically defensible.

The Role of Buffers or Setbacks



Currently, the San Juan County CAO Citizen Committee is discussing the issue of buffers and shoreline setbacks. A buffer is defined as a horizontal distance separating a critical feature or resource such as a wetland, shoreline or critical aquifer from human activities. All development activities within buffers are typically limited or regulated to protect the resource and minimize the risk of creating a hazard. Best available science must be used to determine the size of our habitat buffers and protection areas.

Legal Briefs

Fisherman Bay Protected!

On June 13, 2008, the Shorelines Hearings Board (SHB) upheld the San Juan County Hearing Examiner's denial of a shoreline setback variance for a house on an unbuildable lot along the eastern shore of Fisherman Bay, Lopez Island. The County Code prevents building on the sliver of a forested shoreline lot (15,987 sq. ft.) because a structure could not be placed to meet both the road and shoreline setbacks, which overlap. In addition, the property's unstable shoreline would likely have required armoring in the future.

FRIENDS has been working with the Lopez community to preserve Fisherman Bay since August 2007. "I believe that most of Lopez Island is relieved that the SHB came to the same conclusions that citizens did at the two public hearings, namely the property was purchased with the knowledge that the lot, for many important reasons, was not suitable for any sort of building," stated San Olson, FRIENDS Vice-President.

Similarly, FRIENDS Staff Attorney Kyle Loring noted that "The Board's decision bolstered the County's ability to strictly apply its variance criteria and deny development that contravenes the County Code unless truly exceptional circumstances exist. Here, no such

circumstances existed—instead, the buyers held unreasonable expectations to build a residence in violation of two setbacks, particularly after buying a piece of property, advertised as unbuildable, for a non-residential purchase price."

FRIENDS Challenges Application for a 2.5 Mile Water Pipeline

On March 19, 2008, FRIENDS filed comments with the County to challenge an incomplete application to build a waterline near Dolphin Bay, Orcas Island. If approved by San Juan County, the waterline would connect to a well on an agricultural parcel and transfer water from that well a distance of approximately 2.5 miles to the site of a potential subdivision. The application states that the waterline would supply up to fourteen (14) connections, but does not identify the location of those connections or evaluate the environmental impacts of those connections. The property hosting the well is currently for sale.

FRIENDS filed their comments out of a concern that the project could have significant adverse impacts. FRIENDS is even more concerned that the application does not describe the proposal well enough to identify

all of the potential impacts. Such impacts might include the development of currently unbuildable lots (due to water insufficiency), and the related habitat loss, creation of impervious surface, and air emissions, just to name a few. In addition, the application does not study potential impacts to the water supply for neighboring farmers in this agriculturally rich community on Orcas. Lastly, the cumulative impacts of piping water for fourteen connections from every similar parcel throughout the San Juan Islands could be very harmful, further indicating that more information is needed about this project.

FRIENDS Protects Our Shorelines From Unnecessary Bulkheads

On June 10, 2008, FRIENDS appealed San Juan County's determination under the State Environmental Policy Act ("SEPA") that a bulkhead on San Juan Island was not likely to cause environmental impacts. FRIENDS filed this appeal after learning that the County, in reaching that "Determination of Non-Significance," had not recognized that several state-designated critical areas exist near and under the proposed bulkhead. FRIENDS' primary concern is that the applicants' drawings show that the bulkhead would cover a portion of the beach where surf smelt have been documented to spawn. The bulkhead would also cause beach scouring that would harm eelgrass meadows that host Pacific herring spawning. State and local regulations



Staff Attorney, Kyle Loring, oversees FRIENDS Public Interest Law Program.

This important program is almost exclusively funded by membership gifts.

Your donation is needed right now as Kyle defends our shorelines and freshwater resources.



protect both of these documented spawning habitats due to the important roles they play in the marine ecosystem.

In addition to our charge that the County did not comply with the SEPA procedural requirements, FRIENDS submitted a comment letter to the County Hearing Examiner urging him to deny the bulkhead permit as inconsistent with state law and the County Code.

Safeguarding Herring Habitat in Blind Bay

In early summer, FRIENDS submitted comments urging denial of a permit to construct a 175-foot dock in conjunction with a proposed subdivision near Blind Bay on Shaw Island. FRIENDS opposes the dock because Blind Bay's eelgrass habitat provides one of the few remaining herring spawning sites in San Juan County. The applicant also has not demonstrated a need for the dock as alternative moorage exists at the Shaw Landing Marina or through mooring buoys in the bay. The need for the dock is also speculative since the subdivision has not been built, and owners are not lined up for the homes.

The application proposes a four-home subdivision on a historic landmark amidst 24 acres of Rural Farm Forest. The landmark has in the past served as a chicken and sheep farm, for rearing horses and cattle, and for producing hay crops. FRIENDS has recommended that the development cluster the four homes to preserve open space.

Welcome FRIENDS 2008 Summer Legal Interns!

This Spring, FRIENDS of the San Juans selected Lorraine Rothgery and Kevin Hastings from a talented pool of applicants to join us for the 2008 summer legal internship program. FRIENDS is very grateful for the valuable assistance they are providing to our very busy public interest law program.



Lorraine Rothgery

Lorraine just completed her second year at Gonzaga University School of Law in Spokane, where she is involved with the International Law Journal and Women's Law Caucus. She did her undergraduate work at Loyola College in Maryland, earning a degree in History and Political Science. Last summer, she worked at a small law firm in Tacoma, and looked forward to coming back to the west side of the

state again this summer. Lorraine is excited to be learning about water and land use issues, and couldn't think of a better summer opportunity than at FRIENDS where she could continue to build and improve her knowledge and skills regarding environmental law.



Kevin Hastings

Kevin is a Northwest native with family living on San Juan Island. He graduated from Blaine High School in 2001 and received his B.A. in International Studies from the University of Washington in 2005. He recently completed his second year at Seattle University School of Law, and he is excited about working with FRIENDS to learn more about environmental law and those issues unique to the islands. In addition to his work with the FRIENDS, Kevin is researching water rights in San Juan County as part of an independent study project.



FRIENDS Membership Director Scott Boye works to educate and involve the community in protecting the land, water, sea, and livability of the islands.

Please support our critical work with a donation today.



SAVE THE DATE

FRIENDS *of the San Juans* Annual Meeting

*Saturday September 13, 1-4 p.m.
at the Ellis Biological Preserve on Shaw Island*

Coastal Geologists, Wolf Bauer and Jim Johannessen, will discuss San Juan County's coastal processes, climate change, and opportunities to protect San Juan County shorelines.

RSVP 378-2319 • Lunch \$10 (kids eat free) • Ferry Shuttle to/from Ellis Preserve

photo: Mark Gardner



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