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GROWTH MANAGEMENT  
HEARINGS BOARD

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS, a	)	
Washington not-for-profit corporation,	)	Cause No.
	)	
Petitioner,	)	
	)	
v.	)	<b>PETITION FOR REVIEW</b>
	)	
SAN JUAN COUNTY, a political subdivision	)	<b>SAN JUAN COUNTY SHORELINE</b>
and charter county of the State of Washington,	)	<b>MASTER PROGRAM UPDATE</b>
and the DEPARTMENT OF ECOLOGY, an	)	
agency of the State of Washington;	)	
	)	
Respondent.	)	

**I. PETITIONER**

1.1. Petitioner Friends of the San Juans (“Friends”) is a Washington not-for-profit corporation with its offices located in Friday Harbor. Friends was established in 1979 and pursues a mission to protect and restore the San Juan Islands and the Salish Sea for people and nature. Friends represents approximately 2,000 members and works with diverse stakeholders, including citizens, government agencies, Tribes, and other non-profit organizations, to achieve the greatest benefit for people and nature.

Friends’ staff attorney and representative in these proceedings is Kyle Loring, who can be reached as follows:

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## II. THE CHALLENGED ACTION

2.1. Pursuant to RCW 90.58.190 and RCW 36.70A.270-.290, Friends seeks review of the San Juan County ordinances identified below, which were published for notice October 25, 2017 and which, together, constitute the San Juan County Shoreline Master Program Update. Friends also challenges the Washington Department of Ecology approval of those ordinances. Copies of the ordinances and Ecology approval and publication are attached to this petition.

2.1.1. 2016 Ordinance -- Ordinance No. 1-2016, An Ordinance Repealing Sections 18.50.010 – 18.50.390 of Chapter 18.50 SJCC and Amending Official Comprehensive Plan Land Use and Shoreline Maps; Adopting New Shoreline Master Program Regulations and A Shoreline Restoration Plan; and Amending Section B, Element 3 of the Comprehensive Plan and Chapters 8.20 and 18.80 SJCC; and

2.1.2. 2017 Ordinance -- Ordinance No. 11-2017, An Ordinance Amending San Juan County Ordinance 1-2016; Section B, Element 3 of the Comprehensive Plan; Shoreline Management Regulations; and San Juan County Code Chapters 18.20 and 18.80.

## III. DETAILED STATEMENT OF THE ISSUES

3.1. Does the Update's shoreline environment designations, as reflected in the Comprehensive Land Use and Shoreline Maps, conflict with RCW 36.70A.020 goals 9 and 10, the policies of RCW 90.58.020, the requirements of RCW 90.58.100, the provisions of Chapter 43.21C RCW, and SMP Guidelines for inventorying shoreline conditions and analyzing shoreline issues of concern (WAC 173-26-201(3)(c), -201(3)(d)), for establishing shoreline environment designations (WAC 173-26-201(3)(f), -211), for using the most current, accurate, and complete scientific and technical information available (WAC 173-26-201(2)), and for

1 protecting shoreline ecological functions (WAC 173-26-181, -186(8), -201(2)(c), -221(2),  
2 -221(5))?

3 3.2. Do the Update's mitigation provisions at 2016 Ordinance New Sections 19-21,  
4 which do not require the complete replacement of lost functions and values, or in-kind, on-site  
5 compensation, conflict with RCW 36.70A.020 goals 9 and 10, the policies of RCW 90.58.020,  
6 the requirements of RCW 90.58.100, the provisions of Chapter 43.21C RCW, and SMP  
7 Guidelines for mitigation (WAC 173-26-186(8)(b)(i), -201(2)(e), -221(2)(c)(i)(E),  
8 -221(2)(c)(i)(F), -221(2)(c)(iii)(C), -221(3)(c)(i), -231(2), -241(3)(b)(i)(C)), for using the most  
9 current, accurate, and complete scientific and technical information available (WAC 173-26-  
10 201(2)), and for protecting shoreline ecological functions (WAC 173-26-181, -186(8), -  
11 201(2)(c), -221(2), -221(5), -221(6))?

12 3.3. Does the Update's shoreline buffer scheme, incorporated by 2016 Ordinance New  
13 Section 18 and referenced throughout, conflict with the policies of RCW 90.58.020, the  
14 requirements of RCW 90.58.100, the provisions of Chapter 43.21C RCW, and SMP Guidelines  
15 for analyzing and conserving shoreline vegetation (WAC 173-26-201(3)(d)(viii), -221(5)), for  
16 using the most current, accurate, and complete scientific and technical information available  
17 (WAC 173-26-201(2)), and for protecting against site-specific and ecosystem-wide impacts  
18 (WAC 173-26-181, -186(8), -201(2)(c), -201(3)(d)(iii), -221(2), -221(5), -221(6))?

19 3.4. Does the Update's shoreline stabilization provisions at 2016 Ordinance New  
20 Sections 41-48 and Table X, which authorize actions like the armoring of feeder bluffs and  
21 forage fish spawning habitat and unreplaced shoreline vegetation removal, conflict with RCW  
22 36.70A.020 goals 9 and 10, the policies of RCW 90.58.020, the requirements of RCW  
23 90.58.100, the provisions of Chapter 43.21C RCW, and SMP Guidelines for new shoreline  
24 stabilization (WAC 173-26-211(5)(b)(ii)(E), -211(5)(f)(ii)(A), -231(3)(a)(iii)(B),  
25 -231(3)(a)(iii)(C), -231(3)(a)(iii)(E)), for using the most current, accurate, and complete

1 scientific and technical information available (WAC 173-26-201(2)), and for protecting against  
2 site-specific and ecosystem-wide impacts (WAC 173-26-181, -186(8), -201(2)(c), -201(3)(d)(iii),  
3 -221(2), -221(5), -221(6))?

4 3.5. Does the Update's overwater structure provisions at 2016 Ordinance New  
5 Sections 29-39 and Table X, which authorize: (1) overwater structures in eelgrass and kelps; (2)  
6 overwater structures that would be expected to interfere with normal erosion-accretion; (3)  
7 boating facilities for 5 or more users without ensuring that existing facilities and alternative  
8 moorage are not adequate or feasible; and (4) docks instead of marinas if the marinas are more  
9 than 8 miles away, conflict with RCW 36.70A.020 goals 9 and 10, the policies of RCW  
10 90.58.020, the requirements of RCW 90.58.100, the provisions of Chapter 43.21C RCW, and  
11 SMP Guidelines for boating facilities and docks (WAC 173-26-221(2)(iii)(C), -241(3)(c)), for  
12 using the most current, accurate, and complete scientific and technical information available  
13 (WAC 173-26-201(2)), and for protecting against site-specific and ecosystem-wide impacts to  
14 shoreline ecological functions (WAC 173-26-181, -186(8), -201(2)(c), -201(3)(d)(iii), -221(2),  
15 -221(5))?

16 3.6. Does the Update's nonconforming development provisions at 2016 Ordinance  
17 New Section 14 conflict with RCW 36.70A.020 goals 9 and 10, the policies of RCW 90.58.020,  
18 the requirements of RCW 90.58.100, the provisions of Chapter 43.21C RCW, and SMP  
19 Guidelines for nonconforming development (WAC 173-26-191(2)(a)(iii)(A)), and for protecting  
20 and restoring shoreline ecological functions (WAC 173-26-181, -186(8), -201(2)(c),  
21 -201(3)(d)(iii), -201(2)(f), -221(2), -221(5), -221(6))?

22 3.7. Does the Update's lack of a process for periodically evaluating the cumulative  
23 effects of authorized development on shoreline conditions conflict with the SMP Guidelines  
24 (WAC 173-26-191(2)(a)(iii)(D))?  
25

1 3.8. Friends reserves the right to amend this petition consistent with the SMA and  
2 GMA.

#### 3 IV. STANDING

4 4.1. Friends is a public interest not-for-profit 501(c)(3) Washington corporation based  
5 in San Juan County, with approximately 2,000 members. Friends' founders established the  
6 organization in 1979 to protect the land, air, sea, and livability of the San Juan Islands. Friends  
7 strives to preserve the character of the islands, conserve natural resources, promote ecological  
8 stewardship, and promote strong environmental policies and protections. Friends' members, staff  
9 members, and board members participated in the public process that resulted in the Ordinances  
10 by submitting emails and letters and testifying at public hearings concerning all matters at issue  
11 in this petition. Thus, in addition to other forms of standing, Friends has participation standing to  
12 challenge the Ordinance pursuant to RCW 36.70A.280.

13 4.2. In addition, Friends has standing pursuant to RCW 34.05.530 because it and its  
14 members are aggrieved or adversely affected by the adoption of the 2016 and 2017 Ordinances.  
15 A party is aggrieved or adversely affected pursuant to RCW 34.05.530 where: (1) the agency  
16 action has prejudiced or is likely to prejudice that person; (2) that person's asserted interests are  
17 among those that the agency was required to consider when it engaged in the challenged action;  
18 and (3) a judgment in favor of that person would substantially eliminate or redress the prejudice  
19 to that person caused or likely to be caused by the agency action.

20 4.3. Adoption of the 2016 and 2017 Ordinances is likely to prejudice Friends and its  
21 members who view, recreate, and work along San Juan County shorelines. The adverse impacts  
22 authorized by the provisions identified at Section III above will injure those interests. Thus,  
23 Friends' members are aggrieved or adversely affected by the 2016 and 2017 Ordinances.

24 4.4. Friends' and its members' interests are among those that the County and Ecology  
25 were required to consider in adopting the 2016 and 2017 Ordinances. The SMA directs the

1 County and Ecology to consider the rights and interests of residents of the community in which  
2 the SMP applies.

3 4.5. A judgment in Friends' favor would eliminate or redress the prejudice to Friends  
4 because it would direct San Juan County to adopt SMP Update provisions that satisfied the  
5 ecological protection policies and requirements of the SMA.

#### 6 **V. ESTIMATED LENGTH OF HEARING**

7 5.1. Friends estimates that the Hearing on the Merits for this matter will last  
8 approximately one day.

#### 9 **VI. RELIEF SOUGHT**

10 Wherefore, Friends respectfully seeks the following relief:

11 6.1. An Order for challenged SMP Update provisions relating to shorelines:

- 12 • Determining that the challenged SMP Update provisions relating to shorelines do  
13 not comply with the Growth Management Act, the SMA policy at RCW  
14 90.58.020, the SMA requirements, and the applicable guidelines;
- 15 • Remanding the challenged SMP Update provisions relating to shorelines to the  
16 State of Washington, Department of Ecology and San Juan County for action  
17 consistent with the SMA policy, SMA requirements, and applicable guidelines;  
18 and
- 19 • Declaring invalid the challenged SMP Update provisions relating to shorelines on  
20 the ground that they substantially interfere with the fulfillment of the goals of the  
21 Growth Management Act and Shoreline Management Act.

22 6.2. An Order for challenged SMP Update provisions relating to shorelines of  
23 statewide significance:

- 24 • Determining that the challenged SMP Update provisions relating to shorelines of  
25 statewide significance identified above do not comply with the Shoreline

1 Management Act policy at RCW 90.58.020, the SMA requirements, and  
2 applicable guidelines;

- 3 • Remanding the challenged SMP Update provisions relating to shorelines of  
4 statewide significance to the State of Washington Department of Ecology and San  
5 Juan County for action consistent with the SMA policy and applicable guidelines;  
6 and
- 7 • Declaring invalid the challenged SMP Update provisions relating to shorelines of  
8 statewide significance on the ground that they substantially interfere with the  
9 fulfillment of the goals of the Growth Management Act and Shoreline  
10 Management Act.

11 The undersigned representative for Friends has read the foregoing Petition for Review and  
12 believes its contents to be true.

13 RESPECTFULLY submitted this 22<sup>nd</sup> day of December, 2017.

14  
15  
16 FRIENDS OF THE SAN JUANS

17  
18 By:   
19 Kyle A. Loring, WSBA# 34603  
20 Attorney for Petitioner