

Appendix 2: Summary of Voluntary Protection Programs

San Juan County has two distinct programs for voluntary protection of natural resources on private property. The first is conservation easements, which are written by the Land Bank and the San Juan Preservation Trust. The second is the County Open Space Program.

Of the two, the conservation easement program is significantly more rigorous in its prohibitions, recordkeeping, and oversight. Additionally, our study shows that current conservation easements are more explicit in restricting potentially harmful shoreline modifications than they were in the past.

The County Open Space program provides a measure of protection for ecological resources, but its efficacy in shoreline protection is hindered both by the fact that important ecological resources are not considered in the review process, and by the fact that there are no follow-up visits or mechanisms to ensure compliance.

1. Conservation Easements

Conservation easements provide strong and permanent protection for important ecological resources. The Initiative's analysis of conservation easements was designed to determine the level of certainty for protection by Land Bank and San Juan Preservation Trust conservation easements for important shoreline resources.

Our central question was this: Do current conservation easements on shoreline parcels protect important shoreline resources from shoreline modifications (docks, armoring, loss of vegetation)?

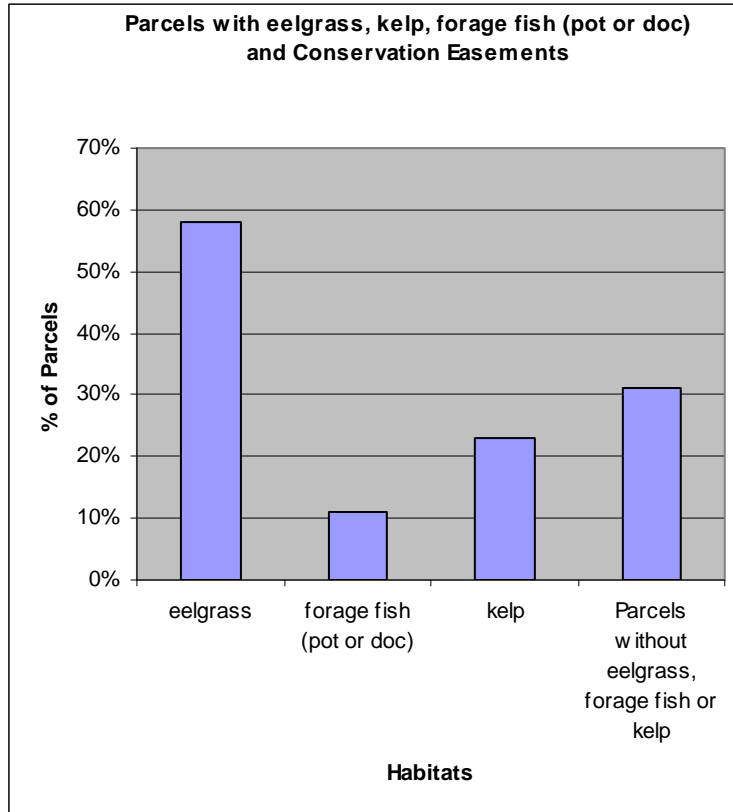
Our analysis included parcels throughout the county and County-wide data sets of eelgrass, kelp, and documented and potential forage fish spawning habitat. We were not able to select for parcels with coastal wetlands, feeder bluffs or shoreline vegetation due to the lack of County-wide data sets although these habitats are critical to overall shoreline health. County wide, the SJPT has 66 shoreline properties with conservation easements totaling 19 miles. The Land Bank has 16 parcels with shoreline easements totaling about 5 miles.

To determine if the conservation easements are protecting important shoreline resources, we selected out of the total number of easements those that had forage fish or eelgrass adjacent to the property. Forty-four SJPT conservation easements were reviewed and all 16 shoreline conservation easements for the Land Bank were reviewed for a total of 60 reviewed conservation easements.

County wide, most parcels with conservation easements have one of the priority habitats. (See Table 1.) 58% have eelgrass, 11% have potential or documented forage

fish and 22% have kelp. Only a third of all parcels with conservation easements lack any of these habitats, but due to our lack of data we do not know if they have coastal wetlands, shoreline vegetation, feeder bluffs, seabird rookeries or other critical habitat characteristics.

Table 1

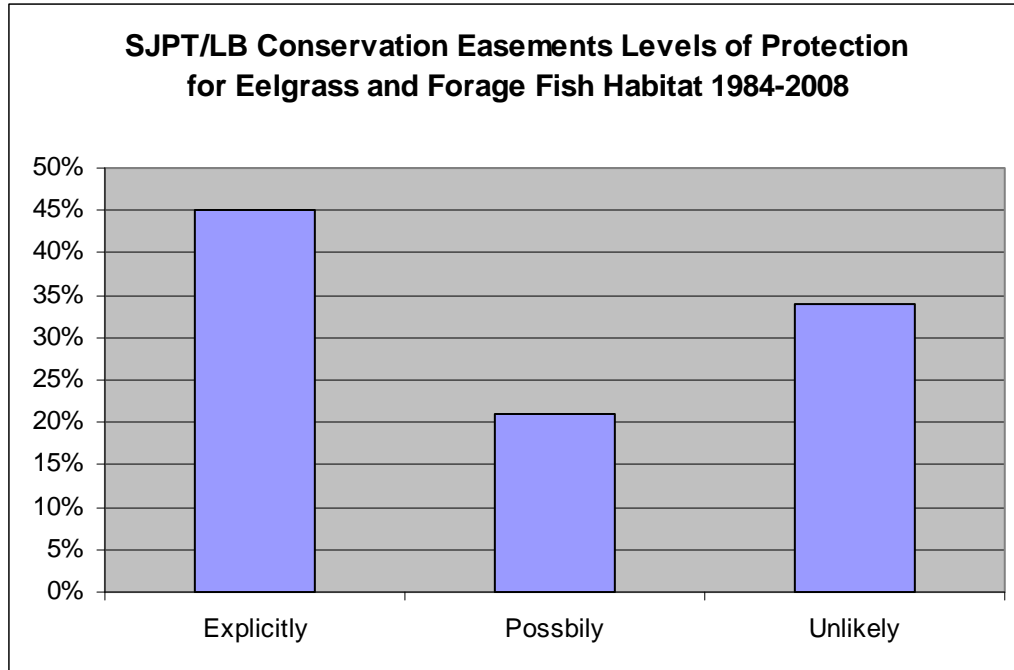


After selecting for just those parcels with mapped shoreline resources (eelgrass and potential and documented forage fish) we reviewed the conservation easements and categorized them based on the certainty that the shoreline would be protected from docks, armoring or loss of shoreline vegetation. Using a simple three-bin approach, the parcels were categorized as explicitly protected, possibly protected or unlikely to be protected. The graphs below show that about 45% of the parcels are explicitly protected, about 20% are possibly protected and 35% are unlikely to be protected. (Table 2.)

However, due to the size and length of the average shoreline conservation easement parcel, these categories may overstate the level of uncertainty. Most of the properties with Land Bank or SJPT conservation easements were much larger than average shoreline parcels. Within our study areas, most of the parcels were less than 5 acres. Of those parcels that have conservation easements, most were more than 10 acres. In addition, the average shoreline length was 1274 feet, which is much greater than the

average shoreline length within our case study areas of 284 feet. One dock or one area of clearing in an area of 1,000 feet of shoreline may be fairly low impact.

Table 2



Based on interviews with Land Bank and SJ Preservation Trust staff, we know that in recent years the interest in explicitly protecting shoreline resources has increased. Recent data and concern about San Juan County's marine shoreline has increased the awareness of staff and changed the way conservation easements are written. By comparing the following graphs of protection levels from 1984 to 1999 and 2000 to 2008, we see that the explicit protection of shoreline resources is dramatically higher in the last eight years. In fact, explicit protection of eelgrass and forage fish has doubled. (Tables 3 and 4.)

Table 3

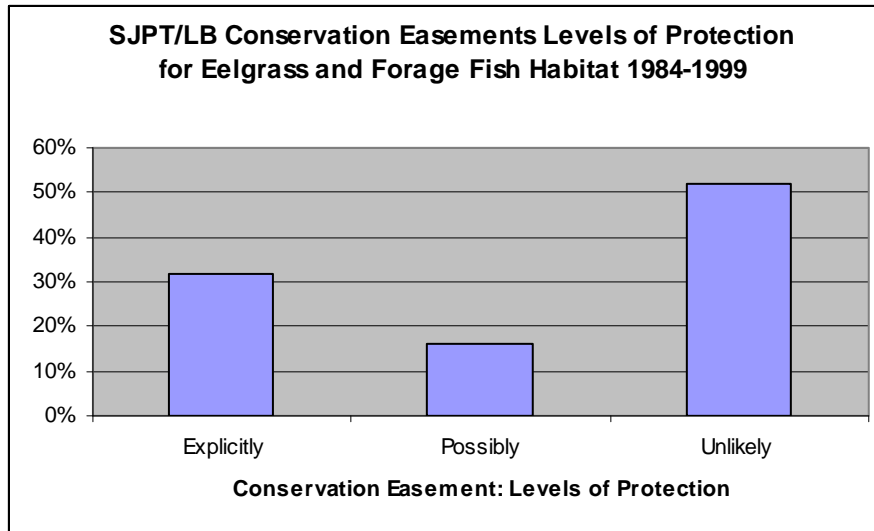
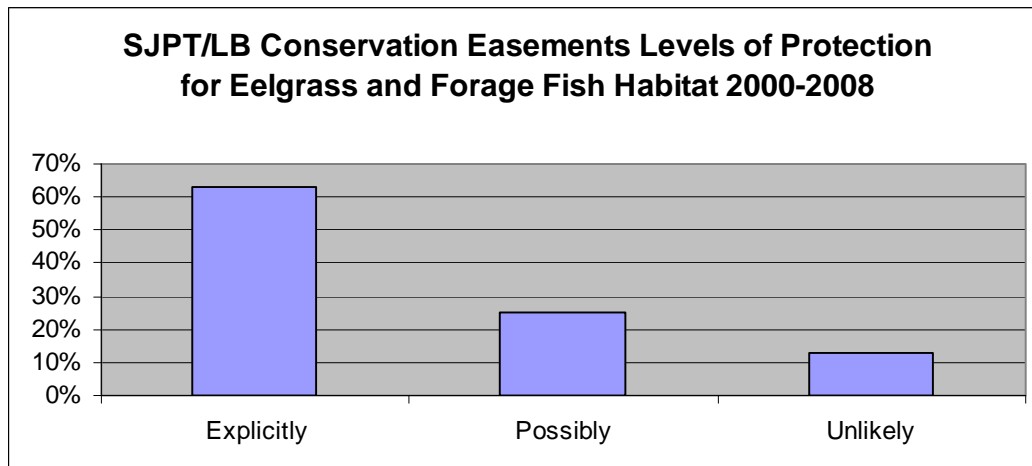


Table 4



2. Open Space Program of San Juan County

The Open Space Program of San Juan County reduces the property tax burden of property owners commensurate with the natural and scenic features of, and public access on, their property.

The program is designed to give the most points to properties with many and different kinds of habitats and features. Bigger properties also receive more points. The program is not designed to limit the rights of property owners in the same way as a conservation easement. The program does not provide permanent protection: enrollment is determined by the property owner and when the property changes hands the property may cease to be enrolled. Also, there is no follow up or monitoring of parcels enrolled in the Open Space Program. The maximum tax reduction a property can receive is 70%.

This program is not widely used in the County; last year there were approximately 3 properties that applied for enrollment.

Does the Open Space Program specifically target protection of significant shoreline habitats?

~Yes, the program gives points for tidal marshes and estuaries, tide pools, coves and beaches. There are also points given for spits, points and barrier berms.

How does the Open Space Program specifically protect shoreline habitats including eelgrass, kelp, coastal wetlands, forage fish (documented and potential), feeder bluffs or shoreline vegetation?

~There are specific points for tidal marshes, estuaries, tide pools, coves and beaches. There are no specific points for presence of eelgrass, documented or potential forage fish habitat, kelp, or shoreline vegetation or overhanging vegetation. (UDC 16.50.220)

~However, under the resource category of “Natural and scenic resources” (UDC 16.50.210), points are awarded for forest land and shoreline as well as no or minimal visible development from either roads or ferry routes. This may in some cases correlate to intact shoreline vegetation or overhanging vegetation.

~Feeder bluffs are awarded points as a hazard prone site. To obtain points, the entire property must be within the hazard prone site. Accretion shoreforms are specifically provided points.

What is the potential for shoreline modifications on shoreline properties already enrolled in the Open Space Program?

~There are no restrictions on shoreline modifications. There is a restriction preventing subdivision and there is a provision for no additional construction but it isn't clear how broadly or narrowly the additional construction provision is interpreted. Also, there is no monitoring of properties enrolled in the Open Space Program. Furthermore, on applications for docks, bulkheads or construction of homes, there is no place to identify that a parcel has an Open Space designation. The County Assessor's database does identify those parcels, but this information is not routinely checked during the permitting process.

~Properties enrolled in the Open Space program do not receive a list of “acceptable” activities or a list of “prohibited” activities. This is markedly different from a conservation easement, which limits the development rights of property owners explicitly and clearly. Under the Open Space program a property owner could diminish the open space values of the property either inadvertently or purposefully and there would be very little chance of recourse by the County. The County does require the paying of back taxes up to 7 years if the property comes out of the

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Open Space program, but the chances of being caught are very slim as there is no monitoring or follow up visits.