



# Riparian Taskforce Preliminary Recommendations

Prepared for the Office of the Governor

Pursuant to Section 117(3), Chapter 475, Laws of 2023

May 1, 2024

# Table of Contents

- I. Executive Summary..... 1
- II. Draft Recommendations ..... 2
  - RECOMMENDATION 1 ..... 3
  - RECOMMENDATION 2 ..... 4
  - RECOMMENDATION 3 ..... 10
  - RECOMMENDATION 4 ..... 10

# I. Executive Summary

## Introduction

In 2023, the Governor's Office contracted with Plauché & Carr LLP to reconvene the Riparian Taskforce, initially convened from June through December of 2022, to continue its work developing policy and spending recommendations to improve riparian habitat to ensure salmon and steelhead recovery. The 2023 efforts were funded pursuant to a budget proviso, Engrossed Substitute Senate Bill 5187, Sec. 117(3) (2023) (the 2023 budget proviso), that funded an independent facilitation process engaging tribes, local governments, agricultural producers, commercial and recreational fisher organizations, business organizations, salmon recovery organizations, forestry and agricultural organizations, and environmental organizations. The 2023 budget proviso implements one of Plauché & Carr LLP's 2022 recommendations from the 2022 Riparian Taskforce work to continue dialogue and maintain momentum towards a comprehensive suite of strategies for riparian habitat protection and restoration in Washington. The 2023 budget proviso requires that recommendations include strategies that can attract private investment in improving riparian habitat as well as recommendations on developing a regulatory or compensation strategy if voluntary programs do not achieve concrete targets.

The current Riparian Taskforce effort, and the recommendations that Plauché & Carr LLP is developing under the 2023 budget proviso, also incorporate and build on key findings and recommendations from a 2022 effectiveness analysis of existing riparian-related voluntary and regulatory state programs conducted by Plauché & Carr LLP in collaboration with technical experts at Industrial Economics, Inc. pursuant to Engrossed Substitute Senate Bill 5693, Sec. 130(22) (2022). The [2022 Riparian Taskforce Final Report](#) and the [2022 Effectiveness Analysis](#) can be found on OFM's website.

As required by the 2023 budget proviso, this document provides preliminary recommendations from Plauché & Carr LLP. These preliminary recommendations are a work in progress; the Taskforce participants are continuing to actively discuss and revise these recommendations as part of the facilitated process. At this point, no Taskforce participants have expressly agreed to these recommendations, nor have they been asked to do so. As required by the 2023 budget proviso, Plauché & Carr LLP will submit a final report and recommendations to the Governor and the Legislature by June 30, 2024.

The preliminary recommendations included below focus on overall policy and spending approaches to the restoration and protection of riparian habitat to ensure salmon and steelhead recovery. These preliminary recommendations are not intended to be used as legislative language. Strategies for implementing these preliminary recommendations will be developed as part of a facilitated process commencing July 1, 2024, under a separate proviso, Engrossed Substitute Senate Bill 5950, Sec. 116(4) (2024).

## Process to Date

In June 2023, Plauché & Carr LLP conducted interviews with Riparian Taskforce members and state legislators and convened a Riparian Taskforce meeting to inform a framework for continued discussions and to identify additional participants. The final framework is structured around a series of five Riparian Roundtable discussions occurring from October 2023 through June 2024. The Roundtable meetings take place every two months in different locations around the state. Generally, Roundtable meetings involve an afternoon of field visits to riparian habitat projects and other sites that provide context and on-the-ground perspective on a variety of existing land uses of riparian habitat, riparian habitat restoration and protection, and salmon and steelhead recovery needs and efforts. The afternoon field visits are followed by a facilitated meeting room discussion the following morning.

The Riparian Roundtable meetings are supported by a Working Group consisting of Roundtable members and/or their designated participants. The Working Group has been convened virtually for three or more meetings prior to each Roundtable to engage more deeply in technical and policy issues that are critical to meeting the goals of Roundtable discussions. Presenters and additional participants are brought into Working Group meetings to share information and expertise on particular topics and engage Working Group members in dialogue that informs the Roundtables and these preliminary recommendations.

Additionally, Plauché & Carr LLP has provided periodic briefings with a group of key legislators to provide updates on the progress and status of Riparian Roundtable discussions.

## II. Draft Recommendations

### DRAFT Funding and Policy Recommendations

The budget proviso authorizing the Roundtable discussions (Engrossed Substitute Senate Bill 5187, Sec. 117(3) (2023)) provides as follows:

*[I]nvite federally recognized tribes, local governments, agricultural producers, commercial and recreational fisher organizations, business organizations, salmon recovery organizations, forestry and agricultural organizations, and environmental organizations to participate in a process facilitated by an independent entity to develop recommendations on proposed changes in policy and spending priorities to improve riparian habitat to ensure salmon and steelhead recovery.*

- (a) The independent entity must develop recommendations on furthering riparian funding and policy, including but not limited to, strategies that can attract private investment in improving riparian habitat, and developing a regulatory or compensation strategy if voluntary programs do not achieve concrete targets.*
- (b) Preliminary recommendations shall be submitted to the legislature and governor by May 1, 2024, with a final report by June 30, 2024.*

## RECOMMENDATION 1:

**Objective:** Recommendation 1 addresses the protection of existing, functioning riparian habitat. Protecting currently functioning riparian habitat is consistent with existing regulatory requirements to protect the functions and values of critical areas, including fish and wildlife habitat conservation areas, under the Growth Management Act (“GMA”) and to assure no net loss of shoreline ecological functions under the Shoreline Management Act (“SMA”). The intent of Recommendation 1 is to provide funding, technical assistance and legal protections that support local governments’ expeditiously moving forward to ensure existing riparian function is protected.

### **Recommendation 1 Text:**

Protect existing healthy, high-quality riparian areas. Where the riparian area does not meet the WDFW Riparian Guidance (2020) for fully functioning riparian areas but provides some level of riparian ecosystem function, ensure that the current level of riparian ecosystem function is not degraded. Ensure that local government land use regulations protect existing riparian ecosystem functions in accordance with the Washington State Department of Fish and Wildlife (“WDFW”) Riparian Ecosystems Volume 1 (WDFW Riparian Guidance). When reviewing land use applications for new development, or a redevelopment of currently developed land, including redevelopment that involves a change in use (for example, a change from agriculture use to residential use), local governments should delineate and protect existing, functioning Riparian Management Zones as set forth in the WDFW Riparian Guidance.

1.1. Provide sufficient funding to WDFW, Washington Department of Commerce (“Commerce”), the Washington Department of Agriculture (“WSDA”), the Washington Department of Ecology (“Ecology”) and the Washington State Conservation Commission (“SCC”) to carry out all of the actions required in this Recommendation 1.

1.2. Require WDFW to coordinate with Commerce, WSDA, and Ecology to develop guidance, in collaboration with local government representatives and federally recognized tribes, for protecting existing riparian ecosystem functions in accordance with the WDFW Riparian Guidance. The guidance developed pursuant to this recommendation shall also consider Volume 2 of the WDFW Riparian Ecosystems Guidance. State agencies, including WDFW, Commerce, WSDA, SCC, and Ecology, shall work together to provide technical assistance to local governments with regard to the WDFW Riparian Guidance, including assistance with identifying and applying for grant opportunities to facilitate protecting existing riparian ecosystem function. Such technical assistance can include, for example, resources to support workshops or other opportunities for education and information sharing on strategies and approaches for effective implementation of the WDFW Riparian Guidance and discussions of other local regulatory controls that may present barriers to effective implementation of the WDFW Riparian Guidance.

1.3. Set a target date, subject to the provision of sufficient funding, by which local governments must protect existing riparian ecosystem functions in accordance with the WDFW Riparian Guidance.

- 1.4. Provide limitations on appeals for local government legislative actions that incorporate WDFW Riparian Guidance consistent with the guidance discussed in Recommendation 1.2.
- 1.5. Provide local governments adequate, dedicated funding for compliance monitoring and enforcement of protections of existing riparian habitat.
- 1.6. Provide sufficient funding to conduct a targeted evaluation of the effectiveness of existing compliance and enforcement processes for riparian-related regulatory programs under the Shoreline Management Act (SMA) and locally implemented GMA critical areas protections as well as funding to implement recommendations that stem from the evaluation.
  - 1.6.1. The evaluation should identify existing compliance and enforcement procedures, authorities, and structures; evaluate whether existing local government code enforcement authorities are sufficient to meet needs; determine which aspects of enforcement and compliance approaches are effective at assessing and achieving compliance (e.g., monetary penalties for noncompliance and other tools that spur voluntary compliance); identify any barriers (e.g., lack of capacity, lack of clear delineation of responsibilities, cost of litigation, lack of judicial resources, reluctance of prosecutors and courts to support local code enforcement); and make recommendations for improvement. Consider how current compliance monitoring such as DNR's efforts to monitor compliance with Forest Practices Rules could be adapted for application in other programs as appropriate.
  - 1.6.2. This evaluation should build on Ecology's ongoing efforts to develop a compliance program under the SMA, ensuring that the program considers the WDFW Riparian Guidance (2020), including the recommendations in that Guidance regarding implementation monitoring and adaptive management to improve the implementation feedback loop for Shoreline Master Programs (SMPs) and the SMP Guidelines.

## RECOMMENDATION 2:

**Objective:** Recommendation 2 addresses the voluntary restoration of degraded riparian areas, using a watershed-based approach to riparian restoration targeted toward salmon and steelhead recovery. Recognizing the substantial and underfunded regional-level salmon and steelhead recovery and riparian restoration planning efforts that have already been taken and are currently taking place around the State, Recommendation 2 is crafted to leverage and sufficiently fund implementation of completed regional riparian restoration plans, build on preliminary regional restoration planning and prioritization efforts, and require riparian restoration planning and prioritization in areas where it has not yet taken place. Recommendation 2 also includes funding and policy recommendations related to agricultural viability; establishment of concrete riparian restoration, protection and stewardship targets; monitoring of restored riparian areas; and strategies that can attract private investment in improving riparian habitat.

**Recommendation 2 Text:**

To restore degraded riparian areas, establish and ensure sufficient funding for a watershed-based riparian implementation program (Program) focused on improving riparian habitat for salmon and steelhead recovery that builds on existing and ongoing watershed restoration and salmon recovery efforts and establishes firm, readily measurable outcomes.

**2.1. The Program shall:**

- 2.1.1. Utilize and build upon existing salmon recovery, watershed planning, and voluntary stewardship program riparian restoration efforts.
- 2.1.2. Expand existing watershed-based groups, or establish new groups as needed, that include federally recognized Tribes with rights to fish in the watershed, counties, cities, and other local government entities within the watershed, agricultural producers within the watershed, commercial and recreational fishing organizations, business organizations, salmon recovery organizations, forestry and agriculture organizations, and environmental and conservation organizations. State agencies may also participate in the watershed-based group at the invitation of the watershed-based group.
- 2.1.3. Sufficiently fund planning, implementation, and monitoring of the riparian restoration strategies and projects that result from the efforts outlined below, while prioritizing near-term funding for riparian restoration projects identified as priorities in already adopted watershed-level plans.
- 2.1.4. Use decision making processes that foster and support collaborative and cooperative planning to meet salmon and steelhead recovery goals while maintaining the viability of the agriculture industry.

2.2. Each watershed-based group shall adopt or amend an existing riparian watershed-based implementation strategy, or develop and adopt a new watershed-based riparian implementation strategy, that identifies and prioritizes specific riparian restoration and protection projects within the watershed that support salmon and steelhead protection and recovery. The watershed-based riparian implementation strategies shall:

- 2.2.1. Be based upon existing regional or watershed-scale plans or processes such as the regional recovery plans created under RCW 77.85.090; watershed-scale recovery plans and habitat project lists developed pursuant to RCW 77.85.050; the action agenda developed under RCW 90.71.260; voluntary stewardship work plans created pursuant to RCW 36.70A.705; and watershed health plans developed pursuant to chapter 90.82 RCW.
- 2.2.2. Establish a clear goal of achieving restoration of the full Riparian Management Zone (RMZ), as defined by the Washington Department of Fish and Wildlife, while recognizing exceptions where that standard is not achievable.

- 2.2.3. Establish criteria for determining when restoration to the outer edge of the RMZ is not currently achievable. Examples of criteria that the watershed-based groups could consider include, but are not limited to, the presence of structures or infrastructure, topography constraints, location of property lines, parcel size or configuration, economic hardship and the likelihood that restoration to the outer edge of the RMZ might become achievable in the future.
- 2.2.4. In those instances where restoration to the outer edge of the RMZ is not currently achievable, establish restoration strategies to optimize riparian habitat benefits, based on technical and scientific expertise. Alternatively, the watershed-based riparian restoration plans shall adopt a process for determining such strategies on a case-by-case basis.
- 2.2.5. Prioritize restoration and protection activities in reaches of streams that Ecology has included in its list of impaired waters in its Clean Water Act Section 305(b) Report.
- 2.2.6. Prioritize connectivity between areas of riparian habitat providing high levels of functionality. This is intended to prioritize restoration efforts in riparian areas that do not currently have barriers to connectivity and to prioritize removing barriers to connectivity between areas that currently have disconnected areas of high levels of riparian functionality.
- 2.2.7. Include restoration criteria for both fish-bearing and non-fish-bearing waters in accordance with Washington Department of Fish and Wildlife recommendations. For non-fish-bearing waters prioritize those that have a significant nexus to salmon and steelhead recovery over non-fish-bearing waters that do not have a significant nexus to salmon and steelhead recovery.
- 2.2.8. Be coordinated with local governments' GMA Comprehensive Plans and provide policy guidance for the development of local GMA Critical Areas Ordinances, and SMPs.
- 2.2.9. Washington Department of Fish and Wildlife, Washington Department of Ecology, and the Puget Sound Partnership shall work collaboratively with local governments to develop alternatives to permittee-responsible riparian mitigation in urban and rural areas to offset unavoidable impacts to riparian functions caused by existing and future commercial, residential, industrial or infrastructure development. Such alternative mitigation strategies include, without limitation, mitigation banking, payment of fees in lieu of mitigation, or a riparian habitat crediting program. Such strategies shall be dedicated to mitigation/restoration projects in the same watershed as the impacts and shall be consistent with the prioritization in the watershed-based riparian implementation strategies developed under Recommendation 2.



- 2.2.10. With regard to agricultural viability:
- 2.2.10.1. Identify and quantify critical factors for ensuring the viability of agricultural production within the watershed, utilizing available resources including the Washington State Conservation Commission's Agricultural Viability Toolkit;
  - 2.2.10.2. Identify and implement public and private sector strategies to ensure an adequate land base for continued viable agricultural activity;
  - 2.2.10.3. Identify and implement strategies to increase productivity of non-riparian agricultural lands within the watershed. Examples include investments in infrastructure and technology, support for collaborative water solutions, support for increasing markets and market access, technical assistance, and other proactive strategies to support agricultural viability;
  - 2.2.10.4. Support succession planning for farmers and establish programs that encourage land access for the next generation of farmers; and
  - 2.2.10.5. Establish and fund a monitoring program that inventories the amount of farmland conversion and loss within the watershed as a result of voluntary riparian protection and restoration actions.
- 2.2.11. By June 30, 2027, establish specific targeted outcomes at the watershed level with respect to quantity and quality of riparian habitats to be restored or protected by January 31, 2030. These targeted outcomes are to be updated every three (3) years thereafter. At a minimum, these outcomes must be established for the following categories: acres planted in riparian areas, miles of streambank planted, average riparian width, miles of streambank protected by land or easement acquisition, acres of restored land maintained and number of returning salmon.
- 2.2.12. Include a monitoring and adaptive management program that includes project monitoring using quantitative metrics that are designed to evaluate whether the restoration performed under the plan achieves the three -year goals established in the strategy. At a minimum, these quantitative metrics must include the following Recreation and Conservation Office metrics used to measure riparian restoration: acres planted in riparian areas, miles of streambank planted, average riparian width, miles of streambank protected by land or easement acquisition, acres of restored land maintained and number of returning salmon. The outcome of this monitoring and adaptive management program shall be reported to the Governor's Salmon Recovery Office every three years.

2.3. Ensure sufficient, flexible, reliable and rapidly accessible long-term funding to implement the priority restoration projects identified in the watershed-based riparian implementation strategies. Target funding to achieve significant landowner participation, implement adopted riparian restoration plans, and support stewardship and monitoring of restored riparian areas, including but not limited to the following:

- 2.3.1. Provide substantial, near-term funding for the implementation of riparian restoration projects identified as priorities in already adopted watershed-based plans.
- 2.3.2. On agricultural lands, provide landowner payments that align with market rental rates and commodity pricing.
- 2.3.3. Fund a substantial outreach and education effort addressing the importance of riparian habitat restoration and protection and providing information about available opportunities to support agricultural viability.
- 2.3.4. Fund technical assistance for aggregating projects and funding sources to provide greater riparian habitat improvement and protection. Ensure funding to support the continued work of the inter-agency Align Partnership (Recreation and Conservation Office, Puget Sound Partnership, Department of Ecology, Washington Department of Fish and Wildlife, and State Conservation Commission) to identify and implement administrative improvements in state voluntary restoration funding programs and implementation of its recommendations. Provide funding to establish a “one stop shop” website or database for riparian grant funding opportunities for applicants.
- 2.3.5. Provide for creative contracting approaches, such as pay for success contracts, that allow landowners and restoration practitioners to implement riparian restoration projects with payments based on delivery and verification of outcomes.
- 2.3.6. Leverage Climate Commitment Act funding to develop voluntary carbon credit payments to farmland owners that establish, enhance, and maintain riparian areas to accelerate conservation at scale.
- 2.3.7. Ensure long-term or dedicated funding for multi-year implementation of larger restoration projects and for ongoing stewardship and monitoring and adaptive management of already implemented riparian restoration projects.
- 2.3.8. Provide continued funding for the State Conservation Commission Integrated Science Hub for Agriculture and Ecosystems specific to work supporting riparian ecosystem restoration and protection.
- 2.3.9. Provide on-request funding for technical assistance with riparian restoration project identification and prioritization for watershed groups and facilitate information and technology sharing among watershed-based groups.

- 2.3.10. Provide continued funding for WDFW monitoring of riparian management zones as part of WDFW's change detection monitoring program, including sufficient funding to include change detection that measures ecological uplift as well as assessments of the reproductive status of riparian forests.
  - 2.3.11. Provide funding to Washington Department of Fish and Wildlife to conduct a study and develop a report evaluating the status and trends of environmental factors that sustain healthy riparian ecosystems, including but not limited to riparian water supply, river flow regimes, groundwater levels, grazing impacts, changes in disturbance regimes, effects of climate change, and other potential threats to Washington state riparian ecosystem sustainability.
  - 2.3.12. Fund and support ongoing permit streamlining efforts for riparian restoration projects.
- 2.4. The watershed-based riparian implementation strategies shall be reviewed, monitored and adaptively managed by a leadership council chaired by the Governor's Salmon Recovery Office, and including the Washington Department of Fish and Wildlife, the Washington Department of Ecology, the Washington Department of Agriculture, the Puget Sound Partnership, federally recognized tribes, local governments, agricultural producers, commercial and recreational fisher organizations, business organizations, salmon recovery organizations, forestry and agricultural organizations, and environmental organizations.
- 2.5. The Program shall provide a simplified process and include incentives to ensure robust participation in the watershed-based implementation strategies, including:
- 2.5.1. Sufficient funding for landowner outreach and technical assistance within each watershed.
  - 2.5.2. Creating a single, simplified application process that is readily usable by all potential funding recipients across watersheds.
  - 2.5.3. Providing incentives for early participation such that "early adopters" are rewarded, including through higher landowner payments and exemption from the state regulatory and/or compensation approach set forth in Recommendation 3.
  - 2.5.4. Create a Sustainable Farm and Fish certification program under the Department of Agriculture that builds on existing certification programs and includes requirements for riparian and habitat conservation consistent with and implementing the watershed-based riparian implementation strategies. Develop agreements that provide certainty to landowners to ensure that landowners committing to long-term enrollment are deemed compliant with established and new regulatory requirements.

## RECOMMENDATION 3:

**Objective:** The legislative proviso requires the independent facilitator to develop recommendations on “developing a regulatory or compensation strategy if voluntary programs do not achieve concrete targets.” With regard to protecting existing riparian habitat functions, Recommendation 1 proposes a regulatory program that would be imposed on new development or certain redevelopment. With regard to restoring degraded riparian areas, Recommendation 2 recommends the establishment and sufficient funding of a voluntary, watershed-based approach to riparian restoration. If the voluntary programs established under Recommendation 2 do not achieve the concrete restoration targets adopted in the watershed-based implementation strategies, Recommendation 3 proposes an acquisition program come into effect in those watersheds to help meet those targets.

### **Recommendation 3 Text:**

Establish and fund a Washington State riparian acquisition program targeted toward land within a particular watershed if the strategy for that watershed fails to achieve the established three-year outcomes for acres planted in riparian areas, miles of streambank planted, average riparian width, miles of streambank protected by land or easement acquisition, and acres of restored land maintained. The State’s targeted riparian acquisition program shall rely upon the State’s eminent domain authority to acquire critical lands within the watershed that are necessary to achieve these three-year outcomes. The targeted riparian acquisition program shall pay fair market value for property interest acquired and shall acquire the minimum ownership interest required to achieve these three-year outcomes.

## RECOMMENDATION 4:

**Objective:** Recognizing the processes outlined in Recommendations 2 and 3 will take time to fully implement, Recommendation 4 addresses the strategy for continuing the funding of riparian habitat restoration while those processes are moving forward but haven’t yet been completed.

In 2023, the Legislature provided significant funding to RCO and the SCC to increase the pace of riparian habitat restoration for the benefit of salmon and steelhead. RCO and the SCC have adopted guidance for the use of those funds. (The SCC adopted interim guidance and is continuing to work with Tribes and stakeholders to develop final guidance). Recommendation 4 proposes that those programs continue to be funded while the policy and spending recommendations in Recommendations 2 and 3 are established and implemented.

### **Recommendation 4 Text:**

For the next two years, maintain or increase the level of funding for the voluntary riparian restoration incentive programs established in the 2023-25 capital budget, Engrossed Substitute Senate Bill 5200 for RCO (Section 3074) and SCC (Section 3087). RCO and SCC shall consider recommendations 2.2.1 through 2.2.6 and Recommendation 2.3.1 in developing or updating their guidelines for these voluntary riparian restoration incentive programs.