

## Riparian Ecosystems, Volume 2: Management Recommendations Futurewise Comments

[https://wdfw.wa.gov/conservation/phs/mgmt\\_recommendations/comments.html](https://wdfw.wa.gov/conservation/phs/mgmt_recommendations/comments.html)

Front Matter: Acknowledgements, Preface, List of Acronyms, and Glossary

Futurewise thinks the characterization of the State of Washington Department Fish and Wildlife (WDFW) as a technical advisor is and accurate.

One issue we often encounter is that some local government participants, such as county or city planning commissioners, do not understand the very limited authority that WDFW has to protect riparian habitats. Some think WDFW has it covered and that the local government does not need to protect riparian and other fish and wildlife habitats. Many of the PHS reports explain WDFW's limited authority and the need to collaborate with local governments well. See for example, E. Larsen, J. M. Azerrad, N. Nordstrom, editors, *Management recommendations for Washington's priority species, Volume IV: Birds* p. vi (Washington Department of Fish and Wildlife, Olympia, Washington, USA: 2004) accessed on July 11, 2018 at: <https://wdfw.wa.gov/publications/00026/> We recommend that a section explaining WDFW's limited authority for protecting fish and wildlife habitats should be included in *Riparian Ecosystems, Volume 2: Management Recommendations (Volume 2)*.

### Chapter 1. Introduction

On page 2, *Volume 2* states that the guidance in the report is statewide in its applicability. Futurewise agrees that the recommendations are applicable statewide, although we recognize that the recommendations will result in different on the ground results in different parts of the state due to differences in site-potential tree height and the separate methodology for the un-forested areas of the Columbia Plateau.

However, we sometimes hear from members of the public that science from one part of the state is not applicable to other parts of the state. We recommend that *Volume 2* briefly explain why the science shows that the recommendations are applicable statewide to address this concern.

On page 2, *Volume 2* writes that “[p]rotecting functions within at least one SPTH is a scientifically supported approach if the goal is to protect and maintain high function of the riparian ecosystem.” But the case study in Appendix 4 documents that if “high function” is an 80 percent chance of species survival over 100 years, two SPTHs would be required in many areas. So perhaps “high function” is the wrong term. We suggest something along the lines of “maintaining many riparian functions” or something similar be substituted for “high function” as more accurately describe the results that will be achieved.

## Chapter 2. Growth Management Act, Shoreline Management Act, and Protection of Critical Areas

In the discussion of the *Swinomish Indian Tribal Community* decision on page 10, we recommend noting that the Washington State Supreme Court wrote that the GMA authorizes, but does not require, enhancement. Some local governments may choose to require enhancement. I recommend the following revision:

The court has also concluded that the “no harm” standard protects critical areas by maintaining existing conditions and the GMA allows, but does not require local governments to adopt regulations that mandate the enhancement or restoration of lost habitat functions ~~that no longer exist~~.<sup>15</sup>

<sup>15</sup> *Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, (2007).

Footnote 13 has a comma where it should have a dash in GMHB 13-3-0012.

Footnote 14 contains a minor typo, the correct case name is *Yakama County v. Eastern WWAGMHB*, 168 Wn. App. 680 (2012).

Footnote 16 only has a partial citation for the *Whidbey Environmental Action Network v. Island County Board* decision, it is missing a date.

On pages 11 and 12, lines 768 through 770, the sentence seems to be missing two words, a “the” before “Ecology” and a “must” between “measures” and “be.” We suggest the sentence be edited as follows with our additions underlined: The Ecology SMP guidelines clarify that mitigation measures must [or are to] be applied in sequence in order of priority, with avoidance as the top priority.

Footnote 17 is also missing a date and the “©” should be a lower case “c” for consolidated.

Footnote 19 also only includes a partial cite.

## Chapter 3. Regulatory Tools

Question 5 on page 16 asks “5. What other regulations may negatively impact riparian areas even though they may not be within the CAO (e.g., clearing and grading regulations)?” The purpose of clearing and grading regulations is to protect the health and safety and the environment, so some may find asking whether the regulations negatively impact riparian areas confusing. But the question makes an excellent point in asking local governments to consider whether their other regulations are adequate to protect riparian areas. We suggest that Question 5 be recast as something like: “5. What other regulations,

including regulations not included in the CAO (e.g., clearing and grading regulations), are not adequately protect riparian areas?”

On page 17 on lines 935 – 36 *Volume 2* states that “[a] county or city must provide a detailed and reasoned justification for any designated critical area not protected.” However, twice now the court of appeals has concluded that the “‘GMA requires the county to designate and protect all critical areas within its boundaries.’ *Stevens County v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1 (2008).” *Ferry Cty. v. Growth Mgmt. Hearings Bd.*, 184 Wn. App. 685, 734, 339 P.3d 478, 500 (2014). We recommend this sentence be deleted because the GMA requires each city and county to designate and protect all critical areas.

Also on page 17 on lines 937 – 39 *Volume 2* writes that “[w]here local jurisdictions have comprehensively updated their Shoreline Master Program (SMP), the SMP provides protection of riparian conditions consistent with the No Net Loss standard embodied in WAC 173-26-186(8).” While we have no doubt that the state agencies and local governments believe this to be true, some of the provisions in SMPs are really experiments. Some cities and even a couple of counties use setbacks and vegetation retention requirements that only require vegetation retention in parts of the setback. The best of these requirements also require native vegetation plantings to address impacts of development or redevelopment. Many SMPs also require very narrow buffers in certain residential and urban environments.

We are unaware of science documenting that all of these approaches work. They certainly not consistent with the recommendations in *Volume 2*. We suggest the above statement be qualified with a statement like, “based on the currently available science” or “are thought” to protect riparian conditions. While we hope the variety of provisions will protect riparian conditions, some of them many not and counties and cities, along with Ecology, need to adjust these provisions if they are shown not to work.

On page 17 line 961 and page 37 line 1557, a “the” is missing before the “Department of Commerce.”

On page 20 line 1036 “forests” sounds, to my ear, better than forest. But this could be a question of style.

Futurewise strongly supports Fish and Wildlife’s offer on page 20 to provide technical assistance and to work cooperatively with cities and counties to delineate channel migration zones (CMZs). This is a valuable service as some jurisdictions were not able to fully identify their CMZs during their SMP updates.

It is not clear that it helps your case, but the Growth Management Hearings Board and courts have concluded that CMZs are a geologically hazardous area that must be designated and protected. *Citizens Protecting Critical Areas v. Jefferson County*, WWGMHB Case No. 08-2-0029c, Final Decision and Order (Nov. 19, 2008), at 2 of 51, 2008 WL 5267906, at \*1, *affirmed Olympic Stewardship Found. v. W. Washington*

*Growth Mgmt. Hearings Bd.*, 166 Wn. App. 172, 201, 274 P.3d 1040, 1054 (2012). Perhaps including a brief mention CMZs are geologically hazardous areas may strengthen the case that CMZs should be protected. That is part of the reason why counties, as is reported later in the report, prohibit development in CMZs.

On page 38 line 1619 “systems” should be “system.”

#### Chapter 4. Restoring Riparian Ecosystems and Protecting through Voluntary Stewardship

Futurewise concludes that this chapter has helpful information for successfully implementing the Voluntary Stewardship Program. We support including it.

#### Chapter 5. Improving Protection through Monitoring and Adaptive Management

Futurewise strongly supports the work of the Washington State Department of Fish and Wildlife, the State of Washington Department of Commerce, and the State of Washington Department of Ecology to provide technical assistance to counties and cities to enable and encourage the counties and cities to monitor the effectiveness of their critical areas regulations and shoreline master programs. We think this chapter will be of substantial assistance to counties and cities.

Futurewise continues to be impressed by WDFW’s High Resolution Change Detections (HRCDD) methodology and work products. We hope WDFW is able to continue this work and expand it throughout Washington State.

#### Appendices

Futurewise concludes that the appendices will help counties and cities carryout the recommendations in this report. We particularly appreciate that WDFW is preparing an appendix specific to the Columbia basin. Futurewise supports including them in *Volume 2*.

We also strongly support Appendix 1’s step-by-step instructions on how to use the several online tools for determine site potential tree height. This will be helpful for many local government staff and landowners.

#### Do you have overall comments?

Overall Futurewise strongly supports *Volumes 1 and 2* of the riparian update. However, we do think *Volume 2* should be clearer on importance of maintaining existing riparian areas and their habitats. As the *State of Our Watersheds 2016* report documents, habitat loss continues to outstrip restoration adversely impacting salmons and steelhead habitat. Northwest Indian Fisheries Commission, *State of Our Watersheds 2016* pp. 7 – 9 accessed on June 12, 2018 at: <https://nwifc.org/publications/state-of-our-watersheds/>

“Riparian forested buffers along fish-bearing streams continue to decline ...” in most areas. *Id.* at p. 7. *Volume 2* needs to more clearly document that these declines are occurring and to have a greater sense of urgency on the need to stop these declines. Business as usual will not maintain, let alone recover, salmon and other riparian dependent fish and wildlife.

### Additional Feedback

WDFW aims to be comprehensive with our management recommendations. Are there important topics missing from Volume 2?

As noted above, the Volume 2 should document that we are still losing riparian habitat and riparian buffers continue to be degraded.

WDFW continues to strive to be respectful and supportive of the conservation practices of our stakeholders. Are there any instances where the document’s tone comes across as anything other than respectful or helpful?

No.

### Final Comments

Do you have any final comments regarding Volume 2, the full two-volume set, or this public comment process?

Futurewise strongly supports the updated *Riparian Ecosystems Volumes 1 and 2*. The public, property owners, and state and local governments will benefit from the updated reports with their synthesis of the current science.

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