
From: Ehlebracht, Mike <Mike.Ehlebracht@hartcrowser.com>
Sent: Monday, March 14, 2022 1:41 PM
To: Contact Council
Subject: Urban Tree Canopy Motion 22-09

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear Snohomish County Councilmembers:

I'm writing this email to express my support for Motion 22-09, which proposes to amend the Natural Environment Chapter of the General Policy Plan (GPP) to address Urban Tree Canopy goals and policies. I fully support the Motion's goal of providing a healthy urban forest to enhance the economic vitality of the community, improve environmental conditions and resiliency, and promote a better quality of life for Snohomish County residents. As an environmental engineering consultant and long-time member of the Snohomish County Marine Resources Committee (MRC), I recognize the critical role that a healthy tree canopy has for improving water quality, providing wildlife habitat, and protecting our natural environment for future generations.

While my work with the MRC primarily focuses on protecting and restoring our local marine environment, we cannot achieve this mission without recognizing the importance of addressing the health of upland watersheds that are intimately connected to the marine ecosystem. For example, our ability to restore salmon and iconic resident killer whale populations is highly dependent on improving stormwater quality that discharges into our local surface water bodies. Enhancing urban forests and tree canopy has been shown to be an excellent tool for improving stormwater quality and management including:

- Reducing stormwater runoff by capturing and storing rainfall in their canopy, releasing water into the atmosphere, and increasing infiltration into the soil.
- Decreasing the amount of pollutants by taking up nutrients, metals, and other contaminants from soils and water through their roots.
- Transforming pollutants into less harmful substances.

As a resident of Snohomish County, I believe that protecting and enhancing our urban tree canopy is vital for improving the quality of life for future generations. Thanks.

Mike Ehlebracht

From: Dunn, Megan
Sent: Monday, March 14, 2022 6:11 PM
To: Contact Council
Subject: Fwd: Support for Urban Tree Canopy Proposal
Attachments: Support for Urban Tree Canopy Proposal.pdf

For the record

Megan Dunn | Council Chair and Councilmember District 2
O: (425) 388-3494 | megan.dunn@snoco.org
Pronouns: she/her/hers

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Begin forwarded message:

From: llyshall@snohomishcd.org
Date: March 14, 2022 at 5:21:41 PM PDT
To: "Dunn, Megan" <Megan.Dunn@co.snohomish.wa.us>, "Low, Sam" <Sam.Low@co.snohomish.wa.us>, "Mead, Jared" <Jared.Mead@co.snohomish.wa.us>, "Nehring, Nate" <nate.nehring@co.snohomish.wa.us>, "Wright, Stephanie" <Stephanie.Wright@co.snohomish.wa.us>
Subject: Support for Urban Tree Canopy Proposal

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear Snohomish County Council,
Please see attached our letter of support for the Urban Tree Canopy proposal for the Comprehensive Plan Update.

Thank you,
Linda

Linda Lyshall, PhD
Executive Director
Snohomish Conservation District
Desk/Mobile: 425-327-9862

To prevent the spread of COVID-19 and comply with the Healthy Washington - Roadmap to Recovery plan, the Snohomish Conservation District office is closed. Our staff are mostly teleworking and are best reached by email. Thank you for your patience and stay healthy.

Snohomish Conservation District

working together for better ground since 1941



528 91st Ave NE, Ste A, Lake Stevens, WA 98258-2538 425-335-5634 www.snohomishcd.org

March 14, 2022

Re: Support for Urban Tree Canopy Proposal for Comprehensive Plan Update

Dear Snohomish County Council,

The Snohomish Conservation District is a Special Purpose District authorized through RCW 89.08 to provide technical and financial assistance to conserve and protect our natural resources, including soil, water, air, habitat, and wildlife. Every year we complete multiple restoration projects that include planting thousands of trees. There are multiple benefits to trees in both our rural and urban environments, including improving water and air quality, sequestering carbon, providing shade during heat events, and contributing to salmon recovery.

We recently published the Puget Sound Urban Tree Canopy and Stormwater Management Handbook, which is accessible at this website: <https://betterground.org/treesandstormwater/>. In the Puget Sound region, growth and land development have greatly expanded the amount of impervious surface, leading to increased stormwater runoff and associated negative impacts to water quality and wildlife habitat. Urban tree canopy plays a vital role in reducing stormwater runoff.

Including the Urban Tree Canopy proposal in the Comprehensive Plan Update will contribute to improved human health and quality of life; ecological and environmental benefits; economic benefits; and air quality improvement. I appreciate and support the County Council's initiative in considering this policy.

Sincerely,

A handwritten signature in black ink that reads "Linda Lyshall". The signature is written in a cursive, flowing style.

Linda Lyshall, PhD

Executive Director, Snohomish Conservation District

llyshall@snohomishcd.org

425-327-9862

From: [Mike Pattison](#)
To: [Contact Council](#)
Subject: Motion 22-096 Comment Letter
Date: Tuesday, March 22, 2022 1:25:08 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[Comment Letter re Motion 22-096.pdf](#)

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear Council,
Attached please find a comment letter regarding Motion 22-096 that is before you tomorrow. Thank you for your consideration.

Mike Pattison



Mike Pattison | Senior Snohomish County Manager

p 425.460.8203
335 116th Ave. SE, Bellevue, WA 98004

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We aspire to be the most trusted and respected housing experts in the Puget Sound region.



March 22, 2022

Snohomish County Council
3000 Rockefeller Avenue
Everett, WA 98004

Re: Motion 22-096 – Countywide Planning Policy Review and Recommendations

Dear Councilmembers,

On behalf of the approximately 2600 member companies of the Master Builders Association of King and Snohomish Counties (MBAKS) I am writing to offer the following analysis and discussion of proposed Motion 22-096 and its related Exhibit A.

It is our intent that the questions we raise below be considered and addressed by Planning and Development Services (PDS) and the Prosecuting Attorney's office (PA) as they review the Motion and Exhibit.

MBAKS generally supports the motion and exhibit to the extent that it seeks Evergreen Community status. However, when the exhibit moves beyond seeking that designation, significant questions arise.

1. The Proposed Motion will have a significant effect.

- Motion 22-096 proposes amending the Natural Environment section of Snohomish County's General Policy Plan (the "Comp Plan") adopted pursuant to the GMA to incorporate additional policies, goals and objectives related to retention of tree canopy in the developable area within UGA's that is outside of designated critical areas.
- If policies regarding tree canopy proposed through Motion 22-096 are adopted, the County would then be expected to adopt specific development regulations implementing the policies.
- If the County did not do so, then the County would potentially open itself to a "failure to act" petition for review to the Growth Management Hearings Board.

2. Current Tree Canopy Regulations are Working.

- Prior to 2014 tree preservation/retention for new development focused primarily on retaining "significant trees" (as determined by diameter breast height). Generally speaking, new development was required to only protect/retain trees that (i) were located within critical areas and associated buffers, and/or (ii) met the definition of a "significant tree".



- In 2013 the County undertook an update to the tree retention/preservation requirements. PDS conducted extensive research regarding the different approaches used across the county to address tree retention. Based on their research PDS recommended the County move away from focusing on retaining “significant trees” and instead move to a “canopy” based approach looking at overall tree canopy from existing/new trees on a development site in 20 years.
- PDS research determined that the average tree canopy within the unincorporated UGA’s was estimated to be 30%. That then became the standard adopted by the Council in 2014 (the “2014 Tree Ordinance”). The new requirements went beyond retention of “significant trees” under the old code to requiring new single-family developments to provide 30% tree canopy through either retention of existing trees or planting of new trees, or a combination of both (the required tree canopy requirement declines on a sliding scale depending on the density of the development – in other words, there is a lower requirement for townhomes, multi-family housing, etc.).
- The 2014 Tree Ordinance came out of an extensive stakeholder process that went on for many months and included home builders and environmentalists. The 2014 Tree Ordinance that came out of that process and was adopted by Council reflected the balancing of protecting/providing tree canopy with the realities of constructing housing to meet the County’s obligation under the GMA to accommodate the projected population growth.
- The “2021 Tree Canopy Monitoring Report” (the “2021 Monitoring Report”) released on January 31, 2022 demonstrates that new development is exceeding the requirements for tree canopy under the 2014 Tree Ordinance. The applications submitted in 2014 will provide 32.8% tree canopy on average under the 2014 Tree Ordinance, although the 2021 Monitoring Report indicates this may understate the amount of tree canopy that will be provided.

3. “Urban Forests” are not part of GMA.

- Under the GMA Counties are required to limit urban development to the designated UGA’s.
- GMA is a land use planning statute that establishes the framework for regulating new development through adoption of comprehensive plans and implementing development regulations.
- Within UGA’s local jurisdictions must designate and protect critical areas (e.g., wetlands, streams, lakes, steep slopes, etc.). Commercial forest lands can be designated within UGA’s only if a TDR program is established. There is no reference in the GMA to “urban forests” as part of the GMA’s regulatory framework.
- Title 76 RCW (including ch. 76.15 RCW) deals with forest practices and was not intended to be a regulatory framework like GMA for land use planning.



- Forest practices and forest practice permits are governed by the Forest Practices Act (ch. 76.09 RCW) as administered by the Department of Natural Resources (“DNR”). However, the Legislature delegated permitting authority for forest practice activities/permits within UGA’s to the local jurisdictions because it is contemplated that lands within UGA’s will be converted to non-forestry use. See RCW 76.09.240.
- Ch. 76.15 RCW is clearly not intended to be regulatory. It is more aspirational through which DNR can provide assistance to counties and cities in order to “promote urban forestry management and care of trees” and “encourage appropriate and improved tree management and care”.
- The fact that Ch. 76.15 RCW is aspirational, not regulatory, is reflected in RCW 76.15.020(5) stating that private property owners may OPT OUT: “An owner of private property may opt out of a voluntary urban and community forestry program established by a city, county ... pursuant to this chapter”.
- On the one hand the Forest Practices Act acknowledges that a property owner within UGA’s have the right to apply to harvest trees on lands within an UGA. Yet, on the other hand the policies proposed through Motion 22-096 would, if adopted, restrict the ability to harvest trees on private property outside of critical areas regulated under the GMA.

4. **Current tree canopy requirements are close to a tipping point of being infeasible to implement.**

- Outside of designated critical areas, development within UGA’s is further restricted through additional regulations/requirements. These include: existing tree retention/replacement requirements; increasingly stringent storm drainage requirements that require larger facilities that take away developable property; and requirements for on-site park/recreation amenities.
- Further increasing tree retention requirements through increasing tree canopy requirements will result in reduced density, thereby making it harder for the County to provide the housing needed to comply with the GMA.
- Developers have been able to manage meeting the 30% canopy requirement under the 2014 Tree Ordinance; however, there is “not much margin for error.”
- It is obviously easier to meet the tree canopy requirements under the 2014 Tree Ordinance on a site with forested critical areas. But on sites with few existing trees, it is harder to find areas on which to plant more trees. Only so many trees can be safely planted within streetscape and on individual lots.
- Planting more trees on lots makes the homes less marketable and leads to newly planted trees growing to become danger trees (and to owners cutting them down). It also creates issues with maintenance bonds a developer is required to post upon final plat recording when homeowners after closing cut down trees that were planted to meet the tree canopy requirements.



5. **Tree preservation requirements, and further increasing canopy requirements, puts the County at legal risk.**

- Applying a blanket tree retention requirement without regard to the extent of existing vegetation on a development site violates state law as an unlawful “tax, fee or charge” on development under RCW 82.02.020. *See Citizens’ Alliance for Property Rights v. Sims*, 145 Wn. App. 652 (2008) (invalidating King County’s blanket clearing limitation recognizing that “the clearing limitations of this ordinance are not required by the GMA”); *see also Isle Verde Int’l Holdings, Inc. v. Cit of Camas*, 146 Wn. 2d 740 (2002).
- Increasing tree canopy requirements to purportedly address climate change is not supported by current Washington law. It is well settled law that restrictions/mitigation on a new development must be roughly proportionate to the impacts caused by the development.
- The Courts in *Citizens’ Alliance* and *Isle Verde* recognized that such mitigation must be based on an individualized determination of the impacts of a new development. The County cannot factually demonstrate that imposing further tree canopy requirements would have any measurable effect on climate change resulting from global warming, let alone show that this is “roughly proportionate” to the impacts of any particular proposed development.
- Adoption of policies/goals/objectives that lead to the County adopting more stringent development regulations regarding tree protection also raises potential constitutional takings and/or substantive due process issues.

6. **Impact fees for “urban forests” on private property are illegal under Washington law.**

- Proposed Policy NE 12.A.6 calls for establishment of “levels of service” for urban forests to serve as the basis for imposing impact fees on new development. This is unlawful under RCW 82.02.020.
- Impact fees are authorized under state law for “public facilities” which are defined under RCW 82.02.090(7) to mean: “the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.”
- Thus, there is no authorization to impose impact fees to mitigate for the loss of “urban forests” on private property.

7. **Many provisions of proposed policies are overly broad and ill-defined.**

- What is “green infrastructure”? (Objective NE 12.B)
- What would be considered “similar vegetated areas” to be protected under an urban forest management programs? (Policy NE 12.A.4)
- How would “no net loss of canopy” be measured? (Objective NE 12.B)



- What specific policies and programs of local government “have led to an uneven treatment of a natural resource [tree canopy]”? (Proposed policies, page A-1)
 - What is “equitable access to trees”? (Proposed policies, page A-1)
8. **Adoption of a “no net loss of tree canopy” policy conflicts with policies adopted by the County in its General Policy Plan.**
- A “No net loss of canopy” policy is called for under Objective NE 12.B.
 - Snohomish County has already adopted a no net loss of housing policy.
 - Policy GPP HO.1.D in the County’s adopted Comprehensive Plan calls for the County to “[m]aintain an adequate supply of appropriately zoned developable land.”
 - Imposing more onerous tree canopy requirements to protect “urban forests” will negatively affect density within individual projects and be contrary to the stated policy of ensuring an “adequate supply of ... developable land”.
 - A “no net loss” of tree canopy requirement would have no measurable effect on global climate change but would further exacerbate the housing affordability crisis.
 - This would be inconsistent with GPP Goal HO 3, which provides that “[l]and use policies and regulations should contribute as little as possible to the cost of housing.”

Thank you for your consideration of the issues raised in this letter. We look forward to engaging with the County Council on these matters as they progress.

Sincerely,

Mike Pattison
Snohomish County Manager

