## REVISED STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 5, 6, and 7 | **Name:** | Jake Tracy |
| **Proposed No**.: | 2019-0287 2019-0288 2019-0289 | **Date:** | September 3, 2019 |

**COMMITTEE ACTION**

|  |
| --- |
| ***Proposed Substitute Ordinance 2019-0287, which makes changes to the Conservation Futures Tax (CFT) program, passed out of committee on September 3, 2019 with a “Do Pass” recommendation. The Ordinance was amended in committee with Striking Amendment S2, which:**** ***Adds of definition for "nongovernmental organization;"***
* ***Makes changes to opportunity area definition;***
* ***Adds a timeline for ripeness of property appraisals;***
* ***Memorializes existing practice that the executive submits the advisory committee's recommendations to the Council;***
* ***Adds requirement that any CFT properties proposed to be converted to another use be included in the CFT committee's project progress report;***

***And Amendment 1, which requires DNRP to notify the Council 60 days prior to conversion of CFT land to another use, if the land being converted is above a certain size or monetary threshold, and the replacement property is outside the jurisdiction of the property being removed, or if a cash reimbursement is proposed. The Council would have 60 days to pass a motion objecting to the proposal. Proposals that involvement replacement properties within the same trail corridor or contiguous open space area would be exempt from the 60-day requirement.******Proposed Substitute Motion 2019-0288, which provides guidance to the CFT Advisory Committee on project funding criteria, passed out of committee on September 3, 2019 with a “Do Pass” recommendation. The Motion was amended in committee with Amendment 1, which includes technical changes to align with executive intent and updated language to match that in 2019-0287 Striker S2.******Proposed Substitute Ordinance 2019-0289, which authorizes use of an interlocal agreement template between King County and cities or towns for CFT funding, passed out of committee on September 3, 2019 with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment 1,*** ***which includes technical changes and adds requirements around ripeness of appraisals.***  |

**SUBJECT**

Proposed Ordinance (PO) 2019-0287, Proposed Motion (PM) 2019-0288, and PO 2019-0289 update the Conservation Futures Tax (CFT) code and project eligibility criteria, and authorize the use of an Interlocal Agreement (ILA) template for CFT projects carried out by cities, towns, and metropolitan park districts.

**SUMMARY**

PO 2019-0287 would adopt a number of changes to the conservation futures program. Some of the proposed changes originated from the recommendations of the King County Open Space Equity Cabinet. Substantive changes include:

* Allowing nonprofits and metropolitan park districts to receive CFT funding.
* Renaming the advisory committee and making other language changes in accordance with the recommendations of the Open Space Equity Cabinet.
* Added criteria around opportunity areas (formerly called equity areas) and funding match waivers.
* Changes to term limits and member rotation.
* Removal of the requirement that the executive's project and funding recommendations be submitted to the Council as part of an annual appropriations ordinance.

PM 2019-0288 would repeal and replace the existing guidance to the Advisory Committee on project eligibility criteria and general conditions. Substantive changes include:

* Additional support for projects in urban areas by including more urban-focused language in the criteria.
* Equity-focused criteria to match changes proposed to K.C.C. 26.12.
* Allowance of playgrounds on CFT-acquired property, up to 15 percent of the acquisition or 5,000 square feet, whichever is less.
* Removal of conflicting language in the criteria.

PO 2019-0289 would authorize use of a template when executing and amending interlocal agreements with cities and towns for CFT funding allocation. The proposed template adds guidelines for bond-funded projects and updates language to match the proposed code changes in PO 2019-0287.

**BACKGROUND**

**CFT.** King County Code,[[1]](#footnote-2) Motion 12587 and Ordinance 18890 provide for a process for an annual allocation of CFT and Parks Levy open space acquisition funds through a review managed by the King County Conservation Futures Advisory Committee.[[2]](#footnote-3) On an annual basis, members of the Advisory Committee present their funding recommendations, including the factors influencing those recommendations. These recommendations are then transmitted to the Executive, who determines how to incorporate them into the proposed budget.

The CFT is a dedicated portion of the property tax that is authorized by state law[[3]](#footnote-4) to acquire property rights to conserve open space lands. It has been collected in King County since 1982. Open space lands are defined in K.C.C. 26.12.003 and RCW 84.34.020 to include open space, agricultural lands, and timber lands. CFT funds are allowed to be used to protect, preserve, maintain, improve, restore, limit the future use of, or other otherwise conserve open space lands.

State law sets the maximum rate for the CFT at 6.25 cents per $1,000 of assessed valuation. King County’s CFT rate was originally set at that level, but due to a state-imposed limit on annual property tax growth, the tax rate has eroded over time and by 2018 was being collected at less than 4 cents per $1,000.[[4]](#footnote-5)

**Land Conservation Initiative.** In 2015, the Council adopted Motion 14458, which asked the Executive to develop a work plan for implementing a preservation and conservation program to identify, protect, and conserve water and land resources, including farmland and forest lands, ecological lands, river and stream corridors, trail corridors, and historic resources on farmlands.

In March 2016, in response to Motion 14458, the Executive transmitted the Land Conservation & Preservation Work Plan. The work plan reviewed the County’s conservation efforts to date, summarized criteria for land and water resource conservation, and made a preliminary identification of resources in unincorporated King County to be prioritized for future protection.

Following the release of the 2016 Work Plan, the Executive convened a Land Conservation Advisory Group. The Advisory Group included 22 members representing business and real estate, local jurisdictions, conservation groups, and agriculture, and was co-chaired by former King County Councilmember Larry Phillips and Tukwila City Councilmember De’Sean Quinn.

The Advisory Group's final report was transmitted to the Council in 2018. The report contained four specific recommendations for the County to take action on as it works to implement the early stages of the Land Conservation Initiative (LCI):

* Equity must be an over-arching theme across the entire Initiative. Land protection is a region-wide benefit; the County and cities must ensure these benefits accrue to all residents.
* Set a base level of investment in open space equity by dedicating at least $160 million specific to the task of eliminating disparities in access to public open spaces and trails in communities with the greatest and most acute needs. This dedicated funding is in addition to all the rest of the funding raised in the Initiative for which these priority equity areas are equally eligible.
* Advance Open Space Equity work in 2018 and 2019 to engage cities and communities about the opportunities through the LCI, and to establish community readiness in two or three initial priority equity areas.
* Establish an Open Space Equity Cabinet to help set policy, and oversee and monitor progress towards the addition of green spaces in priority equity areas.[[5]](#footnote-6)

The county executive convened the Open Space Equity Cabinet in April 2018, and its report was completed in March 2019. According to executive staff, the cabinet's report was not formally submitted to the Council, but each councilmember was briefed individually on the report and received a copy.

In 2018, the King County Council passed Ordinance 18774, which adopted changes to the CFT program in accordance with recommendations from the Land Conservation Advisory Group. The two major changes to the CFT program were an increase to the bond cap from 50 percent to 80 percent of anticipated annual conservation futures tax levy funds for debt service, and removal of the requirement that a project receive equal or greater funding from another source in order to receive CFT moneys, if the project serves communities experiencing inequities in access to open space, as well as demonstrated socioeconomic hardships.

**CFT Code Update (PO 2019-0287).** The Open Space Equity Cabinet's recommendations included revisions to Conservation Futures Tax (CFT) code contained in K.C.C. 26.12. The Open Space Equity Cabinet’s report described these revisions as "a broad set of changes to specifically and explicitly include equity and social justice in KCC 26.12. Suggested revisions include specific goal statements, language that more accurately reflects the equity and social justice narrative, and more defined parameters on how proposed projects may be eligible to receive match-free CFT funds that includes demonstrated community engagement." The cabinet's recommended changes are largely incorporated into the executive's proposal.

**Project Eligibility Criteria (PM 2019-0288).** In 2000, the Council passed Motion 10895, which directed the Conservation Futures Citizen Oversight Committee to draft project eligibility criteria, including definitions of the open space criteria specified in Ordinance 13717. The Council approved the oversight committee's eligibility criteria and general conditions document through Motion 11144. In 2018, the oversight committee stated the need to update the criteria to align with Ordinance 18774 (discussed above). The Open Space Equity Cabinet's report (described in the section above) included recommendations for changes to the eligibility criteria.

**Interlocal Agreement Template (PO 2019-0289).** Starting in 1990 and through 2017, the King County executive, as authorized by the council, executed interlocal cooperation agreements with a number of cities in King County, as well as the Vashon Park District. Many of the existing interlocal agreements were amended over time to add new projects.

Prior to the passage of Ordinance 18827 in November 2018, after the council appropriated moneys for projects for entities with which the county already has interlocal agreements, the executive transmitted a proposed ordinance for approval of amendments to the interlocal agreement with each entity to contractually recognize the moneys already appropriated by attaching a funding allocation amendment for affected entities. Ordinance 18827 allowed the executive to execute follow-on amendments using a template amendment rather than requiring a new ordinance each time new funding was allocated. However, executive staff states that changes to the CFT requirements, both through Ordinance 18774 and as proposed in this package of legislation, necessitate a new ILA template.

**ANALYSIS**

**CFT Code Update (PO 2019-0287).** PO 2019-0287 would make a number of changes to K.C.C. 26.12 and K.C.C. 2.36. Many of these changes are clarifications and updates and are non-substantive in nature. However, there are several substantive changes, as described below.

1. **Nonprofits and Metropolitan Park Districts Allowed to Receive CFT Funding**. King County code does not currently allow nonprofits or metropolitan park districts to receive CFT funding. Such entities are treated as "citizen or citizen groups" by the current code, and while such groups may apply for CFT funding, the award itself must go to a city, town, or King County. However, state law allows metropolitan park districts, nonprofit historic preservation corporations, and nonprofit nature conservancy corporations or associations to receive conservation futures funding.[[6]](#footnote-7) The proposed changes would allow the Council to award CFT funding to these specific types of nonprofits and to metropolitan park districts, in accordance with state law.

The proposed ordinance requires that, before any nonprofit is awarded CFT funding, it must enter into an agreement with, and obtain a letter of intent from, an agency (city, town, metropolitan park district, or the county) or a separate nonprofit organization. This letter must state that the agency or organization is willing to own the property if the organization receiving CFT funding ceases to exist.

In an incorporated area, the letter can be provided by the agency with jurisdiction, or by a separate nonprofit organization. If the agency with jurisdiction refuses to provide a letter of intent, the nonprofit may request a letter of intent from King County. This means that if the nonprofit should fail, the County would end up owning open space properties within a city or town. In an unincorporated area, only King County, a metropolitan park district with jurisdiction, or a separate nonprofit organization would be able to provide a letter of intent.

The proposed ordinance does not identify what would happen if a nonprofit identifies another nonprofit as its backup, and the second nonprofit ceases to exist (either before or after the first ceases to exist).

1. **Renaming.** The proposed ordinance would:
	1. Rename the Conservation Futures Citizen Oversight Committee to the Conservation Futures Advisory Committee.
	2. Change the term "citizen and citizen groups" to "individuals and nongovernmental organizations."
	3. Change the term "equity areas" to "opportunity areas."

All three of these proposed changes were recommended by the Open Space Equity Cabinet. Executive staff states that the Cabinet recommended a move from the "citizen" terminology to reflect that individuals do not need to be U.S. citizens in order to serve on the committee or apply for CFT funding. As rationale for changing the term "equity areas," the Open Space Equity Cabinet report states that "we feel our communities are 'opportunities' for investment. They are areas of King County that have historically been under-invested with open space resources. As such they are areas of 'opportunity.'"[[7]](#footnote-8)

1. **Additional Criterion for Opportunity Areas.** Currently, King County code provides two methods for determining whether a property is located in an equity (opportunity) area, and projects located within an equity (opportunity) area can qualify for a waiver of the requirement for a project to include a land value or monetary match to qualify for CFT awards. The first method is for the property to meet three specific criteria given in code: (1) areas located in a census tract in which the median household income is in the lowest one-third for median household income for census tracts in King County; (2) areas located in a zip code in which hospitalization rates for asthma, diabetes, and heart disease are in the highest one-third for ZIP codes in King County; and (3) areas within the Urban Growth Boundary that do not have a publicly owned and accessible park or open space within one-quarter mile of a residence, or areas outside the Urban Growth Boundary that do not have a publicly owned and accessible park or open space within two miles of a residence.

 If a property does not meet those criteria, it can also qualify under a second method, in which the Advisory Committee determines "that residents living in the area experience disproportionately limited access to public open spaces as well as demonstrated hardships such as, but not limited to, chronic low incomes, persistent poor health, or high rates of utilization of free and reduced price school meals."[[8]](#footnote-9)

The proposed language would remove the examples of hardships and substitutes, "income, health, social and environmental factors." It would also add an additional criterion to this second method, stating that residents in the area must be "lacking the conditions for a fair and just society as defined as 'determinants of equity' in Ordinance 16948, Section 2." There are 14 determinants of equity listed in that ordinance, ranging from "safe, efficient, affordable, and reliable mobility options" to "community economic development that supports local ownership of assets, including homes and businesses."

As written, this language could be interpreted to mean the area would have to be found lacking in all 14 determinants in order to qualify as an opportunity area under this method, setting a much higher threshold to meet in order to be considered an opportunity area. This language is different than that recommended by the Open Space Equity Cabinet. The Cabinet's proposed language referenced the determinants of equity as types of disparities that might fall into "income, health, social and environmental factors." Executive staff has stated that the intent is that the determinants be examples of types of disparities, rather than additional criteria that projects must meet.

1. **Additional Criterion for Match Waivers.** In current code, if a property is determined to be in an opportunity area, the acquisition project qualifies for a match waiver. The proposed ordinance would add the additional criterion that the project include "engagement and collaboration either with community-based organizations or with members of the community, or both, in which the property is located." With this additional criterion, even if a property were determined to be in an opportunity area, it would not qualify for a match waiver if it did not demonstrate engagement and collaboration with the surrounding community. The advisory committee could encourage the applicant to conduct such engagement and reapply once it has been completed.
2. **Changes to Committee Term Limits and Rotation.** Currently there are no term limits set in code for Advisory Committee members. Term limits are thus set by executive policy, which allows for two successive four-year terms per member, unless the executive waives the term limit for unusual circumstance. The proposed ordinance would state that members may serve for up to three successive four-year terms, unless the executive appoints a member for a fourth term. Executive staff states that the reasoning for this wording (three terms unless the executive appoints a fourth, rather than setting a limit of four terms) is to encourage turnover after three terms, but allow an exception to be made in special cases.

Additionally, the proposed ordinance would change the rotation of committee seats, so that four seats become available for appointment every year, rather than eight every two years. The proposed ordinance would give the Department flexibility in the rotation schedule in the near-term, in order to transition from the old rotation schedule to the new one.

1. **Annual Appropriations Ordinance.** King County Code currently specifies that the executive's project and funding recommendations be transmitted as part of an annual appropriations ordinance. The proposed ordinance would remove this requirement. Executive staff states that the reasoning for this change is that the executive may propose allocation of proceeds for bond-funded projects in an appropriations ordinance separate from the non-bond-funded projects. The first such ordinance, which proposes an additional $11 million in bond-backed funding, will be discussed in the Budget and Fiscal Management Committee on August 27th.[[9]](#footnote-10)

While the executive's stated intent in removing this language is to allow more than one appropriations ordinance per year, the removal of this section would remove all requirement that the executive transmit project and funding recommendations to the Council. The code would still state that the Council may "adopt, alter, add to or decline to adopt all or part of the committee's recommendations," but would no longer require the executive to submit recommendations to the Council as part of an appropriation ordinance.

1. **Removal of Properties from the CFT Program.** Currently, if a CFT property is proposed to be changed to a non-CFT use, the jurisdiction must place a comparable property within its borders into the CFT program. The proposed ordinance would remove the requirement that the replacement property be in the same jurisdiction, and would also allow a cash payment to be made to the County in lieu of adding a replacement property. The payment would be based on the value of the property with its changed status, not its value as open space land.

The proposed ordinance states that any land swaps/payments must be "acceptable to King County" but does not lay out a process for how this would be approved, or what role (if any) the Council would have.

**Project Eligibility Criteria (PM 2019-0288).** Proposed Motion 2019-0288 would repeal and replace the existing guidance to the Advisory Committee on project eligibility criteria and general conditions. Attachment A to the motion contains the executive's proposal. PM 2019-0288 reflects the Equity Cabinet's recommendations. The proposal includes a number of minor technical and phrasing changes, but also includes several substantive changes, discussed below.

1. **Support for Projects in Urban Areas.** The proposed motion would provide more support for acquisition of projects in urban areas, by adding additional guidance in several of the criteria that is specific to urban projects, where criteria were previously rural-focused.
2. **Equity and Social Justice Criterion and Match Waiver.** The proposed motion would add a new criterion, "projects that seek to redress historic disparities in access to open space in opportunity areas." The proposed language in the criterion mirrors the definition of opportunity areas proposed in PO 2019-0287. A project would score "low" in this criterion if it is in an opportunity area but does not have demonstrated community engagement and collaboration as evidenced through two letters of support and/or a description of outreach carried out to date. A project would score "high" if it does have this evidence.

The proposed motion would also update guidance on matching funding, in accordance with the match waiver process described in PO 2019-0287.

1. **Removes Conflicting Language in Historic/Cultural Resources Criterion.** In the current motion, the general description of this criterion stated that the property must either be a historic resource in itself, or contain a historic structure. However, in the description of a "medium" score for this criterion, the language states that the project may act as a buffer for a historic resource (i.e. the resource might not be on the property in question). The proposed motion would clarify in the general description that properties acting as buffers to historic/cultural resources also qualify under this criterion.
2. **Playgrounds on CFT Properties.** The proposed ordinance would allow playgrounds to be built on CFT properties. Playground areas would be restricted to 15 percent of the total surface area of the proposed acquisition project, or 5,000 square feet, whichever is less.

**Interlocal Agreement Template (PO 2019-0289).** The proposed ordinance would authorize use of a template (Attachment A to the ordinance) when executing and amending interlocal agreements with cities and towns for CFT funding allocation. The proposed template adds guidelines for bond-funded projects and updates language to match the proposed code changes in PO 2019-0287.

Council staff notes that the ILA template as written does not include timeframes of ripeness for appraisals, neither when property is proposed as a land match to CFT funding, nor when a cash payment is proposed for a change of use.

**AMENDMENTS**

**Striker S2 to CFT Code Update (PO 2019-0287).** Striking amendment 2 to PO 2019-0287 would make the following changes:

* Add a definition for "nongovernmental organization," which would otherwise be undefined in the proposed ordinance.
* Make clarifications to the “opportunity area” definition:
	+ Determinants of Equity would be examples of demonstrated hardships that could be used for a property to qualify as an opportunity area, not 14 separate criteria that project must meet (aligns with executive intent).
	+ Allow match waivers to be granted for projects intended to serve priority equity populations, even if said populations do not live in the immediate area of the project.
	+ Streamline language.
* Add a period of ripeness for appraisals of land being used to match CFT funding (two years).
* Add back the requirement that the executive submit project and funding recommendations to the Council. Allow the executive to transmit one or more appropriations ordinances each year (aligns with executive intent).
* Memorialize current practice that the executive transmit to the council the Advisory Committee's recommendations by July 31st.
* Add a requirement that DNRP notify the Council in writing prior to converting any CFT property to another use, and that information on properties converted to another use be included in the advisory committee's annual project progress report.
* Make clarifying and non-substantive changes.

**Lambert Amendment to CFT Code Update (PO 2019-0287).** The proposed amendment would require one of the executive's three "at-large" nominations to the Advisory Committee to be an employee of the Department of Local Services.

**Amendment 1 to Project Eligibility Criteria (PM 2019-0288).** The proposed amendment would remove attachment A and replace it with a new attachment A. Changes would include:

* Clarify that properties that protect views of off-site scenic resources from off-site public viewpoints meet the "scenic resources" criteria (aligns with executive intent).
* Update opportunity area and match waiver language to align with language in Amendment S2 to PO 2019-0287.
* Clarify that eligible projects need meet only one of the project eligibility criteria contained in attachment A (aligns with executive intent).
* Makes clarifying and non-substantive changes.

**Amendment 1 to ILA Template (PO 2019-0289).** The proposed amendment would remove attachment A and replace it with a new attachment A. Changes would include:

* When land purchased within the last two years is offered as a match, the real estate appraisal must also be from within the last two years.
* If a cash payment is proposed to remove CFT restrictions on a property, the appraisal must have occurred in the last year.
* Clarifying and non-substantive changes.
1. K.C.C. 26.12 [↑](#footnote-ref-2)
2. The current name in code is "Conservation Futures Citizen Oversight Committee." However, PO 2019-0287 proposes to change the name to "Conservation Futures Advisory Committee." [↑](#footnote-ref-3)
3. Conservation futures are established in RCW 84.34.200 through .240. [↑](#footnote-ref-4)
4. Increasing the CFT to its State-authorized maximum would require a vote of the people. [↑](#footnote-ref-5)
5. https://kingcounty.gov/services/environment/water-and-land/land-conservation/Report.aspx [↑](#footnote-ref-6)
6. RCW 84.34.210. Nonprofit nature conservancy corporations are defined in RCW 64.04.130, and nonprofit nature conservancy corporations or associations are defined in RCW 84.34.250. [↑](#footnote-ref-7)
7. King County Open Space Equity Cabinet Recommendation to King County Executive and Council. <https://your.kingcounty.gov/dnrp/library/water-and-land/land-conservation/equity/20190319-Open-Space-Equity-Cabinet-Report.pdf> [↑](#footnote-ref-8)
8. K.C.C. 26.12.003 [↑](#footnote-ref-9)
9. PO 2019-0290 [↑](#footnote-ref-10)