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OFFICE OF
HEARING EXAMINER

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by

TreePAC
Greenwood Exceptional Trees
Coalition for a Stronger Tree Ordinance
Friends of Seattle's Urban Forest
SCALE (Seattle Coalition for Affordability
Livability and Equity)
Beacon Hill Council Seattle
Eastlake Community Council
Fremont Neighborhood Council
Mt Baker Community Council
SUN (Seniors United for Neighborhoods)
Wallingford Community Council

of the August 23, 2018 Determination of
Non-Significance by Chanda S. Emery AICP,
Senior Planner, Department of Construction
and Inspections.

NOTICE OF APPEAL

Non-Project Action Amending Seattle
Municipal Code (SMC), including
repealing and replacing Chapter 25.11

I. INTRODUCTION

Appellants are public interest and community based organizations in Seattle with an interest in working with the City of Seattle to improve the structure, implementation and effectiveness of the City's codes regarding the protection and restoration of the City's urban forest and its functions expressed as tree density, health, diversity, and distribution.

Each appellant will be adversely impacted by enactment of the proposed ordinance notwithstanding the determination by the responsible official that it is not likely to have any significant adverse environmental impacts. Together Appellants represent many thousands of Seattle residents who will be significantly and adversely impacted by the proposed non-project action amending Seattle Municipal Code (SMC), including repealing and replacing Chapter 25.11.

II. APPELLANT INFORMATION

1. TreePAC: TreePAC is a non-profit corporation. It is the mission of TreePAC to seek adoption of legislation that would accomplish the goals of tree retention, tree protection and tree replacement that would maintain all the things that make Seattle an essential for a livable community, habitat for nature, and abundant trees.
Representative: Steve Zemke, 2131 N 132nd St, Seattle, WA 98133
Email: stevezemke@msn.com
2. Greenwood Exceptional Trees is a group of neighbors who organized to protect an exceptional cedar from development in our neighborhood and has a strong interest in greater tree protection and protection of Seattle's urban forest.
Representative: Ivy Durslag, 512 N. 82nd St, Seattle, WA 98103, 206-353-7265
Email: ivyhaley@msn.com
3. Coalition for a Stronger Tree Ordinance was formed by TreePAC and the Friends of Seattle's Urban Forest to mobilize public support for updating Seattle's Tree Protection Ordinance.
Representative: Heidi Siegelbaum
Email: heidi@calyxsite.com
4. Friends of Seattle's Urban Forest is a nonprofit organization that was formed by Seattle residents to support protecting and enhancing Seattle's Urban Forest. They originally came together in 2008 to protect a grove of trees threatened by construction at Ingraham High School and have been active since then working to protect trees and our urban forest.
Representative: Michael Oxman 10236 37th Pl SW, Seattle, WA 98146
Email: michaeloxman@comcast.net
5. SCALE (Seattle Coalition for Affordability Livability and Equity), SCALE is a non profit corporation organized to advocate for the affordability, livability, and equity of all Seattle neighborhoods.
Representative: David Ward, 6815 Ravenna Ave NE, Seattle, WA 98115
Phone: (206) 523-1161
Email: booksgalore22@gmail.com
6. Beacon Hill Council Seattle, is an all-volunteer community organization that works collaboratively to better the unique Beacon Hill neighborhood.
Representative: Mira Latosezk, c/o Jefferson Park Community Center, 3801 Beacon Ave S, Seattle, WA 98108
Email: mira.latoszek@gmail.com
Representative: Maria Batayola
Email: mbjumpstart@msn.com
7. Eastlake Community Council is a neighborhood organization founded in 1971 to, among other purposes, cooperate with other community councils and organizations for the improvement of the quality of life in the City of Seattle and its environs.

Representative: Ann E. Prezyna, 2031 Fairview Ave. E Apt A, Seattle, WA 98102/(206) 910-0753

Email: houseboata@gmail.com

8. Fremont Neighborhood Council, Appellant FNC is a non-profit corporation incorporated in 1980
"To promote the orderly and comprehensive enhancement, preservation and improvement of the Fremont neighborhood" (North 50th Street on the north, Stone Way North on the east, Lake Union and the Lake Washington Ship Canal on the south and 8th Avenue Northwest on the west.

Representative: Toby Thaler, 4212 Baker Ave. NW, Seattle WA 98107

Email: fremont@louplop.net

9. Mt Baker Community Council,
Representative: Eve Keller
Email: eve.keller@me.com

10. SUN (Seniors United for Neighborhoods)
Representative: Lisa Coon
Email: llcoon@juno.com

11. Wallingford Community Council is a neighborhood voice representing the greater Wallingford community in interactions with city government
Representative: Miranda Berner, 724-622-4586
Email: mirandsofia@yahoo.com

All appellants prefer to receive communications from the Office of Hearing Examiner by email attachment at the indicated addresses.

In this appeal, the above entities are referred to collectively as "Appellants."

III. DECISION BEING APPEALED

1. Decision Appealed: Appellants appeal the City of Seattle Department of Construction and Inspections' (DCI) Determination of Non-Significance (DNS) dated August 23, 2018. The DNS is attached, along with the notice of decision. The action being supported by the DNS is "a non-project action that consists of the adoption of legislation to amend the Seattle Municipal Code including repealing and replacing Chapter 25.11, Tree Protection." DNS at 1. The specific ordinance amendments being reviewed by the DNS is not explicitly stated, but the version published concurrently with the DNS is a draft ordinance found at the City Council Planning, Land Use, and Zoning (PLUZ) Committee web page identified as "LEG tree regulations updates ORD D7" (in the upper left corner). <https://www.seattle.gov/council/meet-the-council/rob-johnson/trees-for-all>

2. Property address of decision being appealed: By its own terms, the proposal is "applicable to all [land use] zones in the City." DNS at 1.

1 **3. Elements of decision being appealed:**

- 2 ☒ Adequacy of conditions
3 ☒ EIS not required
4 ☒ Other (as set forth in more detail in Section V below)

5 **4. Timeliness of Appeal:**

6 The City's Notice is Attachment A; the deadline to appeal is September 13, 2018.

7 **IV. PROCEDURAL BACKGROUND**

8 For two decades the Seattle City Council has considered proposals to amend Seattle's Land Use and
9 Zoning Code and Tree Protection Code to update regulations dealing with tree conservation,
10 removal, and related regulations. The failure of the current regulations, both content and
11 implementation, to protect trees and their associated benefits was documented in a two-phase "Tree
12 Regulations Research Project" concluding with a final report and internal City presentation on
13 March 27, 2017. That report was listed in the bibliography of the EIS for the Mandatory Housing
14 Affordability program (MHA EIS)—"City of Seattle. 2017a. Tree Regulations Research Project—
15 Phase II Final Findings and Recommendations. March 27, 2017"—but was not explicitly referenced
16 in the text of the EIS.

17 Mayor Tim Burgess issued "Executive Order 2017-11: Tree Protection" on October 13, 2017,
18 directing the Executive agencies to take actions to improve City tree protections, referencing the
19 research project obliquely: "recent research showed that existing urban tree protections and
20 enforcement practices related to trees must be strengthened in order to protect Seattle's canopy
21 coverage." The order explicitly states that "MHA implementation must work in partnership with the
22 livability promises of the Housing Affordability and Livability Agenda, including urban forestry
23 efforts to preserve and enhance access to urban trees." Tree canopy issues are an issue in the pending
24 appeal of the City's MHA EIS, HE No. W-17-006.

25 The City Council Planning Land Use and Zoning (PLUZ) committee published a framework for an
26 overhaul of the tree ordinances in early July. No draft ordinance was published with the framework
but a schedule was included indicating an intent to "Publish notice of State Environmental Policy
Act (SEPA) threshold determination regarding tree regulation legislation **around the end of
July.**" (emphasis in original.)

The specific ordinance being reviewed—and the subject of the DNS being appealed—is not
explicitly cited in either the DNS or the checklist. A draft ordinance was first made available to the
public on August 1 (labeled version "D5B"). A SEPA checklist was prepared and signed on
August 14, 2018 by a planner at the City Council Central Staff. On or about August 23, Ordinance
Language for Repeal and Replacement of SMC 25.11 was published at the PLUZ Committee's
"Trees for All" page, <https://www.seattle.gov/council/meet-the-council/rob-johnson/trees-for-all>.
The content of this draft (version "D7") is consistent with the description of the proposed action
found in the DNS at p. 2.

1 The Council PLUZ Committee held a single public hearing on the proposed ordinance on
2 September 5.

3 **V. APPEAL INFORMATION**

4 **1. What is your interest in this decision?**

5 Appellants are community and neighborhood organizations who represent thousands of Seattle
6 residents who will be significantly and adversely impacted by the proposed revisions to the tree
7 ordinance. Their respective interests in the conservation of Seattle's urban forest are enumerated in
8 the Appellant Information section above.

9 Members of Appellants live, own property, and work in Seattle and will be directly, indirectly, and
10 cumulatively impacted by reduced tree density, health, distribution and function of trees as well as
11 by the loss of particular individual ("exceptional") trees and groves as defined and protected under
12 current SMC Chapter 25.11. These impacts will be adverse, widespread, and significant, and will
13 reduce the livability and resilience of Seattle's neighborhoods. The proposed rule creates a tree
14 cutting and mitigation system which will facilitate large tree cutting by developers and property
15 owners. These impacts will also result in an increase in public expenditures for energy and
16 stormwater utilities because tree removal and large tree replacement with smaller trees—on or off
17 site—will increase temperature and stormwater, including associated flooding, an expense born by
18 all taxpaying residents of Seattle. Seattle ranks 10th in the nation for Heat Island Effect and reducing
19 tree canopy will accelerate this adverse impact. The proposed ordinance will move Seattle away
20 from its stated goals of environmental justice and equity, away from its goal of becoming carbon
21 neutral by 2050 (City Council Resolution 31447), and will be in conflict with the City's Climate
22 Action Plan (2012) recommended actions, to "protect and enhance natural systems."

23 **2. What are your objections to the decision?**

24 **A. Cumulative Impacts Not Adequately Evaluated**

25 **1. No Consideration of Simultaneous Related City Actions**

26 In 2014, in response to concern about the impacts of growth on housing affordability, livability, and
equity issues, Mayor Murray appointed a committee to develop recommendations for policy actions
the City could take to respond to the problems associated with these interlocking issues. This
committee was called the Housing Affordability and Livability Agenda, or HALA, committee. The
City is currently undertaking two major land use actions resulting from City Executive and
Legislative decisions to implement specific HALA committee recommendations:

- Accessory Dwelling Unit (ADU) proposal. Initially the City issued a DNS for this proposed action
to relax the standards for construction of ADUs and detached ADUs (DADUs) throughout the City's
Single Family (SF) zones. At the conclusion of an appeal of that DNS the City Hearing Examiner
determined that "The record demonstrates that the challenged DNS was not based on information

1 sufficient to evaluate the proposal's impacts. It is therefore clearly erroneous and must be reversed.”
2 Hearing Examiner Findings and Decision in number W-16-004, December 13, 2016, p. 14. The City
published a DEIS in May 2018 to inform the proposed action.

3 • Mandatory Housing Affordability (MHA). As noted above, the adequacy of the EIS for the City’s
4 mandatory housing affordability proposal—a large city-wide up zone—is currently being challenged
5 at the Office of Hearing Examiner, appeal number W-17-006.

6 The cumulative affects of these two potential decisions have not been addressed in any of the
documents related to the proposed ordinance including its SEPA checklist and the DNS being
7 appealed here. Moreover, neither the DEIS for the ADU proposed action, nor the MHA FEIS refer
to each other, or to the instant tree ordinance proposal, for purposes of describing impacts or
8 mitigation for cumulative effects on urban forest resources. The checklist and DNS at issue here
does not mention or refer to either the ADU proposed action or the MHA proposed action.

9
10 Seattle’s Single Family (SF) zones are the highest non-park, non-open space lands in the City in
numbers of trees and tree canopy coverage. The DEIS acknowledges this at p. 4-46, in the
11 description of the affected environment. In the impact assessment sections, there is one reference to
SMC 25.11, including the current provision regarding “exceptional” trees. P. 4-53. There is no
12 reference to the City’s proposal addressed by the DNS at issue here.

13 An FEIS for the ADU/DADU proposal is currently in preparation by the City Council’s Central
14 Staff acting as lead agency.

15 2. No Consideration of Short Term Significant Cumulative Impacts

16 The DNS consistently uses the term “long-term cumulative effects” in its analysis of the potential for
significant impacts. The definition of “significant” is not limited to “long-term.” WAC 1978-11-794;
17 SMC 25.05.794. This error is a major defect when considering impacts on urban forest resources; as
the DNS acknowledges at least obliquely, when removed it can take decades to replace those values
18 even assuming they can be replaced with similar quality resources and in the same geographical
19 location or vicinity.

20 **B. Improper Segmentation of Tree Provisions from Other HALA Committee Report Driven** 21 **Proposed Actions**

22 Both the ADU and MHA proposed actions are the results of a list of recommended actions by the
Housing Affordability and Livability Agenda (HALA) committee and its report of the same name
23 made public by Mayor Ed Murray on July 13, 2015. The City’s segmentation of HALA
recommendations for implementation (e.g., enacting them into City ordinances) into separate
24 decision processes with separate SEPA reviews evades assessment of cumulative impacts of the
three separate actions on urban forest resources. The segmentation of overlapping actions also
25 evades consideration of a range of alternatives to meet the respective proposals’ objectives with
26 lower environmental impact.

C. Inaccurate and Incomplete Description of Current Conditions and the Likely Impacts of the Proposed Action

1. The DNS refers to "other information on file in the responsible department" (DNS p. 8) as part of the basis for their decision but does not provide any bibliography or links for the public to see those documents.

2. The DNS bases its conclusion in part on "the experience of the lead agency with review of similar legislative actions." The lead agency Seattle Department of Construction and Inspections (SDCI) is not a natural resource management agency; it is a development review and permitting agency. The DNS author is a planner. The checklist author is a planner. There is no indication of participation by experts in silviculture or urban forestry in the preparation of the checklist or DNS. The City agency with expertise on urban forest issues is the Urban Forestry Commission, some of whose recommendations were to a large extent ignored in the preparation of the proposed ordinance. SMC 3.72; <https://www.seattle.gov/urbanforestrycommission>

3. The DNS is rife with conclusory statements that the impacts of the proposed action will not be significant, but fails to describe with particularity how this is so.

4. The DNS fails to evaluate the impacts of removing protections for defined exceptional trees, tree groves, and trees that would be required to accompany single family development. SMC Chapter 25.11; SMC 23.44.008(I).

5. The DNS states that "planting several smaller trees may take several years to accomplish comparable value as the larger cut tree." The DNS fails to acknowledge or take into account in its impact assessment that it takes as many years or decades to replace the canopy volume lost as the removed tree is old. Also lost is the additional canopy growth that would have occurred if the tree had not been cut down.

6. The DNS fails to evaluate the impacts from removing all limits on the number of trees that can be cut down in a year.

7. The DNS fails to evaluate impacts from allowing all trees to be removed on undeveloped lots.

8. The DNS admits that "Large trees that are cut down permanently take away the ecological functions and values that the large tree had provided when it was a living tree" followed by the conclusion that an "outcome [that] would be comparable (similar or nearly the same in overall value) to the functions and values that would be lost" is a "long-term" proposition but fails to acknowledge these facts constitute a significant adverse short and long term impact.

9. The DNS states that "The proposal would not prevent the possibility of large trees from being cut down" Probable widespread, increased loss of large trees, particularly native trees and tree groves, would severely reduce habitat for existing wildlife and migratory birds, that depend on large trees, native trees and tree groves.

10. The DNS does not evaluate the net loss of canopy over time by not requiring replacement of trees as long as the canopy is not reduced below the zone goal. The canopy zone value in the proposed ordinance is an average across the zone.

11. The DNS fails to assess the likely impacts of the new ordinance on the geographic distribution of trees and tree canopy among the City's zones and neighborhoods, including disparate economic and racial impacts.

12. The DNS fails to assess increased heat island impacts likely to occur as a result of the geographic shifting of trees and canopy away from urban villages and other rapidly densifying areas.

13. The DNS does not take into account that canopy loss is defined as an area in the draft, yet canopy volume is a much more accurate measure of ecological services that trees provide, including reduction in stormwater runoff and cleaning the air of pollutants.

14. The DNS provides no numbers of expected trees to be removed or cut down or expected replacement values. This proposal makes it easier for developers to remove trees and there is no evaluation of development impacts on tree and canopy removal facilitated by major city zoning and development decisions like ADU and MHA ordinances being passed.

15. The DNS does not evaluate the increase in impermeable surfaces that will increase stormwater runoff as a result of trees being removed.

16. The DNS does not mention or assess increased health impacts as a result of increased removal of trees under the proposed action.

17. The DNS does not include in its impact assessment the history of failure by DCI and its predecessors to enforce SMC 25.11.090 and other sections of the City's tree ordinances.

18. The DNS relies on the City's 2016 LiDAR study which does not accurately measure the attributes of Seattle's urban forest necessary to support the City's assessment of likely impacts from the proposed action.

19. The DNS does not not discuss impact of the proposed ordinance using canopy goals for 2 zones that are less than what 2016 LiDAR study said was current canopy cover. Institutional goal 20%, LiDAR study 25%; multifamily goal 20%; LiDAR study 23%. This over time would contribute to canopy loss based on the way the ordinance is drafted.

20. The proposed action weakens tree protection the most where most of Seattle's "urban forest" exists - single-family zoned lots. The City proposed changes places additional burdens on existing home owners—an impact the DNS fails to acknowledge or assess—it removes all barriers to tree removal from new home builders. The proposed action allows new home builders to clear-cut established groves and significant trees by repealing SMC 23.44.008(I).

21. The DNS speculates that "probable increased canopy cover would lead to better plant and animal habitat functions and values..." There is no analysis of how this conclusion is more likely to occur with a decrease in canopy.

22. The DNS does not discuss possible technical errors, compliance errors and possible gaming of a tree permit system based on property owners calculating canopy cover for trees to be removed and canopy cover of a lot. Including public right of way trees in calculation of property owners canopy may be a legal problem since they do not own the right of way, the city does.

23. The DNS does not discuss why the ordinance uses canopy cover figures for tree replacement that differs significantly from a similar table used by the city for Green Factor using same size trees.

D. Inaccurate and Incomplete Description of Mitigation

1. The DNS "anticipates" many laudatory results without reference to data or specific analyses, and fails to describe the City's current level of monitoring of activities—or lack thereof—affecting tree canopy resources.

2. The DNS does not discuss that tree permit costs and tree replacement costs are absent from the proposed ordinance. This makes it difficult to determine whether the permit and replacement system can pay for itself, including operation and enforcement costs. Economic costs of program to public will be a factor in public acceptance and compliance.

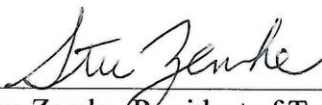
1 3. The DNS admits: "Increased enforcement of the new tree regulations **could** occur, but it
2 would require additional funding for enforcement." DNS at 4 (emphasis added). Whether or not the
3 lack of impacts is dependent on specific program funding is a deficiency in the impact analysis, and
4 the uncertainty of funding is likely to result in more significant impacts than the DNS already fails to
5 address.

6 VI. RELIEF REQUESTED

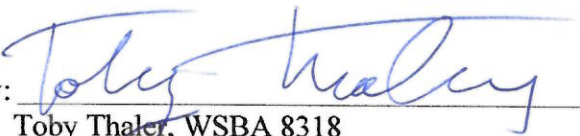
7 Appellant requests that the Hearing Examiner vacate the August 23, 2018 Determination of Non-
8 Significance with instructions to DCI to prepare an Environmental Impact Statement EIS to
9 adequately address the environmental impacts and mitigation for a reasonable range of alternatives
10 to meet the objective of conserving and increasing Seattle's urban forest and associated ecosystem
11 services.

12 Filed on behalf of the Appellants this 13th day of September, 2018.

13 By:

14 
15 Steve Zemke, President of TreePAC

16 And by:

17 
18 Toby Thaler, WSBA 8318
19 Counsel for Appellants
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Attachment A – Notice of Land Use and tree Protection Code Amendments and Determination of Non-Significance

August 23, 2018

NOTICE OF LAND USE AND TREE PROTECTION CODE AMENDMENTS AND DETERMINATION OF NON-SIGNIFICANCE

Pursuant to SMC 25.05.340 and WAC 197-11-340

The City of Seattle is proposing to update the tree regulations. This is a non-project action amending the Seattle Municipal Code (SMC) including repealing and replacing Chapter 25.11, Tree Protection. Generally, the proposed legislation would:

- define "significant tree";
- require a permit for tree removal of significant trees;
- set fees for a tree permits;
- clarify the definition of hazard trees;
- allow flexibility in development standards in order to preserve trees;
- establish requirements for the replacement of removed trees;
- allow for payment in lieu of when tree replacement is required;
- specify tree retention requirements;
- update enforcement provisions for tree regulations; and
- update tree protection provisions.

ENVIRONMENTAL DETERMINATION

After review of a completed environmental checklist and other information on file, the Seattle Department of Construction and Inspections (SDCI) has determined that the amendments described above will not have a probable significant adverse environmental impact and has issued a Determination of Non-Significance under the State Environmental Policy Act (no Environmental Impact Statement required).

HOW TO COMMENT

Comments regarding this DNS or potential environmental impacts may be submitted through September 6, 2018. Comments may be sent to:

City of Seattle, SDCI
Attn: Chanda Emery
P.O. Box 94788
Seattle, WA 98124-7088
chanda.emery@seattle.gov

HOW TO APPEAL

Appeals of the decision to issue a Determination of Non-Significance (DNS) must be submitted to the Office of the Hearing Examiner by 5:00 p.m. September 13, 2018. Appeals should be addressed to the Hearing Examiner and must be accompanied by an \$85.00 filing fee in a check payable to the City of Seattle. The appeal must be sent to:

City of Seattle
Hearing Examiner
PO Box 94729
Seattle WA 98124-4729