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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

Motion by  
TreePAC

To intervene in the appeal of the  
Queen Anne Community Council  
Accessory Dwelling Units FEIS

MOTION TO INTERVENE  
HE File Number: W-18-009  
Non-Project Action of the Department,  
Seattle City Council Final  
Environmental Impact Statement.

**I. INTRODUCTION**

The City Council of Seattle (hereafter, the “Department”) As the FEIS was released in early October 2018 the Accessory Dwelling Unit (ADU) Final Environment Impact Statement (FEIS). Queen Anne Community Council (hereafter, the “Appellant”) filed an administrative appeal (hereafter “Subject Appeal”) with the Office of the Hearing Examiner on October 18, 2018.

By Hearing Examiner Rule (“HER”) 3.09,(b) “ A person, organization or other entity who has not filed an appeal may request by motion to participate in the appeal. The request must state how the person or entity making it is affected by or interested in the matter appealed, and must demonstrate a substantial interest that is not otherwise adequately represented. Except as provided in HER 3.09(d)..., a written request for intervention must be filed with the Hearing Examiner and served on all parties to the appeal no later than 10 business days prior to the scheduled hearing date.” The scheduled first day of the appeal is March 25<sup>th</sup> so that this motion to intervene is timely.

TreePAC is a Seattle-based membership based political action committee that has consistently supported the retention or mitigation of trees within Seattle, including an appeal last year on the Department’s Determination of Non-Significance (DNS) for a proposed Non-Project Action amending Seattle Municipal Code (SMC), including repealing and replacing Chapter 25.11 on Tree Protection. The City Council subsequently retracted their DNS and the appeal was cancelled. TreePAC’s mission includes raising awareness of Urban Forestry issues and pursuing better laws, funding, and enforcement.

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## II. RELIEF REQUESTED

TreePAC moves for an order pursuant to Hearing Examiner Rule 3.09 allowing it to intervene in the Subject Appeal as the Hearing Examiner determines the limit of TreePAC’s nature and scope. As TreePAC is consistently supporting the city-wide retention or mitigation of trees, we have a substantial interest in these proceedings that will otherwise not be adequately represented as evident by the list of witnesses and exhibits presented within the Appellant Final Witness & Exhibit List dated February 12, 2019 and the Department’s Final Witness and Exhibit List dated February 19, 2019. The issued ADU FEIS had very limited content and a subjective environmental assessment of the expected reduction of the city’s tree canopy. It is also apparent that the lack of witnesses and lack of exhibits relative to the original Subject Appeal tree canopy issues ultimately will not adequately address the impacts without TreePAC’s intervention or right to appeal the final order.

Granting TreePAC intervener status in the Subject Appeal will not unduly delay the hearing process in this matter; nor will it expand the issues beyond those already in the appeal; nor will it prejudice the rights of the parties. At the discretion of the Hearing Examiner, TreePAC would minimally intervene for the sole purpose of preserving the right to appeal (as such intervention may be permitted at any time up to the start of the hearing.)

## III. STATEMENTS OF FACT

The Seattle City Council conducted a Final EIS for modifications to Accessory Dwelling Units in October 2018. The study of Tree Canopy and Vegetation begins on pages 4-52 to 4-55. The document states the following facts: “Single-family residential areas specifically account for 63 percent of Seattle’s overall canopy cover.” And “Most of Seattle’s urban trees are found in residential areas (representing 67 percent of land area with 72 percent of Seattle’s tree canopy) and in rights-of-way throughout the city (representing 27 percent of land area and 22 percent of tree canopy).” Thus, the tree canopy within the single-family zoned areas of Seattle are significant.

Exhibit 4.2-9 compares the average tree canopy cover in study area lots without a DADU at 30.8% and study area lots with a DADU at 28.6%. It also shows a credible drop in the study area with new single-family houses constructed since 2010 to be 22.7%. It demonstrates that even with maintaining the rear yard setback of 25% of the lot depth in the new single-family house scenario, the average canopy cover decrease is well below the targeted citywide canopy cover goals.

The Final EIS admits that “for development in single-family zones, an exceptional tree can be removed only if necessary to achieve the maximum allowed lot coverage. Site plans must identify exceptional trees and trees more than two feet in diameter. Section 25.11.090 also requires mitigation for tree removal. In all zones, each exceptional tree and tree more than two feet in diameter removed during development must be replaced with one or more trees.” Yet the EIS failed to note that the 2016 LIDAR study indicated there were 3,188 protected tree groves that would not be protected in the proposed ordinance. Thus, the ADU FEIS inadequately applies the current tree protection requirements.

1 The ADU FEIS also relies on the City Council’s 2018 proposed a new tree protection bill which  
2 they claim without analysis would “increase tree canopy, promote stewardship of existing trees,  
3 and improve customer service for the public and applicants.” After thorough review, TreePAC and  
4 associate appellants found that the City Council’s proposed revisions to the tree ordinance actually  
5 reduced tree protections, including the elimination of the “Exceptional” tree designation. The  
6 referenced tree ordinance proposal, if passed, would have replaced the existing regulations  
7 established in Seattle Municipal Code Chapter 25.11. Generally, the proposed legislation would  
8 have maintained the definition of ‘significant trees’ as a tree six inches or more in diameter.  
9 However, it proposed establishing a major / minor - tiered permit for removal of significant trees  
10 instead of enforcing unilaterally the current tree permit requirements. Currently, the code allows  
11 flexibility in development standards to preserve trees as well as establish replacement  
12 requirements for trees. The current code for single-family zones also requires retaining or  
13 replanting trees to equate to a minimum of 2” of tree diameter for every 1,000 square foot of lot  
14 area. The proposed tree ordinance would have allowed in-lieu payment for tree replacement  
15 without measuring the environmental benefits and incentives to retain or replant trees. Ordinance  
16 Language for Repeal and Replacement of SMC 25.11 - Seattle's Tree Protection Ordinance called  
17 the Tree Regulation Bill - August 16, 2018 has since been retracted. As such, the environmental  
18 impacts to trees with the ADU FEIS may no longer by assumed to be covered with some future  
19 ordinance which may not be pursued or, if pursued, would weaken tree protections.

20 In summary, the proposed tree ordinance was flawed in that it:

- 21 a. Proposed removing any limit on the number of trees that can be removed per year;
- 22 b. Proposed removing the prohibition against cutting down Exceptional trees (which are  
23 the largest of their species) on developed lots. The definition of Exceptional trees  
24 includes Heritage trees and tree groves; and
- 25 c. Proposed removing the current prohibition of cutting down any tree over 6" in diameter  
26 (DBH) on undeveloped lots.

27 The ADU FEIS states that “Increases in the density of dwelling units can result in impacts from  
28 vegetation and tree removal” (p 4-62). “The anticipated increase in DADU construction under  
29 Alternative 2 could result in more vegetation and tree removal than under Alternative 1 (No  
30 Action) as more property owners would use some of their rear yard for the footprint of a DADU.  
31 Compared to Alternative 1 (No Action) (1,150 DADUs), Alternative 2 (2,235 DADUs) could  
32 result in 1,085 additional DADUs. Allowing a one-story DADU to cover more of the rear yard by  
33 increasing the rear yard coverage limit from 40 percent to 60 percent could also result in a greater  
34 loss of vegetation or tree canopy.” The preferred alternative states that the additional rear yard  
35 coverage would apply only of DADU construction did not result in tree removal (p 4-76).

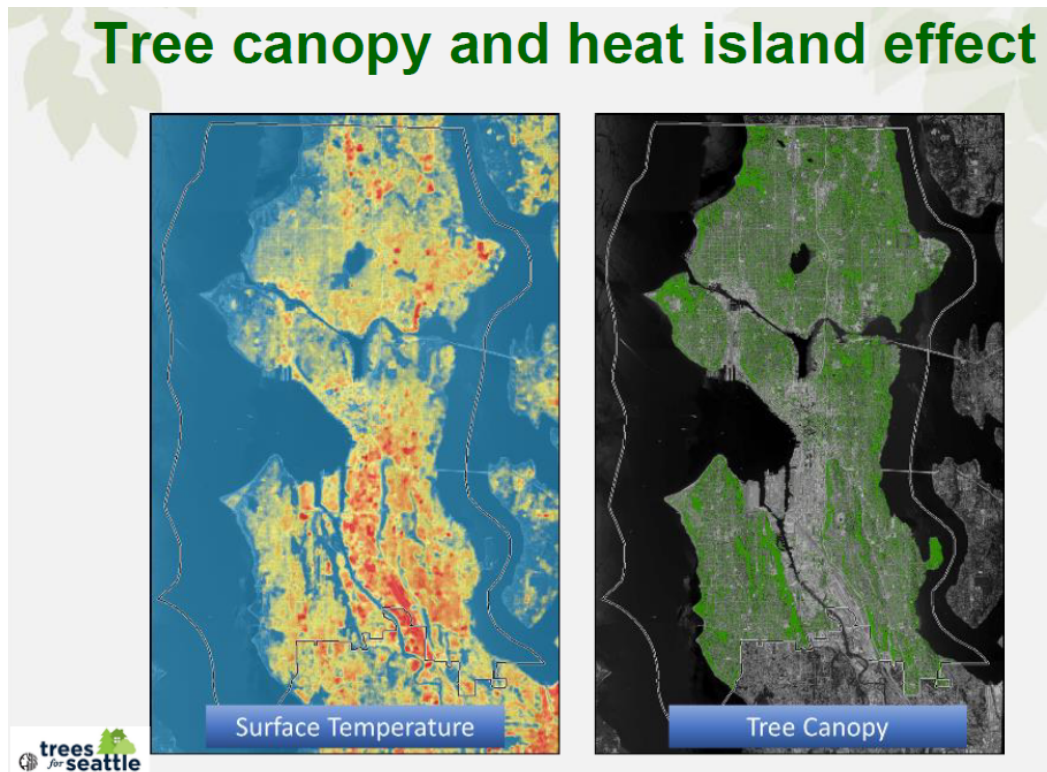
36 The impacts of tree loss caused by the proposed ADU FEIS is clearly erroneous by suggesting the  
37 net loss of trees only equates to a small number of 1,085 additional Detached Accessory Dwelling  
38 Units multiplied over the gross area of 1,000 square feet per DADU. On page 4-47 of the ADU  
39 FEIS states that “Single-family residential areas currently provide 9,574 acres of tree canopy  
40 cover. If all 1,085 additional DADUs maximize the size limit of 1,000 square feet, the total  
41 footprint of DADUs would be just under nine 25 acres, or less than 0.3 percent of the total tree  
42 canopy in single-family residential areas. If these nine acres were entirely tree canopy today,  
43 removing them would have minor to negligible impact on the overall tree canopy in single-family

1 residential areas. This upper-limit estimate also assumes that existing tree regulations would not  
2 require preservation of any trees in the DADU footprint area and that homeowners voluntarily  
3 would make no design or siting choices in order to preserve existing trees.”

4 There is numerous errors with the assessment including that it ignores the number of lots that may  
5 have both attached and detached ADU. It also under-estimates the likely number of additional  
6 DADU as just 1,085 when FEIS Exhibit 3-19 shows an increasing rate of DADU, with 579 added  
7 between its adoption in 2006 to 2017. Similarly, FEIS Exhibit 4.2-7 shows that there are 135,000  
8 single-family zoned lots in Seattle; and from Exhibit 4.2-5 all but 6% of the single-family lots  
9 would be at least 3,200 square feet and eligible to be developed with one primary residence and  
10 two ADU each with net area of 1,000 square feet. The metric number of lots impacting the tree  
11 canopy and its environmental impacts is flawed.

12 The LiDAR assessment shows the correlation of heat island effect being greater in Seattle areas  
13 with reduced tree canopy (figure 1 below). It is evident that the areas of significant tree canopy  
14 also correlates with the areas of Single-Family zoning. Yet, the ADU FEIS fails to account for the  
15 environmental impacts of heat islands increasing in areas as the tree canopy is reduced.

16 *Figure 1- Seattle 2016 LiDAR Canopy Cover Assessment by Seattle's Urban Forestry Team (May 8, 2017)*  
17 <http://www.seattle.gov/trees/docs/2016SeattleLiDARCanopyCoverWebinarFINAL050817.pdf>



25 Seattle ranks 10th in the nation for the Heat Island Effect (HIE) which will only get worse by  
26 removing existing trees, tree groves and large heritage trees:

<http://www.climatecentral.org/wgts/UHI/index.html> (See Figure 1 above).

1 Former Mayor Burgess's Executive Order 27-2017 Tree Protection last year ordered the city to  
2 track tree loss and replacement: "SDCI will require consistent documentation for required tree  
3 review on private property, including mitigating canopy cover loss of trees removed and  
4 monitoring of planted trees for survival".

5 **1. The existing Subject Appeal issues (already in the appeal) that TreePAC wishes to  
6 intervene:**

- 7 a. Firstly, TreePAC would like to intervene on appeal item 2.4 which faults the ADU  
8 FEIS in considering an adequate range of alternatives that specifically consider  
9 unique qualities of certain areas for the Tree Canopy. For instance, areas of the city  
10 with a higher amount of canopy cover, such as northwest Seattle, will be impacted  
11 more by the loss of trees than parts of the city with lower amounts of canopy cover.

12 **2.4** The FEIS fails to consider an adequate range of alternatives that specifically  
13 consider the geographic, topographic, and locational differentiation of the city of  
14 Seattle. The unique qualities, historical and cultural identities, average property  
15 sizes, infrastructure adequacy and mobility limitations, open space and tree  
16 canopy, parking availability and restrictions, among many others were ignored as  
17 the City proposed a one-size-fits-all conversion of all neighborhoods.

- 18 b. Secondly, TreePAC would like to intervene on appeal item 2.12 which faults the  
19 FEIS in considering the impact to the tree canopy in the increase of rear lot coverages  
20 from the current 40% to a proposed 60%.

21 **2.12** The FEIS fails to consider an adequate range of alternatives that specifically  
22 considers impacts from increasing the rear lot coverage by 50% from 40% to  
23 60%. The FEIS fails to consider in a meaningful way the impacts to neighbors and  
24 the tree canopy as well. This increase in rear lot coverage fails to consider the  
25 cumulative impacts from allowing 2 separate 1,000 sq ft DADU's plus a home on  
26 one site while allowing an unlimited sized garage as well. While reliance upon a  
35% lot coverage limitation on lots greater than 5,000 sq ft may be acceptable, the  
increase lot coverage on smaller lots would create significant adverse impacts on  
neighborhood character, aesthetics, urban design and tree canopy coverage that  
are not sufficiently disclosed, discussed and analyzed. Proposed lots of 3,200 sq  
ft actually allow for a significantly higher, 46% lot coverage which has not been  
considered.

- 27 c. Thirdly, TreePAC would like to intervene on appeal item 2.13 which faults the FEIS  
28 in failing to consider the impact to preserving the tree canopy.

29 **2.13** The FEIS fails to consider an adequate range of alternatives that specifically  
30 consider the impacts to preserving the tree canopy.

1           **2. TreePAC represents a city-wide substantial interest in the environmental impacts**  
2           **from reduction in the canopy cover that is not otherwise adequately represented:**

- 3           a. TreePAC argues that within Single Family (SF) zones, the FEIS has failed to identify  
4           the loss of Exceptional trees and Tree Groves that would otherwise prevent the  
5           maximum allowed lot coverage. This is especially true if the rear lot coverage is  
6           increased from 40% to 60%.
- 7           b. TreePAC argues that the DEIS fails to consider the impacts from new foundation  
8           excavations, new walkways, underground and overhead utilities, driveways, etc. that  
9           are negative impacts to Critical Root Zones of Exceptional and significant trees and  
10          Tree Groves.
- 11          c. TreePAC argues that the reduction of minimum lot size being reduced from 4000 to  
12          3200 square feet will have greater loss of trees or areas to replant trees that will reach  
13          a comparable amount of canopy cover.
- 14          d. TreePAC argues that the cumulative long-term impacts to canopy loss must be  
15          calculated assuming the potential maximum buildout of ADU's within Single-  
16          Family zoned properties. Lost open space capable of supporting larger trees would  
17          result in long-term impact that is not acknowledged in the DEIS.
- 18          e. TreePAC argues that the impacts to canopy be calculated from actual canopy  
19          samples from neighborhoods like Bitter Lake, Wallingford and Wedgwood, which  
20          currently have high canopy cover, and compared to neighborhoods like the  
21          University District and South Park. The DEIS figure 4.3-15 assumes neighborhoods  
22          only have a few small trees currently so impacts would be minimal with buildout.
- 23          f. TreePAC argues that the ADU DEIS is significantly flawed in its claim there are  
24          “No significant unavoidable impacts to tree canopy.” This is based upon faulty  
25          assumptions of extremely few ADU's being built in low canopy cover  
26          neighborhoods. It also assumes no impacts to Critical Root Zones, no cumulative  
                impacts from other citywide land use proposals such as the MHA zoning changes.
- g. TreePAC argues that enforcement of the ADU FEIS tree protections is not possible  
                without site development plans being issued with Attached and Detached Accessory  
                Dwelling Units applications. Plans and arborist reports would include maps noting  
                the location, tree DBH, canopy cover, and species of trees. Currently, ADU site plans  
                are exempt from showing existing tree information or consulting an arborist.
- h. TreePAC argues that the ADU DEIS appeal must discuss potential impacts to  
                existing Tree Groves. There are just over 3,000 Tree Groves remaining in Seattle.  
                Trees should not be allowed to be removed if it causes a grove to lose status and  
                protection as a Tree Grove. If one or more trees are removed from a grove that would  
                ordinarily qualify for protection, then the impacts from increased ADU development  
                must be considered.
- i. TreePAC maintains that Single Family (SF) zones have 72% of Seattle's tree canopy  
                on 135,000 lots. Any cumulative impacts of increased ADU development in SF  
                zones, combined with up-zoning for HALA/MHA and Urban Villages could have  
                significantly negative impacts to Seattle's tree canopy, Heritage Trees, Exceptional  
                Trees and Tree Groves throughout the city. Cumulative environmental impacts are  
                not addressed within the ADU FEIS. Underestimated of the number of ADU's that  
                might be built, while also ignoring impacts to Critical Root Zones will likely inhibit

1 the City to reach its intended Tree Canopy Cover goals of 30% in the short term,  
2 much less its 40% in the long term goal.

- 3 j. The ADU FEIS effectively upzones about 67% of Seattle, which includes reducing  
4 minimum lot sizes (allowing potentially increased lot subdivision within SF zones),  
5 increasing lot coverage of structures from 40% to 60%, increased density, and  
6 cumulative impacts to the existing tree canopy or future tree canopy capacity.
- 7 k. With too many record high temperatures this last decade, combined with record  
8 droughts in summer, any significant loss of tree canopy will exacerbate impacts from  
9 Urban Island Heat Effects. TreePAC argues that the ADU FEIS assumption of no  
10 impacts to tree canopy misses opportunities to mitigate known heat island impacts.
- 11 l. TreePAC argues that the FEIS needs to evaluate how much increased runoff from  
12 increased imperious surfaces from new ADU's given anticipated tree losses. How  
13 much more runoff will be added to stress an already overwhelmed our combined  
14 sewage and street runoff during heavy rains and peak storm events? The new Ship  
15 Canal Water Quality Project to reduce pollution from water overflows into the ship  
16 canal will need to capture and store more stormwaters during heavy rains. How much  
17 more runoff will need to be stored from reductions in existing neighborhood canopy  
18 cover in Ballard, Fremont, and Wallingford neighborhoods? This may be estimated  
19 from existing canopy cover data.
- 20 m. TreePAC argues that the current tree protection code requires consideration of urban  
21 wildlife families and where significant and large trees serve as a wildlife travel way  
22 per SMC 25.05.675.N.2.c. The impacts from a loss of natural habitats must be  
23 included within the Subject Appeal. There has been no tree protection considerations  
24 that impact important native bird species. The Heron Habitat Helpers  
25 ([www.heron.helpers.org](http://www.heron.helpers.org)), which has worked in and protected Kiwanis Memorial  
26 Park Preserve since 2001, have worked to restore and protect trees, not just in the  
ravine, but within a 500-foot with buffer of developable private land beyond.
- 1) An ordinance that affects the treatment of members of the entire forest canopy of Seattle and removes and replaces existing legislation clearly requires an environmental impact statement, because it will affect the future forest canopy of a city which professes it intends to increase that canopy.
  - 2) A tree has value in the place where it stands. Simply paying a fee to have someone plant a tree somewhere else ignores the tree's importance where it is. Removing a tree might increase the visibility of a nest. There is altered soil under the tree, and shape-loving plants may grow there.
2. The code SMC 23.44.008 states "Trees are required when single-family dwelling units are constructed. The minimum number of caliper inches of tree required per lot may be met by using either the tree preservation option or tree planting option described in subsections 23.44.008.I.1.a". The FEIS is flawed in removing this requirement without measuring the environmental impacts.
3. The ADU FEIS does not adequately discuss reasonable mitigation measures that would significantly mitigate the tree canopy impacts of the proposal. On page 4-77, it states that



1 “No significant adverse impacts are anticipated to land use; therefore, no mitigation  
2 measures are proposed.” Given the obvious impacts on tree canopy documented above, it is  
3 unknown whether the development standard amendments proposed as mitigation measures  
4 will be sufficient mitigation to avoid probable, significant, adverse impacts from the loss of  
5 tree canopy coverage.

6 **c. Conclusion.**

7 TreePAC seeks to intervene in these proceedings of the Subject Appeal to assure that the ADU FEIS  
8 adequately evaluates and protects trees as an extremely valuable environmental resource. TreePAC  
9 concurs with the Subject Appeal relief item 3.2 that indicates the EIS should be remanded to the  
10 Department. The lack FEIS content, and the lack of witnesses and exhibits relative to the impact of  
11 tree canopy reduction is truly concerning. Without intervention, the Hearing Examiner may be  
12 deprived of relevant factual information and legal argument to bring the ADU FEIS in full  
13 compliance with SEPA. For the foregoing reasons, TreePAC requests that the Hearing Examiner  
14 grant its motion to intervene in the appeal by allowing participation without directly adding days in  
15 the hearing schedule. At the minimum, TreePAC requests the right to appeal the order from the  
16 hearings.

17 **3.2** The EIS should be remanded to the OPCD to bring it into full compliance with  
18 SEPA;

19 On behalf of the TreePAC this 11th day of March, 2019.

20 By: \_\_\_\_\_  
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1 **DISTRIBUTION:**

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4 Date Filed: 10/18/2018

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