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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

WALLINGFORD COMMUNITY
COUNCIL, ET AL.

Of Adequacy of FEIS Issued by the
Director, Office of Planning and
Community Development

Hearing Examiner File:
W-17-006 through
W-17-014

JUNCTION NEIGHBORHOOD ORGANIZATION'S:

(1) RESPONSE TO CITY'S MOTION TO DISMISS;

(2) CROSS MOTION FOR SUMMARY JUDGMENT
AS TO MHA FEIS' FAILURE TO CONSIDER
REASONABLE ALTERNATIVES AND ITS
IMPROPER ATTEMPTS TO UTILIZE PHASED
REVIEW; AND

(3) MOTION FOR SUMMARY JUDGMENT AS TO
MHA EIS' FAILURE TO DESCRIBE
INCONSISTENCIES WITH COMPREHENSIVE
PLAN AND PROPOSED AMENDMENTS
THERETO

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1 **INTRODUCTION**

2 The West Seattle Junction Neighborhood Organization (“JuNO”), appellant in the above-
3 captioned appeal (the “MHA EIS Appeal”) submits this pleading which constitutes the following:

- 4
- 5 1. JuNO’s Response to the City’s Motion for Partial Dismissal (the “Motion to Dismiss”) seeking to dismiss two issues asserted in JuNO’s Notice of Appeal W-17-009, Section 2, ¶¶ 4 and 9;
 - 6 2. JuNO’s Cross-Motion for Summary Judgment requesting that the Hearing Examiner enter an order granting summary judgment in its favor on the bases that (a) the City failed to propose reasonable alternatives in the environmental impact statement as required; and
7 and (b) the City did not comply with the SEPA rules for phased review; and
 - 8 3. JuNO’s Motion for Summary Judgment requesting that the Hearing Examiner enter an order finding that the MHA FEIS (a) failed to adequately analyze the consistency of the
9 MHA Proposal and the Alternatives with the Comprehensive Plan and (b) failed to
10 adequately describe amendments it intended to propose to resolve inconsistencies.
- 11

12 **I. SUMMARY OF ARGUMENT**

13 The MHA EIS identifies four broadly stated and laudable objectives: (1) increasing housing
14 capacity, (2) addressing housing affordability, (3) generating approximately 6,200 rent restricted units
15 over 20 years, and (4) distributing the benefits and burdens of growth equitably.

16 Each of the action alternatives put forward in the MHA EIS (each, an “Action Alternative”) directly conflicts with the City’s 2035 Comprehensive Plan. The multiple and substantive conflicts
17 include, but are not limited to, the Action Alternatives’ disregard of the nine adopted Neighborhood
18 Plans which expressly state that the single-family areas within their urban villages are to be
19 maintained, as well as the community engagement policies that require neighborhood-level planning
20 in order to implement growth in urban villages and/or change the adopted Neighborhood Plans. As
21 such, none of the Action Alternatives constitute reasonable alternatives to achieve the MHA EIS’
22 stated objectives.
23

1 Despite the City’s assertion that the MHA EIS’ proposed action is a “citywide” action, it is
2 primarily concentrated within Seattle’s 26 discrete urban villages, known in the Comprehensive Plan
3 as neighborhoods. The three Action Alternatives consist of minor variations of the following
4 approach: increase the development capacity of all parcels in each of the City’s 26 urban village
5 neighborhoods and multi-family areas, rezone every single-family zoned parcel located in an urban
6 village neighborhood to a multi-family zoning designation, and require performance requirements or
7 in-lieu fees for multi-family development projects.

8 The City seeks to justify its narrowly drawn Action Alternatives by mischaracterizing the
9 MHA EIS as a legitimate step in a SEPA “phased review” process in which a narrow action may
10 permissibly flow from a broader one. According to the City, the previous broader phase was the 2035
11 Comprehensive Plan and the MHA EIS Proposed Project simply implements its guidance with respect
12 to affordable housing. Even if that were true, the City may not used phased review to selectively
13 disregard the substantive provisions in the Comprehensive Plan that are contrary to its desired course
14 of action.

15 The MHA EIS states that the City will resolve unspecified conflicts between its proposal and
16 the adopted Neighborhood Plans in an unspecified manner. The City’s attempt to retroactively alter
17 the Comprehensive Plan in attempt to obtain consistency with its Proposed Action negates the
18 assertion that the MHA EIS is a product of properly phased review as it purports to modify the
19 broader policy document to suit the narrower action.

20 Finally, the MHA EIS fails to identify the multitude of inconsistencies between its three
21 Action Alternatives and the Seattle 2035 Comprehensive Plan as required by SEPA.
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II. RELIEF REQUESTED

JuNO respectfully requests that the Hearing Examiner (1) deny the City's Motion to Dismiss; (2) grant JuNO's cross motion for summary judgment as to (a) the City's failure to propose reasonable Alternatives in the MHA EIS to achieve its MHA Objectives and (b) the City's failure to comply with SEPA rules for phased review; and (3) grant JuNO's motion for summary judgment with respect to the failure of the MHA EIS to adequately analyze and describe inconsistencies with the Comprehensive Plan and/or to describe proposed amendments thereto.

III. BACKGROUND FACTS

A. Seattle Comprehensive Plan Establishes that Urban Village Planning is Inextricably Linked to Neighborhood Plans.

1. The City Formed Urban Villages and Adopted Neighborhood Plan Policies.

Seattle's 1994 Comprehensive Plan and amendments thereto designated 26 geographical neighborhoods across the City as "urban villages." See Tobin-Presser Decl., Ex. A. These neighborhoods were recognized as distinct planning areas. Under the City's Plan, these areas would plan for and accept greater density and the City, in turn, would commit to direct investment in infrastructure, services and amenities to serve the denser populations in these neighborhoods. Id.

In connection with the creation of the urban village strategy, the 1994 Comprehensive Plan initiated a neighborhood planning process under which neighborhoods designated as urban villages conducted intensive and largely autonomous community-led outreach and planning in order to shape the development of their own urban village neighborhoods. Id. at 6.

In accordance with the uniqueness of each neighborhood, each urban village prepared its own City-sanctioned neighborhood plan (each, a "Neighborhood Plan"), setting forth its neighborhood's vision and corresponding policies for how it would grow while at the same time retaining its distinct

1 character. All of the plans can be viewed on the City's website.¹ Throughout 1998 and 1999, the City
2 adopted portions of each of the Neighborhood Plans, which were then incorporated into the 1994
3 Comprehensive Plan by amendment. *Id.* There is a direct relationship between the urban villages and
4 neighborhood plans. All urban villages have a neighborhood plan component in the Comprehensive
5 Plan.

6 **2. Neighborhoods Developed Design Guidelines.** Some neighborhoods also developed
7 Design Guidelines that are peculiar to their urban villages. The Design Guidelines stipulate the nature
8 of the urban village context, key areas, intersections and zones within the urban village, along with
9 their intended use and aesthetic, and building architectural standards. The West Seattle Junction
10 Urban Village (the "Junction Urban Village") adopted its own Design Guidelines. See Tobin-Presser
11 Decl., Ex. MM. These guidelines were adopted into Seattle Municipal Code and are integral to the
12 design review process. SMC 23.41.010(B).

13 **3. Seattle 2035 Affirms Neighborhood Plans and Neighborhood Planning Mandate.**
14 On October 28, 2016, the City Council adopted the Seattle 2035 Comprehensive Plan.² The City
15 amended the Comprehensive Plan on October 5, 2017.³ The amended plan stands as the most recent
16 version.

17 The Seattle 2035 Comprehensive Plan renewed the City's policy to focus growth in urban
18 villages while explicitly providing for neighborhood-level planning as an integral part of its policy
19 and processes. The City's policy implementation tools flow from a combination of Citywide
20

21
22 ¹ <https://www.seattle.gov/neighborhoods/programs-and-services/neighborhood-planning>.

23 ² See Seattle City Council Bill 118683, available at seattle.legistar.com.

³ Ord 125428

1 Goals/Policies, Neighborhood Goals/Policies, and its Six-Year Capital Investment Plan. See Tobin-
2 Presser Decl., Ex. OO.

3 The Comprehensive Plan acknowledges that the role of the urban villages are not merely to
4 absorb growth. Rather, their unique Neighborhood Plans are essential and integrally coupled to
5 growth management:

6 Of course, urban villages are more than just the fulfillment of the regional growth strategy;
7 they are neighborhoods where Seattle residents live, work, learn, shop, play, and socialize.
8 After initial adoption of the Plan, the City engaged in a citywide neighborhood-planning
9 effort that produced a **neighborhood plan** for each area of the city containing an urban
10 center or urban village. Those neighborhood plans found some common themes for
11 improvement among the different communities and also highlighted some needs that were
12 unique to each of those neighborhoods.

13 The urban village strategy takes the unique character of the city's neighborhoods into
14 account when planning future growth.

15 The City will continue to work with its residents, businesses, and institutions citywide to
16 promote conditions that will help each of its communities thrive, but it will pay special
17 attention to the urban areas and villages where the majority of the new housing and jobs is
18 expected. The policies in this Plan provide direction for that change and growth.

19 Tobin-Presser Ex. PP at 13 and 23.

20 The Comprehensive Plan committed to ensuring that the Neighborhood Plans would remain
21 relevant and current, promising to neighborhoods that a community's vision for its own neighborhood
22 would be respected:

23 Moving forward, community planning will be an integrated and equitable approach to identify
and implement a community's vision for how **their** neighborhood will grow. Plans will reflect

1 the history, character, and vision of the community but also remain consistent with the overall
2 citywide vision and strategy of the Comprehensive Plan. Creating and implementing
3 community plans ... can provide more specific guidance than the citywide policies do for areas
4 where growth and change are occurring or desired. . . .**The City will undertake community
5 planning to review and update current neighborhood plans**, as well as to address ongoing
6 and emerging issues.

7 Tobin-Presser Decl., Ex. I at 165-66 (emphasis added). The Comprehensive Plan further committed
8 that the City would commit the necessary funding to update Neighborhood Plans, where appropriate:

9 CI 2.12. Provide sufficient funding and resources to work with communities to update
10 community and neighborhood plans to maintain their relevancy and consistency(sic) with
11 community goals and the citywide policies of the Comprehensive Plan.

12 Id.

13 On October 28, 2016, the City Council voted to adopt Seattle 2035, including all of the
14 Neighborhood Plans and their policies regarding maintaining the character and integrity of single-
15 family areas within the urban villages without change. Ex. J. The Neighborhood Plans, including the
16 Junction Neighborhood Plan continue to be the largest section of the Comprehensive Plan today,
17 comprising over one-third of the document.

18 **4. Comprehensive Plan Does Not Endorse Dramatic or Wholesale Upzones of Urban
19 Villages.** The Housing section of the Seattle 2035 Comprehensive Plan provides the following policy:

20 H 3.5 Allow additional housing types in areas that are currently zoned for single-family
21 development inside urban villages; respect general height and bulk development limits
22 currently allowed while giving households access to transit hubs and the diversity of goods
23 and services that those areas provide.

Tobin-Presser Decl., Ex. K.

Seattle 2035 § H 3.5 does not require or provide that **all** single-family areas in **all** urban
villages should undergo zoning designation changes. While it contains no specifics as to the
additional types of housing to be allowed, it is clear that the additional housing types are to be
consistent with the existing general height and bulk limits. For example, a 40 or 50-foot apartment

1 building is clearly inconsistent with the current 30-foot height limits and yard requirements in existing
2 single-family areas.

3 **5. Neighborhood Plans Stipulate Maintaining Single Family Areas.** Nine of the
4 Neighborhood Plans, including that of the West Seattle Junction Urban Village (“Junction Urban
5 Village”) contain language, which the City adopted and incorporated into the 1994 Comprehensive
6 Plan, making it a policy for the subject urban villages to retain some or all of their then-existing
7 single-family zoned areas. Tobin-Presser Decl., Ex. B.

8 The City adopted the following Junction Urban Village neighborhood plan policies, among
9 others:

10 Housing and Land Use Policies: WSJ-P13 Maintain the character and integrity of the
11 existing single-family areas.

12 Tobin-Presser Decl., Ex. J.

13 **6. Neighborhoods Submit Timely Proposals to Amend Comprehensive Plan.** As
14 described in Section III.D.8 infra, in late October 2016, neighborhoods learned of actions being
15 undertaken by the City with respect to the development of its Housing Affordability and Livability
16 Agenda (“HALA”) and Mandatory Housing Affordability (“MHA”) programs that would clearly
17 conflict with City-adopted Neighborhood Plans. Neighborhoods were justifiably concerned that the
18 City would submit single-family rezoning legislation to City Council and simultaneously propose
19 amendments eliminating important the policies of their Neighborhood Plans with none the
20 neighborhood-level planning collaboration required by the Comprehensive Plan.

21 To avoid having their Neighborhood Plans summarily mooted in the name of MHA, a number
22 of neighborhoods timely submitted proposed amendments to the Comprehensive Plan prior to May
23 15, 2017. JuNO submitted a proposed amendment that would remove the single-family areas from

1 within the West Seattle Junction Urban Village boundaries so that the entire Junction Urban Village
2 could fully participate in MHA, and its Neighborhood Plan policy to maintain the integrity of the
3 single-family areas would not be violated (the “Junction Proposed Amendment”).⁴ Tobin-Presser
4 Decl., Ex. QQ. Other neighborhoods submitted similar amendments. Tobin-Presser Decl., Ex. RR.
5 The neighborhood-proposed amendments are docketed to be considered by City Council along with
6 the MHA legislation, when submitted. *Id.*

7 **B. DEIS and MHA EIS Fail to Describe Alternatives’ Inconsistency with Comprehensive**
8 **Plan.**

9 **1. DEIS Fails to Describe Inconsistency or Proposed Amendments.** On June 8, 2017,
10 the City released its Draft Environmental Impact Statement (the “DEIS”) with respect to MHA. In
11 addition to the obligatory “no action” alternative, the DEIS provided two alternatives, each of which
12 provided for the upzone of every single-family zoned parcel within an urban village. The two
13 alternatives simply varied the combination of multi-family zoning designations from one to another.

14 The DEIS’ only reference to the inconsistencies with the Neighborhood Plans is in
15 Appendix F:

16 Several policies in individual urban villages contained in the Neighborhood Plan policies
17 section of the Comprehensive Plan may conflict with elements of the proposed action
18 concerning changes to single family zones within urban villages. Amendments to these
19 policies will be docketed and the policies modified to remove potential inconsistencies.
20 The potential impacts of these policy amendments is considered in this EIS.

21 Tobin-Presser Decl., Ex. SS at F7.

22 The DEIS states as fact that the City’s not yet-proposed amendments would be adopted,
23 notwithstanding no neighborhood outreach or planning had taken place with respect to amending the
24 Neighborhood Plans and no feedback obtained. The DEIS’ assumption that the City’s as-yet

⁴ The Junction Proposed Amendment was supported by 186 signatures of West Seattle residents.

1 undisclosed amendments would be accepted is particularly troubling given its total failure to disclose
2 or discuss the amendments proposed by the West Seattle Junction and other neighborhoods that, if
3 passed, would prohibit the implementation of MHA as proposed in the DEIS.

4 **2. City Begins “Community Engagement” After Issuance of DEIS.** Beginning in
5 October 2017, almost four months after the release of the DEIS that assumed that any City-proposed
6 amendments would be adopted, the City began its “community engagement” with respect to the nine
7 neighborhoods with Neighborhood Plans inconsistent with the MHA proposal. Tobin-Presser Decl.,
8 Ex. TT. Notwithstanding the late date, the outreach purported to solicit feedback with respect to three
9 City-proposed alternatives to the existing Neighborhood Plan language with a comment deadline of
10 December 8, 2017. Tobin-Presser Decl., Ex. UU.

11 The City-proposed options for the Junction Urban Village to replace the existing policy to
12 “maintain the integrity of single family areas” were as follows:⁵

13 Option A: Maintain character and scale similar to existing single-family housing areas.

14 Option B: Maintain opportunities for lower-density housing choices in historically
15 single-family housing areas, including larger sized housing units and ground-related
housing units.

16 Option C: Maintain the physical character of historically lower-density areas of the
17 urban village by encouraging housing choices such as cottages, townhomes, and low-
rise apartments. Encourage primarily residential uses while allowing for commercial
18 and retail services for the urban village and surrounding area.

19 Tobin-Presser Decl., Ex. UU at 10.

20 ⁵ The legitimacy of the City’s outreach is undermined by the fact that the only option evaluated under any of
21 the Alternatives in the MHA DEIS or the Final MHA EIS with respect to the Junction Urban Village is Option
22 B. Option A is in direct conflict with the MHA proposal to upzone much of the Junction Urban Village’s
23 single-family areas to Lowrise 2 and Lowrise 3 40-50+ foot apartment buildings. Option C provides that
current single-family zoned areas could be zoned for retail and commercial, which is neither contemplated nor
discussed in the MHA EIS for the MHA proposal.

1 **3. Final MHA EIS Fails to Describe Inconsistencies or Disclose Amendments.**

2 Notwithstanding that it was purportedly still conducting outreach on Options A, B and C with respect
3 to Neighborhood Plan amendments through December 8, 2017, the City released the Final EIS on
4 November 9, 2017 (the “MHA EIS”). Tobin-Presser Decl., Ex. VV. In addition to the two
5 alternatives in the DEIS, the MHA EIS contained a third alternative which also provided for the
6 upzone of every single-family zoned parcel within an urban village. Like the DEIS, the MHA EIS
7 contains a single vague reference to inconsistencies with the Comprehensive Plan. Moreover, the
8 MHA EIS inaccurately states that amendments to resolve Neighborhood Plan inconsistencies with the
9 MHA alternatives in the EIS were already docketed:

10 Several policies in individual urban villages contained in the Neighborhood Plan policies
11 section of the Comprehensive Plan may conflict with elements of the proposed action
12 concerning changes to single family zones within urban villages. Amendments to these
13 policies **are docketed** and the policies would be modified to remove potential inconsistencies.
14 The potential impacts of these policy amendments is considered in this EIS.

15 Tobin-Presser Decl., Ex. W at F.11 (emphasis added).

16 The City has not docketed any of its own proposed amendments to the Neighborhood Plans.

17 **C. City’s Development of HALA/MHA Proposals Repeatedly Ignored Comprehensive Plan.**

18 In its Motion to Dismiss, the City cites to a number of activities that it asserts were undertaken
19 primarily to develop a strategy to address the current lack of affordable housing within Seattle.
20 Throughout the process, the existing provisions of Neighborhood Plans were wholly disregarded and
21 there is no discussion of the neighborhood planning required to undertake action inconsistent with the
22 adopted plans.

23 **1. City Council Resolution 31546.** On September 22, 2014, the City Council adopted
Resolution 31546 providing for the development of a Seattle Housing Affordability and Livability

1 Agenda and establishment of a Seattle Housing Affordability and Livability Agenda Advisory
2 Committee (the “HALA Advisory Committee”).

3 **2. HALA Advisory Committee Recommendations.** On July 13, 2015, the HALA
4 Advisory Committee selected by Mayor Murray released its recommendations relating to for actions
5 to be taken to achieve affordable housing. Weber Decl., Ex. B. Significantly, approximately half of
6 the individuals on the 28-member Advisory Committee are employed by real estate construction and
7 development-related firms, both profit and non-profit.⁶ Only one member of the Advisory Committee
8 represented the interests of residents of the City’s 26 urban villages. Id.

9 Among the HALA Advisory Committee’s published recommendations was a recommendation
10 to convert single family zoning within urban villages to residential small lot (“RSL”) or lowrise
11 multifamily zoning. Weber Decl., Ex. B at 22 (MF.3).

12 There is no evidence within the recommendations that the HALA Advisory Committee was
13 aware of or in any way considered the provisions of the Neighborhood Plans. The recommendations
14 themselves directly conflict with the provisions of nine adopted Neighborhood Plans. In any event,
15 the recommendations were in no way binding upon the Mayor or City Council, who were free to
16 utilize the information presented and tailor it in such a way that it conformed to the Comprehensive
17 Code or to decline to pursue such recommendations altogether.

18 **3. Mayor Murray Enters into Agreement with Private Parties.** On the same day as
19 the release of the HALA Advisory Committee Recommendations, Mayor Murray and Seattle City
20

21 ⁶ These included Skanska USA, Hal Real Estate Developers, Spectrum Development, Marpac
22 Construction, Barrientos, Weber Thompson, Neiman Taber Architects, Jonathan Rose Companies, Enterprise
23 Community Partners, Housing Consortium, Plymouth Housing Group and Mercy Housing Northwest, as well
as the Seattle Building Trades Council and Construction Trades Council. Weber Decl., Ex. B at 1. See also
https://livingfuture2015.sched.com/speaker/catherine_benotto.1taes5tw.

1 Councilmember Mike O'Brien purported to enter into an agreement with eight individuals, including
2 a well-known attorney for developers, a paid lobbyist for developer Vulcan, the director of the Bill
3 and Melinda Gates Foundation, the executive directors for two non-profit affordable housing
4 providers and developers, and Mayor Murray's hand-picked co-chair of the HALA Advisory
5 Committee. Tobin-Presser Decl., at ¶ 6.

6 The July 13, 2015 agreement is referred to as the "Grand Bargain." Notwithstanding the
7 contrary provisions of the numerous adopted Neighborhood Plans, the interested parties to the Grand
8 Bargain agreed among themselves to pursue the upzone of all single-family neighborhoods in urban
9 villages to lowrise (no mention of RSL as stated in the HALA recommendations) with no reference to
10 any obligation to comply with the City's own Comprehensive Plan. Weber Decl., Ex. C.; Tobin-
11 Presser Decl., Ex. C at 2(c) and 4(a). It is abundantly clear what the parties to the Grand Bargain
12 would receive, i.e., wholesale upzones of desirable single-family zoned areas and significant
13 opportunities for development of both affordable and market-rate housing. It is equally clear that the
14 interests of the residents whose neighborhoods would bear all of the burdens of the plan had no seat at
15 the table and no opportunity to "bargain."

16 **4. Mayor Murray's Roadmap.** On July 13, 2015, Mayor Murray issued an 11-page
17 document entitled Housing Seattle: A Roadmap to an Affordable and Livable City, An Action Plan to
18 Address Seattle's Affordability Crisis. Weber Decl., Ex. D. In the roughly four pages of text, the
19 "Roadmap" briefly describes 20 key policies and programs. There is only one buried sentence
20 relating to rezoning residential areas: "Seattle's Urban Village growth strategy will be bolstered by . . .
21 rezoning Single Family areas with Urban Villages to allow more intensive development where the
22 City is targeting its growth." Later, the document suggests that in single family areas, future housing
23 would "include small lot dwellings, cottages or courtyard housing, rowhouses, duplexes, triplexes and

1 stacked flats” with no mention of the townhouses, and 40 to 50-foot apartments that would
2 characterize MHA Lowrise. Id. at 4. The Roadmap makes no mention of existing Neighborhood Plan
3 policies or the collaborative planning with those neighborhoods that would be required in order to
4 change those policies.

5 **5. City Council Resolution 31622.** On October 16, 2015, the City Council adopted a
6 resolution committing to consider strategies recommended by the Mayor and the HALA Advisory
7 Committee that would accomplish a number of stated objections. Weber Decl., Ex. E. The resolution
8 neither endorsed nor proposed specific zoning changes.

9 **6. City Council Resolution 31612.** On November 17, 2015, the City Council adopted a
10 resolution in which it agreed to “consider changing the zone designation” of single-family zoned areas
11 in urban villages to implement a mandatory inclusionary housing program. Weber Decl., Ex. F at
12 § 1C. The resolution neither endorsed nor proposed specific zoning changes and specifically stated
13 that City Council would **only** consider changes to land use and zoning if certain minimum outreach⁷,
14 planning and mitigation requirements were met, including that MHA planning and implementation be
15 **coordinated with the Seattle 2035 Comprehensive Plan update.** Weber Decl., Ex. F at §§ 2:4-16;
16 2A and 2B.

17 ⁷ City Council Resolution 31622 provided that the City Council would not consider the Mayor’s MHA recommendations
18 without an “inclusive public outreach and engagement plan” providing for “opportunities for ongoing and continuous
19 engagement through a variety of means including community meetings and social media.” Weber Decl., Ex. F at 4:17-20.
20 Presumably, the contemplated engagement meant that the City must provide accurate information and must accurately
21 record and preserve community feedback. Unfortunately, the HALA outreach conducted by the City was clearly designed
22 to obscure rather than advise, containing substantive omissions and misrepresentations. The dramatically negative
23 feedback from the communities to be impacted was misreported, minimized and, in at least one case, lost altogether. The
manner in which the City conducted its outreach appears to have been intended to dilute the feedback of those to be
directly impacted in favor of those who would indirectly and financially gain from the proposal. A full analysis of the
outreach, engagement and feedback relating to the Junction Urban Village was included in JuNO’s comment to the DEIS,
including comprehensive data obtained from records requests and transcripts of the City’s presentations to the community.
Tobin-Presser Decl., Ex. XX.

1 7. **City Council Ordinance 125108.** On August 17, 2016, the City Council passed an
2 ordinance adding a new chapter to the Seattle Municipal Code establishing the framework under
3 which the mandatory inclusion of affordable housing in projects or alternative fees would be
4 calculated and implemented. Weber Decl., Ex. H. The City Council acknowledged the strategy of
5 planning for the bulk of future growth in urban centers and urban villages but explicitly stated that the
6 ordinance was not “determin[ing] the particular areas where the affordable housing incentive program
7 addressed by [the] ordinance will be applied.” *Id.* at ¶¶ 4 and 5.

8 8. **OPCD Releases Draft MHA Maps on October 20, 2016.** On October 20, 2016, over
9 16 months after execution of the Grand Bargain by the mayor, OPCD revealed the draft maps (each a
10 “Draft MHA Map”) it had been working on internally to implement the mayor’s Grand Bargain.
11 Tobin-Presser Decl., Exs. D and E. With respect to the 21 urban villages containing single-family
12 neighborhoods, the Draft Maps provided for changing the zoning designation of every single-family
13 parcel to RSL, Lowrise 1, 2, and/or 3. The City identified the areas in which the zoning changes were
14 to occur as “Mandatory Housing Affordability” (MHA) areas. It was explained that in these areas, a
15 developer building a commercial or multi-family project would be required to include some affordable
16 housing in the project or pay a fee to the City so that the City could build affordable housing
17 elsewhere. Counterintuitively, it would not be mandatory for the affordable housing to located within
18 the so-called MHA areas themselves.

19 The Junction community was blindsided. The director of the Junction Neighborhood
20 Organization who was actively involved in Junction land use matters had no knowledge of the
21 proposed rezone prior to the draft map release. Commons Decl. While the City assured stunned
22 Junction-area residents that the Draft MHA Maps were the result of community input, the City had
23 provided no advance warning to the Junction Urban Village and the community had provided no input

1 with respect to the proposal. See Tobin-Presser Decl. at Exs. F, Ex. XX and Ex. FFF; Section III.B
2 infra.

3 In January 2016, a Jesseca Brand of the City's Department of Neighborhoods, who is a key
4 member of the HALA team, informed JuNO that, regardless of neighborhood input, the City would
5 consider no alternatives to the Draft MHA Maps that did not involve changing all single-family
6 zoning within urban villages to multi-family zoning. Commons Decl.; Tobin-Presser Decl. at ¶ 10,
7 Exs. G and H.

8 **D. FEIS States That The Proposed Action "May" Be Inconsistent With The Comprehensive**
9 **Plan.**

10 The FEIS simply states that the proposed action "may" conflict with elements of the
11 Neighborhood Plan section of the Comprehensive Plan. Tobin-Presser Decl., Ex. WW at F.11. It is
12 not clear from the FEIS which elements constitute the potential conflict. The FEIS and its supporting
13 documentation do not present any analysis or consideration of the Neighborhood Plan section of the
14 Comprehensive Plan in any other portion of its study.

15 **IV. STATEMENT OF ISSUES**

- 16 1. Whether the Action Alternatives MHA EIS constitute sufficient and reasonable
17 alternatives to achieve the MHA Objectives, as described herein.
- 18 2. Whether the City properly relies on phased review to justify its Action Alternatives.
- 19 3. Whether the City adequately described the inconsistencies between the Proposed
20 Action and the Comprehensive Plan and/or adequately described its to be proposed amendments to
21 resolve such inconsistencies.
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V. EVIDENCE RELIED UPON

JuNO relies upon the Declaration of Christine M. Tobin-Presser, the exhibits attached thereto, the Declarations of René Commons and the files and records herein.

VI. LEGAL ARGUMENT

A. Summary Judgment Standard

As a supplement to the Hearing Examiner Rules of Practice and Procedure, Washington Rule of Civil Procedure 56(c) provides in relevant part that “[t]he judgment sought shall be rendered forthwith if the pleadings . . . together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Facts and inferences are reviewed in the light most favorable to the nonmoving party. See Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

B. The City Did Not Develop Any Reasonable Action Alternatives

1. **The City’s Stated Objectives.** The MHA EIS sets forth the City’s four objectives (the “MHA Objectives”):

- Address the pressing need for housing affordable and available to a broad range of households.
- Increase overall production of housing to help meet current and projected high demand.
- Leverage development to create at least 6,200 net new rent- and income-restricted housing units serving households at 60 percent of the area median income (AMI) in the study area over a 20-year period.
- Distribute the benefits and burdens of growth equitably.

Tobin-Presser Decl., Ex. YY at § 1.2.

2. **The City’s Proposed Action.** The MHA EIS describes the City’s proposal to achieve the MHA Objectives as follows (the “Proposed Action”):

1 The proposal addressed in this Draft Final EIS is to implement MHA requirements for
2 multifamily residential and commercial development in certain areas of Seattle. To put MHA
3 in effect place, the City would grant additional development capacity through area-wide
zoning changes and modifications to the Land Use Code. The proposed action includes several
related components:

- 4 • Adopt requirements in the Land Use Code (SMC Chapter 23) for developers either to build
5 affordable housing on-site or to make an in-lieu payment to support the development of rent-
and incomerestricted housing when constructing new development meeting certain thresholds.
- 6 • Modify development standards in the Land Use Code to provide additional development
7 capacity, such as increases in maximum height and floor area ratio (FAR) limits.
- 8 • Make area-wide zoning map changes.
- 9 • Expand the boundaries of certain urban villages on the Comprehensive Plan's Future Land
10 Use Map (FLUM) near high frequency transit, as studied in the Seattle 2035 Comprehensive
11 Plan.
- 12 • Modify certain rezone criteria in the Land Use Code.

13 Additional development capacity would allow for the construction of more floor area, more
14 housing units, or greater building height and scale compared to what existing regulations
allow. In turn, this additional capacity may lead to additional household or job growth
15 compared to the growth that would otherwise occur. Although it brings many benefits to a city,
household and job growth can also have impacts to elements of the environment, such as
services, transportation, and parks and open space.

16 Tobin-Presser Decl., Ex. ZZ.

17 3. Consideration of Reasonable Alternatives to Achieve the MHA Objectives.

18 RCW 43.21C.030(2)(c)(iii) required the MHA EIS to include a detailed statement of alternatives to
19 the Proposed Action. WAC 197-11-440(a) requires the MHA DEIS to present alternative courses of
20 action to its proposal. WAC 197-11-440(b) describes reasonable alternatives to the proposal to
21 include "actions that could feasibly attain or approximate a proposal's objectives, but at a lower
22 environmental cost or decreased level of environmental degradation." WAC 197-11-442(2) and SMC
23 25.05.442.D(2) further provide that in discussing environmental impacts, "[a]lternatives should be

1 emphasized” and “[i]n particular, agencies are encouraged to describe the proposal in terms of
2 alternative means of accomplishing a stated objective.”

3 **4. The MHA EIS “Alternatives” Do Not Constitute Reasonable Alternatives.**

4 a. **The Action Alternatives.** The MHA EIS purports to study three alternatives,
5 in addition to the no-action alternative. Each action alternative is referred to herein as an “Action
6 Alternative” and collectively as the “Action Alternatives.”

7 To achieve the MHA Objectives, each Action Alternative provides that MHA zoning would
8 apply to all property within the study area identified by the MHA EIS (the “Impacted Area”). The
9 MHA Study Area for each of the three Action Alternatives consists of “existing multifamily and
10 commercial zones in Seattle, areas currently zoned Single Family in existing urban villages, and areas
11 zoned Single Family in potential urban village expansion areas identified in the Seattle 2035
12 Comprehensive Planning process.” Tobin Presser Decl., Ex. YY at (page) 1.2. While the precise size
13 of urban boundary expansions may vary among the three Action Alternatives, each proposed
14 expansion is directly adjacent to an existing urban villages and measured by either a five or ten minute
15 walkshed from what the City characterizes as a “frequent transit station.” Tobin-Presser Decl., Ex.
16 AAA at 2.39-2.33. In other words, the Impacted Area for each Action Alternative is substantially
17 similar.

18 The impact of MHA zoning on a single parcel of property would be to increase the degree of
19 zoning capacity thereon. There are two ways in which MHA zoning could impact a property. In the
20 first scenario, the property within the MHA Study Area would retain its existing zoning designation
21 but the zoning designation itself would allow for larger capacity. For example, the height allowance
22 of the Lowrise-2 designation would increase from 30 feet to 40 feet. In the second scenario, the
23

1 property's zoning designation would itself be changed and the new zoning designation would include
2 the increased development capacity.

3 For the most part, in each Action Alternative, existing multi-family zoned parcels retain their
4 zoning designations. However, in each of the Action Alternatives, every single-family zoned parcel
5 receives a new multi-family zoning designation without exception.

6 **b. Every Action Alternative Violates the Comprehensive Plan.** Each Action
7 Alternative violates the policies of at least nine Neighborhood Plans that are part of the existing
8 Comprehensive Plan, including Policy WSJ-P13 ("Maintain the character and integrity of the existing
9 single-family areas"). Action Alternatives that are in direct conflict with the Comprehensive Plan
10 cannot be reasonable alternatives. No amendments have been docketed or considered that would alter
11 the existing plans. Moreover, there is no evidence that the **neighborhood community** planning with
12 respect to any such Neighborhood Plan amendments has taken place.

13 **c. The Action Alternatives Are Not Consistent with a Statutorily Approved**
14 **Plan.** Unlike the alternatives in the cases cited by the City in its Motion for Dismissal, the MHA EIS
15 Action Alternatives have not been legislatively approved and are not consistent with, nor
16 contemplated by, a statutorily approved plan. See Solid Waste Alternative Proponents v. Okanogan
17 County, 66 Wn. App. 439, 832 P.2d 503 (1992) (two alternatives providing for landfill sites within the
18 county were consistent with county's Waste Management Plan adopted pursuant to statute and thus it
19 was not unreasonable to limit alternatives to county sites) and Izaak Walton League v. Marsch, 655
20 F.2d 346 (D.C. Cir. 1981) (the Army Corps of Engineers (the "Corps") had already obtained
21 legislative approval to replace a specific lock and dam located on the Upper Mississippi and thus, it
22 was not required to consider alternatives that did not involved replacing the lock and dam).

1 Here, there is no legislation specifically approving the wholesale increase in development
2 capacity and/or upzone of every parcel of property in every urban village. To the contrary, the MHA
3 EIS Alternatives are inconsistent with explicit policies of the Comprehensive Plan, the document
4 intended to guide all development in Seattle.

5 **d. The Action Alternatives Were Not the Subject of a Formal Proposal.** WAC
6 197-11-442(2) provides that “[t]he EIS content may be limited to a discussion of alternatives which
7 have been formally proposed.” Thus, the City attempts to argue that the activities and occurrences
8 described in Section III.D supra together constituted a formal proposal of the Proposed Action as
9 described in the MHA EIS that “developed and unfolded over time in a public process, supported by
10 public participation and planned outreach appropriate for a proposal of this scale and importance.”
11 Motion to Dismiss at 16:15-17:6.

12 As an initial matter, the fact that no formal proposal was made is evidenced by the shock with
13 which the Draft MHA Maps were met by residents of the very neighborhoods proposed to be
14 impacted. Commons Decl., Tobin-Presser Decl., Exs. XX and FFF. The cases cited by the City
15 illustrate the nature of a formal proposal. In the Matter of the Appeal of Citizens for Livability in
16 Ballard, W-16-003, September 7, 2016, the hearing examiner found that the five alternatives studied
17 in the EIS for the Seattle 2035 Comprehensive Plan were formally proposed in the Mayor’s May 2016
18 Recommended Plan: *Seattle 2035 Comprehensive Plan – Managing Growth to Become an Equitable*
19 *City* and thus, the EIS did not need to consider additional alternatives. The formal proposal was itself
20 **the 535 page draft Comprehensive Plan.**⁸ Id. at Finding of Fact 1 and Conclusion of Law 6.

21
22 ⁸[http://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/SeattlesComprehensivePlan/Seattle
23 MayorsRecommendedPlan.pdf](http://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/SeattlesComprehensivePlan/SeattleMayorsRecommendedPlan.pdf).

1 The other case cited by the City, Citizens Alliance to Protect Our Wetlands v. City of Auburn,
2 126 Wn.2d 356 (1995), involved a developer's proposal to amend the City's zoning code. In contrast
3 to these true formal proposals, the activities that the City tries to retroactively cobble together into a
4 formal proposal do not constitute a clearly defined or formal proposal of the Proposed Action
5 contained in the MHA EIS.

6 Notably, various neighborhoods **did** make formal proposals in their proposed Comprehensive
7 Plan Amendments to ensure consistency with MHA, and the proposals are docketed for consideration
8 along with the ultimate MHA legislation. Tobin-Presser Decl., Ex. RR. Nonetheless, the MHA EIS
9 failed to even reference those formal proposals.

10 **e. The Action Alternatives Are Not Meaningfully Distinct Ways to Achieve**
11 **the MHA Objectives.** WAC 197-11-442(2) provides that the City should describe alternative means
12 of achieving its objectives. None of the four MHA Objectives is to increase the zoning capacity of
13 every parcel in every urban village or every multi-family zoned parcel, or to upzone every single-
14 family zoned parcel. Nonetheless every Action Alternative shares these identical primary
15 characteristics and thus are not true alternative means of achieving the MHA Objectives. While the
16 City is not required to examine "all conceivable policies, designations, or implementation measures,"
17 it is required to cover a range of such topics. WAC 197-11-442(4).

18 The City cites Theodore Roosevelt Conservation P'ship v. Salazar, 661 F.3d 66 (D.C. Cir.
19 2011) for the proposition that the Hearing Examiner is somehow compelled to defer in all cases to the
20 City's selection of alternatives so long as its objectives are reasonable. Motion to Dismiss at 14:4-5.
21 To the contrary, the Court of Appeals makes clear that deference will only be granted where an
22 agency's selection of alternatives is "reasonable **in light of** [its defined] objectives." Id. at 73
23 (emphasis added). In light of the fact that the MHA Objectives do not require zoning changes to

1 every parcel in every urban village, proposing three variations containing the same primary means for
2 achieving the objectives is not reasonable.

3 As stated in League of Wilderness Defenders-Blue Mts. Biodiversity Project v. U.S. Forest
4 Serv., 689 F.3d 1060 (9th Cir. 2012), an EIS “analyzing in detail two action alternatives that differed
5 only in proposed acreage **would likely be inadequate.**” Id. at 1071 (emphasis added). In that case
6 the Court of Appeals allowed a narrow range of alternatives because the proposal was a research
7 project to be conducted in an experimental forest established under federal law by the United States
8 Forest Service for the purpose of conducting such research. The Court held that ‘the special
9 circumstances of a research project in an experimental forest “necessarily narrowed the consideration
10 of alternatives.”’ Id. citing Muckelshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 812-813 (9th
11 Cir. 1999). The broad MHA Objectives, on the other hand, do not justify such a narrow consideration
12 of alternatives.

13 **f. The MHA Objectives Can Be Achieved by Reasonable Alternatives.** There
14 were numerous meaningful alternatives the City could have evaluated within the EIS to achieve the
15 stated objective, using the key elements, at a potentially lower environmental cost. After the MHA
16 Draft Maps were released, neighborhoods, including the Junction Urban Village, repeatedly advised
17 the City that there were alternative, feasible ways in which the City could allocate zoning changes in
18 their urban villages that would not require upzone and/or expanded capacity, across the board, in
19 every part of every urban village throughout Seattle. See, e.g., Tobin-Presser Decl., Exs. CCC and
20 DDD.

21 The City itself acknowledges that applying a minimum zoning capacity increase of M, rather
22 than the significantly more intense proposed combinations of M1, M2 and M3 across the entire
23 Impacted Area as proposed, would only reduce the affordable housing projected by the City by

1 approximately 10%. Tobin-Presser Decl., Ex. E. The City further estimates that applying the lowest
2 intensity M increase across single-family in the citywide Impacted Area would only reduce projected
3 affordable housing by 5.2%. *Id.* In that scenario, instead of replacing single-family homes and their
4 yards and trees with 30-foot, lot filling townhouses, 40 and 50-foot apartment buildings,
5 neighborhoods would retain a semblance of their unique character through zoning allowing two 25-
6 foot dwellings per lot. This would preserve yards and trees and encourage existing residents to
7 develop their own properties to provide the income that would enable them to defray rising property
8 taxes and other costs. While this particular action would still conflict with nine Neighborhood Plans,
9 it is definitive evidence that there are undoubtedly reasonable and significantly less negatively
10 impactful alternatives to the Proposed Action that would still achieve the MHA objectives.

11 The impacted neighborhoods have expressed willingness to identify additional areas to
12 increase zoning capacity within their own urban villages to meet the City's targets for growth and
13 affordable housing. This, coupled with the evidence that there were far less intense means to obtain
14 affordable housing in the single-family areas, while at the same time minimizing impacts including
15 displacement of existing residents; height, bulk and scale; loss of neighborhood character and loss of
16 critical tree canopy, to name a few, require the City to consider these reasonable alternatives.

17 Citing Concerned Taxpayers Opposed to Modified Mid-S Sequim Bypass v. State Dept. of
18 Transp., 90 Wn. App 225, 230, 951 P.2d 812 (1998), the City argues that an EIS is not required to be
19 a "compendium of every possible alternative." Motion to Dismiss at 15:5-6. The appellant in
20 Concerned Taxpayers sought to require the EIS to consider a two-lane highway as an alternative when
21 the proposed project was a four-lane highway. *Id.* In contrast, JuNO does not seek alternatives that
22 relate to a dramatically scaled back set of objectives or analysis of every conceivable effect or
23 alternative to the Proposed Action. The City is proposing to upzone every parcel of every urban

1 village to obtain the broad MHA Objectives. JuNO simply requests that the Hearing Examiner
2 require the City to discuss “[r]easonable alternatives . . . that could feasibly attain or approximate [the]
3 proposal's objectives, but at a lower environmental cost or decreased level of environmental
4 degradation.”

5 **C. City Improperly Purported to Use Phased Review.**

6 **1. Proper Phased Review is Permitted.** SEPA permits phased review in appropriate
7 circumstances. Properly utilized phased review assists agencies and the public to focus on issues that
8 are “ready for decision” and exclude from consideration “issues already decided.” WAC 197-11-
9 060(5)(b). Phased review is appropriate when the sequence is from a document that is broader in
10 scope to a document of narrower scope. WAC 197-11-060(5)(c). The reverse, however, is not true.
11 WAC 197-11-060(5)(d)(i). Phased review is not appropriate when the sequence is from a narrower
12 document to a broad policy document. *Id.*

13 **2. The City’s “Phased Review” Improperly Moves from Narrow to Broad.** In order
14 to constrain its discussion of alternatives and impacts, the City asserts that the MHA EIS is the next
15 step in a course of phased review. The City further asserts that the broader policy document from
16 which the Proposed Action was narrowed is the Comprehensive Plan, and that the environmental
17 review process for the Comprehensive Plan constituted the preceding “phase.” Motion to Dismiss at
18 28:1 and 28:9.

19 The City’s strategy improperly excludes and fails to recognize other “issues already decided”
20 in the Comprehensive Plan. The Comprehensive Plan already decided that (1) neighborhood
21 planning is a central factor in planning for growth and to guide precisely the sort of zoning changes
22 that the City includes in its Proposed Action; (2) each neighborhood is a unique planning area; and (3)
23

1 Comprehensive Plan policies including but not limited to WSJ-P13 (“Maintain the character and
2 integrity of the existing single-family areas”) are factors that govern the City’s implementation.

3 The City admits as much in its finding of potential conflict between the Proposed Action and
4 the adopted Neighborhood Plans, as well as its reference to its intent to docket Comprehensive Plan
5 amendments to resolve the conflict that could be carried out by the City Council in a later action. In
6 so doing, the City purports to retroactively narrow the broader policy document. The City’s attempted
7 amendment to belatedly narrow the Comprehensive Plan forecloses the possibility of phased review.

8 **3. Phased Review May Not be Used to Selectively Ignore Broader Comprehensive**
9 **Plan Provisions.** The City mischaracterizes the Proposed Action as a citywide action. In reality, it is
10 narrowly focused, applied almost entirely in urban villages, the very areas whose growth and planning
11 – as a matter of policy – is governed by (1) the Comprehensive Plan’s general neighborhood planning
12 policies, philosophy and processes; and (2) the specific policies and guidelines of the neighborhoods
13 as set forth in their Neighborhood Plans that are part of the Comprehensive Plan.

14 The MHA EIS contains no consideration of the Neighborhood Plan policies, other than in its
15 brief, vague admission of potential conflict. The City improperly relies on phased review to narrowly
16 isolate the Proposed Action in order to avoid incorporating consideration of the Neighborhood Plans
17 into the Proposed Action and/or the MHA EIS.

18 **4. Phased Review May Not Rely on the Possible Future State of an Earlier-Phased**
19 **Document.** The City has recommended that the City Council amend the Comprehensive Plan in
20 order to address the Proposed Action’s conflicts with the Neighborhood Plans. This is a future action
21 without a known outcome. It is not clear whether an amendment will take place at all, nor what an
22 amended form of the Comprehensive Plan would be, nor whether an amended form of the
23 Comprehensive Plan would be compatible with the environmental review from an earlier version.

1 The phased review process cannot rely on the future form of a broader policy document to constitute
2 its earlier phase.

3 JuNO requests that the Examiner find that (1) the City's failure to acknowledge and include all
4 relevant portions of the Comprehensive Plan into its proposal, (2) its admission that some portion of
5 the Comprehensive Plan may be inconsistent with the Proposed Action, (3) the self-evident conflict
6 between WSJ-P13 and the Proposed Action, and (4) the City's strategy to amend away whatever
7 conflicts it discovers, constitutes an improper use of WAC 197-11-060(5) phased review.

8 **D. MHA EIS Failed to Describe Conflicts Between Proposed Action and Comprehensive**
9 **Plan or to Adequately Describe Amendments to Comprehensive Plan.**

10 WAC 197-11-440(6)(d)(i) requires the MHA EIS to incorporate, where appropriate, "[a]
11 summary of existing plans (for example: Land use and shoreline plans) and zoning regulations
12 applicable to the proposal, and how the proposal is consistent and inconsistent with them." For all of
13 the reasons discussed supra, it was appropriate for the City to summarize **all** of the provisions of the
14 Seattle 2035 Comprehensive Plan applicable to the Proposed Action and to describe how the Proposed
15 Action is wholly inconsistent with them. The MHA FEIS made no attempt to comply with this
16 requirement. Even assuming for the sake of argument that an amendment to the Comprehensive Plan
17 could be adopted by City Council to "fix" the inconsistencies, the MHA FEIS utterly fails to describe
18 what such an amendment would be.

19 JuNO respectfully requests that the Court find that the MHA FEIS was required to and failed
20 to comply with WAC 197-11-440(6)(d)(i).

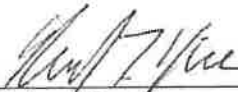
21 **CONCLUSION**

22 JuNO respectfully requests that the Court (1) deny the City's Motion to Dismiss with respect
23 to the issues set forth in JuNO's Notice of Appeal at Section 2, ¶¶ 4 and 9 relating to lack of

1 alternatives and phased review; (2) enter an order granting JuNO's cross-motion for summary
2 judgment and finding that the City failed to proposed reasonable alternatives in the MHA DEIS; (3)
3 enter an order granting JuNO's cross-motion for summary judgment and finding that the City did not
4 comply with SEPA rules for phased review; and (4) enter an order granting JuNO's motion for
5 summary judgment and enter an order finding that the City failed to adequately describe the
6 inconsistencies between the Proposed Action and the Comprehensive Plan or to adequately described
7 its contemplated amendments to the Comprehensive Plan to resolve such inconsistencies.

8 DATED this 1st day of May, 2018.

9
10 JUNCTION NEIGHBORHOOD
ORGANIZATION

11 By 
12 Richard Koehler, Legal Representative
13 Christine M. Tobin-Presser, Member
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