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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SNOQUALMIE**

In the consolidated hearing process)
regarding:)

an Appeal of administrative approvals)
for Panorama Apartments project,)
submitted by)

HOLLY FLETCHER,)
Appellant)

CITY OF SNOQUALMIE, COMMUNITY)
DEVELOPMENT DEPARTMENT,)
Respondent,)

and an Application for a Conditional Use)
Permit to construct buildings F, G, H, J)
and K to four stories within a proposed)
affordable housing apartment community)
on Parcel S-20 of the Snoqualmie Ridge)
II community located in the City of)
Snoqualmie,)

Submitted on behalf of)

PANORAMA APARTMENTS, LLC,)
Applicant)

**City Project File Nos. WHW 17-0001;
MOD 17-0001; and CUP 17-0002
Related Permit: MUCR 17-0004**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION DENYING APPEAL AND
APPROVING CONDITIONAL USE
PERMIT**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
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1
2 **I. SUMMARY OF DECISION.**

3 The appellant, Holly Fletcher, failed to satisfy her burden of proof, so her appeal
4 must be denied, and the challenged administrative approvals are confirmed, subject to
5 conditions.

6 The applicant, Panorama Apartments, LLC, presented credible and substantial
7 evidence to establish how its application for a Conditional Use Permit to construct 5 of 11
8 proposed buildings, identified as buildings F, G, H, J and K, to four stories, satisfies the
9 City's approval criteria for such request. Accordingly, the pending Conditional Use Permit
10 application is approved, subject to conditions.

11 **II. APPLICABLE LAW.**

12 ***Jurisdiction of Hearing Examiner:***

13 The City's Municipal Code explicitly vests the Hearing Examiner with authority to
14 hear and issue decisions on appeals of administrative decisions and applications for
15 Conditional Use Permits issued under the City's Zoning Code, Title 17 SMC. See *SMC*
16 *2.14.060(A) and (C)*.

17 ***Burden of proof, deference to administrative decisions:***

18 Washington courts have long held that pro se appellants are held to the same
19 standard as attorneys and must comply with all procedural rules on appeal. The appellant
20 bears the burden of proof, and must establish that the Director made a mistake in issuing the
21 two challenged decisions at issue in her appeal, based on an error of law or erroneous
22 factual determination(s). Arguments and personal opinions are not sufficient. To be
23 successful, an appeal must be supported by credible evidence, references to the record,
24 meaningful analysis, and/or citation to pertinent authority. Unchallenged findings of fact
25 are verities in any appeal.

26 In an appeal of administrative determinations, the Examiner must give considerable
deference to the interpretation and application of relevant regulations by those officials
charged with their enforcement (*See Eastlake Community Council v. Seattle*, 64 Wn. App.
273, 823 P.2d 1132 (1992); *Ford Motor Co. v. City of Seattle, Exec. Servs. Dep't*, 160
Wn.2d 32, at 42, 156 P.3d 185 (2007); *Gen. Motors Corp. v. City of Seattle, Fin. Dep't*, 107
Wn. App. 42, 47, 25 P.3d 1022 (2001)); provided, however, that deference to administrative
determinations does not extend to actions that are arbitrary, capricious, and contrary to law.

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1 An agency action is arbitrary and capricious only if it was willful and unreasoning, and
2 taken without regard to attending facts and circumstances. An action is not arbitrary and
3 capricious if there is room for two opinions. *Skokomish Indian Tribe v. Tom Fitzsimmons*,
4 97 Wn. App. 84 (1999).

5 ***Decision Criteria for the requested Conditional Use Permit:***

6 SMC 17.55.030(B) provides that the hearing examiner shall be guided by the
7 following criteria in granting a conditional use permit:

- 8 1. The proposed use will not be materially detrimental to the public welfare or injurious to
9 the property or improvements in the vicinity and in the district in which the subject property
10 is situated;
- 11 2. The proposed use shall meet or exceed applicable performance standards;
- 12 3. The proposed development shall be compatible generally with the surrounding land uses
13 in terms of traffic and pedestrian circulation, building, and site design;
- 14 4. The proposed use shall be in keeping with the goals and policies of the comprehensive
15 plan;
- 16 5. All measures should be taken to minimize the possible adverse impacts which the
17 proposed use may have on the area in which it is located.

18 Section 4.6.1 of the Mixed Use Final Plan Development Agreement for the
19 Snoqualmie Ridge II neighborhood, where Parcel S-20 is located, expressly provides that:

20 *“The Applicant may request a conditional use permit for a specific multi-family residential
21 development of 4 or 5 stories in height, but only if the specific proposal is located on a site
22 where the existing topography lends itself to a taller development such that the apparent
23 height from the higher elevation on the site does not give the appearance of a structure in
24 excess of 2 or 3 stories, and where the proposed building is designed so that the portion of
25 the structure with a height in excess of 3 stories is less than 50% of the total structure, and
26 is designed in a fashion to minimize the bulk and scale of the 4- or 5- story height through
modulation, orientation, or other architectural treatment.” (Emphasis added to original).*

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III. RECORD.

All exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Snoqualmie, and may be examined or reviewed by contacting the City’s public records officer.

Exhibits entered into evidence by the Examiner:

For Ms. Fletcher’s Appeal of MOD 17-0001 and WHW 17-0001:

Exhibits 1-10, as numbered and identified by Gwyn Berry, Planning Technician, in her pre-hearing transmittal of appeal materials to the Examiner, including without limitation Exhibit 1, the challenged Minor Modification Decision issued on September 28, 2017, with supporting exhibits labeled A – L; and Exhibit 2, the challenged Retaining Wall Height Waiver Decision issued on September 28, 2017, with supporting exhibits labeled A – M.

Supplemental Exhibits Accepted during the appeal hearing on November 8th:

1. Ms. Fletcher’s written statement, 7 pages, submitted during her testimony;
2. Snoqualmie Ridge II – Draft EIS, portion addressing Transportation issues, pages 244 – 295;
3. *Curriculum Vitae* for Michael J. Read, P.E., with Transportation Engineering NorthWest (TENW);
4. Traffic and Parking Impact Analysis of Snoqualmie Ridge Apartments (aka Panorama Apartments), to David Ratliff, Development Manager, DevCo, Inc. (the applicant), from Michael Read, PE, Principal, TENW, dated November 1, 2016;
5. Consistency Analysis for Snoqualmie Ridge Apartments (aka Panorama Apartments), to David Ratliff, with DevCo, Inc. (the applicant), from Michael Read, PE, Principal, TENW, dated January 9, 2017;
6. FEIS for Snoqualmie Ridge II, issued on February 23, 2004;
7. Map illustration prepared by CPH Consultants, depicting Snoqualmie Ridge II Parcel S-20, the project site, labeled “Site Areas and Residential Density”, providing data re: Gross Site Area, wetland area, buffer area, Right of Way dedication area, Net Developable site area, and calculations used by the applicant; and
8. Site Line Illustrations, prepared by CPH Consultants, two sections shown on one page, for Panorama Apartments, dated November 8, 2017, labeled “Consistency Review Exhibit E Conceptual Site Section,” depicting how proposed 4-story buildings will appear to be no more than 3-stories tall,

when viewed from neighborhood above the proposed development;

For the Conditional Use Permit Hearing, CUP 17-0002;

Advisory Report to the Hearing Examiner, from the City of Snoqualmie Community Development Department, re: Conditional Use Permit Application CUP 17-0002 (twenty pages, with Exhibits A-Q as marked and identified on page 20 of the Advisory Report);

Supplemental Exhibits offered during the CUP hearing on November 16th:

1. Site Line Illustrations, three sections shown on two pages, for Panorama Apartments, dated November 8, 2017, labeled “Consistency Review Exhibit E Conceptual Site Section,” depicting how proposed 4-story buildings will appear to be no more than 3-stories tall, when viewed from neighborhood above the proposed development (also included as Ex. 8, from the portion of the hearing regarding Ms. Fletcher’s appeal);

2. Updated Grading Plan, one page, dated November 8, 2017;

3. *Curriculum Vitae* for Michael J. Read, P.E.;

4. Certification of Site Posting for Panorama Apartments – Multifamily Residential Development Site.

* Several members of the public offered written exhibits, comments, photos, and the like in support of their positions and testimony, all provided at the public hearing, all of which has been included as part of Exhibit M, which was reserved for public comment materials.

* Consistent with a briefing schedule announced during the public hearing, the record also includes Post Hearing Briefs from the appellant, the applicant, and the City of Snoqualmie; and Proposed Findings submitted by the applicant and the City.

Testimony: The following persons provided testimony under oath as part of the record:

1. Holly Fletcher, the appellant, only spoke during her appeal presentation on November 8th;
2. Mark Hofman, Community Development Director, City of Snoqualmie, testified on both evenings, November 8th and 16th;
3. David Ratliff, the applicant, with DevCo, owner of the Panorama project,

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testified on both evenings;

4. Mike Read, P.E., traffic engineer, for the applicant, testified on both evenings;
5. Chris Breiland, with Fehr & Peers, as the City's on-call, 3rd party traffic engineer, testified on both evenings;
6. Matt Hough, CPH Consultants, lead project engineer for the applicant's project, testified on both evenings;
7. Adam Babcock, local resident, lives on Jacobia Street, spoke twice on November 16th;
8. Hector Granda, local resident, lives on Ash Avenue, spoke twice on November 16th;
9. Leslie Sheppard, local resident, lives on Snowberry Avenue, spoke twice on November 16th;
10. Maxim Golovanov, local resident, lives on Mahonia Street, spoke twice on November 16th;
11. Peggy Shepard, local resident, lives on West Crest View Loop, spoke twice on November 16th;
12. Mara Deutsche, local resident, lives on Ash Avenue, spoke twice on November 16th;
13. Chris Deutsche, local resident, lives on Ash Avenue;
14. Sam Insalaco, local resident, lives on Saterlee Avenue; and
15. Heather Razzano, local resident, lives on Ash Street.

Given the size of the record, which involves the appeal of two complicated administrative decisions, a connected Conditional Use Permit application for development of an affordable housing project in an area where none have existed before, and the volume of opposition comments received throughout the process, the Examiner sought to read every exhibit with attention and a fair mind. This involved site visits to verify findings based on physical characteristics of the property, research, and reviewing a lengthy public record of legislative and administrative determinations made well before the pending applications were submitted. This was not a "small and simple" matter. Instead, it required considerable time and focus. Having completed such review and mindful of the legal standards involved, this Decision is now in order.

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IV. FINDINGS OF FACT.

Based on the record, and following consideration of all the evidence, testimony, codes, policies, regulations, briefs from the parties, and other information included therein, the undersigned issues the following findings of fact. Any statements in previous or following sections of this document that are deemed findings of fact are hereby adopted as such and incorporated by reference.

1. In this matter, Panorama Apartments, LLC (Applicant) proposes to develop Snoqualmie Ridge II Parcel 20 with 191 affordable rental apartment units.

2. On May 25, 2017, Applicant submitted a General Land Use Application to the City of Snoqualmie seeking four approvals for development on parcel S-20 within Snoqualmie Ridge II mixed use development (“SR II”):

- (i) An administrative approval of a Minor Modification to establish net developable acreage;
- (ii) An administrative approval to increase retaining wall heights above six feet (WHW 17-0001);
- (iii) A Mixed Use Consistency Review (Phase I) to determine consistency of the proposed development with the SR II Development Standards (MUCR 17-04); and
- (iv) Hearing Examiner approval of a Conditional Use Permit to authorize four-story building heights for five of the project’s buildings, identified in the record as buildings F, G, H, J and K (CUP 17-02).

3. The project site is known as “Parcel S-20”, which is part of Snoqualmie Ridge II, a large-scale, primarily residential development approved over the years through multiple project permit decisions of the Snoqualmie City Council after recommendation by the Snoqualmie Planning Commission.

4. Development of properties located within SR II is governed by a City Council adopted Development Agreement (“DA”) dated June 28, 2004 (Exhibit 1.B); and the Snoqualmie Ridge II Mixed Use Final Plan (“SR II MUFPP”) dated August 9, 2004 (Exhibit 1.C).

5. The potential significant, adverse environmental impacts of the SR II Development Agreement and the SR II Mixed Use Final Plan were analyzed in a Draft Environmental Impact Statement (“DEIS”) and Final Environmental Impact Statement (“FEIS”) issued on June 2, 2003 and February 23, 2004, respectively. Appeal Exhibits 2 and 6.

6. The FEIS identified and evaluated probable significant environmental impacts from the project’s land use and zoning designations, implementation of the SR II Annexation

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1 Implementation Plan, implementation of the SR II MUFPP, subsequent development
2 approvals, and approval of the DA.

3 7. The DEIS and FEIS included analysis of potential transportation impacts of the entire
4 SR II development. The DEIS and FEIS also recommended mitigation for probable
5 significant impacts, which mitigation was incorporated into the DA and as MUFPP
6 conditions of approval. There is no dispute that the existing FEIS issued for SR II was
7 never appealed and has never been rescinded. It is still in full force and effect.

8 8. The scope of the SR II development approved in the DA and SR II MUFPP is broad.
9 Development was authorized for three alternatives with the developer Quadrant choosing
10 Alternative 1 (allowing up to 1,850 units with two schools).

11 9. "Flexibility" is a mentioned and authorized in the SR II MUFPP. As explained in the DA
12 recitals, by allowing mixed use plan review and approval of the entire proposed SR II
13 development, the developer received greater flexibility in design and development while the
14 City received the flexibility to consider community-wide issues.

15 10. Accordingly, Section 6.3 of the DA, the Conditions of Approval, as incorporated into
16 the MUFPP, provide the desired level of initial certainty to the development and that
17 modifications to the MUFPP were likely to occur during build-out to achieve the Flexibility
18 Objectives. Accordingly, the DA provided a process for modifications to the MUFPP's
19 Conditions of Approval.

20 11. Section 6.4.1 of the DA authorizes the City Director of Planning¹, with concurrence of
21 the chair of the Parks and Planning Committee of the City Council,² to grant a "Minor
22 Modification" if he or she determines that the modification is minor and is consistent with
23 the overall scope and intent of the Conditions of Approval, satisfies the requirements of
24 SMC 17.30.150, and meets the additional criteria listed in Section 6.4.1.

25 12. City Staff credibly note that the Flexibility Objectives, as defined in subsection 1.4 of
26 the DA must also be analyzed when evaluating a requested Minor Modification.

13. On September 28, 2017, the City issued its Decision on Minor Modification to SR II
Mixed Use Final Plan Conditions and Development Standards ("Decision") granting the
Minor Modification regarding the net developable acreage with conditions (MOD 17-
0001).

¹ The Director of Planning title was changed to Community Development Director.

² The City Council's Parks and Planning Committee was subsequently re-named the Community Development Committee.

³ The density calculation is 190.88 (16 units/ac. x 11.93 acres = 190.88).

⁴ For purposes of brevity, only certain Findings from the Staff Advisory Report and the challenged Decisions granting

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1 14. On the same date, the City also issued its Decision granting approval to increase
2 retaining wall heights above six feet (WHW 17-0001).

3 15. On October 13, 2017, Appellant Holly Fletcher submitted an appeal of the two
4 administrative decisions, specifically the Minor Modification and the Wall Height Waiver
5 granted for the Panorama project on S-20.

6 ***Summary of Public Hearing:***

7 16. The combined open-record public hearing process for the connected appeals and the
8 underlying conditional use permit was duly noticed in accord with law. *Exhibit O*. The
9 appeal hearing occurred on November 8, 2017, with the connected hearing process for the
10 related CUP application continued to November 16th. All witness testimony was provided
11 under oath in the Council Chambers at Snoqualmie City Hall. At the hearing, the
12 undersigned Examiner presided, with city staff, applicant's representatives, the appellant
13 and almost two dozen interested members of the general public in attendance, many of
14 whom testified at some point in the proceedings.

15 17. During the portion of the hearing devoted to Ms. Fletcher's appeal, Ms. Fletcher
16 appeared on her own behalf, providing sincere and respectful testimony to support her point
17 of view and preferred outcomes. She did not call any other witnesses or offer any expert
18 reports to rebut evidence and information used by the city as a basis to issue the two
19 challenged decisions. In response to arguments and testimony provided by Ms. Fletcher,
20 the City and the applicant called several witnesses to respond and offer credible testimony
21 to support the challenged decisions. (*Testimony of Mark Hofman, Community Development*
22 *Director; David Ratliff, the applicant's representative; Mike Read, P.E., traffic engineer,*
23 *for the applicant; Chris Breiland, with Fehr & Peers, the City's on-call, 3rd party traffic*
24 *engineer; and Matt Hough, CPH Consultants, lead project engineer for the applicant's*
25 *project).*

26 18. The Examiner visited the site of the project on the day of the hearing, and several
times in the following weeks. This provided an opportunity to observe the topography of
the site and the upland-developed area, vantage points looking into the proposed
development site, and to experience traffic challenges, ingress/egress issues, and circulation
patterns in the vicinity, at various times of the day and on different days of the week,
including weekday evening rush hours, weekday lunch-time, and a weekend afternoon, all
mentioned by various witnesses during the public hearing.

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1 19. Nine local residents testified at the public hearing portion regarding the CUP
2 application, and most all live along public streets that would eventually connect to the
3 proposed Panorama Apartment project. Six of the public witnesses spoke twice. A
4 tremendous amount of the public comments opposing the project focused on perceived
5 traffic problems that might result if the application is approved. The applicant and staff
6 properly note that potential traffic impacts were already addressed in prior public SEPA
7 reviews and mitigation measures that are included as part of the record, and that standing
8 alone, traffic impacts, are not a specific approval criteria that must be considered for this
9 very limited Conditional Use Permit, which only seeks authorization to build five buildings
10 up to four stories.

7 ***Findings of particular relevance to Ms. Fletcher’s appeal.***

8 20. In her appeal, Ms. Fletcher generally argued the “modification is not minor” and
9 that the six-foot wall height waiver is not necessary and/or was granted without sufficient
10 environmental review. (*Fletcher Appeal, email dated October 13, 2017, included in the
11 Record as Appeal Exhibit 10; Supporting Documents Regarding Appeal of Minor
12 Modification 2017-0001 and Wall Height Waiver 17-0001, submitted by Ms. Fletcher at the
13 Appeal Hearing on November 8th, marked as Appeal Hearing Ex. 1; Testimony of Ms.
14 Fletcher*).

13 21. Essentially, Ms. Fletcher asserts that because granting the Minor Modification
14 would increase the number of units by 32, the application should be considered a Major
15 Modification. As support for her position, she alleges that potential traffic problems, school
16 overcrowding, general environmental issues, unit size (i.e. too many bedrooms in larger
17 units), limited access, and site location, and other concerns noted in her materials, all
18 support her appeal and warrant denial of approvals needed to develop the Panorama
19 Apartments project on parcel S-20.

17 22. City officials responded by directing attention to Section 6.4.1 of the DA, which
18 shows that a unit count is not the criteria to be used in determining Major or Minor
19 Modification. (*Development Agreement for SR II, Resolution No. 712, at pages 9 and 10,
20 included in the Record as Exhibit B to the Staff Advisory Report regarding the pending
21 CUP application*).

21 23. Under Section 6.4.2 of the DA, any proposed modification that meets the criteria in
22 Section 6.4.1 is a Minor Modification, and any proposed modification that does not meet
23 the criteria in Section 6.4.1 is to be considered a Major Modification.

23 24. Attachment G to the MUFPP (Exhibit 1.F) required that the SR II developer provide
24 affordable housing mitigation, in the form of a number of “credits” equal to fifteen percent

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1 (15%) of the total number of housing units constructed in SR II. For 1,850 housing units,
2 the number of affordable housing credits required was 278 credits. The 278 credits were
divided between “for-sale” and “for-rent” and were initially to be dispersed in SR II.

3 25. In September 2009, Snoqualmie Ridge II Development LLC (“SR II LLC”) sought
4 a Minor Modification to concentrate the remaining “rental” affordable housing on Parcel S-
5 20. SR II LLC, contended that requiring dispersal of affordable housing created economies
6 of scale that made it difficult for a smaller rental project to make economic sense and obtain
7 financing. In November 2009, the Minor Modification was approved. Exhibit 1.G. The
8 Minor Modification confirmed 184 for-rent affordable housing credits as the remaining
obligation, and deleted the former dispersal requirement such that the remaining affordable
housing would be constructed on S-20. 184 units was a minimum number, not a cap on the
number of units that could be permitted. A covenant was recorded against Parcel S-20 to
that effect. Exhibit 1.H.

9 26. In sum, the 2009 Minor Modification, effectuated by the covenant recorded against
10 the property and included in the Record as Exhibit 1.H, confirms that all of the affordable
11 housing use requirements for SR II would be consolidated onto parcel S-20. None of the
12 witness testimony or opposition evidence submitted by Ms. Fletcher or any of the neighbors
13 who appeared at the CUP permit hearing is legally sufficient to reverse previous,
unchallenged land use determinations that firmly established parcel S-20 as the sole site on
which all remaining affordable housing units for the SR II development would be located.

14 27. Based on facts established in the record, the Examiner finds and concludes that the
15 use of parcel S-20 to fulfill the remaining SR II affordable housing program requirements
16 cannot be collaterally attacked through either Ms. Fletcher’s appeal or opposition to the
17 underlying CUP application. *Chelan County v. Nykriem*, 146 Wn.2d 904, 931-33, 52 P.3rd 1
(2002)(holding that ministerial land use decisions are final after 21 days and cannot be
collaterally attacked).

18 28. When Panorama submitted its application for a Minor Modification in 2017, the
19 City had approved 1,556 total residential units in SR II. If the additional 191 units are
20 developed as proposed on S-20, the total unit count in all of SR II will be 1,747. Exhibit
1.A.

21 29. Parcel S-20 is approximately 13.60 total acres, based on the scaled architectural site
22 plan submitted by the Applicant. Parcel S-20 is listed on the MUFPP Use Table (“Use
23 Table”), as having a total of 14.2 acres; however, the acreages listed on the Use Table were
24 based on conceptual parcel boundaries, with actual, surveyed boundaries to be established
at the time of development application for particular parcels to be developed, per MUFPP
Condition 1.4. Exhibits 1.A and 1.C.

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1 30. For Parcel S-20, the Use Table indicates that a “Residential Density” of eight to
2 sixteen units/acre, and a “Unit Range of 80-159 units” Ex. 1.G. According to the asterisked
3 statement at the bottom of the Use Table, the “unit range” stated on the Use Table “assumes
4 a 30% discount to gross acreage for roads and other undevelopable areas,” such as wetlands
5 and stormwater facilities.

6 31. Parcel S-20 has an actual net developable acreage of 11.93 acres, when the area
7 necessary for roads (.13 acres) and other undevelopable areas (1.54 acres of wetlands and
8 wetland buffers) are subtracted from the 13.60 gross acres ($13.60 - 1.67 = 11.93$). This
9 yields a greater net developable acreage than assumed by the Use Table ($14.2 \text{ acres} - (14.2$
10 $\times .30 = 4.26) = 9.94$ acres). The need for public right-of-way dedication is significantly
11 reduced because the on-site vehicular circulation route will be a private roadway only. A
12 similar reduction occurs because stormwater will be directed to an existing, off-site
13 stormwater facility for treatment.

14 32. If Parcel S-20’s actual net developable acreage is utilized, Parcel S-20 may be
15 developed with 191 units ($16 \text{ units/ac.} \times 11.93 \text{ acres} = 190.88$), rather than 159 units
16 derived using the assumed thirty percent (30%) discount to gross acreage.

17 33. The City’s SEPA Responsible Official reviewed the potential impacts from the
18 proposed Minor Modification, and determined that they are within the range of impacts
19 analyzed in the DEIS and FEIS issued for the SR II DA and MUFP. The proposed
20 multifamily development is one of the “Permitted Uses” in the Use Table for Parcel S-20,
21 and the project’s density range is within density range for Parcel S-20 anticipated by the
22 Use Table. The proposed Minor Modification would allow thirty-two units beyond the 159
23 units stated in Use Table, but the total SR II development is substantially less than the total
24 development evaluated in the DEIS and FEIS. The requested Minor Modification also does
25 not involve any new information that would indicate new or different probable, significant
26 adverse environmental impacts not previously evaluated in the DEIS and FEIS.

34. Frontier Avenue currently terminates at Parcel S-20’s eastern boundary. The MUFP
Circulation Map (South) includes a street in the approximate current location of Frontier
Avenue that is designated as a collector serving parcel S-20. Exhibit 1.C. The SR II
Development Standards confirm that Frontier Avenue would be a Neighborhood Collector,
and that the capacity of a Neighborhood Collector is 8,000 to 10,000 average daily trips.
Frontier Avenue was designed and constructed as a Neighborhood Collector. (*Decision
approving MOD 17-0001, pages 7-8, findings 13-17*).

35. Appellant Fletcher argued that the impact of granting the application is major rather
than minor due to traffic impacts. Chris Breiland, PE at Fehr and Peers confirmed in a

1 memorandum dated March 3, 2017 (Exhibit 1.I) and in testimony at the hearing that
2 Frontier Avenue has sufficient capacity to accommodate the combined trip generation of
3 the proposed 191-unit on Parcel S-20 and the Eagle Pointe neighborhood. While the total
4 number of units may be higher, the resulting traffic matches what was identified in the
5 DEIS and FEIS. Breiland also confirmed that it was common traffic engineering practice to
6 use the trip generation rate used by TENW to calculate the trip generation for the
7 development proposed on S-20. He explained that car ownership for affordable housing
8 units is lower than for market rate units. Several neighbor-witnesses questioned that
9 affordable housing units generate less traffic, without support from studies or reports from
10 experts in the field.

11 36. The City approved a similar Minor Modification on June 6, 2011, for Parcel S11.
12 Exhibit 1.K. The S11 Modification revised the Parcel S11 density range from 4-9 units per
13 acre to 10-24 units per acre; increased the unit range from 31-71 units to “a maximum of
14 100 MF units”; and amended the “Permitted Uses.” The 2011 Minor Modification was not
15 appealed.

16 37. The current Community Development Director, Mark Hofman, testified at the
17 hearing that a review of development in SRI and SR II shows that the City used actual net
18 density to calculate the number units allowed. He also testified that for development
19 elsewhere in the City, actual net density, not gross density or estimated net density is used
20 to calculate density; and that actual net density is the prevailing practice of cities in the
21 vicinity of Snoqualmie.

22 38. Ms. Fletcher argued that the steep slope of S-20 makes it undevelopable. The
23 average slope on S-20, however, is just fourteen percent (14%), and city codes provide that
24 a forty percent (40%) slope is required for a site to be deemed a Steep Slope Hazard Area.
25 SMC 19.12.020.X.

26 39. Appellant Fletcher argues that the impact on area schools of granting the Minor
Modification makes the application Major rather than Minor. Director Hofman testified,
however, that the impact on schools of the development was considered in the DEIS and
FEIS and that this application does not exceed the number of units that was contemplated.
The FEIS included construction of up to two schools under the Alternative chosen for SR
II. Mr. Hofman also testified that the Capital Facilities Plan for the Snoqualmie Valley
School District (the “District”) takes into consideration the maximum number of units,
1850, that could be developed in SR II.

40. Ms. Fletcher, as well as other witnesses during the CUP hearing, argued that the
District should have been mailed or otherwise actually received the Notice of Application
for this Minor Modification. At the hearing, Director Hofman reviewed the notice given by

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1 the City to the District and provided the Hearing Examiner with information that the
2 District was provided notice pursuant to SMC 14.30.060.C.3 through posting of the S-20
3 site and publishing in the designated legal newspaper. Mr. Hofman explained that the
4 District was not provided notice as an agency with jurisdiction because the District has no
5 permitting authority over the S-20 project.

6 41. Even without Mr. Hofman's explanation, the Examiner notes that the School
7 District is already able to address facility impacts that might be caused by residential
8 development in the City of Snoqualmie, by School Impact Fees, that can be collected under
9 Chapter 20.10 SMC. In this situation, the applicant may be entitled to receive an exemption
10 for low-income housing, wherever it might be located, but the record establishes that the
11 School District already received substantial consideration within the text of the
12 Development Agreement/MUFP itself by way of Alternatives addressed in the SR II plan,
13 which specifically involved the school district to determine if one or two schools would be
14 necessary based on development activity in SR II. The School District made such
15 determination, and nothing in the record shows how the pending application would exceed
16 the allowable development limits imposed on SR II, which one presumes the District relied
17 upon in making its determination as to whether one or two schools would be needed to
18 serve the SR II project.

19 42. Complaints about failure to provide personal notice to the District about the
20 Panorama project are without merit or consequence. The record shows that school facility
21 needs are already addressed in the DA and MUFP for SR II, unlike many projects in the
22 region. And, the city's code mandates specific notice to the District if the applicant seeks a
23 low-income housing exemption for School Impact Fee obligations otherwise applicable to
24 residential projects in the City of Snoqualmie. SMC 20.10.060(A)(8)(d) reads as follows:

25 d. The city shall review requests for exemptions from impact fees under subsections
26 (A)(8)(a) and (b) of this section, and shall advise the developer in writing of the granting or
denial of the request. Prior to the city granting an exemption, the developer shall execute
such agreements and restrictive covenants as provided by the district to ensure that the units
are maintained as low-income housing. The city shall notify the district of all applications
for exemption when they are received and shall notify the district when such requests are
granted or denied.

43. As noted elsewhere in this Decision, and throughout the approvals challenged by
Ms. Fletcher, Development on Parcel S-20 is governed by the SR II DA and MUFP.

44. By previous, unchallenged land use decisions, including the Minor Modification
approved in 2009, all of the required, remaining affordable housing units included as part of
the SR II community were consolidated onto parcel S-20.

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1 45. The standards governing a proposed Minor Modification are set forth in Section
2 6.4.1 of the SR II DA. They require that requested modification is: a) minor; b) consistent
3 with the overall scope and intent of the [MUFP] Conditions of Approval; c) satisfies the
requirements of SMC 17.30.150; and d) meets the additional criteria listed in this
subsection 6.4.1.

4 46. The proposed Minor Modification is “in fact minor.” It will not change the density
5 range or permitted uses on Parcel S-20. The Applicant seeks only to clarify that the Use
6 Table’s density range is to be applied to the net developable acreage of Parcel S-20, rather
7 than to an acreage based on an assumed 30% discount. Such a clarification satisfies all of
8 the criteria for a Minor Modification in Section 6.4.1 in the DA. It is a reasonable
9 interpretation of the existing Use Table given that section 6.3 of the DA explicitly
10 acknowledges the Use Table information is for “initial” use only and modifications to the
11 MUFP “are likely to occur during build-out of the Property to achieve the Flexibility
Objectives.” Additionally, the City and other cities in the vicinity use actual net acreage to
calculate density as it is the best practice. Using actual net acreage is also consistent with
the past practices in SR I and SR II development. Specifically, a 2011 Minor Modification
was approved by the City that involved a greater degree of intensification than does the S-
20 proposal. Exhibit 1.K.

12 47. The proposed Minor Modification is consistent with the scope and intent of the
13 MUFP Conditions of Approval. The scope of the SR II MUFP is broad and authorizes
14 development of up to 1,850 residential units. The MUFP’s intent, as expressed in the
15 findings of fact, was to include within SR II’s broad scope a range of housing densities, to
16 ensure that a wide range of housing choices would be available, including multifamily
17 apartments. The MUFP’s intent, as expressed in the City Council’s findings and MUFP
18 Condition 4.12, was also to ensure that a significant percentage of these housing types be
affordable, and priced to be available to households earning less than 80% of the King
County median income. The proposed Minor Modification is sought in order to provide
191 affordable rental units affordable to households earning 80% or less of the King County
median income.

19 48. The proposed Minor Modification satisfies the requirements of SMC Section
20 17.30.150. Panorama’s proposed Minor Modification is within the scope and intent of the
21 MUFP. The 191 units it proposes are of a similar size and scale, and do not present
22 appreciably different environmental effects from those identified in the DEIS and FEIS. It
23 does not reduce overall acreage of dedicated public areas, open space or buffers, because it
24 does not affect those areas at all. It does not materially change the balance of uses, in fact,
it increases the balance of uses by adding additional affordable multifamily rental housing,
which is in short supply in the City generally, and specifically within the SR II
development. Further, the proposed Minor Modification does not exceed any of the

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1 limitations of the SR II Development Standards.

2 49. The Examiner finds and concludes that the proposed Minor Modification satisfies
3 the additional criteria for minor modifications set forth in subsections 6.4.1.1 – 6.4.1.9 of
4 the DA, as thoroughly and credibly explained in the City’s challenged Minor Modification
5 Decision, File No. MOD 17-0001, which is incorporated herein by reference as part of this
6 Decision. (*Decision issued on September 28, 2017, pages 9-12*).

7 ***Findings of particular relevance to Ms. Fletcher’s appeal of the Retaining Wall Height
8 Waiver (WHW 17-0001).***

9 50. As mentioned above, on September 28, 2017, the City issued its Decision approving
10 the applicant’s requested Retaining Wall Height Waiver (“Decision”). The Decision
11 addresses the request for administrative approval of a wall height waiver pursuant to
12 Condition 4.11 of the SR II Mixed Use Final Plan (“MUFPP”).

13 51. Due to the topography of the project site, the Applicant requested a waiver of the
14 six-foot retaining wall height limitation in MUFPP Condition 4.11, which provides as
15 follows:

16 *“Residential development shall be designed to minimize clearing and grading and to fit the
17 existing topography of the parcel to the maximum extent feasible. The preliminary plat or
18 binding site plan pre-application conference shall include review of existing topography,
19 sensitive areas, buffers, parks, or open space areas on and adjacent to the parcel and
20 evaluation of alternative plat designs and associated grading requirements to minimize the
21 amount of grading required and to provide as much as possible for natural transitions
22 between the residential lots, between the lots and any adjacent open spaces or sensitive
23 areas, and between residential lots and streets. Before permitting construction of retaining
24 walls at the edge of a sensitive areas buffer, the City shall evaluate and require mitigation
25 for impacts to the sensitive area and its buffer, including potentially additional setbacks
26 from the sensitive areas buffer, if necessary, to mitigate impacts. The Applicant shall be
required to consider design suggestions provided by the City to accomplish the objectives of
this Condition, and if rejected, shall provide the City with a written explanation of why the
suggestion is not feasible, for review during the preliminary plat hearing. **The use of
retaining walls in excess of 6 feet shall not be allowed unless the City determines this
limitation should be waived because there is no feasible alternative layout, plat design, or
site grading without a retaining wall that exceeds this limitation.** Proposed preliminary
plats or binding site plans also shall consider use of step foundations or other residential
design and construction techniques to minimize the total amount of site grading and to
minimize the use of retaining walls, provided nothing in this Condition is intended to
require step foundations in any particular parcel or plat.”*

27 53. The Community Development Director is tasked in the MUFPP with making the
28 administrative decision on a wall height waivers.

1 54. At present, there are 184 credits remaining of affordable housing mitigation that
2 must be provided in the form of “for-rent” units on S-20. The intent of the MUF
3 affordable housing requirements is to provide units affordable to households earning 80%
4 or less than the median income for King County. Panorama Apartments proposes to
5 provide 191 affordable rental apartment units affordable to households earning 60% or less
6 of the King County median income. The proposed development of 191 units at this income
7 level will provide more than the minimum required units to achieve the remaining
8 affordable housing threshold for SR II.

9 55. Staff reviewed the requested waiver of the 6-foot retaining wall height limitation for
10 consistency with MUF Condition 4.11, set forth above.

11 56. Testimony, and various exhibits, as well as site visits, establish that Parcel S-20 has
12 a significant drop in elevation across the site from north to south of approximately 100 feet.
13 The site slopes from elevation 1,080’ westerly at an average grade of 14% for
14 approximately 700 feet to elevation 980’.

15 57. The connecting roads into the site are fixed; Frontier to the north and the emergency
16 vehicle access connection to the south.

17 58. In order to comply with the Americans with Disability Act (ADA) and take up grade
18 across the site, the Applicant determined that the private internal vehicular circulation route
19 must be a minimum 2,000 feet in length. This results in a serpentine vehicular drive route
20 and pedestrian paths that require multiple switchbacks.

21 59. A retaining wall in excess of 15 feet is proposed on the uphill side of the carriage
22 house units so that from the single-family residential neighborhood, only the third story and
23 a portion of the second story would be visible. Evidence in the record established that
24 excavating building pads below existing grade and utilizing retaining walls in excess of six
25 feet would ameliorate views of the apartment buildings from the adjacent single-family
26 housing upslope of the site.

54. The proposal to provide 191 affordable housing units increases the minimum
number of affordable units required by six (6)³. It is not the addition of six (6) affordable
units that is driving the need for increased retaining wall height. The roadway and layout of
the project would be similar if the number of affordable units were reduced to the minimum
184 that is required by the MUF.

³ The density calculation is 190.88 (16 units/ac. x 11.93 acres = 190.88).

1 61. The FEIS identified and evaluated impacts, and recommended mitigation measures
2 for the probable significant environmental impacts from development of the SR II proposal.
3 The requested waiver will not change the total number of allowable units or change the
4 allowable density within S-20. The proposed waiver does not involve changes that are
5 likely to have significant adverse impacts not previously analyzed in the existing
6 environmental documents. The proposed waiver does not involve any new information that
7 would indicate new or different environmental probable significant adverse impacts that
8 have not been previously evaluated and mitigated. No new SEPA review was required.

9 62. Ms. Fletcher argued that there is not sufficient evidence to prove that retaining walls
10 six feet and under are not feasible for the S-20 project. David Ratliff and Matt Hough both
11 testified, though, that affordable housing on S-20 was not feasible without waiver of the
12 six-foot retaining wall height limit.

13 63. David Ratliff, development project manager for the Applicant, credibly testified
14 during the hearing that the Americans with Disabilities Act (“ADA”) requires that all
15 common areas and all ground floor areas be ADA accessible. The ADA, the topography of
16 the site, and fixed points of public access mean that no layout of the project would
17 eliminate the use of retaining walls over six feet in height.

18 64. Ms. Fletcher argued that if the number of dwelling units was reduced the need for a
19 wall height waiver would be eliminated. Fletcher argued that some of the required
20 affordable units could be constructed at another location, and that S-20 should not be used
21 to go above the required 184 affordable housing units (and even fewer because the project
22 is built for 60% AMI). Ratliff testified that reducing the number of dwelling units in the
23 project would not eliminate the use of retaining walls over six feet in height. The need for
24 the height waiver is not related to an increase in the number of dwelling units; it is related
25 to the physical constraints of the site. Community Development Director Mark Hofman
26 concurred in this conclusion, and explained that all of the remaining affordable housing
rental units must be built on S-20 pursuant to the 2009 Minor Modification of the MUFPP
(Exhibit 1.G). Hofman also testified that the 184 units of affordable housing in the MUFPP
was not a maximum, but rather the minimum being required by the MUFPP (Exhibit 1.F).

65. Appellant Fletcher argued that if walls of the height sought in the Applicant’s plans
are needed, then the site must not be suitable for the project. Fletcher discussed materials
she had reviewed showing critical areas as mapped by King County and affecting the site.
She also argued that the higher retaining walls will cause problems with erosion, drainage,
and structural support. Director Hofman explained that the construction of the walls would
be subject to further review, permitting, and inspection process. He also explained that the
City’s critical area regulations, rather than King County’s, apply to this project and were
analyzed in the EIS.

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1 66. Matt Hough, P.E., the project civil engineer, also testified at the hearing that the
2 drop in the site's elevation and the fixed points of access to roads require the use of
3 retaining walls in excess of six feet. Hough clarified that these site conditions do not make
4 the site undevelopable. He testified that he has experience with retaining walls of this
5 height for projects of this kind and these types of issues are resolved through engineering,
inspection and construction practices. He stated that there was no alternative lay out for
this site use that would not require retaining walls over six feet in height; and there was no
alternative grading plan that would not require use of retaining walls over six feet in height.

6 67. Appellant Fletcher testified that new analysis should be required under the State
7 Environmental Policy Act because construction of the hospital and the homes adjacent to S-
8 20 is new information not evaluated in the FEIS. Director Hofman explained that analysis
9 was done to determine whether all impacts of the wall height waiver were considered under
the FEIS and he concluded that they were. The impacts of the hospital and other potential
uses on S-21 and the adjacent homes were included in the EIS.

10 68. Based on the record, the Examiner finds that the requested waiver of the 6-foot
11 retaining wall height limitation is consistent with SR II MUFPP Condition 4.11, which
12 provides in part: *"The use of retaining walls in excess of 6 feet shall not be allowed unless
13 the City determines this limitation should be waived because there is no feasible alternative
14 layout, plat design, or site grading without a retaining wall that exceeds this limitation."*
15 The project design relies on excavation and existing sloping grade to minimize structural
16 bulk on views to and from the site. To the extent the documented existing site topography
17 necessitates any project design to include retaining wall heights of up to a story,
18 development of the site as proposed requires taller retaining walls to balance cut and fill
grading for construction on the site to reasonably proceed. Further, in order to "dig in" and
take advantage of the existing sloping grade to minimize visual bulk and mass, retaining
wall heights in excess of six feet are necessary. No feasible alternative design or site
grading with retaining walls less than six feet would achieve balanced grading, adequate
site access, and minimized bulk and mass.

19 69. The wall height waiver granted will allow for the site and building design to work
20 with the site's downhill sloping grade and is necessary in order for Parcel S-20 to meet the
21 affordable housing obligation as specified in the recorded Declaration of Covenant. The
22 techniques available to adjust grades are limited. The sidewalks and paths have been
23 designed at 4% where feasible. The Wall Height Waiver allows development of the site in
24 compliance with the approved MUFPP Land Use Plan and Conditions and the applicable
Development Standards.

25 70. Due to the project site's constraints as outlined above, the City reasonably and

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1 credibly determined that there is no feasible, lower impact alternative or engineering
2 alternative that would allow for wall heights of six feet or less.

3 ***Findings applicable to this entire Decision.***

4 71. David Ratliff of DevCo is a qualified expert on the development of affordable
5 housing who testified within his area of expertise. His testimony was credible.

6 71. Mike Read of Transportation Engineering Northwest (“TenW”) is a qualified expert
7 on traffic engineering who testified within his area of expertise. His testimony was
8 credible.

9 73. Chris Breiland of Fehr & Pehrs is a qualified expert on traffic engineering who
10 testified within his area of expertise. His testimony was credible.

11 74. Matt Hough of CPH Consultants is a qualified expert on civil engineering who
12 testified within his area of expertise. His testimony was credible.

13 75. The appellant, Ms. Fletcher, has an accounting background, but she conceded that
14 she is not a qualified expert on any of the substantive topics addressed in her appeal. She
15 testified about her experience in accounting, but there are no identified issues in this appeal
16 to which her experience is directly relevant.

17 76. Ms. Fletcher voiced concerns but did not offer any reliable or credible evidence that
18 would rebut the environmental reviews and SEPA documentation used to support the
19 challenged administrative decisions.

20 77. Ms. Fletcher did not identify any impacts to traffic or school crowding that were
21 more severe than what the Environmental Impact Statement (“EIS”) for SRII disclosed.

22 78. The traffic studies performed by TenW, Appeal Hearing Exhibits 4 and 5, were
23 conducted in a manner generally accepted by traffic engineers, and were reliable and
24 accurate.

25 79. The acreage calculation performed by Matt Hough and admitted as Exhibit G was
26 performed in a manner that is generally accepted by civil engineers, and is reliable and
accurate.

80. The acreage calculation included the proper buffer for the wetland critical areas on
Parcel S-20 as established in Attachment K to the SRII Mixed Use Final Plan (“MUFP”).

1 81. There are 11.93 of net developable acres on Parcel S-20.

2 82. There is no feasible alternative layout to develop sufficient residential units on S-20
3 in a manner that would comply with the Americans with Disabilities Act (“ADA”) and
4 would satisfy the outstanding affordable housing credits for SRII without using retaining
walls over six-feet tall.

5 83. Third-party reviews confirmed the substance of the applicant’s key submittals at
6 issue in the appeals and the CUP application, including without limitation that adequate
7 capacity exists in the transportation system in the area (*Chris Breiland testimony*) and that
8 the plans and analysis submitted by the applicant for the wall height waiver were reviewed
and confirmed by Perteet, an independent engineering firm hired by the City as a
consultant. (*Testimony of Mr. Hofman*).

9 84. The Examiner adopts and incorporates the City of Snoqualmie’s decision on Minor
10 Modification to SRII Mixed Use Final Plan Conditions and Development Standards dated
11 September 28, 2017, regarding File Number MOD 17-0001. The Examiner also adopts and
12 incorporates the City of Snoqualmie’s decision on Retaining Wall Height Waiver to SRII
13 Mixed Use Final Plan Conditions dated September 28, 2017, regarding File Number WHW
17-0001. Both decisions contain an accurate and thorough discussion of the relevant
background regarding the Snoqualmie Ridge II (“SRII”) development and Ms. Fletcher’s
appeal.

14 85. The City appropriately relied upon the EIS in its review of the wall height waiver
15 and minor modification. A new EIS was not required. The impacts studied in the EIS
16 included and are more severe than those the Project would cause.

17 86. Under the Development Agreement criteria for approving a minor modification, it is
18 appropriate to apply actual net developable acreage of a parcel instead of applying the
19 assumed 30 percent discount originally contained in the MUFPP Use Table (Attachment B to
20 the MUFPP).

21 87. There is no legal basis to provide Ms. Fletcher with any of the relief she requests.

22 ***Traffic, Level of Service.***

23 88. Many of the public comments focused upon concerns with future traffic that might
24 pass through the speaker’s neighborhood or the commute-routes they travel on most days.
While sincere, and consistent with concerns about traffic woes shared by drivers throughout
King County, the testimony was not supported by persuasive engineering data or studies

1 that would rebut the application materials and prior SEPA environmental reviews analyzed
2 and referenced in the Staff Report. The Staff Report, application exhibits and testimony at
3 the public hearing established that existing local streets surrounding the proposed apartment
project are sufficient, will not experience a decrease in the level of service standards set for
such streets, and were constructed to city standards.

4 89. SMC 16.04.190(B) provides that city “Roads shall be designed with appropriate
5 consideration for existing and projected roads, anticipated traffic patterns, topographic and
6 drainage conditions, public convenience and safety, and the proposed uses of the land
7 served;” and SMC 12.24.030 requires transportation concurrency for all development
8 projects in the city.

9 90. Consistent with these provisions and developer obligations set forth in the
10 Development Agreement for the SR II community, the applicant’s Transportation engineer,
11 and the City’s third-party traffic engineering consultant, both provided credible testimony at
12 the public hearing that the street system that will service the Panorama project has been
13 built with sufficient capacity to serve more units than those proposed by the applicant.

14 91. Again, the SR II Development Standards confirm that Frontier Avenue would be a
15 Neighborhood Collector, and that the capacity of a Neighborhood Collector is 8,000 to
16 10,000 average daily trips. Frontier Avenue was designed and constructed as a
17 Neighborhood Collector and Chris Breiland, PE at Fehr and Peers, confirmed in a
18 memorandum dated March 3, 2017 (Exhibit 1.I) and in testimony at the hearing that
19 Frontier Avenue has sufficient capacity to accommodate the combined trip generation of
20 the proposed 191-unit on Parcel S-20 and the Eagle Pointe neighborhood. While the total
21 number of units may be higher, the traffic operations-result matches what was identified in
22 the DEIS and FEIS.

23 92. The Examiner finds that the street network surrounding the proposed Panorama
24 project was designed and constructed to meet city standards, with capacity to provide for
25 the future needs of other undeveloped properties in the general vicinity, specifically
26 including the property at issue in this matter. (*Staff Reports; Site visit*).

93. Comments implying that some street widths that will connect to the proposed
Panorama project are unacceptable to area residents, without any engineering or Level of
Service standard to support such claims, were unsupported and cannot serve as a basis to
deny the pending application, which conforms to city-assigned density and land use
requirements for the site.

94. Obviously, a transportation network that has been built to serve more residential
units than initially occupied by “pioneer/initial” residents will see some local streets

1 experience increases from artificially-low volumes enjoyed before “full build-out” occurs.
2 Such is the case here.

3 95. Some witnesses generally indicated their displeasure with city zoning and
4 development policies that apply to the limited vacant land remaining in the SRII
5 community.

6 96. Placing the comments in context, it should be noted that the pending Panorama
7 project was submitted under long-established city development agreement provisions for
8 the greater SRII community, all of which were in place at the time most, if not all, of the
9 neighbor-witnesses’ homes and streets were constructed over the last few years.

10 97. The adjacent neighborhood and street network was developed using mitigation and
11 infrastructure capacity that would be sufficient to meet full-buildout for the larger project.
12 The Examiner is bound to use the review criteria and LOS standards in place at the time the
13 pending applications were submitted. Public policy is not within the Examiner’s
14 jurisdiction, that is left to the elected city council members, who undertook years of public
15 processes and environmental reviews that are referenced throughout the record for this
16 hearing process, to establish standards and review criteria set forth in relevant development
17 regulations, mostly in SRII agreement provisions, that specifically apply to the site of the
18 Panorama project at issue herein.

19 98. The pending application would not cause the greater SR II community to exceed the
20 maximum density level assigned to the area. General comments requesting a separate
21 environmental impact statement for the project were not supported by any evidence that
22 would invalidate the unchallenged environmental and traffic studies used to generate the
23 legal instruments that control development in the Snoqualmie Ridge II community. An EIS
24 would be appropriate if an applicant sought to develop the property in a manner that
25 exceeds the assigned density under applicable standards, or requested to use the property
26 for some purpose other than affordable housing/residential uses, like retail, office or other
activities that might generate traffic counts in excess of those anticipated for affordable-
residential densities and uses. That is not the case here, so there is no basis to find that the
applicant’s project will not conform to city and state transportation concurrency
requirements.

99. While of little solace to local residents who are/were fortunate enough to purchase
homes along relatively light-travel roadways, as adjacent lands lie undeveloped for several
years, the fact and reality remain that the City’s development regulations allow surrounding
landowners to develop their properties and connect with public streets built in the area.

100. “First-in” does not entitle one to the artificially-low traffic levels experienced by

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1 residents on streets that were planned and built to serve undeveloped parcels, or for future
2 extensions, connections, and the like. Instead, a temporarily-lightly-travelled public street
3 (always a matter of perspective to the affected party) was/has been built to serve new
4 neighbors, as new parts of the planning area are developed over time.

5 101. Again, as noted above, the pending application is for the type of land use assigned
6 under terms of the development regulations that apply to the SR II community, i.e.
7 affordable, multi-family residential, and the scale/density of the project will actually keep
8 the SR II community *below* the maximum density assigned to the area.

9 102. Several witnesses devoted time and attention to their concerns with commuters who
10 make it difficult to leave their neighborhood onto the parkway leading to I-90 or other
11 destinations, particularly during morning rush hour(s). Others mentioned existing problems
12 with people parking cars and causing congestion on narrow streets that will serve the new
13 project as well. However, the record does not show that permit denial, or a development
14 moratorium is the solution. Ongoing enforcement of traffic safety, parking, fire-lane, and
15 emergency access laws, are and should be a priority for appropriate city departments – even
16 without this project. The applicant in this matter cannot be held responsible for bad driving
17 habits or inconsiderate parking routines of some travellers.

18 103. Several local residents expressed compelling concerns with the impacts of
19 construction-activities, like trucks hauling materials along local streets, passing by areas
20 with pedestrians and children, potentially impacting traffic, street cleanliness, noise and the
21 like.

22 104. Many citizens providing comments explained that they were not opposed to new
23 development, but that they wanted to be sure that potential impacts on their existing streets
24 and neighborhoods would be adequately addressed, as the project is developed and after
25 new units are occupied. These concerns were thoughtfully presented, and supported by
26 personal descriptions of previous projects that involved noisy trucks driving to and from
construction sites in the SR II area, the speed and frequency of trucks driving along local
streets to access new development sites, and parents driving or picking up school children
in the area.

105. Testimony in the record for this matter may be used by City staff as a basis to
consider and/or impose appropriate construction-related truck-routing and other right-of-
way use requirements as part of subsequent grading and building permits for the site, in
order to minimize truck/pedestrian and truck/local traffic conflicts described in the public
hearing.

106. The applicant's submittals and testimony provided on its behalf established that

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1 some aspects of the Panorama Apartments project would provide a public benefit, including
2 without limitation increased supply of affordable housing, including larger units that are in
3 high demand. Contrary to some skeptical testimony as to whether there are any job
4 locations in relatively close proximity to the Panorama site on parcel S-20, Mr. Hofman's
5 testimony and site visits by the Examiner confirm that there are several employers in the
6 vicinity that may have employees who would consider living in the more affordable
7 apartments proposed in this matter. These employers include: Timber Ridge and Cascade
8 View Elementary Schools; pre-school and daycare businesses; Safeway grocery store;
9 Bartell's drug store; Starbucks and other food-service businesses, banks, fitness and
10 recreational businesses, public employers (including the King County permitting offices),
11 all filling commercial buildings located within 1.5 to 2 miles, accessible by Snoqualmie
12 Parkway, with pedestrian and bike path facilities for much, if not all, of the route; and
13 Snoqualmie Valley Hospital, with its Specialty Care Clinic and Rehabilitation Clinics, all
14 located on the parcel immediately downhill from the proposed Panorama project.

15 107. None of the individuals testifying at the hearing or submitting written comments
16 opposing the project offered any expert reports, studies or other convincing environmental
17 analysis that would rebut the expert reports, certifications and/or environmental analyses
18 included in the record, as provided in the previous SEPA review for the greater SR-II
19 development, and as submitted by the applicant, or as generated by the City or its reviewing
20 consultant, particularly on transportation issues.

21 108. The findings, recommendations and conclusions provided in the environmental
22 documentation submitted on behalf of the applicant, as well as the City's reviewing
23 consultant reports, are credible and well-reasoned summaries of complicated regulations,
24 conditions, possible impacts and appropriate mitigation measures associated with the
25 proposed Panorama Apartments project. No one presented comparable expert witnesses or
26 evidence with traffic, planning, design, engineering or other relevant credentials to support
opposing views.

109. The Staff Advisory Report for CUP 17-0002 includes a number of specific findings
and conditions that establish how the pending CUP application satisfies provisions of
applicable law and/or can be conditioned to comply with applicable development standards
and guidelines. Again, at the hearing, the applicant's representative accepted all findings,
recommended conditions and comments in the Advisory Report regarding the Conditional
Use Permit, as well as those included as part of the two challenged administrative decisions.

110. Except as modified in this Decision, all Findings contained in the Staff Advisory
Report for the pending Conditional Use Permit are incorporated herein by reference as

1 Findings of the undersigned hearing examiner.⁴ Though some witnesses directed attention
2 to erroneous references to just 4 buildings on some of the application materials and staff
3 analysis, the vast majority of substantive written material directly addresses FIVE specific
4 buildings that are covered by the CUP application, which would authorize four-story
5 heights for Buildings F, G, H, J and K in the Panorama Apartments project. Typos do not
6 serve to control or limit the scope or substance of the pending conditional use permit
7 application. The illustrations used in the hearing record clearly identify FIVE buildings that
8 would be four stories, identified as Buildings F, G, H, J and K, and the original application
9 materials depict FIVE buildings that would be four stories. *See Application, Exhibit C –
10 Preliminary Grading Plan.* The Staff Advisory Report provides evidence that its CUP
11 review and analysis was, in fact and substance, intended to address the criteria and potential
12 impacts for FIVE (5) buildings with four stories, including without limitation Findings 27,
13 32, 33, 34, 41, and 44; proposed Conclusion No. 11; and the Recommendation of Approval,
14 which is specific to buildings F, G, H, J and K.

9
10 ***Findings that Proposal Meets Criteria for Conditional Use Permit:***

11 111. The Examiner finds that substantial evidence in the record, including without
12 limitation the un rebutted, credible and convincing illustrations and testimony provided by
13 Mr. Hough and his Site-Line Analysis renderings prepared by CPH (*CUP Hearing Exhibit
14 1, also included as Appeal Hearing Ex. 8*) that comprehensively illustrate how the proposed
15 4-story apartment buildings will be situated and constructed in a manner that they will not
16 appear to be in excess of 3-stories and meets the other criteria set forth in Section 4.6.1 of
17 the Mixed Use Final Plan Development Agreement for the Snoqualmie Ridge II
18 neighborhood, where Parcel S-20 is located, which expressly provides that:

16 *“The Applicant may request a conditional use permit for a specific multi-family residential
17 development of 4 or 5 stories in height, but only if the specific proposal is located on a site
18 where the existing topography lends itself to a taller development such that the apparent
19 height from the higher elevation on the site does not give the appearance of a structure in
20 excess of 2 or 3 stories, and where the proposed building is designed so that the portion of
21 the structure with a height in excess of 3 stories is less than 50% of the total structure, and
22 is designed in a fashion to minimize the bulk and scale of the 4- or 5- story height through
23 modulation, orientation, or other architectural treatment.”*

21 112. As explained above in previous findings, the project site (Parcel S-20) has a 14%
22 grade moving downhill away from the uphill single-family residential neighborhood where
23 most of the public commenters reside. And, as explained above, due to the existing

23
24 ⁴ For purposes of brevity, only certain Findings from the Staff Advisory Report and the challenged Decisions granting
25 administrative approvals are highlighted for discussion in this Decision, and others are summarized, but any mention or
26 omission of particular findings should not be viewed to diminish their full meaning and effect, except as modified herein.

1 topography on the site, the un rebutted testimony establishes how the developer must use
2 retaining walls to comply with ADA requirements, so that streets, parking areas, sidewalks
3 and walking paths meet slope and the side-slope limitations for accessibility. (*Application,*
4 *Pages 8-11*).

5 113. In what may have been the clearest and most convincing portion of the public
6 hearing, Mr. Howell's testimony included a review of the rooftop elevations for each
7 proposed building to demonstrate how in each case, the rooftops of the four story buildings
8 will lie below the rooftops of the upper three-story apartment buildings or carriage houses
9 that will be located closer to the single-family neighborhood above. Mr. Hough's specific
10 and authoritative testimony constitutes undisputed evidence establishing that in addition to
11 topography and vegetation, the three story buildings, which are allowed outright on parcel
12 S-20, will also serve to block views of the proposed four-story buildings, when looking
13 down from uphill on the site or the neighboring residents' yards. (*Testimony of Mr. Hough;*
14 *CUP Hearing Exhibits 1 and 2*).

15 114. None of the speakers opposing the project presented any credible evidence, testimony
16 or studies that would rebut application materials and staff analysis that show how the
17 proposed fourth-story on the proposed buildings will be less than 50% of the total structure
18 for each and will be designed to minimize its bulk and scale.

19 115. The applicant, Mr. Ratliff, and the Director, Mr. Hofman, both provided credible
20 testimony explaining how the four-story buildings will be less than 50% of the total
21 structure. Mr. Hofman also testified that the building designs for the Panorama Apartments
22 project will require City review and approval through the Mixed Use Consistency Review
23 (MUCR) process prior to building permit approvals. The requirement for building designs
24 to be approved in conformance with applicable development regulations is also addressed
25 in the staff's proposed CUP Condition of Approval number 3.

26 116. Based on substantial evidence in the record, including without limitation the
application materials, the staff's advisory report and recommendation of approval, and
testimony provided at the public hearing, the examiner finds and concludes that the
applicant has met its burden to demonstrate that its site design and preliminary building
designs comply with section 4.6.1 of the Mixed Use Final Plan Development Agreement
for the Snoqualmie Ridge II neighborhood.

117. Further, the Examiner finds and concludes that the record contains credible,
substantial evidence to demonstrate that the applicant's Conditional Use Permit application,
as conditioned, meets all of the following required criteria for approval, found in SMC
17.55.030(B)(1-5):

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1. As conditioned herein, the proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and in the district in which the subject property is situated. *Staff's Advisory Report, all statements of fact and proposed findings, including without limitation page 13, item 43; Applicant's Brief for CUP, all statements of fact and proposed findings, including without limitation pages 7-12, explanation of evidence showing how the requested CUP meets criteria found in SMC 17.55.030(1).*

2. The proposed use shall meet or exceed applicable performance standards. *See Staff's Advisory Report, all statements of fact and proposed findings, including without limitation page 13, item 44; Applicant's Brief for CUP, all statements of fact and proposed findings, including without limitation pages 12-13, explanation of evidence showing how the requested CUP meets criteria found in SMC 17.55.030(2).*

3. The proposed development shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building, and site design. *Staff's Advisory Report, all statements of fact and proposed findings, including without limitation page 13-14, item 45; Applicant's Brief for CUP, all statements of fact and proposed findings, including without limitation pages 13-14, explanation of evidence showing how the requested CUP meets criteria found in SMC 17.55.030(3); Site Visits;*

4. The proposed use shall be in keeping with the goals and policies of the comprehensive plan. *Staff's Advisory Report, all statements of fact and proposed findings, including without limitation the thorough Comprehensive Plan Analysis found in pages 14-15, item 46; Applicant's Brief for CUP, all statements of fact and proposed findings, including without limitation pages 14-15, explanation of evidence showing how the requested CUP meets criteria found in SMC 17.55.030(4); testimony of Mr. Hofman.*

5. All measures should be taken to minimize the possible adverse impacts which the proposed use may have on the area in which it is located. *Staff's Advisory Report, all statements of fact and proposed findings, including without limitation pages 15-16, item 47; Applicant's Brief for CUP, all statements of fact and proposed findings, including without limitation pages 7-12, explanation of evidence showing how the requested CUP meets criteria found in SMC 17.55.030(5); All Conditions of Approval.*

118. As noted in the record, in addition to Conditional Use Permit (CUP 17-0002) approval, this project requires the following permits and approvals:

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- 1 1. The three associated administrative actions requested on the applicant's General
2 Land Use Application- Minor Modification to establish net developable acreage
3 (Exhibit P, MOD 17-0001), Wall Height Waiver to increase retaining wall heights
4 above six feet (Exhibit Q, WHW 17-0001), and Mixed Use Consistency Review
5 Phase I to determine consistency of the proposed development with the SR II
6 Development Standards (MUCR 17-0004). **(Note that MOD 17-0001 and WHW
7 17-0001 are both confirmed as part of this Decision);*
8
9 2. Phase II Mixed Use Consistency review and approval;
10 3. Engineering Plan approval, including drainage review;
11 4. Clear and Grade Permit;
12 5. Fire Marshall approval; and,
13 6. Building permits.

14 119. The Examiner finds that the comprehensive record established for the pending
15 appeal and CUP application should provide helpful evidence and information to use when
16 reviewing subsequent permits and approvals needed for the project, and that testimony and
17 evidence provided during the course of this public hearing process may provide a basis to
18 impose conditions, that are reasonable and capable of being accomplished, to mitigate
19 potential construction-related impacts addressed in the record.
20

21 V. CONCLUSIONS OF LAW.

22 1. As explained above, the record, particularly the City Staff's Advisory Report with
23 its recommendation of approval, includes credible, un rebutted, and substantial proof that
24 the Conditional Use Permit application satisfies all applicable decision criteria specified in
25 development regulations regarding parcel S-20, as conditioned herein.

26 2. It is a well-established rule that considerable deference should be given to the
construction and application of codes and regulations by those officials charged with their
enforcement. Generally speaking, where there are two plausible constructions of whether
the facts fit one position or another, caselaw mandates a deferential standard of review,
meaning that an Examiner is not free to simply substitute his interpretation and judgment
for that of an administrative decision maker whose decision has been challenged.

3. To prevail in her appeal, Ms. Fletcher needed to demonstrate that the Director erred
in issuing the two challenged administrative approvals. As explained above, the facts do
not leave the Examiner with the definite and firm conviction that a mistake has been
committed. While reasonable minds may disagree, and some may have their legitimate
personal interests and concerns, and others may prefer different criteria for approval and

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standards of review, the fact remains that substantial, un rebutted evidence in the record supports the Director's challenged approvals. Other circumstances, where an applicant seeks to locate prohibited uses on the site, or seeks design deviations that are not authorized by flexible regulations (such as those adopted for SR II), or not supported by credible and substantial environmental analysis relevant to the request for approval, could produce a different result.

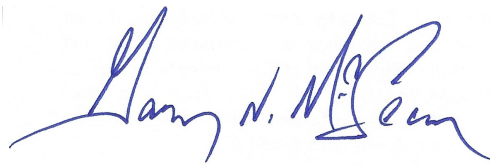
4. Because the appellant failed to meet her burden, and failed to present evidence that would rebut materials included in the record, including without limitation the application submittals and the comprehensive Decision documents prepared in issuing each of the contested administrative approvals (MOD 17-0001 and WHW 17-0001), her appeal must fail.

5. Any finding or other statement contained in this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

VI. DECISION.

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and the examiner's site visits, the undersigned examiner: denies the appeal submitted by Ms. Fletcher and confirms Minor Modification MOD 17-0001 and Wall Height Waiver WHW 17-0001, subject to conditions modified below; and APPROVES the Conditional Use Permit for the Panorama Apartments, LLC project, subject to the attached Conditions of Approval. Each and every of the Conditions set forth below are hereby incorporated as part of this Decision.

ISSUED this 23rd Day of January, 2018



Gary N. McLean
Hearing Examiner

1 **CONDITIONS OF APPROVAL (modified)**

2 **for**

3 **Panorama Apartments, LLC**

4 **MINOR MODIFICATION MOD 17-0001**

- 5 1. No access to Parcel S-20 shall be allowed from the Snoqualmie Parkway.
- 6 2. The applicant shall obtain all necessary permits and approvals from the City, and shall comply with all conditions of such permits.
- 7 3. All conditions of the Snoqualmie Ridge II Mixed Use Final Plan not expressly modified herein or by any other City approval shall remain in full force and effect.
- 8 4. Prior to approval of a building permit for the proposed project, the Applicant shall record against Parcel S-20 a covenant, substantially in a form approved by the City Attorney, assuring that:
 - 9 a. the property will be developed with and used for rental apartment housing, with rental rates priced to be affordable to households earning 80% or less of the median income for King County and otherwise in compliance with Attachment G to the Snoqualmie Ridge II Mixed Use Final Plan, for a period of at least 15 years from the date of first occupancy; and
 - 10 b. any rental rate increases will be limited to the same percentage increases as the annual median income for King County as a whole during the period of the affordable housing rental covenant.

11 **CONDITIONS OF APPROVAL (modified)**

12 **for**

13 **Panorama Apartments, LLC**

14 **WALL HEIGHT WAIVER FOR PARCEL S-20 (WHW 17-0001)**

15 All provisions and conditions included as part of the City’s Wall Height Waiver for Parcel S-20 (WHW 17-0001) are confirmed and included herein by reference, except to the extent modified as follows:

16 *New Condition:* Construction of any retaining walls on the S-20 site that are greater than six feet in height must be in substantial compliance with the plans submitted in the application for retaining wall height waiver, as determined by the Community Development Director or designee.

1 candles at the inside edge of perimeter or sensitive area buffers. Plans for any proposed building or site
2 lighting shall be submitted for review and approval by the Community Development Department to assure
compliance with this requirement and with the performance standards of SMC 17.55.080(E). If provided,
street lights shall comply with the requirements of SR II DS 7.020.

3 10. All development activities performed as a result of this CUP shall occur in a manner consistent with each
4 of the Mitigation Measures set forth in the SEPA FEIS issued for SR II, and consistent with any
recommendations or best practices included in any environmental reports generated for review and approval
5 of the project elements approved herein.
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25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
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Notice re: Revocation Proceedings

As provided in SMC 17.55.030(D), the hearing examiner may revoke or modify a conditional use permit under certain circumstances. Such revocation or modification shall be made on any one or more of the following grounds:

- 1. That the approval was obtained by fraud;
- 2. That the use for which such approval was granted has at any time ceased for one year or more;
- 3. That the permit granted is being exercised contrary to the terms or conditions of such approval or in violation of any statute, resolution, code, law, or regulation; or
- 4. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.

SMC 17.55.030(E) explains that individuals who are aggrieved by any use that is subject to a conditional use permit may petition the hearing examiner to initiate revocation proceedings for such permit. Before a conditional use permit may be revoked, a public hearing shall be held. Procedures concerning notice, reporting and appeals shall be the same as required by this title for the initial consideration of a conditional use permit application.

Notice of Rights of Appeal

SMC 14.30.020 summarizes the type of permit decisions made by the City, and which are appealable to the city council. SMC 14.40.010 provides the time limit for appeals to the city council (14 days), and mandates that a notice of appeal shall set forth the factual and legal basis for appeal. The Land Use Petition Act, Chapter 36.70C RCW, addresses the process for judicial review of certain land use decisions made by local jurisdictions.

***NOTE:** The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable to revocation proceedings or appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the city code provisions referenced above and the Land Use Petition Act (Chapter 36.70C RCW) for additional information and details that may apply.*

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