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2
3 CITY OF SNOQUALMIE
OFFICE OF THE HEARING EXAMINER

4 In re:
5 SNOQUALMIE RIDGE II PARCEL S20
6

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

7 **APPLICANT'S POST-HEARING**
8 **BRIEF, FINDINGS OF FACT, AND**
9 **CONCLUSIONS OF LAW FOR**
10 **CONDITIONAL USE PERMIT**

11 **I. INTRODUCTION**

12 The Snoqualmie City Council approved the Snoqualmie Ridge II Mixed Use Final
13 Plan ("MUFPP") in 2004, following years of intensive land use planning, environmental
14 impact analysis, planning commission recommendations, and many late nights of Council
15 deliberations including multiple public hearings. In the MUFPP, Council designated certain
16 proposed development parcels for higher density development and multifamily housing,
17 including the subject parcel, S-20. Parcel S-20, among others, was approved outright for
18 multifamily apartments of two to three stories. Moreover, the Council specifically allowed
19 that on parcels with sloping topography, such as Parcel S-20, an applicant for a multi-family
20 project could request a conditional use permit to exceed the three-story limit and build up to
21 four or five stories, if specified criteria were met. The applicant, Panorama Apartments, LLC,
22 has applied for a conditional use permit to construct buildings F, G, H, J and K to four stories
23 within its proposed affordable housing apartment community on Parcel S-20 (the "Project").

24 The City's Advisory Report to the Hearing Examiner thoroughly examined all criteria
25 applicable to the CUP request and recommended approval (hereafter, "*Staff*")

1 *Recommendation*” or “SR”). As part of the CUP proceedings, the Hearing Examiner held a
2 public hearing on November 16. Testimony presented by the applicant and the City at the
3 public hearing also establishes that the applicable criteria are met. Public testimony at the
4 hearing voiced concerns regarding the Project in general, but provided no factual evidence
5 that approval of the fourth stories would violate applicable CUP criteria. Importantly,
6 because the fourth story is not the source of most of the neighborhood complaints, denial of
7 the CUP to allow the fourth stories would not remedy the concerns raised. The CUP
8 application meets all applicable standards and should be approved.

9 **II. DISCUSSION**

10 **A. The scope of what is subject to CUP is extremely narrow.**

11 Panorama’s application to the City for preliminary Project approvals includes four
12 elements: a minor modification regarding developable acreage; a wall height waiver request;
13 a request for Mixed Use Consistency Review (“MUCR”); and a CUP application to build
14 five of the eleven buildings proposed for Parcel S-20 to four stories in height. The
15 preliminary approvals are subject to separate procedural processes and distinct substantive
16 criteria, and, if granted, they support different aspects of the proposal. Only the CUP
17 application is subject to the Hearing Examiner’s direct approval authority under
18 SMC 17.55.030.B.
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1 The scope of what is before the Hearing Examiner for the CUP decision is extremely
2 narrow. As set forth in MUFPP Cond. 4.6.1, it includes only the request to add a fourth story
3 to certain multifamily buildings, specifically buildings F, G, H, J, and K.¹ See also SR § IV.

4 The use of Parcel S-20 for multifamily apartments is expressly allowed by MUFPP
5 Condition 4.6.1 and MUFPP Land Use Table Att. B, so that allowed use is not before the
6 Examiner. Parcel S-20 is expressly authorized for multifamily development at 8-16 dwelling
7 units per acre, *id.*, so the parcel density is not before the Examiner. The quantification of
8 “developable acreage” to be used to calculate the number of units allowed on Parcel S-20 is
9 the subject of the applicant’s request for minor modification. That is a separate decision
10 before the Examiner on appeal, but it is not a part of this CUP determination. The use of
11 Parcel S-20 to fulfill the remaining SR II Affordable Housing Program requirements was
12 determined in 2009 by Minor Modification, MUFPP-MOD 9-01, and that decision cannot be
13 collaterally attacked through this CUP application. *Chelan Cty. v. Nykriem*, 146 Wn.2d 904,
14 931-33, 52 P.3d 1 (2002) (holding that ministerial land use decisions are final after twenty
15 one days and cannot be collaterally attacked). Thus, it is solely the request to add a fourth
16 story to the specified buildings that is before the Examiner in this CUP request. That request
17 must be measured only against the CUP criteria specified in the MUFPP, and those guidelines
18 found in the City’s CUP ordinance.
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¹ At the hearing, legal counsel for the applicant called to the Examiner’s attention that the application contained
23 an error, in that the narrative in the application stated that only four buildings would exceed four stories rather
24 than the five actually requested. The grading plan attached as Exh. C to the application, however, identifies all
25 all five buildings sought to include four stories: F, G, H, J, and K. In addition, the *Staff Recommendation* identifies
all five buildings requested to include four-stories, and recommends approval.

1 **B. The fourth story meets all applicable CUP criteria.**

2 1. *Conformance with Mixed Use Final Plan Criteria*

3 The criteria most directly applicable to the Hearing Examiner's decision here comes
4 from Condition 4.6.1 of the MUFP, which reads in pertinent part:

5 The Applicant may request a conditional use permit for a specific
6 multi-family or assisted living residential development of 4 or 5
7 stories, but only if the specific proposal is located on a site where the
8 existing topography lends itself to a taller development such that the
9 apparent height from the higher elevation on the site does not give
10 the appearance of a structure in excess of 2 or 3 stories, and where
11 the proposed building is designed so that the portion of the structure
12 with a height in excess of 3 stories is less than 50% of the total
13 structure, and is designed in a fashion to minimize the bulk and scale
14 of the 4- or 5-story height through modulation, orientation, or other
15 architectural treatment.

16 MUFP Cond. 4.6.1 (excerpt) at 45.

17 At the public hearing, the Examiner heard testimony from the applicant, city staff,
18 and expert witnesses addressing how the proposed fourth story complies with the various
19 elements of Condition 4.6.1. In addition, the *Staff Recommendation* explains how each
20 component of the Condition are met. The preponderance of the evidence establishes that the
21 CUP proposal meets Condition 4.6.1.

- 22 a. Buildings F, G, H, J, and K will appear as two to three stories as
23 viewed from above.

24 The Panorama Apartments CUP application describes how the sloping topography of
25 Parcel S-20 makes it possible to construct four-story buildings at the middle and bottom
portions of the site that will appear as two or three stories from uphill. Parcel S-20 has a 14%
grade from the north (higher) to the south (lower). *SR*, Ex. A (Application) at 11. The slope
results in an elevation drop of nearly 100 feet from north to south, which causes buildings

1 lower on the site to be partially hidden from view, as seen from above. Also, due to existing
2 topography, the developer must use retaining walls to comply with ADA requirements, so
3 that streets, parking areas, sidewalks and walking paths meet slope and side-slope limitations
4 for accessibility. *Id.* at 8-10. Matt Hough of CPH, the civil engineer for the Project, testified
5 that these retaining walls have the effect of dropping the uphill side of each lower story into a
6 “well”, again reducing the perceived height as viewed from uphill. The application included
7 cross-sections for three separate view corridors through the site, which provide a visual
8 depiction of how the four-story buildings lower on the site will appear shorter than
9 three-story buildings uphill from them. *SR*, Ex. A (Application); Ex. E (Site Cross Sections).

10 In order to further examine the “visibility” criteria, CPH conducted additional
11 analyses for the hearing. CPH applied sight-lines to each of the cross sections, from the
12 perspective of a 6-foot person standing at an adjacent yard above Parcel S-20.² Matt Hough
13 described the sight-line analysis at hearing, providing additional evidence that site grade,
14 walls, and vegetation will obscure the view of the lower one or two stories of the four-story
15 buildings. Thus, each four-story building, to the extent it is visible at all behind the
16 three-story buildings higher on the site, will appear as three stories or less when viewed from
17 the upper site. HEx. 1 (Sight Line Analysis);³ Testimony of Matt Hough. This evidence is
18 undisputed in the record.

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20 CPH then took the view analysis one step further, and extrapolated from the grading
21 plan and preliminary building designs to establish the rooftop elevation of each building on
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23 ² The condition calls for the visibility criteria to apply from the “higher elevation on the site.” Using a viewpoint
24 from the adjacent property, which lies above that finished site elevation, is conservative, as more of the slope
25 will be visible from that higher vantage point than from the finished grade of the site itself.

1 site. HEx. 2 (Roof Elevation Analysis). At the hearing, Mr. Hough reviewed the rooftop
2 elevations of each building to demonstrate how in each case, the rooftops of the four-story
3 buildings will lie below the rooftops of the upper three-story apartment buildings or carriage
4 houses. Thus, undisputed evidence shows that in addition to topography and vegetation, the
5 three-story buildings, which are allowed outright on Parcel S-20, will also block views to the
6 four-story buildings, when looking down from uphill on the site or the neighboring yards.

7 b. The fourth story will be less than 50% of the total structure and
8 will be designed to minimize its bulk and scale.

9 Both Mark Hofman and David Ratliff testified that the preliminary designs
10 demonstrate the fourth story of the buildings will be less than 50% of the total structure.
11 Moreover, Mr. Hofman testified that preliminary designs in the application show that rooftop
12 modulation, architectural features and other design elements function to minimize the bulk
13 and scale of fourth stories of the buildings. Importantly, Mr. Hofman testified that the
14 building designs for the Panorama Apartments will be subject to City approval through
15 Mixed Use Consistency Review (MUCR) before building permit approval. *See also*
16 *SR § IX.2 at 7.* The need for the building designs to be approved against applicable
17 development standards is also captured in staff's proposed CUP Condition 3. *Id.* at 18

18 Public testimony at hearing, though critical of the Project as a whole, provided no
19 factual evidence that the four-story structures would not meet the requirements of MUCR
20 Condition 4.6.1. Based on the application, the Staff Recommendations, and testimony at
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24 ³ To avoid confusion with exhibits to the Staff Recommendation, this brief refers to exhibits admitted at the
25 CUP hearing as "HEx."

1 hearing, the Applicant has met its burden to show that the site design and preliminary
2 building design comply with Cond. 4.6.1.

3 2. *CUP Application Conforms to CUP Criteria of SMC 17.55.030.*

4 The request for four-story building heights also meets the City's CUP ordinance
5 found at SMC 17.55.030, which provides:

6 The hearing examiner shall be guided by the following
7 criteria in granting a conditional use permit:

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

22 The *Staff Recommendation* thoroughly documents how the fourth-story CUP request
23 conforms to the foregoing criteria. In addition, the preponderance of evidence presented at
24 the hearing supports a determination that the request meets the guiding criteria.

- 25 a. The fourth-story CUP will not be materially detrimental to the
public welfare, or injurious to improvements in the vicinity or the
M-U District.

Affordable housing is urgently needed in Snoqualmie. Testimony of M. Hofman.
SR II is required to provide affordable rental housing, SR § VI.C at 5, and Ex. F, but to date,
efforts to complete this requirement have failed. Testimony of M. Hofman. The City has
recognized that enabling affordable housing developers to achieve economies of scale will

1 help make it feasible to complete the affordable rental requirement. *SR*, Ex. G, MUFP-MOD
2 09-01, Findings 18, 19. In approving Minor Modification 09-01, the City determined that
3 eliminating the dispersal requirement for affordable rental housing would allow developers to
4 achieve economies of scale, and thus help attract multifamily developers. Similarly here, the
5 requested CUP to allow a fourth story on five of the proposed multifamily buildings will
6 create economies of scale for the Panorama Apartments, and support project feasibility.

7 Far from being detrimental to the public welfare, the requested fourth story will help
8 the applicant develop a high-quality affordable community within the Snoqualmie Ridge MU
9 District. David Ratliff of DevCo testified that the fourth story provides the applicant with
10 greater flexibility in determining the best range of unit sizes to match the Snoqualmie
11 community, meet market demand and support the Project. The federal funding program
12 DevCo seeks to use is a competitive process, and with a fourth story they have been able to
13 secure the funding for other projects in the region. Testimony of D. Ratliff. It helps the
14 developer achieve an economy of scale by spreading the fixed costs of the development over
15 a larger floor area for affordable rental units. *Id.* This helps the applicant afford a strong level
16 of project amenities, such as construction finishes, parking and landscaping, and important
17 recreational facilities, including trails, a recreation center, and on-site play areas. *Id.* Thus, at
18 the same time that the fourth story helps make the Project more competitive for funding, it
19 creates a more desirable living environment for the residents.

21 Mr. Ratliff testified that larger, family-sized affordable units are in the greatest
22 demand, and they will be included in the development. A family-oriented affordable
23 community on Parcel S-20 will fit compatibly with the single-family neighborhoods of SR II.
24 By increasing the building square footage within the same footprint, the fourth story provides
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1 the greatest flexibility to ensure the Project can include a broad range of unit-sizes for the
2 Snoqualmie community, from one- to five-bedrooms in size.

3 Some neighbors testified about impacts to schools in Snoqualmie, which they
4 perceive to be crowded. This concern relates more to the pending minor modification
5 regarding developable acreage and not the CUP to construct fourth stories. Nevertheless,
6 Mark Hofman testified that all public notice requirements for the CUP application and
7 hearing were met, and the Snoqualmie Valley School District (“SVSD”) did not submit any
8 comments or concerns to the City. Moreover, SR II is being built out as Alternative One
9 under the MUFPP, and it has provided two school sites for the SVSD. *SR*, Ex. P §A.2; *see also*
10 MUFPP Cond. 1.1 at 35. Also, even with Parcel S-20 building 191 units, SR II will create
11 fewer total households than allowed for in Alternative One. *SR*, Ex. P §V.A.4, at 6. In
12 addition, SR II MUFPP Condition 4.12 specifically provides that payment of school impact
13 fees for affordable housing units is governed by Ch. 20.10 SMC, the City’s school impact fee
14 ordinance. The City establishes the school impact fees legislatively with input from the
15 SVSD. The fees may be adjusted by the City Council if that is determined to be necessary in
16 response to the annual review of the SVSD capital facilities plan. *See SMC 20.10.030, .090.*
17 Whether the Panorama Apartments qualify for an affordable housing exemption under
18 SMC 201.10.060.A.8 is to be determined by the City upon the applicant making a request for
19 exemption. If applicable, the fee is assessed at the time of building permit issuance.
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21 Next, adding a fourth story as requested will not injure improvements in the vicinity.
22 Although neighbors testified to their concerns about traffic impacts to Frontier Avenue and
23 Jacobia Street, the evidence does not support those concerns. The applicant’s traffic expert,
24 Mike Read of TenW, testified to the results of a traffic impact analysis (“TIA”) that his
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1 company prepared for the Panorama Apartments. He testified that even a build-out of
2 200 apartment units on Parcel S-20 (191 are proposed), will not degrade the level of service
3 (“LOS”) at the intersection of Jacobia Street and the Snoqualmie Parkway. His testimony
4 established that the subject intersection presently operates at LOS B, and will continue to do
5 so with or without the Panorama Apartments. Testimony of M. Read. The City allows LOS D
6 before concurrency improvements are implicated. *Id.* Mr. Read testified at hearing that the
7 fourth story makes no difference to traffic impacts from the Project.

8 At the hearing, neighbors expressed concerns about increasing vehicle trips on
9 Frontier Avenue, where parked cars and tight corners impede traffic flow, but Mr. Read
10 testified that those street elements are intentional. He explained how street widths, parking
11 patterns and intersection characteristics are designed to create “road friction”, which has the
12 beneficial effect of slowing traffic to safer speeds in neighborhood settings. Mr. Read also
13 testified that SR II had already completed all off-site traffic mitigation called for in the SR II
14 FEIS and MUFP, by providing Parkway widening and contributing to a former course of
15 interchange improvements conducted by WSDOT.
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17 These conclusions were supported by the City’s traffic consultant, who made an
18 independent peer review of TenW’s TIA. Testimony of C. Breiland, Fehr & Peers. In
19 addition, Mr. Breiland testified that the City’s streets have adequate capacity to handle the
20 increase in traffic from the Project. Both Jacobia and Frontier are designated and constructed
21 as Neighborhood Collectors, which support 8,000 to 10,000 vehicle trips per day. *SR*, Ex. I,
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1 *Fehr & Peers Traffic Assessment of Parcel S-20* (2012).⁴ Even with the Panorama
2 Apartments, the daily trips will be substantially below the designed capacity of the roadways.
3 Mr. Breiland also testified that standard practices for calculating traffic impacts from
4 apartments do not consider the number of stories in an apartment building, or the number of
5 bedrooms in an apartment unit. While transit frequency can provide a basis for discounting
6 the number of trips provided, the frequency of transit here was not relevant to the TIA
7 conclusions because no transit discount was applied to the trip generation factors.
8 Importantly, again, Mr. Breiland testified that a fourth story on the Panorama Apartments
9 would not create additional traffic impacts.

10 Neighbors testified to possible impacts related to the City's lack of a ladder truck in
11 the event of a fire on a fourth story. Mr. Hofman testified that the City has a Mutual Aide
12 agreement with Eastside Fire and Rescue, which provides ladder truck response to
13 participating parties as needed. Emergency access to Parcel S-20 is available from two
14 locations: from SE 99th Street,⁵ via the Snoqualmie Hospital emergency access connection;
15 and from the Snoqualmie Parkway via Jacobia Street to Frontier Avenue. In addition, the
16 City's code adopts numerous fire safety requirements, including, for example, the provision
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22 ⁴ Although the 2012 Traffic Assessment was conducted for a previous proposal with 160 apartments rather than
23 191 apartments, it is a simple matter to adjust the forecast trips to account for the additional units. Table 1
24 provides a trip generation factor of 6.65 daily trips for apartment units, thus, 6.65 daily trips x 31 apartment
25 units equals 206 additional daily trips under the current proposal. Even when one adjusts upward for those 206
additional daily trips, the total trips per day in Table 1 and Table 2 are far below the 8,000 to 10,000 trip
capacity of the two roadways.

⁵ SE 99th Street is the first intersection north of the I-90 interchange.

1 of automatic sprinklers in multi-family buildings.⁶ Moreover, the *Staff Recommendation*
2 establishes that the Project buildings are subject to Fire Marshall approval. *SR* § IX.5 at 7,
3 and at 18 (Proposed Condition 2). The Fire Marshall is responsible for confirming that the
4 Project as constructed, including the fourth stories, meets all applicable fire code
5 requirements.

6 b. The proposed use shall meet or exceed applicable performance
7 standards.

8 The *Staff Recommendation* identifies the applicable performance standards that
9 govern development of the Project, including City Ordinances, plans, policies, agreements
10 and development standards. *SR* § VIII, at 7. It also establishes the many subsequent reviews
11 and approvals required that will ensure that the Project, including its fourth stories, will meet
12 those Performance Standards. *Id.* § IX. Particular to the fourth story, Mr. Hofman testified to
13 the adequacy of the subsequent approvals, including the MUCR, engineering plan approval,
14 clear and grade permit, Fire Marshall approval, and building permit review to assure
15 conformance with the CUP criteria and conditions imposed on CUP approval.

16 Some members of the public testified that the Project has not demonstrated
17 compliance with the SR II Affordable Housing Program. However, that testimony is not
18 pertinent to the CUP application. First, inclusion of a fourth story is not among the criteria to
19 be measured in determining whether the Project complies with the Affordable Housing
20 Program. Moreover, compliance with the SR II Affordable Housing Program is a
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22 ⁶ The City has adopted the 2015 International Building Code (“IBC”), SMC 15.04A.010, and has adopted
23 additional fire protection requirements at SMC Ch. 15. The Examiner may take official notice that the IBC
24 requires multifamily apartments to be sprinklered, as Group R-2 structures. See IBC 101.2 (applicability to
25 multifamily buildings); 310.4 (apartment houses are Group R-2); 903.2 (where automatic sprinkler systems are
required); 903.2.8 (all Group R-2 *fire areas* to be sprinklered); and 902.1[F] (defining Fire Area).

1 determination to be made during the MUCR, a review step that will occur subsequent to this
2 CUP proceeding. Thus, the Examiner's decision does not include determining conformity
3 with the Affordable Housing Program.

- 4 c. The proposed development shall be compatible generally with the
5 surrounding land uses in terms of traffic and pedestrian circulation,
6 building, and site design.

7 The traffic discussion at subsection a, above, establishes that the Project as a whole
8 will be compatible with traffic circulation on adjacent roads, including safety on those roads.
9 More to the point, however, the traffic experts testified that the fourth story has no impact on
10 traffic. Accordingly, traffic considerations are not pertinent to determining whether the
11 proposed CUP meets applicable criteria.

12 The circulation patterns within Parcel S-20 are set largely to meet ADA accessibility
13 standards, and the fourth story has no impact on that circulation pattern. Mr. Ratliff testified
14 that the fourth story would have no effect on pedestrian circulation on site. The Preliminary
15 Landscape Plan also shows the connection of on-site trails to existing trails. SR Ex. B; Ex. A
16 (Application, Ex. G, at sheet L1.0).

17 In fact, the circulation restriction that generated the most public comment is the lack
18 of a separate access road to Parcel S-20 from the Snoqualmie Parkway. However, the number
19 and locations of direct Parkway connections were set by the City Council in the MUFP. See
20 SR Ex. P, Ex. C (Res. 717 and MUFP, Cond. 5.5.1 (at 50) and Attachment A Figure A-2
21 South (at p. 78)). The configuration of Parcel S-20 taking access to the Parkway via the
22 existing intersection at Jacobia Street and then from Frontier Avenue is fully consistent with
23 the circulation plan shown on MUFP Att. A, Figure A-2 South. That Figure also shows *no*
24 *public road connection between Parcel S-20 and Parcel S-21*. As Mike Read testified, there
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1 was concern at the time of MUFPP approval that a secondary through road would compete
2 with the Snoqualmie Parkway for access to the I-90 Interchange, and that would generate
3 adverse impacts to traffic flow and neighborhoods. That decision cannot be second-guessed
4 now. Moreover, it is irrelevant to the CUP request. The fourth stories requested on Parcel
5 S-20 neither affect nor are affected by the Snoqualmie Parkway access configuration.

6 Finally, the proposed fourth stories are compatible with surrounding land uses in
7 terms of building and site design, as they are located to the middle and southern portion of
8 Parcel S-20, away from the single family neighborhoods to the north. They are not only
9 distant from those homes, but they are also at a much lower elevation. Mr. Hough testified
10 that the four-story buildings would create no shading of or views into the yards of the
11 single-family homes. The three-story buildings permitted outright are closer to those
12 receiving sites and at higher elevations, and those buildings will also serve to block views
13 uphill from the fourth stories.
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15 d. The proposed use shall be in keeping with the goals and policies of
16 the comprehensive plan.

17 The *Staff Recommendation* does a thorough job of evaluating the CUP application
18 against numerous Comprehensive Plan goals and policies. *SR* § X.A.46 at 14-15. The
19 analysis concludes that to the extent the goals and policies are applicable to the CUP request
20 for a fourth story on certain buildings, the proposed increased height is consistent with them.
21 *Id.* at 14.

22 In addition, the applicant asks the Examiner to consider how the requested CUP
23 supports the public interest, by implementing precisely what the Council provided for in the
24 SR II MUFPP. Mr. Hofman's testimony summarized the long and involved planning and
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1 environmental review process that resulted in the MUFPP approval. *See also* SR Ex. B,
2 Res. 712 Ex. A at 1-2. The MUFPP approval process was an exercise in designing a master
3 plan development where the parts would not only fit well together, but the whole would
4 contribute to the larger community. The resulting SR II MUFPP land use plan and conditions
5 reflect a balancing of the master plan approval with important comprehensive plan goals,
6 such as affordable housing. The Council thoughtfully designated densities and conditions for
7 various SR II parcels, which would become neighborhoods. They assigned Parcel S-20 the
8 highest densities approved for SR II, knowing it was located next to Parcels S-16 and S-19,
9 with density levels that allowed single-family neighborhoods. They expressly authorized
10 multifamily housing on Parcel S-20. They knew the sloping site would make Parcel S-20
11 amenable to accepting additional height, and they expressly allowed, and set criteria to apply
12 to, requests for four- and five-story buildings. Accordingly, the Examiner can conclude that
13 because the fourth stories on Parcel S-20 help achieve affordable housing goals, they exhibit
14 consistency with comprehensive plan goals and policies, provided they meet the express
15 criteria of MUFPP Condition 4.6.1.

- 17 e. All measures should be taken to minimize the possible adverse
18 impacts which the proposed use may have on the area in which it is
located.

19 The site design and grading plan for the Panorama Apartments minimize possible
20 impacts of the proposed fourth stories on the surrounding area. First, there is a 20 foot
21 landscaped perimeter setback that separates and screens the first row of apartments (carriage
22 houses) from the adjacent homes. *See* SR Ex. A (CUP Application), Ex. G Preliminary
23 Landscape Plan, sheet L2.0. That first row of buildings includes the three “carriage houses”,
24 which are two stories over a garage and thus within the number of stories allowed outright on
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1 Parcel S-20 by MUFPP Condition 4.6.1. The carriage houses provide a transition between the
2 existing single-family neighborhood and the larger multifamily apartment buildings located
3 interior to Parcel S-20. *SR* § X.A.33 at 11.

4 That first row of multifamily buildings located farther downhill in Parcel S-20 is also
5 held to three stories. As Mr. Ratliff testified, the site design placed these three-story buildings
6 closer to the existing neighborhood for compatibility. These three-story buildings provide
7 additional separation to the proposed four-story buildings further downhill, and obstruct
8 views between them and the neighborhoods on Parcels S-16 and S-19.

9 Further, the discussion in subsection a above describes the sight-line analysis
10 conducted by CPH, which demonstrates how the four-story buildings are far enough
11 downhill that they will appear to be two or three stories from the upper elevation of the site.
12 This too minimizes impacts to the surrounding area and meets the applicable “visibility”
13 criteria of 4.6.1. Because the rooftops of the four-story buildings will be at a lower elevation
14 than those of the three-story buildings allowed outright, they will not obstruct views from
15 Eagle Point.
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17 Although MUFPP Condition 4.6.1 allows the applicant to request a five-story building,
18 the Panorama Apartments are seeking only four stories, and only on five of the eleven
19 buildings in the Project. By seeking only four stories in height, the work of CPH has
20 confirmed that the rooftop elevation of the four-story buildings will be below that of the
21 carriage houses and three-story buildings located uphill, thus minimizing the height as
22 viewed from adjacent properties. This also minimizes impacts to privacy voiced by public
23 testimony. The Examiner should find that all measures have been taken to minimize impacts
24 from the fourth stories.
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C. The EIS remains authoritative and accurate.

Some public testimony suggested the EIS for SRII was outdated and unreliable, but the City properly relied on the EIS because the Project is a part of SRII. “An agency considering an action upon the same proposal for which an EIS or checklist and DNS was prepared shall use the documents unchanged without any formalities.” Richard L. Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis, § 15.01 (Matthew Bender) (citing WAC 197-11-600(4)(a)). The Development Agreement for SRII also required the EIS to be used for Subsequent Approvals like the CUP application. *SR Ex. B (Dev. Agmt.)* § 6.5 at 10-11.

Furthermore, the City appropriately relied on the EIS because impacts from the Project are less than the impacts disclosed in the EIS. *SEAPC v. Cammack II Orchards*, 49 Wn. App. 609, 613, 744 P.2d 1101 (1987) (“An action which does not have an environmental impact substantially different from an earlier proposed action does not require either a new threshold determination or a new or supplemental draft or final environmental impact statement.”). The Staff Recommendation found that granting the CUP would not involve changes that would be likely to have significant, adverse environmental impacts not previously analyzed in the DEIS and FEIS. *SR* § VII at 6. Public testimony provided no evidence regarding new impacts that were not studied in the EIS nor any impacts that were more significant than those disclosed in the EIS. No new EIS is required for the Project. *SEAPC*, 49 Wn. App. at 613 (holding it is not necessary to prepare a new EIS where a subsequent proposal impacted the environment less than the original application).

