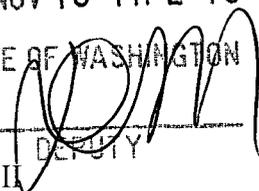


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STATE OF WASHINGTON

BY 
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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SHAWN C. McROBERTS and SARAH J. McALISTER, husband and
wife; and FRIENDS OF THE HISTORIC WEYERHAEUSER
MANSION, a Washington nonprofit corporation,

Respondents,

v.

CITY OF TACOMA, a Washington municipal corporation;
NORTHWEST BAPTIST SEMINARY, a Washington nonprofit
corporation; CORBAN UNIVERSITY, an Oregon nonprofit corporation;
and BLUE RIBBON COOKING, LLC, a Washington corporation,

Appellants.

BRIEF OF APPELLANTS
NORTHWEST BAPTIST SEMINARY
AND CORBAN UNIVERSITY

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I. INTRODUCTION

Tacoma's Municipal Code expressly recognizes the importance of preserving historic properties. To encourage their preservation and adaptive re-use, the Code conditionally allows a variety of uses that would not otherwise be permitted. The allowed uses are all income-generating, recognizing the financial obligations in maintaining historic properties.

The Weyerhaeuser Estate on North Stevens in Tacoma has not served a primary residential use since 1942. It has been used for a variety of religious and educational uses in the past 75 years. After nearly 40 years of operating a seminary at the Weyerhaeuser Estate, Northwest Baptist Seminary dba Corban University ("Northwest Baptist") filed an application for a conditional use permit that would enable it to use the property for one of the permitted uses—assembly—to allow the property to be used as a wedding venue. After a lengthy review process, the City of Tacoma Hearing Examiner approved the proposal subject to numerous conditions. This appeal under the Land Use Petition Act followed. The Superior Court reversed the Hearing Examiner's decision, and this appeal followed.¹

¹ Because this is an appeal under the Land Use Petition Act and Appellants Northwest Baptist Seminary and Corban University were not the appealing parties before the Superior Court, they are required to file a response brief before this Court pursuant to General Order 2010-1 of Division II.

II. COUNTER STATEMENT OF THE CASE

A. History of Weyerhaeuser Mansion and Estate.

The Weyerhaeuser Mansion and its surrounding estate, also known as “Haddaway Hall,” together constitute a landmark property in North Tacoma. The Mansion was built by John P. and Anna Weyerhaeuser in approximately 1923, on a bluff overlooking the Puget Sound. The well-preserved four-story Jacobethan Revival residence consists of 32 rooms, 11 bedrooms, and 9 bathrooms, with exquisite original finishing details throughout.² The property includes several accessory structures, including the Carriage House, Greenhouse, Education Building, and Chapel. It also features a Rose Garden and beautiful landscaping, some of which is part of the Olmsted Brother’s original plan for the estate.³

The Mansion was used as a personal residence until around 1942. At that time, it was purchased by the Sisters of St. Dominic and converted for use as a novitiate and school for nuns.⁴ It was never again used as a family residence. The Sisters added both the Chapel and the Education Building to the property. The University of Puget Sound then leased the property from 1969-1975 for educational purposes, after which Northwest Baptist Seminary (“Northwest Baptist”) purchased the property and began

² See Exhibit A to Brief, Findings of Fact, Conclusions of Law, and Decision of the Hearing Examiner (“Decision”), Finding of Fact (“FOF”) No. 1.

³ Administrative Record (“AR”), p. 1392.

⁴ Ex. A, FOF No. 1.

using it as a seminary.⁵ “Haddaway Hall” is listed on both the National Register of Historic Places and the Tacoma Register of Historic Places, a status the City of Tacoma (“City”) applies to the entire property.⁶

B. Use of the Weyerhaeuser Estate for Weddings.

During the years that Northwest Baptist operated a seminary on the property, events “were occasionally held at the school involving a larger crowd, such as graduations, Christmas, youth group events, or church gatherings.”⁷ Weddings were also held on the property, particularly after Northwest Baptist began actively marketing the property as a wedding venue in 2005.⁸ There is no history of neighbor complaints arising from these weddings and events, some of which drew 100 people or more to the property at a time.⁹ Northwest Baptist began renting the property more frequently for weddings following its 2010 affiliation with Corban University, eventually entering into an agreement with Blue Ribbon Cooking LLC (“Blue Ribbon”) for management of wedding rentals at the property in early 2012. Dancing was allowed at weddings starting in 2009,

⁵ *Id.*

⁶ Ex. A, FOF No. 5.

⁷ Ex. A, FOF No. 5.

⁸ Brubaker Testimony, Verbatim Report of Proceedings (“RP”), Vol. II, p. 210.

⁹ Ex. A, FOF No. 7; Brubaker Testimony, *supra*, RP Vol. II, p. 209.

and alcohol was allowed starting in or around 2012.¹⁰ The Hearing Examiner described the ensuing changes as follows:

After Northwest Baptist started renting the facility more frequently for weddings catered by Blue Ribbon, the Mansion proved to be a popular wedding venue. During the May through September peak wedding season, the Mansion was often used for weddings on two or three days during a weekend. As is typical in the wedding industry, contracts for weddings at the Mansion were entered into 12 to 18 months in advance of the event. Volkman Testimony. During the 2012 wedding season, the property was very busy with weddings. Most of the weddings include amplified music for the ceremony although some have live musicians. Most of the ceremonies are outside in the Rose Garden area. Originally, dancing was re-located to the patio and terrace, rather than the garden. The weddings normally include beer, wine, and champagne service. Blue Ribbon does not serve hard alcohol at the Mansion. The weddings involve the type of amplified speeches and toasts common to such occasions. Toward the end of the reception, a send-off is common, which can involve cheering, screaming, horn honking, and car noise. Volkman Testimony.¹¹

Notably, Northwest Baptist obtained prior written confirmation from the City that weddings were a permissible accessory use to the property's primary use as a seminary.¹² The Examiner expressly found that Northwest Baptist would not have proceeded to contract with Blue Ribbon without the City's statement that weddings were a legal use.¹³

¹⁰ Ex. A, FOF No. 8.

¹¹ Ex. A, FOF No. 10.

¹² Ex. A, FOF No. 9; see AR, p. 630 (email from Senior Planner Dustin Lawrence to Kevin Brubaker, dated March 23, 2012, stating facility may proceed with event rentals).

¹³ Ex. A, FOF No. 9.

Weddings were typically limited to Friday, Saturday, and Sunday, with only a handful of weddings conducted on other days of the week.¹⁴ As the frequency of weddings increased, the neighbors noticed more impact from the events, particularly during the busy summer months.¹⁵ Their concerns fell generally into three categories: (1) noise impacts; (2) parking pressure on neighborhood streets; and (3) security. The Hearing Examiner heard testimony from numerous neighbors and summarized these alleged impacts in her findings. For example:

- “One impact was the sheer number of major events occurring at the Mansion on the weekends during the summer months. Neighbors were likely to be outdoors in the summer... [and many residents] opened their windows for cool air during the summer.... Noise coming from activities during the weddings diminished the neighbors’ enjoyment of their homes and yards.”¹⁶
- “Neighbors were bothered by relatively short bursts of loud noise, such as clapping and cheering,... and by the lesser, but

¹⁴ RP Vol. II, p. 304.

¹⁵ Ex. A, FOF No. 7.

¹⁶ Ex. A, FOF No. 11.

more continuous, noise from conversation, dancing, amplified music with heavy bass, and speeches and toasts....”¹⁷

- “Many of the weekend weddings continued late into the evening, which interfered with the sleep habits of some children and other residents in the neighborhood.”¹⁸
- “While the streets in the area are public streets with no posted parking restrictions, some of the roadways are difficult to navigate when cars are parked on both sides.... At this time, the Mansion property contains 24 parking spaces. R1-4. This is not sufficient parking to accommodate the typical 100 to 150 guests attending a wedding.”¹⁹
- “[N]eighbors are troubled by the noise that occurs in the area when guests return to their cars at the end of a wedding reception.”²⁰

The Examiner found that Blue Ribbon and Northwest Baptist took a number of steps to try to address the neighbors’ concerns. Blue Ribbon, however, was bound by wedding contracts that in many cases were executed a year or more in advance. That meant contract terms (such as

¹⁷ Ex. A, FOF No. 11.

¹⁸ Ex. A, FOF No. 12.

¹⁹ Ex. A, FOF No. 13.

²⁰ Ex. A, FOF No. 14.

hours, the use of amplification of music, etc.) had been agreed to before many of the neighbors' concerns began to surface in 2012 and 2013.²¹ Blue Ribbon worked to alleviate as many of the neighbors' concerns as possible without cancelling weddings already booked.²² Its owners took action to mitigate wedding impacts. Among other things, they:

- Posted “No Event Parking” signs in areas most heavily impacted by guest parking, which neighbors found helpful until the City required their removal.²³
- Imposed earlier event times on new contracts and prohibiting outdoor sendoffs after 10:00 p.m.²⁴
- Hired campus security and eventually professional security to patrol the property.²⁵
- Provided contact information to neighbors to call with any concerns or complaints.²⁶
- Installed sound muffling curtains and automated closing system on front door of the Mansion.²⁷

²¹ RP Vol. II, pp. 278, 287.

²² *Id.* at pp. 293-96.

²³ *Id.* at pp. 287-88.

²⁴ *Id.*, at p. 290.

²⁵ *Id.* at pp. 266, 291.

²⁶ RP Vol. II, p. 267.

²⁷ *Id.*

- Contacted pre-booked wedding parties multiple times to attempt to renegotiate terms including end times, ceremony location, guest count and dining location, and paying substantial refunds to parties who agreed to new more restrictive contract terms.²⁸
- Moved some weddings to a different venue, where agreement could be reached with the parties.²⁹
- Provided shuttle service and required guests to park off-site.³⁰

Blue Ribbon also maintained a strict policy of limiting alcohol service to wine, beer, or champagne—no hard liquor—at all weddings at the property, and ended alcohol service 30 minutes prior to the end of the event.³¹ It was often necessary for Blue Ribbon to give refunds in exchange for agreements to change contract terms. Vanessa Volkman, a Director and co-owner of Blue Ribbon, estimated the costs of these modifications to be at least \$100,000.³²

In July, 2013, the City requested that Northwest Baptist and Blue Ribbon obtain a conditional use permit (“CUP”) to allow further weddings

²⁸ *Id.* at pp. 293-94.

²⁹ *Id.* at pp. 293-94.

³⁰ *Id.* at p. 296.

³¹ RP Vol. 2, pp. 286, 301.

³² *Id.* at p. 294.

at the property.³³ In imposing this new requirement, the City recognized that a potentially lengthy process was required, but assured Northwest Baptist and Blue Ribbon that they could continue to honor pre-existing wedding contracts.³⁴ The Respondents complied, submitting a CUP application in October, 2013. The City Director of Planning and Development Services issued the CUP on June 13, 2014, and it was ultimately upheld in the Hearing Examiner's Order on Reconsideration issued March 12, 2015.

C. City of Tacoma Land Use Process.

The Hearing Examiner's decision under review followed an extensive permit review and decision process that included numerous opportunities for public comment. After Northwest Baptist submitted a CUP application in October, 2013, the City held a public meeting attended by 79 people, at which numerous neighbors voiced both support and concern regarding the proposal.³⁵ The City also received numerous written public comments on the proposal, which were summarized in the original decision.³⁶ After a lengthy review and additional public comment, the City's Director of Planning and Development Services issued the written

³³ RP Vol. II, at p. 11; see Ex. NB-33 (AR, p. 3104) (email dated 7/23/2013 from Jana Magoon to Blue Ribbon and Northwest Baptist representatives).

³⁴ Ex. NB-33 (AR, p. 3104).

³⁵ Ex. R-1, at p. 7 (AR, p. 532).

³⁶ Ex. R-1, at p. 8-9 (AR, p. 533-34).

original CUP on June 13, 2014 with a number of conditions.³⁷ The Respondents, Friends of Historic Weyerhaeuser Mansion (“Friends”) and Sarah McAlister and Shawn McRoberts (jointly, “McRoberts”), filed requests for reconsideration of the City’s permit decision. After another lengthy review (three months), the Director denied the requests but did modify Conditions 7 and 15³⁸ in response to Respondents’ requests. Respondents and Appellants both appealed aspects of the CUP.

The appeal hearing before the Hearing Examiner spanned four days over a period of two weeks. The Hearing Examiner heard testimony from 17 witnesses, including six neighborhood representatives, Respondent Shawn McRoberts, two noise experts, and the City’s traffic, planning and historic preservation experts. Every party was given the opportunity to cross-examine each witness. The Hearing Examiner ultimately upheld the City’s approval of the CUP in a 47-page decision issued February 4, 2015 that includes detailed findings of fact summarizing the testimony of the numerous witnesses, along with additional conditions. Both Respondents again moved for reconsideration, which the Hearing Examiner granted in part by modifying Condition 14,³⁹ otherwise, the Examiner upheld her original decision.

³⁷ Ex. R-1, CUP Report and Decision dated June 30, 2014 (AR, p. 526-44).

³⁸ Regarding hours of alcohol service and noise wall, respectively.

³⁹ Condition 14 discusses security during events.

As explained in further detail below, the Hearing Examiner's thorough and well-supported decision must be given substantial deference under the Land Use Petition Act ("LUPA"), Chapter 36.70C RCW. For that reason and because the Examiner's decision demonstrates her careful analysis, we quote from it extensively and attach it to this brief as Exhibit A.⁴⁰

III. ARGUMENT

A. Standard of Review.

Respondents correctly set forth the standards of review to be applied to the Examiner's decision, under RCW 36.70C.130(1). Respondents, however, make only a passing reference to the highly deferential nature of review under LUPA.⁴¹

Under RCW 36.70C.130(1), there are limited bases on which a court may reverse a land use decision:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

⁴⁰ A copy of the Hearing Examiner's Order on Reconsideration dated March 12, 2015 is attached as Exhibit B.

⁴¹ Notably, in reaching its decision the trial court failed to give any deference to the Hearing Examiner as required under LUPA. The trial court instead weighed the evidence anew, without the benefit of hearing any testimony firsthand, and reached its own conclusion that the Examiner's decision was a "bridge too far." *See* Decision of the Court dated May 2, 2016, at p. 20 (CP at p. 5153). The Respondents are asking this Court to do the same thing and substitute its judgment for the Hearing Examiner, in contravention of LUPA.

- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts;
- (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
- (f) The land use decision violates the constitutional rights of the party seeking relief.⁴²

In a LUPA appeal, this Court stands in the shoes of the superior court and limits its review to the Hearing Examiner's record.⁴³

Respondents challenge both the Examiner's factual and legal findings. Review of factual findings is particularly deferential. Factual determinations must be sustained unless they are not supported by evidence that is substantial when viewed in the light of the whole record.⁴⁴ Stated in a different way, findings must be sustained so long as supported by evidence of a sufficient quantity to persuade a fair minded person of

⁴² RCW 36.70C.130(1).

⁴³ *Stanzel v. City of Puyallup*, 150 Wh. App. 835, 841, 209 P.3d 534, 536 (2009), review denied 168 Wash.2d 1018, 227 P.3d 852 (2010) (internal citations omitted).

⁴⁴ RCW 36.70C.130(1)(c).

the truth or correctness of the finding.⁴⁵ The substantial evidence test requires the Court

“to view the evidence and the reasonable inferences therefrom in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority, a process that necessarily entails acceptance of the fact finder’s views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences.”⁴⁶

Applied to the case at hand, the Court must view the evidence in a light most favorable to Northwest Baptist and the City, as the parties that prevailed before the Hearing Examiner.⁴⁷

With regard to Respondents’ challenges to the Hearing Examiner’s interpretation of the law, LUPA directs courts to give deference to the Examiner’s legal interpretations, since the Examiner is the appointed local expert on issues involving land use regulations.⁴⁸ LUPA only authorizes the Court to grant relief from the underlying decision if “[t]he land use decision is an erroneous interpretation of the law, after allowing for such deference as is due to construction of law by a local jurisdiction with

⁴⁵ *Benchmark Land Co., v. City of Battle Ground*, 146 Wn.2d 685, 694 (2002).

⁴⁶ *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, *review denied*, 120 Wn.2d 1008 (1992); *see also Dep’t of Corrections v. City of Kennewick*, 86 Wn. App. 521, 529 (1997).

⁴⁷ The fact that there may be some evidence in the record that supports Friends’ or McRoberts’ arguments is irrelevant. Under LUPA, the applicable standard of review is whether the Hearing Examiner’s findings were supported by substantial evidence, not whether there is evidence to support a different conclusion.

⁴⁸ Decisions regarding conditional use permits are land use decisions under LUPA. RCW 36.70C.020(2).

expertise,” or if “the land use decision is a clearly erroneous application of the laws to the facts.”⁴⁹ The statutory standard of review is supported by the common law: “It is axiomatic that courts give considerable deference to the construction of ordinances by those officials charged with their enforcement.”⁵⁰ The rationale for deference is the special expertise of local administrators:

The primary foundation and rationale for this rule is that considerable judicial deference should be accorded to the special expertise of administrative agencies. Such expertise is often a valuable aid in interpreting and applying an ambiguous statute in harmony with the policies and goals the legislature sought to achieve by enactment. At times, administrative interpretation of a statute may approach “lawmaking,” but we have heretofore recognized that it is an appropriate function for administrative agencies to “fill the gaps” via statutory construction -- as long as the agency does not purport to “amend” the statute.⁵¹

The decision at issue in this case involved the special expertise not only of the Hearing Examiner but also of the City land use planning manager, historical preservation expert, traffic engineer and Director of Planning and Development Services, all of whom contributed to drafting the CUP. Several also gave testimony as to their conclusions at the Examiner’s Hearing. The

⁴⁹ RCW 36.70C.130(1)(b),(d) (emphasis added).

⁵⁰ *Friends of the Law v. King County*, 63 Wn. App. 650, 654 (1991); see also *Hama Hama v. Shoreline Hearings Board*, 85 Wn.2d 441, 448 (1975).

⁵¹ *Hama Hama*, 85 Wn.2d at 448.

Hearing Examiner's decision upholding the CUP should be given an extra measure of deference, given the extensive role of the City's subject matter experts in the permitting process at multiple stages.

B. The conditional use permit must be granted if the proposed use satisfies the City's requirements.

Under Tacoma Municipal Code ("TMC") Section 13.06.640.F, a CUP that allows the re-use of an historic property is to be granted if the following criteria are met:

1. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plans, and applicable ordinances of the City of Tacoma.
2. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a CUP:
 - a. The generation of noise, noxious or offensive emissions, light glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.

- b. Availability of public services which may be necessary or desirable for support of the use. ...
 - c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.
3. The proposed re-use shall promote the preservation and/or restoration of the designated historic structure(s) on the site.
 4. The proposed reuse and design of any modifications to the historic structure(s) and site shall be approved by the Landmarks Preservation Commission. ...⁵²

Before discussing how the Examiner’s decision is consistent with these criteria and the substantial evidence that supports that decision, a brief discussion of CUPs is warranted.

1. A conditional use permit is a permitted use.

Several terms describe a use expressly provided for by a zoning ordinance: a special use, a conditional use or a special exception. These terms are used interchangeably and each “authorizes a use which is permitted by zoning regulations, subject to approval by the administrative

⁵² TMC 13.06.640.F.

body charged with issuing such permits.”⁵³ These permits allow a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations.⁵⁴

A conditional use is distinguishable from a variance. A variance “authorizes a use that would otherwise be prohibited in the zoning district.”⁵⁵ In contrast, a CUP or special use permit involves a use that is provisionally allowed under the zoning regulations, subject to administrative review and approval.⁵⁶

A conditional use is also different from a rezone. A rezone “contemplates the amendment of an existing zoning ordinance which changes the zoning classification of a previously zoned area.”⁵⁷ Conversely, a conditional use or special permit “contemplates an exception granted pursuant to a previously existing zoning ordinance,” subject to the standards required by the ordinance.⁵⁸

⁵³ *Lund v. Tumwater*, 2 Wn. App. 750, 754, 472 P.2d 550, rev. denied, 78 Wn.2d 995 (1970) (emphasis added).

⁵⁴ Salkin, 2 Am. Law. Zoning § 14:1 (5th ed. 2008).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Durocher v. King County*, 80 Wn.2d 139, 154, 492 P.2d 547 (1972).

⁵⁸ *Id.* (emphasis added).

2. Washington law requires that a conditional use permit be issued if the requirements for such a permit are satisfied.

The inclusion of specific uses in an ordinance “reflects a legislative finding that the listed conditional uses advance the ‘public convenience and necessity.’”⁵⁹ Therefore, no specific finding of need is necessary in order to issue a CUP for a use specified in the applicable ordinance.⁶⁰ The fact that the project “will alter the surrounding area” is not sufficient to justify the denial of a CUP.⁶¹ “The law does not require that all adverse impacts be eliminated; if it did, no change in land use would ever be possible.”⁶² Furthermore, “strict adherence to the comprehensive plan is not required; the plan is a blueprint or guide to adoption and application of zoning regulations.”⁶³

A municipal authority’s issuance of a CUP is an administrative act.⁶⁴ The issuing authority must grant a CUP if the applicant has satisfied the standards of the ordinance.⁶⁵ Once the applicant has demonstrated

⁵⁹ *Pease Hill v. County of Spokane*, 62 Wn. App. 800, 807, 816 P.2d 37 (1991); *see also* *McNaughton v. Boeing*, 68 Wn.2d 659, 664, 414 P.2d 778 (1966).

⁶⁰ *Id.*

⁶¹ *Pease Hill*, 62 Wn. App. at 808.

⁶² *Id.*

⁶³ *Id.* (citing *Barrie v. Kitsap Cy.*, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980)).

⁶⁴ *See, e.g., Durocher*, 80 Wn.2d at 153 [unclassified use permit]; *State ex rel Standard Min. v. Auburn*, 82 Wn.2d 321, 327, 510 P.2d 647 (1973) [special use permit]; *Lund v. Tumwater*, 2 Wn. App. at 755 (1970) [special use permit].

⁶⁵ *State ex rel Ogden v. City of Bellevue*, 45 Wn.2d 492, 495, 275 P.2d 899 (1954); *Pease Hill*, 62 Wn. App. at 807-09.

compliance, “a presumption arises that [the proposed use] is consistent with the health, safety and general welfare of the community.”⁶⁶

Importantly, general community displeasure is irrelevant to zoning decisions.⁶⁷ Rather, residents must have a substantial and well-founded basis for their fears, not one based on popular prejudices or stereotypes.⁶⁸ Courts have been particularly sensitive to denial of permits based on disharmony with surrounding properties, because such a determination is subjective with a potential for abuse:

[T]he courts will typically defer to special permit approvals under the criteria of harmony with the neighborhood as long as the decision is based on substantial evidence that the proposed use will not adversely affect surrounding properties, even if other evidence in the record tends to show that the proposed use would not be in harmony with the neighborhood.⁶⁹

As discussed in more detail below, Northwest Baptist’s proposed use is consistent with the City’s zoning regulations for the re-use of a historic property. The implementation of reasonable conditions will ensure that potential impacts associated with weddings are mitigated to acceptable levels.

⁶⁶ *Manor Healthcare v. Zoning Hearing Bd.*, 590 A.2d 65, 70 (Pa. Cmwlth. 1991).

⁶⁷ *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 894, 801 P. 2d 985 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn. App. 295, 303, 680 P. 2d 439, *review denied*, 101 Wn. 2d 1021 (1984).

⁶⁸ *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn. 2d 782, 903 P. 2d 986 (1995); *Washington State Dept. of Corrections v. City of Kennewick*, 86 Wn. App. 51, 532, 937 P. 2d 1119 (1997).

⁶⁹ Salkin, 2 Am. Law. Zoning § 14:10 (5th ed. 2008) (internal citations omitted).

C. The proposal meets the requirements for issuance of a conditional use permit, and the Hearing Examiner’s decision is supported by substantial evidence.⁷⁰

1. The proposal is consistent with the overarching policies of the Comprehensive Plan.

There are numerous provisions within the City’s Comprehensive Plan that support the proposed re-use of the Weyerhaeuser Mansion for a wedding venue. The municipal code governing Residential Districts specifically provides that “[f]or historic structures and sites, certain uses that are otherwise prohibited may be allowed, subject to the approval of a conditional use permit.”⁷¹ The code thereby provides a means by which limited commercial uses may be allowed and deemed compatible with the zoning restrictions for the area.

Moreover, the Comprehensive Plan also allows for flexibility in the use of “special properties” like the Weyerhaeuser Mansion:

[D]evelopment with uses other than single-family detached housing may be considered, provided that the proposed development is properly located, designed, scaled, and developed to be compatible with the surrounding area.⁷²

⁷⁰ There is a great deal of overlap between the arguments raised by Friends and McRoberts. For clarity, Northwest Baptist has adopted the same general order of arguments as in Friends’ brief, with the issues unique to McRoberts addressed last.

⁷¹ TMC 13.06.100.C.4 (n. 1). Allowed uses for historic structures and sites under TMC 13.06.640.F.5 include assembly facility, continuing care retirement community, extended care facility, offices offering professional services (medical, legal, etc.), retirement home, and retail use incidental to another listed use, among other uses.

⁷² LU-RDLISFD-8. LU-RDLISFD is an abbreviation for “Land Use – Residential Development Low Intensity Single-family Detached Housing Areas.” See Comprehensive Plan Generalized Land Use Element, as amended 6/14/11, at LU-3

Quasi-public facilities are specifically permitted in single-family residential areas, so long as they are “designed and scaled to be compatible with the existing character, properly located and adverse effects are minimized.”⁷³ As the Hearing Examiner concluded:

The Comprehensive Plan also contains an entire chapter addressing historic preservation plans for the City highlighting the role that zoning code provisions can play in preserving historic structures.⁷⁴

Goals of the City’s Historic Preservation Plan include encouraging new use of historic resources by promoting adaptive re-use of historic properties;⁷⁵ providing incentives to protect historic resources from “neglect or adverse economic conditions”;⁷⁶ and ensuring continued maintenance of historic buildings.⁷⁷

The Hearing Examiner carefully considered the meaning of TMC 13.06.640.F.1, which requires that the proposed use be consistent with the goals and policies of the Comprehensive Plan. The Examiner concluded that “the reference to compliance with the Comprehensive Plan in TMC

(available at <http://cms.cityoftacoma.org/Planning/Comprehensive%20Plan/3%20-%20Generalized%20Land%20Use%207-22-14.pdf>). Note that the City adopted a new Comprehensive Plan effective December 1, 2015. This appeal is governed by the Comprehensive Plan in effect at the time of application.

⁷³ LU-RDLISFD-5.

⁷⁴ Ex. A, COL No. 8 (citing to City of Tacoma’s Historic Preservation Plan).

⁷⁵ Policy HP-6; Action HP-6A. Excerpts of the City’s Historic Preservation Plan are attached as Exhibit C.

⁷⁶ Policy HP-23. *See* Ex. C.

⁷⁷ Policy HP-24. *See* Ex. C.

13.06.640.F.1 requires substantive consideration of the Comprehensive Plan.”⁷⁸ Further,

[t]estimony from the City of Tacoma staff charged with the responsibility to apply the zoning code and the Comprehensive Plan indicated that the Comprehensive Plan has such broad coverage that it is common for a project to involve different policies from different sections that may appear somewhat inconsistent. The City did not consider the proposed assembly use by Northwest Baptist as in conflict with the Comprehensive Plan provisions when viewed as a whole. As indicated above, the Comprehensive Plan provisions acknowledge the need to look at policies in relationship to other policies when evaluating a given project. This direction is consistent with long-standing doctrines of statutory construction.⁷⁹

Noting that “deference to an agency’s interpretation of its own regulations is appropriate,” the Examiner concluded that the terms of the Comprehensive Plan were “not in irreconcilable conflict with the TMC.”⁸⁰

The Examiner observed that in the *Weyerhaeuser v. Pierce County* case, which is heavily relied upon by Respondents, the Court held that a large regional landfill was “consistent” with the Comprehensive Plan’s Rural-Residential land use designation even though it did not qualify as a “residential use.”⁸¹ The *Weyerhaeuser* Court clarified:

The Pierce County Comprehensive Land Use Plan... is concerned with broad categories and is conceptual in

⁷⁸ Ex. A, Conclusion of Law (“COL”) No. 6.

⁷⁹ Decision, COL No. 9. (Emphasis added)

⁸⁰ Ex. A, COL No. 11.

⁸¹ Ex. A, COL at No. 11 (citing *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43 (1994)).

nature. The recommendations for the rural-residential designation identified in the staff report emphasize reserving space for later development and providing rural living space. We agree that a landfill is not a residential use, but the extremely broad nature of the comprehensive plan, the broad purposes of the “rural-residential” designation, and the notion that landfills must be sited somewhere lead us to the conclusion that a landfill at the 304th and Meridian site is not so incompatible with the rural-residential designation as to be proscribed by the comprehensive plan. “‘[A] comprehensive plan is no more than a general policy guide....’”⁸²

Similarly, the City’s Comprehensive Plan contains numerous provisions that may be “somewhat inconsistent” in their application.⁸³ The proposed assembly use in this case is consistent with the provisions of the Comprehensive Plan allowing alternative uses of historic structures, and generally consistent with the goals of the Comprehensive Plan as a whole.

Respondents argue that the proposal’s alleged inconsistency with the general prohibition on “[encroachment] by commercial or other incompatible nonresidential uses” in North End Neighborhood Policy Intent Section NE-1 precludes approval of the CUP. They contend that this single statement of intent in the Comprehensive Plan takes precedence over all other provisions in the Plan and the zoning code and precludes *any* “commercial” use in the North End area. Respondents have argued that anything involving the exchange of money should be considered

⁸² *Id.* at 43-44 (internal citations omitted) (emphasis added).

⁸³ Ex. A, COL No. 9.

“commercial.” Under that standard, even renting a single-family home would be a prohibited commercial activity. Notably, this policy goal is not unique to the North End; similar provisions appear in other neighborhood policies, including portions of Central and South Tacoma.⁸⁴ Such a broad-sweeping and strict interpretation of the Plan would have absurd results.

Respondents’ argument would also effectively bar any adaptive reuse of a historic structure or site in these neighborhoods, since virtually all other uses allowed under TMC 13.06.640.F have at least some “commercial” component.⁸⁵ For example, TMC 13.06.640.F includes such uses as offices, intermediate care, retirement, and extended care facilities (e.g., assisted living and senior housing), lodging (e.g., bed and breakfast), and retail as a use incidental to any of the listed uses.⁸⁶ It also allows for “assembly uses,” defined to include, among other things, facilities primarily for “social gatherings (including incidental recreation)”; social clubs (e.g., Veterans Hall or Elks Club) and youth centers (e.g., Boys and Girls Club).⁸⁷ Virtually all of the uses involve some income generation. That is a necessary element because the income allows preservation.

⁸⁴ See, e.g., C-1.2 Franklin Park Residential; ST-1.4 Oakland-Madrona Housing Preservation.

⁸⁵ See n. 71, *supra*.

⁸⁶ Notably, a religious assembly use is allowed by CUP in all residential zones, R-2 included, regardless of whether the property has historic significance. See TMC 13.06.100.C.4.

⁸⁷ RP Vol. II, p. 92; TMC 13.06.700.

As City Planning Manager Jana Magoon testified, there is a distinction between the assembly use contemplated here and the more strictly commercial uses permitted elsewhere in the code.⁸⁸ The City considers the commercial use that is prohibited in residential districts to be retail-oriented, while uses allowed on historic properties in the residential zones under a CUP are “distinctly... different from... a commercial use.”⁸⁹ The Weyerhaeuser Mansion is and will remain a private facility, not a retail enterprise that is open to the public. If the only criterion for “commercial” use was the exchange of money, as Respondents contend, then virtually all of these other allowed uses would also be precluded.

Finally, it bears noting that the Comprehensive Plan is a large document consisting of over two dozen separate elements, subarea plans, and design guidelines. Give the size and scope of the Plan, Ms. Magoon testified that it is not unusual to find conflicting policies within the Plan or between the Plan and the code.⁹⁰ Part of the City’s task is balancing these different and sometimes competing policy goals, and conditioning the proposal to ensure it is compatible with the overarching policies of the Plan.⁹¹

⁸⁸ RP Vol. II, p. 92.

⁸⁹ RP Vol. II, p. 21.

⁹⁰ RP Vol. II, p. 21-22.

⁹¹ *Id.* at 23-24.

The Hearing Examiner balanced the numerous applicable provisions of the Comprehensive Plan and correctly concluded that the proposed use, if properly conditioned, would not be incompatible with the neighborhood. Past weddings that may not have been consistent with the goals of the Plan were booked under contracts that would not have been allowed under the CUP as now conditioned:

Part of the noise problem has been caused by Blue Ribbon honoring the terms of wedding contracts entered into a year or more in advance of the scheduled event rather than observing the City's directives. Blue Ribbon was not successful in modifying all of the existing contracts to incorporate the more restrictive rules the City was requiring after July 2013. As a result, it is difficult to use past experience at the site as a strong indicator of whether a wedding conducted in compliance with all the terms of the CUP would disrupt the neighborhood. The City reasons that a number of weddings have been held that did not result in neighbor complaints, thereby indicating that wedding uses could be consistent with neighborhood uses. This reasoning is supported by certain inspection trips to the site that did not identify noise problems or violations. Compatibility will be a function of limiting noise, activity, and parking impacts emanating from the Weyerhaeuser site. The terms of the CUP address these concerns.⁹²

The Examiner's conclusion was based on a thorough consideration of the neighbors' complaints and the applicable provisions of the municipal code and Comprehensive Plan. All future weddings and events will be booked under the terms of the CUP. Compliance with the carefully drafted

⁹² Ex. A, COL No. 15 (emphasis added).

conditions of the CUP will ensure that future operations succeed at maintaining harmony with the surrounding neighborhood, even where past operations may have failed. There was no error of law in the Hearing Examiner's approval of the CUP.

2. The Hearing Examiner did not err by deferring to the City's designation of the entire property as historic, not merely the Mansion.

Respondents contend that the Hearing Examiner erred by allowing the entire Weyerhaeuser Estate to be used in connection with the CUP, on the basis that not every feature of the property should be considered "historic." Respondents go so far as to assert that only the Mansion, Carriage House, and derelict Greenhouse may be used in connection with the permitted use—but not the gardens surrounding them or their accessory buildings. This argument overlooks the fact that the gardens are, in fact, specifically recognized as a historic feature of the Estate. Further, there is substantial evidence in the record that the historic designation was intended to apply to entire Estate, not merely one or two buildings on the property.

Reuben McKnight, the City's Historic Preservation Officer, testified as to the scope of Haddaway Hall's historic listing before the Hearing Examiner. As the official tasked with administering the City's Historic Preservation Program, Mr. McKnight oversees the Tacoma

Historic Register and designation process and has an advisory role in the City's permitting process involving historic properties.⁹³ Mr. McKnight testified that the Weyerhaeuser Mansion is an "individually listed property" on the Tacoma Registry of Historic Places.⁹⁴ As such, the City's goal is to "preserve the historic character of the site." Mr. McKnight also testified that the City administers the property as a whole, not based on which building is affected.⁹⁵ Thus, a proposed change to any part of the property, including the Education Building or the Chapel, requires review by Mr. McKnight and potentially by the Landmarks Preservation Commission.⁹⁶

As additional evidence that the listing applied to the entire property, the nomination form by which Haddaway Hall came to be listed on the City's Register of Historic Places specifically states that the "[a]creage of nominated property" is 4.7 acres.⁹⁷ This acreage necessarily includes multiple tax parcels owned by Northwest Baptist, which collectively comprised the original Mansion estate—not merely the parcel containing the Mansion. Further, the nomination form clearly states that the property is significant both for its connection to John P. Weyerhaeuser

⁹³ McKnight Testimony, RP Vol. I, at p. 76-77.

⁹⁴ *Id.* at 77.

⁹⁵ *Id.* at 79.

⁹⁶ *Id.* at 111.

⁹⁷ AR, p. 1395.

and “for the landscape design provided by the Olmsted Brothers,” of which the rose garden used in wedding ceremonies is a highlight.⁹⁸

Moreover, Respondents seem to overlook that the primary feature of the property—indeed, what makes it an attractive wedding venue—is the historic Mansion and its surrounding grounds. The Mansion is the centerpiece of the property. The Education building and Chapel are accessory structures to the Mansion, not the reverse. The CUP enables Northwest Baptist to make productive use of the Mansion with secondary use of its accessory structures. This is precisely the sort of adaptive reuse for which TMC 13.06.640.F is intended.

In granting the CUP, the City concluded that the provisions of TMC 13.06.640.F for an historic “structure and/or site” apply to the entire Weyerhaeuser Mansion site, not merely the Mansion building. The City’s interpretation of its own code and administration of its historic registry are entitled to considerable deference, and Mr. McKnight’s interpretation was supported by substantial evidence in the record. The Examiner’s Finding of Fact No. 5 and Conclusion of Law No. 36 are not erroneous.

⁹⁸ *Id.* at p. 1393.

3. Substantial evidence supports the Examiner’s decision to allow alcohol service with appropriate restrictions on hours.

Friends assert that alcohol service should be prohibited because alcohol consumption may contribute to some of the behaviors that have disrupted the neighborhood in the past. Notably, neither Friends nor McRoberts presented any testimony or evidence addressing alcohol service in their appeal before the Hearing Examiner.⁹⁹ Nonetheless, the Hearing Examiner acknowledged the potential impact of alcohol service in her findings: “Weddings are festive occasions with much conversation and the attendant noise. The service of alcohol and the common use of a DJ for dancing add to the festivities and the attendant noise.”¹⁰⁰

The Examiner found, however, that the conditions of the CUP are specifically designed to mitigate the impacts of any such festivities and noise “to effectively avoid disturbance of the neighbors.”¹⁰¹ The Examiner correctly observed that alcohol regulation is a function of the state, not the city, and that the state is equipped with specialized rules to control alcohol

⁹⁹ Ex. A, COL No. 22 (“No particular testimony or evidence was provided addressing this condition by any of the parties.”). McRoberts also did not appeal Conclusion of Law 37 or otherwise raise any issue about the service of alcohol in their LUPA Petition. *See* AR, pp. 4-27. Because McRoberts did not raise this issue before the trial court, they are foreclosed from raising it for the first time before this Court. RAP 2.5(a). The Court should disregard Section 4 of McRoberts’ argument, addressing Error No. 17/COL 37, on pages 48-50 of McRoberts’ Opening Brief.

¹⁰⁰ Ex. A, COL No. 18.

¹⁰¹ *Id.*

service at the Weyerhaeuser Mansion.¹⁰² The Director's decision to require alcohol service to end one hour before the end of the event was based on limitations that have been successfully imposed on a similar wedding venue.¹⁰³

Further, the CUP does not exempt Northwest Baptist from complying with the other provisions of state law and city code, including the noise code. Northwest Baptist is required to conduct its events in compliance with the CUP and *all* applicable laws. This provides additional assurance that allowing alcohol service at weddings will not make the events incompatible with the surrounding neighborhood. There is no basis for the Court to reverse this condition.

4. The CUP does not require the installation of more than 40 parking stalls, and the Examiner did not err by finding that the CUP was exempt from SEPA.

Friends contend that Northwest Baptist's proposal to add parking capacity to the subject property should have triggered review under the State Environmental Policy Act ("SEPA"), and that the Hearing Examiner erred in concluding that the proposal was exempt from SEPA review. However, the CUP does not require Northwest Baptist to install a minimum number of parking stalls. Rather, it limits the number of guests that may attend weddings at the Weyerhaeuser Mansion to those that can

¹⁰² Ex. A, COL No. 37.

¹⁰³ Ex. A, COL No. 22.

be accommodated with onsite parking, using a vehicle occupancy rate of three guests per vehicle. In the event more onsite parking is added, the CUP allows Northwest Baptist to increase event attendance by three guests for every parking space provided.¹⁰⁴

At present, there are 24 parking spaces on the property.¹⁰⁵ Reserving five spaces for wedding vendors leaves 19 spaces for guests, which accommodates a wedding no larger than 57 guests under the CUP.¹⁰⁶ Northwest Baptist provided the Examiner with an outline of proposed parking improvements that would provide an additional 31-33 spaces on the property.¹⁰⁷ It is undisputed that construction of less than 40 parking spaces is categorically exempt from SEPA review under TMC 13.12.310.E. Construction of additional parking would enable Northwest Baptist and Blue Ribbon to host larger weddings on the property; however, adding new parking is not a condition of the CUP. The CUP does not authorize the construction of new parking, nor exempt a parking proposal from compliance with SEPA and any other applicable law. Any parking proposal would still be subject to comprehensive design and environmental review in compliance with applicable regulations. The

¹⁰⁴ Ex. R-1, Condition Nos. 3, 4 (AR, p. 539).

¹⁰⁵ Ex. A, FOF No. 26; Goertzen Testimony, RP Vol. II, at p. 261-62.

¹⁰⁶ Kao Testimony, RP Vol. I, at p. 150-51.

¹⁰⁷ Ex. NB-30 (AR, p. 3099).

Hearing Examiner did not err in concluding that the CUP was exempt from SEPA.

5. The Hearing Examiner's decision allowing repair of the Greenhouse was supported by substantial evidence.

Friends challenge the Hearing Examiner's Conclusion of Law 20 allowing Northwest Baptist to explore repair options for the greenhouse as a possible alternative to complete restoration. Friends fail to meet their burden of establishing that this conclusion was clearly erroneous.

The Hearing Examiner heard testimony that it was the applicant's intent to repair the Greenhouse to make it more presentable.¹⁰⁸ The City's Historic Preservation Officer acknowledged that it would not be surprising for restoration costs to exceed \$100,000 or even \$200,000.¹⁰⁹ And yet the Greenhouse does not add to the value of the property for the proposed re-use.¹¹⁰ Costs of restoration or repair would be considered as part of the Plan of Action submitted to the Landmarks Preservation Board.¹¹¹

Taking this testimony into consideration, the Examiner reasonably concluded that Northwest Baptist should be allowed to at least explore the option of repairing the Greenhouse, in light of the significant cost difference between the two approaches.¹¹² Either repair or restoration of

¹⁰⁸ Brubaker Testimony, RP Vol. II, at p. 218.

¹⁰⁹ McKnight Testimony, RP Vol. I, at p. 89.

¹¹⁰ Volkman Testimony, RP Vol. II, at p. 308-09.

¹¹¹ McKnight Testimony, RP Vol. I, at p. 89.

¹¹² Ex. A, COL 20.

the Greenhouse, which is currently derelict,¹¹³ would help achieve the City's goal of adaptive re-use and revitalization of the historic property. In light of the evidence presented, the Examiner's decision on this point was not clearly erroneous.

6. The Hearing Examiner's condition requiring design of a noise wall to shield McRoberts' home is not clearly erroneous and is supported by substantial evidence.

McRoberts challenges the validity of several findings and conclusions involving the design and permitting of a noise wall intended to deflect sound from McRoberts' home. McRoberts does not meet his burden of establishing that the Hearing Examiner's conclusions on this point are clearly erroneous or that the Examiner's findings are not supported by substantial evidence.

The Hearing Examiner heard extensive testimony from noise experts retained by both parties in regard to the benefits of a noise wall designed to block sound between the Mansion and McRoberts' adjacent property to the south. The Examiner acknowledged that there were some drawbacks to this proposal, regardless of its location:

Evidence from the noise experts in the case established that to be effective a wall for noise attenuation must be near the source or near the receiver. McRoberts, understandably, does not wish to have an extremely high wall on his

¹¹³ McKnight Testimony, RP Vol. I, at p. 88 ("I would say that it is... derelict in the sense that it is not weather protected. The greenhouse... steel frame is... open to the weather. Most of the glass is missing.... and I believe there is quite a bit of vegetation growing on the site currently that was not intentional.").

property line shading his outdoor space. He proposes an alternative location near the Rose Garden, which would presumably be designed to minimize sound by being located near the source. Such a location may not be as effective as a wall along the property line in protecting his outdoor area from noise generated at other locations within the Mansion property. Northwest Baptist's expert concluded that a wall along the Mansion veranda would do very little to reduce noise reaching the McRoberts property. McRoberts' expert thought a wall at the veranda could have some benefit.¹¹⁴

Balancing these competing opinions, the Examiner declined to impose conditions on the wall design, choosing instead to leave the determination of the optimal noise barrier to the experts.

The Examiner conducted a second review of Condition 15 in response to McRoberts' Request for Reconsideration, but declined to further modify it:

Condition 15 was intentionally worded to allow some flexibility in the design of the sound reduction wall(s). Northwest Baptist and McRoberts each presented detailed testimony from noise experts. These professionals are in a much better position than the Hearing Examiner to evaluate design alternatives and develop a workable solution. The Hearing Examiner has no basis to impose detailed direction on the placement of any noise reduction installation. As to the concern over code compliance, the existing condition requires that permits be obtained for the construction work. Code compliance is evaluated as part of the permit process. McRoberts' concerns are adequately addressed by the existing language of Condition 15 and the request to modify it is properly denied.¹¹⁵

¹¹⁴ Ex. A, COL No. 29.

¹¹⁵ Ex. B, Order on Reconsideration, at p. 4 (emphasis added).

Under the modified Condition 15, Northwest Baptist is required to retain a noise expert to professionally design a noise wall that will screen the McRoberts/McAlister residence from sound emanating from the Mansion property. Further, Northwest Baptist must confer with the property owners and their noise expert(s) to determine the height and location of the wall(s). The wall(s) will also be subject to design approval by the City.¹¹⁶ Nothing in Condition 15 exempts the wall(s) from compliance with all applicable laws and regulations. If a variance is required, Northwest Baptist will be required to establish the criteria necessary for a variance and McRoberts will have an opportunity to comment on the proposal. Following construction of the noise wall, wedding events will still be subject to the City's noise and public nuisance ordinances. Northwest Baptist will be required to comply with the conditions of the CUP and keep noise levels below the threshold allowed under the code.¹¹⁷

Much of McRoberts' discussion of the noise wall centers on his general concern that noise from wedding events will constitute an actionable nuisance regardless of the wall design or the other conditions imposed on the assembly use. However, as the Hearing Examiner noted,

¹¹⁶ Ex. B, Modified Condition 15.

¹¹⁷ It should be noted that the applicable noise standard is not "plainly audible" for all noise emanating from the wedding events. Under TMC 8.122.100, noise *from commercial music* may not be "plainly audible" at a distance of 100 feet from the property line. Noise from sources other than commercial music (e.g. talking, laughter) is subject to the general provisions of TMC 8.122.060, which establishes maximum permissible sound levels in excess of the ambient level.

[a]pplication of common law nuisance decisions to the present situation is strained at best.... Past events that were not conducted in compliance with the CUP conditions do not establish that compliant wedding events will constitute a nuisance. To the contrary, the extensive conditions are being imposed to prevent just such a problem.¹¹⁸

The fact that McRoberts can identify evidence of negative impacts associated with past events is irrelevant to the Court's determination of whether the Hearing Examiner's findings are supported by substantial evidence or whether her conclusions are clearly erroneous.

Condition 15 is well-supported by extensive evidence in the record and does not authorize Northwest Baptist to construct anything that is not compliant with City code. There is no basis for the Court to overturn the Examiner's related findings and conclusions or the modified condition.

IV. CONCLUSION

The Examiner's decision is thorough, well-reasoned and supported by the substantial evidence. This court should reverse the Superior Court's ruling and affirm the City of Tacoma's approval of the conditional use permit allowing weddings at the Weyerhaeuser Mansion.

¹¹⁸ Ex. A, COL No. 40.

Dated this 17th day of November, 2016.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By 
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Amanda M. Nathan, WSBA No. 46469
Attorneys for Appellants Northwest
Baptist Seminary, Corban University
and Blue Ribbon Cooking, LLC

2016 NOV 18 PM 2: 14

CERTIFICATE OF SERVICE
STATE OF WASHINGTON

I, Lisa Blakeney, declare under the penalty of perjury of the laws of the State of Washington that on November 18, 2016, I caused this **Brief of Appellants Northwest Baptist Seminary and Corban University** to be served by personal delivery as follows:

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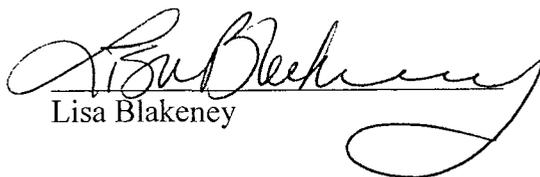

Lisa Blakeney

EXHIBIT A

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

**NORTHWEST BAPTIST SEMINARY
D/B/A CORBAN UNIVERSITY
AND BLUE RIBBON COOKING, LLC;
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION;
SHAWN MCROBERTS AND
SARAH MCALISTER,**

Appellants,

v.

**CITY OF TACOMA,
PLANNING AND DEVELOPMENT
SERVICES DEPARTMENT,**

Respondent.

FILE NOS.:

**HEX 2014-027 (CUP2013-40000211241);
HEX 2014-029 (CUP2013-40000211241);
HEX 2014-030 (CUP2013-40000211241);**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

THIS MATTER came on for hearing before PHYLLIS K. MACLEOD, Hearing Examiner for the City of Tacoma, on December 9, 10, 11, and 22, 2014. The City of Tacoma was represented by Deputy City Attorney Jeff Capell. Northwest Baptist Seminary, Corban University and Blue Ribbon Cooking, LLC (Northwest Baptist) were represented by Attorneys William T. Lynn and Amanda Nathan. Friends of the Historic Weyerhaeuser Mansion (Friends) was represented by Attorney Robert Casey. Shawn McRoberts and Sarah McAlister (McRoberts) were represented by Attorney Stephen Burnham. At the conclusion of the hearing on December 22, 2014, the record was held open for the limited purpose of the City providing a supplemental exhibit requested by the Hearing Examiner. The exhibit was filed on January 9, 2015, and the evidentiary record was then closed.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

ORIGINAL

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768

1 During the hearing, witnesses were placed under oath and testified. Exhibits were
2 admitted and reviewed and the parties made legal arguments.

3 Based upon the evidence submitted, the Hearing Examiner makes the following:

4 **FINDINGS OF FACT**

5 1. Northwest Baptist has owned the property at 4301 North Stevens Street since
6 1975. From the inception of their ownership until May of 2014, Northwest Baptist and Corban
7 University used the property primarily as a seminary for students studying for the ministry.
8 The property is commonly referred to as the Weyerhaeuser Mansion (Mansion), however, the
9 site contains several buildings in addition to the large residence known as Haddaway Hall that
10 was built by John P. and Anna Weyerhaeuser in approximately 1923. Haddaway Hall is a four-
11 story Jacobethan Revival style residence consisting of 32 rooms, 11 bedrooms, and 9
12 bathrooms, with exquisite finishing details throughout. The home has accessory structures
13 including a Greenhouse and Carriage House. The home was occupied as a personal residence
14 until 1942 when it was purchased by the Sisters of St. Dominic (Sisters) and converted for use
15 as a novitiate and school for nuns. The Sisters added the chapel building and an educational
16 building to the site during their tenure. The Sisters operated the novitiate until they leased the
17 property to the University of Puget Sound from 1969-1975. In 1975 Northwest Baptist
18 purchased the property from the Sisters of St. Dominic and began using it as a seminary. *Ex.*
19 *R1-d-11 through 20.* The seminary use continued until May 2014, when the college relocated.
20 *Brubaker Testimony.*

21 2. The main house, Haddaway Hall, is centrally located toward the northerly side of
22 the property. The site is comprised of several tax parcel numbers, but the individual parcels are

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 not separated physically or by type of use.¹ The structures on site include Haddaway Hall, a
2 chapel building, a greenhouse, a carriage house, and a two story education building. The
3 chapel, carriage house, and education building also include a total of four residential
4 apartments. The apartments have been occupied in the past, but are not currently in use.

5 *Brubaker Testimony; Goertzen Testimony.*

6 3. The property is located in an established residential neighborhood of beautiful
7 single-family homes, many with views of Commencement Bay, porches, decks and other
8 outdoor living spaces. The majority of the homes were constructed in the late 1800s or early
9 1900s, before adoption of the Tacoma Municipal Code (TMC). The subject property is
10 adjoined by a steeply sloping area to the east and by residential development to the north, south,
11 and west. The zoning in the area is "R-2" Single-Family Development District with a "VS"
12 View-Sensitive Overlay District. *Ex. RI-5.* The site is located within the Sherman subarea of
13 the North End Neighborhood. *Ex. RI-4.* Northwest Baptist Seminary is listed as a major
14 landmark in this subarea. *Magoon Testimony.*

15 4. The property fronts on North Stevens Street to the west and North 43rd Street to
16 the south. North Stevens Street is a Minor Arterial paved to a width of 22 feet. North 43rd
17 Street is a Residential Arterial. West of North Stevens Street, North 43rd Street is paved to a
18 width of 32 feet, and east of North Stevens Street, North 43rd Street is paved to a width of 24
19 feet. Other Residential Arterials in the area include: North Alki Street and North Mason Street
20 paved to a width of 16 feet; North 44th Street paved to a width of 32 feet; and North 45th Street
21 paved to a width of 32 feet. *Ex. RI-5.*

22 _____
¹ The complete set of parcel numbers for the property includes 450000-020-1, 450000-021-1, 970500-001-0,
556500-028-0, 556500-036-0, and 556500-037-0. *Ex. M-64.*

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1 5. The Weyerhaeuser Mansion was nominated for inclusion on the Tacoma Register
2 of Historic Places in May 1992. *Ex. NB-31*. The nomination form discusses both Haddaway
3 Hall and the grounds. The geographical data section of the application lists a size of 4.7 acres,
4 which includes the area encompassed by all the tax parcels associated with the property. *Id.*
5 Friends and McRoberts contend that Resolution No. 31784, which approved the historic
6 register listing, mentions only Haddaway Hall and that the historic property designation and
7 applicable land use regulations, based upon historic status, should apply to only the residence
8 and not the additional buildings on the site. *Ex. M-2, Ex. B*. The City's Historic Preservation
9 Officer Reuben McKnight testified that the entire property is considered part of the Tacoma
10 historic register listing. Based upon the evidence presented, the entire 4.7 acre site is properly
11 considered part of the historic register listing for the Mansion. The property is also included on
12 the National Register of Historic Places. *McKnight Testimony*.

13 6. For many years the Mansion property was used in a manner that had only minimal
14 impacts on the surrounding residents. When the Sisters ran a novitiate on the property, parking
15 on the nearby streets was not a significant problem and loud noise and revelry did not occur on
16 the site. Occasional weddings may have taken place at the Mansion during this time, but they
17 were rare events without amplified music, alcohol service, or a party atmosphere. *Billingsley*
18 *Testimony; Kray Testimony*.

19 7. When Northwest Baptist began using the property for educational purposes,
20 students from the school parked in the neighborhood, primarily during the day on weekdays, for
21 classes. Events were occasionally held at the school involving a larger crowd such as
22 graduations, Christmas, youth group events, or church gatherings. The property was sometimes

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1 rented to local churches for services on the weekend. Weddings were held on the grounds, but
2 only infrequently. *Brubaker Testimony*. The rules for weddings originally imposed by
3 Northwest Baptist prohibited the service of alcohol and did not permit dancing.
4 *Ex. F-23*. None of the neighbors who testified at the hearing were disturbed by the weddings
5 that occurred prior to 2012 under the original Northwest Baptist rules.

6 8. In 2010, Northwest Baptist merged with Corban University. Corban did not have
7 the same rules about alcohol usage as Northwest Baptist and the limits on weddings at the
8 Mansion were modified in or around 2012 to allow alcohol. Dancing was allowed beginning in
9 2009. *Brubaker Testimony*. Northwest Baptist began to more actively pursue wedding rentals
10 for the site beginning in 2012, when it entered into an agreement with Blue Ribbon Cooking,
11 LLC (Blue Ribbon) for the company to be the exclusive catering company for weddings at the
12 Mansion. Northwest Baptist started to rent the property for weddings because they needed
13 income to help defray the substantial cost of maintaining the property and to address items of
14 deferred maintenance. However, they did not have the staff necessary to handle management of
15 the wedding events. *Id.*

16 9. After entering into an agreement with Blue Ribbon for the company to manage
17 wedding rentals at the Mansion, Northwest Baptist contacted the City of Tacoma regarding
18 whether conducting weddings was an allowable use on the property. Senior Planner Dustin
19 Lawrence responded to Northwest Baptist's inquiry, stating:

20 I have concluded that this facility can proceed with the event rentals
21 because it is still operating as a seminary, the use in which it has
22 legal non-conforming rights. Renting the site out for weddings on a
temporary basis is considered accessory to the primary use and
allowed. Be sure that less than 50 percent of the entire site is used

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1 for weddings, as the code notes if more than 50 percent of the site is
2 used for a different use, it is not considered accessory anymore.

3 *Ex. NB-22, Ex. A. Kevin Brubaker, Vice President for Business with Corban University,*
4 *testified that they would not have continued with the Blue Ribbon contract to engage in*
5 *wedding rentals if the City had indicated that it was not a legal use. Brubaker Testimony.*

6 10. After Northwest Baptist started renting the facility more frequently for weddings
7 catered by Blue Ribbon, the Mansion proved to be a popular wedding venue. During the May
8 through September peak wedding season, the Mansion was often used for weddings on two or
9 three days during a weekend. As is typical in the wedding industry, contracts for weddings at
10 the Mansion were entered into 12 to 18 months in advance of the event. *Volkman Testimony.*
11 During the 2012 wedding season, the property was very busy with weddings. Most of the
12 weddings include amplified music for the ceremony although some have live musicians. Most
13 of the ceremonies are outside in the Rose Garden area. Originally, dancing was set up in the
14 garden area. In later months, after complaints from neighbors, dancing was re-located to the
15 patio and terrace, rather than the garden. The weddings normally include beer, wine, and
16 champagne service. Blue Ribbon does not serve hard alcohol at the Mansion. The weddings
17 involve the type of amplified speeches and toasts common to such occasions. Toward the end
18 of the reception, a send-off is common, which can involve cheering, screaming, horn honking,
19 and car noise. *Volkman Testimony.*

20 11. As the number of weddings increased over the 2012 wedding season, and the
21 nature of the festivities became more intense, the neighbors began to experience a variety of
22 impacts. One impact was the sheer number of major events occurring at the Mansion on the

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1 weekends during the summer months. Neighbors were likely to be outdoors in the summer
2 working on their property or relaxing in outdoor living spaces. Many of the residents in the
3 historic homes in the neighborhood opened their windows for cool air during the summer
4 evenings because air conditioning is not common in the houses located in the area. *Billingsley*
5 *Testimony; Mulhall Testimony*. Noise coming from activities during the weddings diminished
6 the neighbors' enjoyment of their homes and yards. *Kray Testimony; McRoberts Testimony;*
7 *Mulhall Testimony; Billingsley Testimony; R. Dempster Testimony*. Neighbors were bothered
8 by the relatively short bursts of loud noise, such as clapping and cheering, and noise from the
9 send-off as well as and by the lesser, but more continuous, noise from conversation, dancing,
10 amplified music with heavy bass, and speeches and toasts, which could last for several hours.
11 *Id.* The large number of events at the Mansion reduced the quieter times available for residents
12 of the neighborhood to entertain guests and enjoy the outdoor spaces on their properties during
13 the prime summer weekend hours. *Id.*

14 12. Many of the weekend weddings continued late into the evening, which interfered
15 with the sleep habits of some children and other residents in the neighborhood. *Mulhall*
16 *Testimony*. After nearby residents complained, Blue Ribbon attempted to re-negotiate contracts
17 for wedding events, but they were only partly successful in obtaining agreements to end
18 weddings earlier. *Volkman Testimony*. By 2014, the end time for events had been moved from
19 11:00 p.m. to 10:00 p.m., but evidence was presented that many weddings ran over that
20 deadline, with significant noise after 10:00 p.m. *Kray Testimony; Kao Testimony*.

21 13. The neighbors also emphasized the problem of wedding guests utilizing on-street
22 parking. While the streets in the area are public streets with no posted parking restrictions,

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1 some of the roadways are difficult to navigate when cars are parked on both sides. Evidence
2 was presented showing significant use of the nearby streets for parking in connection with
3 wedding events. *Garofalo Testimony; Ex. F-27*. At this time, the Mansion property contains
4 24 parking spaces. *RI-4*. This is not sufficient parking to accommodate the typical 100 to 150
5 guests attending a wedding. As a result, guests use nearby streets. Residents of the
6 neighborhood are troubled by the lack of parking available for their own guests and by the
7 possibility that emergency vehicles might be unable to access their homes when cars are parked
8 on both sides of certain streets. *Garofalo Testimony*.

9 14. Beyond the issue of parking per se, the neighbors are troubled by the noise that
10 occurs in the area when guests return to their cars at the end of a wedding reception. Residents
11 report loud talking between guests, rough language from people under the influence of alcohol,
12 noise from car security systems, and talking in clusters around vehicles well after the end of the
13 event. *Kray Testimony; Mulhall Testimony*. Others are concerned that guests have been
14 observed drinking alcohol at their vehicles before, during, and after the events.² On isolated
15 occasions, neighbors also report guests smoking marijuana near their vehicles, vomiting in
16 yards, and urinating on the sidewalk. *W. Dempster Testimony; Garofalo Testimony*. Neighbors
17 are concerned with raucous and/or illicit behavior occurring in front of their homes. *Mulhall*
18 *Testimony*.

19 15. The neighboring property owners raised additional concerns about the weddings
20 being held at the property including increased traffic, lack of knowledge about the scheduled
21

22 _____
² This practice was referred to as "tailgating." Ms. Volkman indicated problems with tailgating are more common when alcohol is not served as part of the reception.

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1 events, and lack of effective security patrols during events. *Ward Testimony; Garofalo*
2 *Testimony; W. Dempster Testimony; Billingsley Testimony.*

3 16. During the 2012-2014 wedding seasons, neighbors made voluminous complaints
4 to City authorities about activities in and around the Mansion, including calls to code
5 enforcement, police, and fire personnel. Neighbors frequently utilized the Tacoma CARES
6 system to register their complaints, but they were dissatisfied with that avenue because it did
7 not result in the immediate response needed to address noise or behavior concerns at the time
8 they were occurring. *R. Dempster Testimony.* Some neighbors began to confront wedding
9 guests angrily and/or engage in activities that disrupted scheduled weddings. *Volkman*
10 *Testimony.* Police reports were filed on more than one occasion. *Ex. NB-44.* On certain dates
11 City enforcement personnel were at the site during a wedding and no violations were noted.
12 *Ex. R13-839; R13-895; Ex. R18.* Weddings have been held that did not create problems in the
13 neighborhood, but many events have generated complaints. At times, complaints have been
14 filed when no wedding was in progress or included activities that were not occurring at the
15 Mansion property. *Volkman Testimony.*

16 17. Appellants Shawn McRoberts and Sarah McAlister live in a home that is adjacent
17 to the northwest corner of the Weyerhaeuser Mansion property. The property was formerly part
18 of the Weyerhaeuser ownership and the structure was used for many years as a dormitory for
19 nuns and/or students. In 1985 the home was separated from the remainder of the estate through
20 a boundary line adjustment. *Ex. R1-4.* McRoberts purchased the home for a personal residence
21 in April 2013. He was aware that the property would be adjacent to parts of the Mansion used
22 for events, but he was unaware of the frequency of use and the noise levels that would reach his

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1 property. The McRoberts home includes a ground level yard and outdoor living space, a small
2 second floor deck and a third floor window, all facing the Mansion and its Rose Garden.
3 McRoberts has a large fence along his property line with the Mansion, but it has not been a
4 meaningful sound barrier. Mr. McRoberts reports that his ability to enjoy his home and
5 outdoor space has been severely compromised by noise coming from weddings at the Mansion.
6 He reports that sounds from the Rose Garden and the terrace, whether amplified or not,
7 interfere with the quiet enjoyment of his home, deck and yard. *McRoberts Testimony.*

8 18. As the level of activity and controversy escalated in the neighborhood, the City
9 attempted to place additional restrictions on weddings occurring at the Mansion. In
10 communication dated July 23, 2013, Jana Magoon reviewed the discussion at a July 2013,
11 meeting held between the City and representatives of Blue Ribbon and Northwest Baptist.
12 Ms. Magoon indicated that the City would allow the parties to honor existing wedding
13 contracts, but that newly scheduled events would need to be "scaled back." *Ex. NB-33.* She
14 suggested that any wedding booked after July 23, 2013, end by 8:00 p.m., use no outdoor
15 amplification, and be limited to 100-150 people. These conditions would govern during the
16 time necessary for Northwest Baptist to seek a conditional use permit (CUP). *Id.*

17 19. During the same timeframe, summer of 2013, the City determined that the level of
18 wedding activity at the Weyerhaeuser site exceeded the characteristics of the historic accessory
19 use the seminary and novitiate made of the property for weddings. The City informed
20 Northwest Baptist that an application for a CUP to allow assembly uses on the site was
21 necessary to continue the expanded wedding venue business. Northwest Baptist filed an
22

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1 application for a CUP in October 2013. *Ex. NB-10*. The application proposed the following
2 uses:

- 3 ▪ Continued use of the Education Building for a school with
4 potential adjunct residential use.
- 5 ▪ Repairs to the Greenhouse building.
- 6 ▪ Continued use of the Carriage House for storage and
7 apartments.
- 8 ▪ Continued use of the Chapel for weddings as an indoor venue.
9 Continued use of the residential apartment and continued use of
10 the basement for storage.
- 11 ▪ Continued use of the Mansion and Grounds as a
12 wedding/event/meeting space. Residential and office space use
13 of the building would also continue.
- 14 ▪ Weddings would occur primarily on Thursday, Friday,
15 Saturday, and Sunday. Weddings on other days would be more
16 limited.
- 17 ▪ Hours would be until midnight on Friday and Saturday and
18 until 11:00 p.m. on other nights. No Rose Garden or other
19 outdoor events would be held after 9:00 p.m. Last call for
20 alcohol would be 10:45 p.m.

21 20. While the CUP application was pending, the Applicant continued to host
22 weddings on the site pursuant to their understanding that existing wedding contracts could be
honored. *Volkman Testimony*. Some of the weddings caused problems and neighborhood
complaints about noise, parking, and disruptive behavior continued. In response to this
situation Peter Huffman, Director of Planning and Development Services, issued a letter dated
December 24, 2013,³ requiring Northwest Baptist to further limit activities at weddings held

³ The face of the letter reflects a date of December 24, 2014, which is an obvious typographical error. *Testimony* established the letter was mailed in December 2013. *Magoon Testimony*.

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1 after March 24, 2014. The letter required no alcohol or dancing and required music to comply
2 with the City's codes related to noise. Further, the duration of the events was changed to
3 require that all activity, including clean-up, be completed by 10:00 p.m. on Friday and Saturday
4 and 8:00 p.m. on Sunday through Thursday. The letter was in the form of a Request for
5 Voluntary Compliance. *Ex. R1-a*. Northwest Baptist responded with a proposed Plan of
6 Action to address the issues raised by Director Huffman. *Ex. NB-16*. The Plan was not
7 accepted by the City. *Ex. NB-18*. The City then instituted enforcement action and issued
8 Notice of Violation 60000101500, which required events undertaken without approval of a
9 CUP to conform to the historic Northwest Baptist restrictions prohibiting dancing and alcohol.
10 The modified hours from the December letter were also incorporated into the Notice of
11 Violation. *Ex. NB-19*.

12 21. In the meantime, the City was processing the Northwest Baptist CUP application.
13 The City held a public meeting regarding the requested CUP on November 7, 2013. *Ex. R-9*.
14 The meeting was attended by over 80 neighbors who expressed strong opposition to the
15 proposed use. *Kao Testimony*. As the project was being evaluated, further information was
16 requested from the Applicant, particularly regarding traffic and parking. *Ex. R1*. After the
17 record was complete, Director Huffman (Director) issued a CUP allowing assembly use of the
18 site dated June 13, 2014. The CUP contains an extensive list of conditions designed to assure
19 that operating the Mansion for assembly uses will be compatible with the surrounding
20 neighborhood. *Ex. R1-1 through 19*. The CUP restricts the number of guests allowed at an
21 event based upon available on-site parking. Dining and beverage service is limited to indoor
22 areas. No amplified music is allowed during outdoor events and all disc jockey (DJ) music and

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1 dancing is restricted to indoor areas. The use is required to comply with noise code
2 requirements. Fire lane access must be maintained and the gate must remain unlocked during
3 events. Professional security must be provided during all events. The Applicant is required to
4 provide a Code analysis demonstrating compliance with requirements for assembly uses. The
5 CUP requires the Applicant to construct a wall to buffer noise travelling from the site to the
6 adjacent property to the northwest (McRoberts property). The CUP is limited to a term of five
7 years, after which the Applicant must apply for a new CUP. The permit requires all
8 modifications to the property to be approved by the Landmarks Preservation Commission. *Ex.*
9 *R1-1 through 19.*

10 22. Friends and Sarah McAlister each requested reconsideration of the Director's
11 decision. Orders on the Reconsideration Motions were issued on September 10, 2014. The
12 Director denied reconsideration of the decision, but modified two conditions. The time for
13 final alcohol service was changed from 30 minutes prior to the end of the event to one hour
14 prior to the end of the event and the condition regarding the buffer wall was further clarified.
15 *Ex. R5; Ex. R4-42 through 47.*

16 23. Northwest Baptist, Friends, and McRoberts all filed appeals of the Director's CUP
17 decision and reconsideration rulings with the Hearing Examiner. The Applicant challenged a
18 number of the conditions placed upon the CUP. Friends and McRoberts challenged the
19 issuance of any CUP approval, as well as the sufficiency of many of the specific conditions
20 incorporated into the permit. Those appeals form the basis for this case.

21 24. In support of the CUP application, the Applicant was asked to provide a traffic
22 study addressing anticipated impacts to traffic loads in the area and necessary parking for

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1 proposed use of the Weyerhaeuser Mansion as an assembly facility. A study was prepared by
2 consulting engineers Heath & Associates, Inc., Transportation and Civil Engineering. *Ex. NB-*
3 *21*. During the hearing, Jennifer Kammerzell, Senior Engineer for the City, testified regarding
4 the traffic impacts of the project and her review of the proponent's traffic study.

5 25. The traffic study concluded that the increase in traffic attributable to assembly
6 events at the Mansion would not create traffic problems in the neighborhood. The traffic study
7 assumed an event size of 250 guests, which is much larger than the size allowed by the CUP.
8 Utilizing peak commute levels as a conservative approach, the study concluded that the Level
9 of Service (LOS) would be low in the LOS A to LOS B range, which is representative of
10 uncongested operations. *NB-21, p.11; R1-d-102*. No controverting testimony was presented at
11 the hearing regarding traffic impacts.

12 26. The study also examined the number of parking spaces that would be necessary to
13 accommodate events occurring at the Mansion. The analysis concluded that a 150 guest event
14 would require 55 parking spaces. This calculation included parking for event staff and guests.
15 A vehicle occupancy capacity (VOR)⁴ rate of 3 people per car was used in the assessment. This
16 figure was based upon information obtained from other wedding catering businesses and was
17 substantiated by documentation collected by the City regarding parking loads required for
18 similar types of facilities in other cities. *Ex. R15-118*. While a few cities reported a VOR rate
19 less than 3, a large majority had VOR rates at 3 or above. Some citizens criticized using a VOR
20 of 3, however, no credible controverting evidence was presented documenting an error or
21
22

⁴ The vehicle occupancy rate was also referenced in the record in places as the VOC rate.

1 establishing an alternative number.⁵ Based upon the evidence presented, the traffic engineering
2 study and its use of a VOR of 3 is credible. At the present time, the Weyerhaeuser Mansion
3 property contains parking spaces for only 24 vehicles. The Applicant plans to expand on-site
4 parking by 21 spaces to achieve a total of 55 spaces, thereby accommodating up to 150 guests.
5 *Ex. NB-30.* The CUP decision ties the number of guests to the amount of on-site parking
6 available with the goal of confining event parking to the Mansion property. *Ex. R1-1 through*
7 *19.*

8 27. In light of the numerous neighborhood complaints regarding noise at the site,
9 Northwest Baptist and McRoberts each presented expert testimony on the topic. Northwest
10 Baptist submitted a noise study prepared by the Greenbusch Group, Inc. authored by Julie
11 Wiebusch, an acoustical consultant with 40 years of experience in the field. *Ex. NB-29.*
12 Ms. Wiebusch based her report on measurements taken on and around the site on October 18,
13 2014. A wedding was scheduled on October 18, although the ceremony was conducted in the
14 chapel, rather than the Rose Garden due to the weather. Prior to the start time for the event,
15 Ms. Wiebusch took ambient noise measurements on each side of the property. She utilized the
16 L_{max} standard contained in the TMC for her work on this report. Both Ms. Wiebusch and
17 McRoberts' expert, Daniel Bruck, Ph.D., of BRC Acoustics & Audiovisual Design, believe the
18 L_{max} standard of measurement is inferior to the L_{eq} standard used by many regulatory
19 authorities, however they agree that the TMC limits are based on L_{max} measurements.

20
21
22 ⁵ Some exhibits, comprised of emails, make reference to a federal government study on vehicle occupancy rates for social trips. The City discounted that information because it was extremely general and did not address assembly or entertainment facilities specifically. This general reference in an email to a report that was not submitted into the record does not constitute persuasive evidence of a more appropriate VOR for assembly uses.

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1 *Wiebusch Testimony; Bruck Testimony.* Ms. Wiebusch found measured sound levels at the
2 property's boundaries between 2:00 p.m. and 3:00 p.m. as follows:

- 3 • North Property Line of Mansion – 42 low and 64 high;
- 4 • West across N. Stevens St. – 63 low and 82 high;
- 5 • South at N. 43rd and Mason – 42 low and 63 high;
- 6 • East at the Rose Garden Gazebo – 50 low and 76 high.

7 *Ex. NB-29.* In reaching her conclusions Ms. Wiebusch used the lower reading to be
8 conservative in approach. *Wiebusch Testimony.*

9 28. During the wedding, Ms. Wiebusch took measurements of many of the activities
10 to obtain source data that was used in a modeling exercise to determine noise levels that would
11 occur at different locations in the surrounding area. Measured noises varied from a low of 55
12 dBA for an unamplified male voice at the back of the chapel to a high of 113 dBA for dancing
13 and crowd clapping inside the Ballroom. *Ex. NB-29 – Table 6.* Utilizing this source data,
14 Ms. Wiebusch used recognized acoustic modeling programs and techniques to simulate the
15 level of noise that would be experienced in the surrounding area from typical events during a
16 wedding. She concluded that maximum sound levels at a Rose Garden outdoor wedding
17 ceremony would have to be limited to a level of L_{max} 72 dBA at the audience center to avoid a
18 noise code violation. This level would allow guests to hear the music or officiant, but at a
19 relatively low level. Sound above 72 dBA would cause an exceedance of the daytime noise
20 code limit at the north property line. *Ex. NB 29 – Table 7A.* She also concluded that amplified
21 music at 72 dBA in the Rose Garden would meet the plainly audible standard at the distance of
22 100 feet from the Mansion property line. *Ex. NB 29 – Table 7B.*

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1 29. Ms. Wiebusch also modeled predicted sound levels for activities associated with
2 wedding receptions on the property. The predicted sound levels at neighboring property lines
3 for 100 and 150 people dining on the outdoor deck reflected compliance with the daytime code
4 limit of ambient plus 10 dBA. *Ex. NB 29 – Tables 8 and 9.* She further found that indoor
5 dancing with the door and window open to the deck would not violate the standards for
6 amplified music when measured at 100 feet from the property line. *Ex. NB 29 – Table 10.* The
7 study predicted noise code violations at the north and south property lines if cheering occurred
8 on the deck. *Ex. NB-29 – Table 11.* The study also found that erecting a 7-foot wall
9 surrounding the deck would have a very minor impact on sound levels at the property line
10 caused by cheering on the deck. *Ex. NB-29 – Table 12.*

11 30. Dr. Bruck reviewed the Greenbusch Group report on behalf of McRoberts. He
12 emphasized that the report showed any activity over 72 dBA in the Rose Garden would violate
13 noise code standards. He posited that clapping and cheering would typically occur at the
14 conclusion of a wedding ceremony and that this type of activity would exceed standards. *Ex.*
15 *M-71; Bruck Testimony.*

16 31. Dr. Bruck further mentioned that noise from events at the Mansion would be
17 audible at the McRoberts property, although he acknowledged that the noise code standard for
18 non-amplified sound is not based on a plainly audible standard. He suggested that such sound
19 might violate nuisance standards. He also indicated that noise impacts from traffic and parking
20 associated with events at the Mansion should have been addressed by the report. *Ex. M-71;*
21 *Bruck Testimony.*

22
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1 32. Dr. Bruck did not believe the conditions in the CUP relating to construction of a
2 sound barrier wall would be sufficient to mitigate noise impacts on the McRoberts property.
3 He suggests construction of two barrier walls – one at the north edge of the Rose Garden or
4 north property line 10 to 12 feet high and one at the north edge of the outdoor deck area 10-12
5 feet high. Although he did not perform a full study or take independent measurements, he
6 estimates a noise reduction of 13 to 15 dBA at the north property line if such measures are
7 implemented. This conclusion does not differentiate between the attenuation provided by each
8 wall. The Wiebusch report indicated only a very modest decrease in sound generated by
9 installation of a wall at the north edge of the outdoor deck. Both experts agreed that it is not
10 possible to shield the third-floor rear window of the McRoberts' home from sound coming from
11 the Mansion because the height of the room, at 23 feet, is above the reasonable height of a
12 sound barrier in this setting. *Wiebusch Testimony; Bruck Testimony.*

13 33. City witnesses from the Planning and Development Services Department testified
14 at hearing that they did not consider the CUP in conflict with the Comprehensive Plan.
15 *Magoon Testimony; Kao Testimony.* They indicated that the Comprehensive Plan is a broad
16 document expressing goals and policies applicable very widely. Due to the range of topics
17 discussed in the Comprehensive Plan it is common to have multiple provisions articulating
18 different policies applicable to the same project or activity. At times the policies may appear to
19 be inconsistent. *Magoon Testimony; Kao Testimony.* Comprehensive Plan policies are
20 implemented through the adoption of TMC provisions regulating land use. The City gives
21 TMC provisions precedence over Comprehensive Plan policies in the event of a conflict.
22 *Magoon Testimony.*

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1 However, the CUP is being processed under the terms of TMC 13.06.640.F which specifically
2 expands permitted uses in historic structures.

3 F. Uses in Historic Structures. A conditional use permit for the
4 reuse of a historic structure and/or site for one of the below-listed
5 uses (where not otherwise allowed by the underlying zoning) shall
6 be authorized only if it can be found to be consistent with all of the
7 following criteria. This provision shall be limited to only those
8 structures and sites that are individually-listed on the Tacoma
9 Register of Historic Places. In granting such a conditional use
10 permit the Director or Hearing Examiner may attach thereto such
11 conditions regarding the location, character, orientation, layout,
12 access and other features of the proposed development as may be
13 deemed necessary to ensure consistency with the intent of the TMC
14 and Comprehensive Plan and ensure that the use of the building and
15 site will be compatible with the existing, historic attributes of the
16 building and site and surrounding uses.

- 17 1. The use shall be consistent with the goals and policies of the
18 Comprehensive Plan, any adopted neighborhood or community
19 plans, and applicable ordinances of the City of Tacoma.
- 20 2. The use shall be located, planned, and developed in such a
21 manner that it is not inconsistent with the health, safety,
22 convenience, or general welfare of persons residing or working
in the community. The following shall be considered in
making a decision on a conditional use permit:
 - a. The generation of noise, noxious or offensive emissions,
light glare, traffic, or other nuisances which may be
injurious or to the detriment of a significant portion of the
community.
 - b. Availability of public services which may be necessary or
desirable for the support of the use. These may include, but
shall not be limited to, availability of utilities,
transportation systems (including vehicular, pedestrian, and
public transportation systems), education, police and fire
facilities, and social and health services.
 - c. The adequacy of landscaping, screening, yard setbacks,
open spaces, or other development characteristics necessary

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to mitigate the impact of the use upon neighboring properties.

- 3. The proposed re-use shall promote the preservation and/or restoration of the designated historic structures(s) on the site.
- 4. The proposed reuse and design of any modifications to the historic structures(s) and site shall be approved by the Landmarks Preservation Commission.

...

TMC 13.06.640.F.

4. The following section of the TMC identifies the types of uses allowed in historic structures under the re-use provisions. The uses include art/craft production, assembly facilities, continuing care retirement community, cultural institutions, extended care facility, group housing, intermediate care facility, lodging house, multi-family dwellings, offices offering professional dental, medical, legal or design services, offices for charitable philanthropic or community service organizations where it can be shown that there is limited contact with the general public, personal services, retirement home, and retail, only as an incidental use to one or more of the other listed uses. *TMC 13.06.640.F.5.*

5. An argument was raised that the proposal should be analyzed under both the general CUP criteria and the historic structures provisions of TMC 13.06.640.F. Looking at the entire chapter governing conditional use permits, it is evident that the historic structure re-use requirements for a CUP are contained wholly within subsection F. Subsection F makes no reference to the general criteria for CUP approval and many of the identified criteria duplicate the more general considerations in TMC 13.06.640.C. In addition, this lack of reference to the general conditions stands in contrast to the provisions of TMC 13.06.640.H, which address

1 duplex, triplex and townhouse development in NRX Districts and provide, “*In addition to the*
2 *standard decision criteria for conditional use permits*, as outlined above under subsection C, a
3 conditional use permit for a duplex, triplex, or townhouse in the NRX District shall only be
4 approved upon a finding that such development is consistent with all of the following
5 additional criteria....” *TMC 13.06.640.H (emphasis added)*. The terms of TMC 13.06.640.F,
6 governing historic structure re-use contain no such reference. Accordingly, the application is
7 properly analyzed for compliance with only the terms of TMC 13.06.640.F.

8 6. Friends and McRoberts contend that the CUP issued by the City is improper
9 because it violates the first criterion for approval which states:

10 The use shall be consistent with the goals and policies of the
11 Comprehensive Plan, any adopted neighborhood or community
plans, and applicable ordinances of the City of Tacoma.

12 *TMC 13.06.640.F.1*. The City and Northwest Baptist assert that the project is consistent with
13 the TMC and that the City Code prevails over planning documents in the case of a conflict.
14 They further maintain that the project is consistent with the Comprehensive Plan and the North
15 End Neighborhood Plan. The first legal issue to be resolved is whether the project must comply
16 with the Comprehensive Plan in addition to the TMC. The City and Northwest Baptist cite well
17 established authority for the proposition that a Code takes precedence over a Comprehensive
18 Plan in making land use decisions on site specific projects. *Citizens for Mount Vernon v. City*
19 *of Mount Vernon*, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997); *Timberlake Christian v. King*
20 *County*, 114 Wn. App. 174, 183, 61 P.3d 332 (2002). Friends and McRoberts cite authority
21 indicating that if a Code provision specifically incorporates the Comprehensive Plan into
22 consideration of site specific projects, an application must meet both standards.

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1 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994):

2 Generally, a specific zoning ordinance will prevail, even over an
3 inconsistent comprehensive plan. *Cougar Mt. Assocs. v. King Cy.*,
4 111 Wn.2d 742, 757, 765 P.2d 264 (1988); *Nagatani Bros., Inc. v.*
5 *Skagit Cy. Bd. of Comm'rs*, 108 Wn.2d 477, 480, 739 P.2d 696
6 (1987). Thus, to the extent the comprehensive plan prohibits the
7 landfill use, while the zoning code permits it, the use would be a
8 permitted use under this general rule.

9 However, the zoning code itself expressly requires that “[s]olid
10 waste facilities that require a Solid Waste Permit shall indicate on a
11 site plan that the facility *meets ... any comprehensive land use*
12 *plan*”. (Italics ours.) PCC 18.10.560. Thus, for landfills, the
13 zoning code requires consistency with the comprehensive plan...

14 *Weyerhaeuser v. Pierce Cy.*, 124 Wn.2d at 43. As in the *Weyerhaeuser* case, the reference to
15 compliance with the Comprehensive Plan in TMC 13.06.640.F.1 requires substantive
16 consideration of the Comprehensive Plan.

17 7. The next legal issue is whether the proposal is “consistent with the goals and
18 policies of the Comprehensive Plan.” *TMC 13.06.640.F.1*. The parties have differing views
19 regarding the meaning and application of the Comprehensive Plan. The Plan itself
20 acknowledges the broad nature of its provisions and the need to look at all the provisions that
21 pertain to a particular subject:

22 The policies need to be read in context of the Comprehensive Plan
 as a whole and in relation to other policies. No single policy is
 more important than any other policy. Individual policies may
 appear to be in conflict when applied to a specific action, activity
 or location. Policies do not exist in isolation and must be
 understood in the context of all other relevant policies and the
 goals they support. Not all policies apply to every situation.

City of Tacoma Comprehensive Plan, Intro-3. In this case, the parties have identified
 Comprehensive Plan policies that focus on different aspects of the City’s land use planning

1 efforts. Friends and McRoberts emphasize the guidance in the Generalized Land Use Element
2 addressing Residential Development Goals. They assert the project is inconsistent with the
3 policies recognizing the importance of residential neighborhoods and the effort that should be
4 made to protect them from incompatible uses.

5 **LU-RDG-1 Protect Established Residential Areas**

6 Protect, preserve and maintain established residential neighborhood
7 areas located outside of designated mixed-use centers where a definite
8 density, housing type and character prevail; nuisances and
9 incompatible land uses should not be allowed to penetrate these areas.

10 **LU-RDG-2 Prohibit Incompatible Land Uses**

11 Prohibit incompatible land uses from situating within or adjacent to
12 existing or future residential developments and gradually eliminate
13 existing incompatible uses from existing residential areas.

14 **LU-RDG-5 Regulate Non-conforming Uses**

15 Provide stricter regulation of non-conforming uses with the goal of
16 gradual elimination of the non-conforming uses or achieving
17 conformity to existing regulations.

18 Friends and McRoberts also point to the language of North End Neighborhood Policy Intent
19 Section NE-1 which states in part: "Encroachment by commercial or other incompatible
20 nonresidential uses shall be prohibited."

21 8. The City and Northwest Baptist point to other provisions of the Comprehensive
22 Plan, particularly those relating to sites with unique characteristics.

23 **LU-RDLISFD-5 Public and Quasi-Public Facilities**

24 Within single-family detached housing areas permit public and
25 quasi-public uses and community facilities, provided they are
26 designed and scaled to be compatible with the existing character,
27 properly located and adverse effects are minimized.

28 **LU-RDLISFD-8 Unique Sites**

29 Recognizing that there may be individual sites within identified
30 single-family detached housing areas with unique characteristics,
31 development with uses other than single-family detached housing

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1 may be considered, provided that the proposed development is
2 properly located, designed, scaled and developed to be compatible
 with the surrounding area.

3 The Comprehensive Plan also contains an entire chapter addressing historic preservation plans
4 for the City highlighting the role that zoning code provisions can play in preserving historic
5 structures. *City of Tacoma Historic Preservation Plan, p. 2-25.*

6 9. Testimony from the City of Tacoma staff charged with the responsibility to apply
7 the zoning code and the Comprehensive Plan indicated that the Comprehensive Plan has such
8 broad coverage that it is common for a project to involve policies from different sections that
9 may appear somewhat inconsistent. The City did not consider the proposed assembly use by
10 Northwest Baptist as in conflict with the Comprehensive Plan provisions when viewed as a
11 whole. As indicated above, the Comprehensive Plan provisions acknowledge the need to look
12 at policies in relationship to other policies when evaluating a given project. This direction is
13 consistent with long-standing doctrines of statutory construction.

14 10. Courts construe an act as a whole giving effect to all the language used,
15 considering all provisions in relation to each other and, if possible, harmonizing all to insure
16 proper construction of each provision. *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138
17 Wn.2d 699, 708, 985 P.2d 262 (1999); *Newschwander v. Teachers' Retirement System*, 94
18 Wn.2d 701, 707, 620 P.2d 88 (1980). The sequence of all statutes relating to the same subject
19 matter should be considered. *Labor and Industries v. Estate of MacMillan*, 117 Wn.2d 222,
20 229, 814 P.2d 194 (1991). A statute should be read to give each word and clause effect so no
21 part is rendered meaningless or superfluous. *Hangartner v. Seattle*, 151 Wn.2d 439, 451, 90
22 P.3d 26 (2004). In addition, deference to an agency's interpretation of its own regulations is

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1 appropriate. *Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 593, 90 P.3d
2 659 (2004); *Postema v. PCHB*, 142 Wn.2d 68, 86, 11 P.3d 726 (2000).

3 11. In the present case, the terms of the Comprehensive Plan are not in irreconcilable
4 conflict with the TMC. The Comprehensive Plan contains primarily aspirational language
5 encouraging the protection of single-family residential uses. The TMC provisions allowing
6 expanded uses for historic structures are consistent with the goal of protecting single-family
7 neighborhoods because they specifically require conditions that assure compatibility with the
8 surrounding area. The *Weyerhaeuser v. Pierce County* case is instructive in this instance. After
9 finding that the County was required to examine consistency with Comprehensive Plan
10 provisions, the court found that a large regional landfill was consistent with the Rural-
11 Residential designation in the Comprehensive Plan, observing that the plan was “broad and
12 conceptual in nature.” *Weyerhaeuser* at 43. The Court acknowledged that a large landfill was
13 not a “residential use” but nevertheless concluded that a proposal to construct a regional landfill
14 was not inconsistent with the rural-residential designation in the Comprehensive Plan.
15 Similarly in this case, the broad protection offered residential neighborhoods in the
16 Comprehensive Plan is properly harmonized with the very specific provisions of the zoning
17 code allowing alternative uses of historic structures. This consistency is assured by imposing
18 conditions on any historic structure approval adequate to assure compatibility with residential
19 uses in the neighborhood.

20 12. Friends and McRoberts stress that the language in the North End Neighborhood
21 Plan even more distinctly states that commercial uses and other incompatible uses shall not be
22 allowed to encroach on single-family neighborhoods. *North End Neighborhood Goals and*

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1 *Policies Goal NE-1. When this language is read in concert with the sentences preceding it,*
2 *which discuss concentration of multi-family residential uses along transportation corridors and*
3 *the need to accommodate additional residents while maintaining the unique sense of place*
4 *reflected in the community vision, the language can be seen as part of the larger effort to assure*
5 *compatibility between uses in and around residential neighborhoods. Moreover, the North End*
6 *Neighborhood Policies also contain two policies addressed to historic preservation.*

7 **NE-1.5 Historic Preservation**

8 Preserve and protect existing historic homes and structures.
9 Discourage demolition of properties listed on, or eligible to be
10 listed on, the National Register of Historic Places and the Tacoma
11 Landmarks Register through the adoption of effective regulations
12 and policies governing City review of projects affecting historic
13 properties.

14 **NE-1.6 Historic Building Replacement**

15 Allow designated historic buildings that are damaged or destroyed
16 and are legally non-conforming to area regulations to rebuild
17 within their existing footprint, provided the new structure complies
18 with appropriate building and fire codes.

19 The North End Neighborhood Goals and Policies reflect the same dual objectives of preserving
20 residential uses and preserving historic structures that appear in the generally applicable
21 provisions of the Comprehensive Plan.

22 13. Accordingly, the proposed assembly use of the subject property is not prohibited
by the terms of the Comprehensive Plan as long as the use is conditioned to assure protection of
residential uses and compatibility with the neighborhood.

14. The next legal issue is whether the CUP granted by Director Huffman has been
conditioned adequately to assure protection of the neighboring residential uses. The neighbors
contend the conditions do not do enough to protect their peaceful enjoyment of their homes. By

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1 contrast, Northwest Baptist argues that many of the conditions the City imposed on the project
2 to achieve the desired compatibility are unnecessary and unworkable. The record contains
3 extensive evidence about the conflicts that have occurred between the neighbors' use of their
4 homes and the Applicant's use of the site for wedding events. During a number of weddings,
5 noise of various kinds has traveled beyond the site and into the neighborhood. Parking for the
6 weddings has frequently lined both sides of the nearby streets, leading to difficult access for
7 homeowners and noise impacts as people return to or congregate by their vehicles. Some
8 wedding guests have engaged in raucous behavior and used rough language along the sidewalks
9 in the neighborhood.

10 15. Part of the noise problem has been caused by Blue Ribbon honoring the terms of
11 wedding contracts entered into a year or more in advance of the scheduled event rather than
12 observing the City's directives. Blue Ribbon was not successful in modifying all of the existing
13 contracts to incorporate the more restrictive rules the City was requiring after July 2013. As a
14 result, it is difficult to use past experience at the site as a strong indicator of whether a wedding
15 conducted in compliance with all the terms of the CUP would disrupt the neighborhood. The
16 City reasons that a number of weddings have been held that did not result in neighbor
17 complaints, thereby indicating that wedding uses could be consistent with neighborhood uses.
18 This reasoning is supported by certain inspection trips to the site that did not identify noise
19 problems or violations. Compatibility will be a function of limiting noise, activity, and parking
20 impacts emanating from the Weyerhaeuser site. The terms of the CUP address these concerns.

21 16. Parking is one of the major objections expressed by residents of the neighborhood.
22 The TMC specifically exempts individually listed historic buildings and sites, such as the

1 Mansion property from "all parking quantity requirements." *TMC 13.06.510.d*. However, the
2 Director included parking requirements in the CUP as a measure designed to mitigate impacts
3 from the assembly use and to improve compatibility with the residential neighborhood. The
4 CUP addressed parking by limiting the size of events to 57 guests based upon the 24 parking
5 spaces currently available on the site. This calculation includes five spaces for event staff and
6 19 spaces for vehicles carrying an average of three persons.⁶ As additional parking is
7 completed the number of guests is increased by three for each new parking space. This parking
8 plan will allow guests to park on the site rather than in the surrounding neighborhood. The
9 weight of the evidence supported the use of an average of three occupants per vehicle in
10 considering parking needs. On-site parking will eliminate the difficulty residents of the area
11 have reported with access and will prevent congregating around vehicles in the street during or
12 after the event. Parking on-site will avoid the problems neighbors have experienced from on-
13 street parking for wedding events. The CUP condition limiting events to 150 guests will also
14 prevent the need for guests to park on the nearby streets.

15 17. Several of the CUP conditions address the issue of noise. Limits on the hours of
16 events, a prohibition on amplified music at outdoor events, restricting food and beverage
17 service to indoor locations, restricting dancing and amplified entertainment to indoor areas, and
18 a statement that all events must comply with the applicable noise code requirements are
19 designed to contain the majority of the noise generated by wedding events to the site. A further
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22 ⁶ Friends argue that parking must be reserved for residents of the apartments on the site. Reserved parking is not
legally required for these existing residential uses. The City was justified in mitigating parking concerns based on
the parking needs of the assembly use under consideration in the CUP application.

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1 condition requiring Northwest Baptist to construct a noise mitigating wall between the site and
2 the McRoberts property has been included to address impacts specific to their immediately
3 adjoining property. The noise experts' testimony supports the validity of placing
4 noise conditions upon the wedding operations in the CUP. The simulated noise levels
5 contained in the expert report of Ms. Weibusch demonstrate that wedding events subject to the
6 CUP restrictions could use some level of amplification for wedding ceremonies and still meet
7 the requirements set forth in the governing noise code sections. Northwest Baptist, however,
8 would need to consistently enforce identified limits on amplified noise to remain in
9 compliance.⁷ To avoid noise code violations, all cheering and hollering would need to be
10 confined to interior spaces. This could prove difficult to control in a wedding environment. If
11 noise code violations are prevented, the wedding events will be less likely to disturb the
12 residential neighborhood.

13 18. At this point, the neighbors are skeptical that the conditions in the CUP can be, or
14 will be, consistently observed. Weddings are festive occasions with much conversation and
15 laughter. The service of alcohol and the common use of a DJ for dancing add to the festivities
16 and the attendant noise. Confining guests to indoor areas for eating, drinking, dancing, and
17 toasts may be very difficult to achieve during warm summer evenings. If the limits in the CUP
18 are not observed, the neighbors have a justified fear that they will be disturbed by noise from
19 the Mansion property. While the CUP contains conditions that are designed to effectively
20 avoid disturbance of the neighbors, compliance with those conditions will be critical to the

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22 ⁷ The noise simulations indicate that a noise violation would not occur if amplification in the Rose Garden area is limited to 72 dBA at the center point with speakers pointing away from the McRoberts residence. Accordingly, music for the wedding ceremony, consistent with the 72 dBA limit can be allowed while meeting the noise code.

1 preservation of the residential uses in the area and the ongoing validity of the premise
2 underlying the CUP.

3 19. The CUP contains a number of other conditions regarding assembly use of the
4 facility that have not been in particular controversy relating to subjects such as fire lane access,
5 required code analysis of Haddaway Hall, and recording an easement for a public storm line in
6 the area. These conditions are reasonable terms of the CUP and should be retained.

7 20. Northwest Baptist has challenged several of the conditions included in the CUP
8 contending they are unnecessary, unsupported by legal authority, impracticable, or in need of
9 further refinement. Northwest Baptist initially opposed the condition requiring Landmarks
10 Preservation Commission approval for "any future modifications to the property," but that
11 appeal was withdrawn during hearing through Ex. NB-45. Northwest Baptist seeks rewording
12 of Condition 2 relating to the Greenhouse on site to add repair as an option and adding wording
13 subjecting the plan of action to review and approval of the Landmarks Preservation
14 Commission. Given the costs that may accompany restoration versus repair of the Greenhouse,
15 it is reasonable to allow an option to explore repair. The requested modification to Condition 2
16 is appropriate. Additional language clarifying the time for action is important to insure
17 progress is made in a reasonable fashion. Friends and McRoberts have questioned whether the
18 assembly use will fulfill the goal of preserving the Mansion property. Northwest Baptist
19 contends that use as a wedding venue will necessitate good upkeep of the property to assure it is
20 attractive as a site for weddings and associated receptions. The repair/restoration of the
21 Greenhouse and the other improvements that will be implemented to meet Code, the
22 involvement of the Landmarks Preservation Commission in any alterations, together with the

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1 importance of retaining a beautiful setting for weddings will make preservation of the historic
2 site more likely as a result of the proposed assembly use.

3 21. Northwest Baptist seeks a modification to the hours of operation. The CUP limits
4 hours of operation on Sunday through Thursday to 8 a.m. to 8:00 p.m., including all time for
5 set-up and clean-up. On Friday and Saturday, the hours of operation are extended to
6 10:00 a.m. to 10:00 p.m. including all time for set-up and clean-up. Northwest seeks a
7 modification to exclude set-up and clean-up from the time limits on events. Cleaning would be
8 limited to staff only. The testimony did not demonstrate strong opposition to this type of
9 change, however, it was noted that it is easier to enforce an absolute end time than to allow staff
10 to stay on for clean-up. Given that the condition is in place to assure that crowds disperse at a
11 reasonable hour and the lack of any information indicating that the staff involved in clean-up
12 generate objectionable noise, this modification is reasonable and will be granted. This
13 modification will not impact the compatibility of this assembly use with the surrounding
14 residential uses.

15 22. Northwest Baptist is requesting a modification to the end time for alcohol service.
16 In Condition 7, the original CUP required alcohol service to cease 30 minutes prior to the end
17 of an event. This condition was modified on reconsideration to require that alcohol service
18 close one hour prior to the end of the event. Northwest Baptist is suggesting that the condition
19 should be modified to allow a last call for alcohol 40 minutes prior to the end of the event and
20 the bar closing 30 minutes prior to the end of the event. No particular testimony or evidence
21 was provided addressing this condition by any of the parties. The Director's reconsideration
22 references the limitations imposed at a similar venue. In the absence of any evidence providing

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1 a further basis for setting a timeframe for terminating alcohol service, the Director's decision on
2 reconsideration is properly upheld.

3 23. Northwest Baptist is seeking a modification to Condition 8 that would change the
4 prohibition on outdoor dining, food service, and beverage service to allow outdoor dining for
5 150 people with no amplification of music or the spoken word. *Ex. NB-45*. The condition
6 requiring indoor dining and beverage service is designed to result in reduced noise levels in the
7 neighborhood. While the noise simulation data seemed to provide some support for the
8 proposition that dining on the terrace would not cause an actual noise code violation at the
9 property line, neighbors testified that significant levels of activity on the terrace generated
10 continuous noise that could be heard in the area and intensified as the evening progressed. The
11 noise problems at weddings were not restricted to amplified music. In fact, noise from
12 continuous conversation and laughter was of particular concern to impacted neighbors.
13 Animated levels of continuous conversation were noted for long periods of time during an
14 event and they add a temporal element to the raw dBA levels experienced by neighbors. The
15 outdoor dining prohibition is designed to prevent noise impacts from traveling off the site to
16 neighboring properties for extended periods of time and Northwest Baptist did not demonstrate
17 that dining and extended conversation outdoors can be undertaken without undue noise impacts
18 to the surrounding area, even if a technical noise violation is avoided.⁸ Condition 8 will not be
19 modified.

20 24. Northwest Baptist is requesting a change to Condition 9 which states that no
21 amplified music may be utilized during outdoor weddings. Northwest Baptist is asking that
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⁸ Testimony indicated that this condition was not intended to address casual eating or drinking by guests who wander onto the veranda, but was designed to prevent seated dining service at tables on the deck.

1 amplification be permitted outdoors only during wedding ceremonies in the Rose Garden. Such
2 amplification would be restricted to use of a sound system provided by the venue with an
3 output limit of 72 dBA, with speakers oriented toward the Mansion. The requested
4 modification also indicates no brass instruments would be permitted outdoors. The noise
5 expert testimony indicated that sound at the level requested (72 dBA) would not result in a
6 noise violation at the property line. In addition, the music would be limited to a brief prelude
7 and a recessional, so the length of time sound would be experienced is brief.⁹ Use of music at
8 the beginning and end of a wedding ceremony is traditional, reasonable and usually inoffensive
9 in nature. Accordingly, a modification to Condition 9 is reasonable.

10 25. Sound emanating from the Rose Garden appears to be a problem primarily for the
11 McRoberts' residence. The testimony from noise experts indicated that a noise violation would
12 not occur for Rose Garden sound at the 72 dBA level. McRoberts' noise expert indicated that
13 the sound below the noise code violation levels might be subject to regulation under the
14 nuisance provisions of TMC 8.12.060. McRoberts has cited two particular sections of TMC
15 8.12.060 as grounds for finding noise from the Rose Garden would constitute a nuisance:

16 (C) Yelling, shouting hooting, whistling or singing on or near the
17 public streets, particularly between the hours of 11:00 p.m. and
18 7:00 a.m., or at any time and place so as to unreasonably disturb or
19 interfere with the peace, comfort and repose of owners or
20 possessors of real property;

19 (D) The creation of frequent, repetitive or continuous sounds
20 which emanate from any building, structure, apartment, or
21 condominium, which unreasonably interfere with the peace,
22 comfort, and repose of owners or possessors of real property, such
as sounds from audio equipment, musical instruments, band
sessions, or social gatherings.

⁹ This condition would preclude the rehearsal of live music in the Rose Garden prior to the ceremony. Any such rehearsal would need to occur indoors.

1 The limited music allowed under the Condition 9 revision would not violate the standards of
2 unreasonably interfering with the peace, comfort and repose of owners of real property. The
3 wedding processional and recessional would not involve the yelling and hooting type of activity
4 governed by (C). The ceremony music would also be unlikely to be frequent, repetitive or
5 continuous sound contemplated by (D). The sound would be limited in both volume and
6 duration. This type of music would not unreasonably interfere with enjoyment of real property
7 under TMC 8.12.060. This conclusion is based upon the additional requirement in the CUP
8 that noise standards not be violated. If live instruments (brass or otherwise) are played at a
9 level that exceeds the noise code standards at the property line, this would be a violation of the
10 CUP. In addition, impacts to the McRoberts property could be reduced by posting the Rose
11 Garden area as a "Quiet Zone" so that guests are apprised of the importance of using low voices
12 in that area.¹⁰

13 26. Northwest Baptist is seeking a related clarification to Condition 10 indicating that
14 the limited ceremony music addressed in Condition 9 would be allowed despite the general ban
15 on amplified music outdoors. In light of the modification to Condition 9, this clarification is
16 warranted.

17 27. Northwest Baptist seeks a revision to Condition 14 that would require security
18 only for events attended by more than 50 guests. Friends and McRoberts argue that the
19 condition should be modified to require that all security duties are provided by off-duty police
20 officers. This position is based in part on the ineffective control private security has provided at
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22 ¹⁰ Dr. Bruck expressed the opinion that clapping at the close of the wedding ceremony would create a noise code violation. Any such noise would be extremely limited in duration and should not impair reasonable use of the adjoining property.

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1 many of the weddings held on the site in the past three years. Neighbors believe that off-duty
2 police would provide advantages not available with private security personnel. They assert that
3 officers would provide the City with a clear view of what is really happening at the events,
4 which has been difficult to obtain because Code Enforcement personnel do not typically work
5 on weekends. Officers are also viewed as more authoritative in dealing with any illicit activity
6 that might occur. The goal of the condition is to assure security is available to monitor
7 compliance with the law and rules applicable to the event. This duty is important to
8 maintaining compatibility with the neighborhood. Accordingly, Condition 14 shall be modified
9 to specify that security will be provided by off-duty Tacoma Police Officers for all events
10 attended by more than 30 guests.¹¹

11 28. Condition 15 requires Northwest Baptist to construct a wall to diminish sound
12 transmission between events at the Mansion and the McRoberts property to the north. The
13 condition was modified on reconsideration to require the Applicant to consult with an
14 acoustical engineer and "incorporate all recommendations reasonably aimed at reducing off-site
15 impacts." The condition required the wall and landscaping to be installed within six months of
16 the effective date of the decision. Northwest Baptist proposes alternative language for the
17 condition bringing the issue of cost into the equation. The proposed language also deletes the
18 requirement for landscaping from the Condition and adjusts the timing to be six months from
19 final building permit approval. McRoberts objects to the adequacy of the wall condition,
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22 ¹¹ The parties have contested the appropriate threshold number for required security. Northwest Baptist is seeking an increase to events with 50 people. Given the problems with compliance and crowd control experienced at the site, increasing the threshold above 30 people is unwarranted. At the same time professional security is not needed for small, more intimate gatherings such as a 30 guest event.

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1 proposes construction of two walls, and contends any wall plans should be subject to review by
2 the parties impacted.

3 29. Evidence from the noise experts in the case established that to be effective a wall
4 for noise attenuation must be near the source or near the receiver. McRoberts, understandably,
5 does not wish to have an extremely high wall on his property line shading his outdoor space.
6 He proposes an alternative location near the Rose Garden, which would presumably be
7 designed to minimize sound by being located near the source. Such a location may not be as
8 effective as a wall along the property line in protecting his outdoor area from noise generated at
9 other locations within the Mansion property. Northwest Baptist's expert concluded that a wall
10 along the Mansion veranda would do very little to reduce noise reaching the McRoberts
11 property. McRoberts' expert thought a wall at the veranda could have some benefit. The
12 Condition addressing this wall should encompass expert consultation on design, some
13 consideration of financial feasibility, input from the affected neighbor to the north, and design
14 consideration from the Landmarks Commission. Landscaping of the wall area would be
15 voluntary if the wall is located significantly south of the property line with McRoberts. If the
16 wall is on the McRoberts property line, reasonable landscaping should be provided.

17 30. Northwest Baptist objects strongly to CUP Condition 20, which limits the term of
18 the CUP to five years and requires Northwest Baptist to file a new CUP application at that time.
19 Northwest Baptist contends there is no legal authority for the five-year limitation and that it is
20 unreasonable to require significant capital investment in the property with no assurance that the
21 use can continue long-term. The City indicated that it wanted an opportunity to fully review the
22

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 matter at the end of five years to determine whether the use is operating in a manner compatible
2 with the residential neighborhood.

3 31. Friends and McRoberts point to the five-year duration for conditional use permits
4 contained in TMC 13.05.020 and TMC 13.05.070 as a basis for the condition. The cited Code
5 provisions contain a similar five-year term for variances and site approvals, plats, binding site
6 plans, and boundary line adjustments. The five-year expiration in these instances is the outside
7 limit for completing the steps of the approval involved. For instance, a person obtaining
8 approval for a variance allowing construction within a setback must complete the project within
9 five years. The five-year limit does not mean that the approved structure can only be left
10 standing for five years or that a new variance must be obtained after five years. The City,
11 through Associate Planner Philip Kao, indicated that this is the standard interpretation of the
12 meaning for limits contained in these code provisions.

13 32. The Director has the authority under TMC 13.05.040.B to "attach any reasonable
14 conditions found necessary to make the project compatible with its environment, to carry out
15 the goals and policies of the City's Comprehensive Plan, including its Shoreline Master
16 Program, or to provide compliance with applicable criteria or stands set forth in the City's Land
17 Use Regulatory Codes." *TMC 13.05.040.B*. Setting limits on the duration of use and
18 subsequent removal of structures is listed as a specific type of condition within the Director's
19 authority. *TMC 13.05.040.B.7*. In this case, however, the justification given for the five-year
20 term has no relationship to the characteristics of the use, its compatibility with the
21 neighborhood, or the governing land use policies and code provisions. The requirement to
22 apply for a completely new CUP is essentially a mandatory revisiting of the same issues that are

**FINDINGS OF FACT,
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1 being fully examined and decided at this time. Land use decisions properly provide all parties
2 with certainty regarding the ongoing use of land. The courts of this state have consistently
3 emphasized the need for procedures that provide certainty, predictability and finality for land
4 owners and the government. See, *Durland v. San Juan County*, No. 89293-8, No. 89745, 2014
5 WA LEXIS 1136 (Supreme Court December 11, 2014)(LUPA); *Abbey Rd. Group, LLC v. City*
6 *of Bonney Lake*, 167 Wn.2d 242, 251, 218 P.3d 180(2009) (vesting). In issuing the CUP, the
7 Director has concluded that if all conditions are observed, the use will be compatible with the
8 neighborhood. If the conditions are not observed, code enforcement, up to and including
9 termination of the use, would be the appropriate vehicle for addressing noncompliance. There
10 is no legal basis or Code-related justification provided by the City for limiting the term of the
11 CUP to five years.

12 33. Northwest Baptist has suggested five new Conditions for inclusion in the CUP.
13 The Conditions include providing information about upcoming events, meetings with
14 representatives for the Appellants during the 2015 wedding season, limits on the number of
15 weddings outdoors during the period of May through September, limits on use of the Rose
16 Garden area, and City approval of the standard contract provisions relevant to the CUP
17 conditions. The proposed conditions place additional restrictions on the operation of the
18 project, accommodate better communication, and foster greater compatibility with the
19 neighborhood. No reasonable basis for excluding these conditions from the CUP has been
20 presented and the additional matters are properly incorporated into the permit. The new
21 conditions will not constitute a prerequisite to, or limitation on, City code enforcement action.

22
**FINDINGS OF FACT,
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1 34. The weight of the evidence supports a conclusion that the proposed assembly use
2 would be compatible with the surrounding neighborhood, if, and only if, the Applicant
3 complies with all the conditions contained in the CUP decision, as modified by this decision.
4 Weddings can be conducted in a manner that will not degrade the neighbors' enjoyment of their
5 homes. Whether the type of event necessary to comply with the applicable conditions will be a
6 successful business venture is beyond the scope of this land use decision. Under the governing
7 provisions of the TMC and the Comprehensive Plan, the CUP can only be granted on terms
8 assuring compatibility with adjacent residential uses. The CUP conditions will bring about that
9 compatibility.

10 35. Friends and McRoberts argue that the project should have been reviewed under the
11 State Environmental Policy Act (SEPA). The City did not perform SEPA analysis because the
12 project fell within a categorical exemption in the Act that applies to change of use. WAC 197-
13 11-800(6)(b). Statutory exemptions allow projects to proceed without site specific review
14 under SEPA. *Dioxin Ctr. v. Pollution Board*, 131 Wn.2d 345, 362, 932 P.2 158 (1997).
15 Controlling authority indicates the project was handled appropriately under SEPA.¹²

16 36. Friends and McRoberts have asserted that the special provisions for use of historic
17 structures should apply solely to Haddaway Hall and not the entire Mansion property. As
18 indicated above in the Findings of Fact, the application for historic landmark status
19 encompassed an area over 4 acres and not simply the residential structure. Even the home and
20 associated carriage house, greenhouse and gardens extend beyond a single tax parcel. It was

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¹² The City has stated that if future actions on the property meet SEPA triggers, environmental analysis will be required for those projects.

1 appropriate for the City to consider the entire house, buildings and grounds as part of the
2 proposed assembly use.

3 37. Friends and McRoberts insist that alcohol should not be allowed at events taking
4 place at the Mansion. The neighbors trace many of the objectionable behaviors they have
5 experienced to alcohol consumption during wedding events. The City has indicated that the
6 service of alcohol is governed by the State Liquor Control Board, rather than local authorities.
7 Northwest Baptist and Blue Ribbon Cooking are required to comply with state standards for the
8 service of alcohol at all events. These specialized rules, rather than land use conditions, are the
9 most appropriate mechanism for governing the provision of alcohol at an assembly site.

10 38. McRoberts, and to some extent Friends, contend that the wedding events
11 constitute a public nuisance or public disturbance that should not be authorized by any land use
12 approval. The TMC contains provisions identifying certain types of sounds as "public
13 disturbance" noises. *TMC 8.12.060.B*. McRoberts points to the following sections as
14 applicable to this situation:

15 (C) Yelling, shouting hooting, whistling or singing on or near the
16 public streets, particularly between the hours of 11:00 p.m. and
17 7:00 a.m., or at any time and place so as to unreasonably disturb or
interfere with the peace, comfort and repose of owners or possessors of
real property;

18 (D) The creation of frequent, repetitive or continuous sounds which
19 emanate from any building, structure, apartment, or condominium,
20 which unreasonably interfere with the peace, comfort, and repose of
owners or possessors of real property, such as sounds from audio
equipment, musical instruments, band sessions, or social gatherings.

21 The CUP conditions specifically require that all events comply with applicable noise code
22 requirements. *CUP Condition 11*. Activities in compliance with the noise code would be

**FINDINGS OF FACT,
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1 unlikely to violate the terms of TMC 8.12.060. Sound from music on the Mansion site would
2 be diminished by both the requirement to limit such music to the indoor areas and the
3 anticipated sound buffering wall(s). The weight of the evidence supports the conclusion that
4 activities in compliance with the terms of the CUP will not constitute a disturbance under TMC
5 8.12.060(C) or (D).

6 39. McRoberts further alleges that the conduct of wedding events at the site
7 constitutes a nuisance as that term has been recognized in the common law. McRoberts cites
8 authority for the proposition that one landowner is not permitted to use his land so
9 unreasonably as to interfere unreasonably with another landowner's use and enjoyment of his
10 land. McRoberts argues that this doctrine applies even if the activity is allowed by zoning code
11 or other permit. *See, Jones v. Rumford*, 64 Wn.2d 559, 562, 392 P.2d 808 (1964); *Riblet v.*
12 *Spokane-Portland Cement Co.*, 41 Wn.2d 249, 248 P.2d 380 (1952); *Crawford v. Central*
13 *Steam Laundry*, 78 Wash. 355, 139 Pac. 56 (1914).¹³

14 40. Application of common law nuisance decisions to the present situation is strained
15 at best. The CUP decision imposes numerous conditions on wedding events at the Mansion
16 that are designed to mitigate any impacts to the neighborhood and assure compatibility with
17 residential uses. Past events that were not conducted in compliance with the CUP conditions
18 do not establish that compliant wedding events will constitute a nuisance. To the contrary, the
19 extensive conditions are being imposed to prevent just such a problem. The evidence does not
20 support a conclusion that wedding events conducted in compliance with the CUP will create a

21
22 ¹³ The cases cited by McRoberts on "nuisance per se" are not applicable to the present situation because the CUP provides a legal basis for the activity in question. Assembly use pursuant to a lawfully granted permit is not a nuisance per se.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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City of Tacoma
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1 nuisance by interfering with McRoberts' enjoyment of their property at the level recognized by
2 the cited case authority.

3 41. Northwest Baptist suggests that weddings are valid as an accessory use to the
4 long-standing nonconforming religious and educational use of the Mansion property. To the
5 extent Northwest Baptist is arguing that status as an accessory use in the past would authorize
6 the size and scale of wedding venue that has been proposed, the assertion is without merit.
7 Whatever nonconforming rights may have existed to conduct weddings on the property in the
8 past, the type of enterprise being planned at this point in time vastly exceeds the historic used
9 of the property for weddings. The size of the weddings, the frequency of events, the
10 substantially increased noise impacts on the neighborhood, the parking issues on surrounding
11 streets, the service of alcohol and resulting raucous behavior in the surrounding area and the
12 lengthy receptions with amplified music, amplified speeches, hollering, dancing, and singing
13 constitute a marked expansion of the use. These changes in the format and tenor of weddings
14 held on the site exceed the level of modification allowed for nonconforming uses. "A
15 protected nonconforming status generally grants the right to continue the existing use but will
16 not grant the right to significantly change, alter, extend, or enlarge the existing use." *Rhod-A-*
17 *Zalea v. Snohomish County*, 136 Wn.2d 1, 7, 959 P.2d 1024, (1998). The facts of this case
18 demonstrate significant change and enlargement of the wedding use made in the past.
19 Moreover, the nonconforming religious and education use to which the weddings were
20 arguably accessory has been discontinued and cannot form the basis for an accessory wedding
21 use. The City was correct in concluding that the wedding venue has become the primary use of
22 the property and in requiring an independent CUP permit to authorize the use.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

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Condition 10. Dancing and amplified music from DJs, bands, or similar entertainment must occur indoors. This condition does not prohibit the limited music permitted during wedding ceremonies as described in Condition 9.

Condition 14. The Applicant shall provide security utilizing off-duty City of Tacoma Police Officers for all events attended by more than 30 guests.

Condition 15. The Applicant must construct a wall, or walls, designed to screen the residence at 4415 North Stevens Street from noise/sound emanating from the Mansion property. The wall(s) shall be professionally designed with input from the Greenbusch Group or comparable noise expert. The Applicant shall confer with the property owners and any noise expert they have retained, when evaluating the size and location(s) of the wall(s). The City will approve the design and size of the project giving consideration to the cost and effectiveness of the proposed structure(s). Landscaping near the wall(s) will be evaluated based on the final location and its proximity to the adjacent property. Permits for the wall(s) shall be obtained. The wall(s) should be installed within six months of final permit approval.

Conditions 16 and 18 are deleted because they are no longer relevant to the application.

Condition 20 requiring a new CUP application in five years is deleted.

Additional Conditions

The following new conditions are added to the CUP:

New Condition. The Applicant shall provide the City with a schedule of weddings and other events taking place at the project site, and shall send out an updated schedule as events are changed and added.

New Condition. The Applicant shall schedule one meeting per month with the City and the representatives of the other Appellants during the 2015 wedding season. The purpose of these meetings is to evaluate whether the permit conditions as implemented are adequately mitigating impacts on the neighborhood. If it appears that a condition is not workable or is not having the desired effect, the parties shall work together in good faith to make minor modifications in the condition to improve its effectiveness. In September 2015, the City

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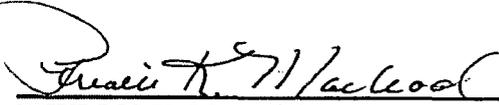
will decide whether it is necessary to continue to hold meetings on a monthly or less frequent basis.

New Condition. The Applicant shall hold no more than three weddings per week outdoors during the "wedding season," typically May through September. Other events shall be conducted indoors, with the occasional exception not to exceed four weddings per year.

New Condition. Guests shall not be allowed to remain in the Rose Garden area after 7:00 p.m. and shall be supervised by staff at all times when in the Rose Garden. Signs shall be posted at the entrance to the Rose Garden indicating it is a Quiet Zone.

New Condition. The Applicant will obtain the City's approval of a standard contract for rental of the project site that encompasses the conditions of this permit, which will then be used for booking all future weddings at the property.

DATED this 4th day of February, 2015.


PHYLLIS K. MACLEOD, Hearing Examiner

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

ORIGINAL

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NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be within the sole discretion of the Hearing Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Hearing Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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EXHIBIT B

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**OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA**

**NORTHWEST BAPTIST SEMINARY
D/B/A CORBAN UNIVERSITY
AND BLUE RIBBON COOKING, LLC;
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION;
SHAWN MCROBERTS AND
SARAH MCALISTER,**

Appellants,

v.

**CITY OF TACOMA,
PLANNING AND DEVELOPMENT
SERVICES DEPARTMENT,**

Respondent.

FILE NOS.:

**HEX 2014-027 (CUP2013-40000211241);
HEX 2014-029 (CUP2013-40000211241);
HEX 2014-030 (CUP2013-40000211241);**

ORDER ON RECONSIDERATION

THIS MATTER came on for hearing before PHYLLIS K. MACLEOD, Hearing Examiner for the City of Tacoma, on December 9, 10, 11, and 22, 2014. The City of Tacoma was represented by Deputy City Attorney Jeff Capell. Northwest Baptist Seminary, Corban University and Blue Ribbon Cooking, LLC (Northwest Baptist) were represented by Attorneys William T. Lynn and Amanda Nathan. Friends of the Historic Weyerhaeuser Mansion (Friends) was represented by Attorney Robert Casey. Shawn McRoberts and Sarah McAlister (McRoberts) were represented by Attorney Stephen Burnham. The Findings of Fact, Conclusions of Law, and Decision in the case were issued by the Hearing Examiner on

ORDER ON RECONSIDERATION - 1 -

City of Tacoma
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747 Market Street, Room 720
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COPY

1 February 4, 2015, and approved a Conditional Use Permit (CUP) allowing assembly uses at the
2 Weyerhaeuser Mansion property. The CUP was subject to a number of Conditions of approval.
3 McRoberts filed a motion on February 18, 2015, requesting reconsideration of certain portions
4 of the decision. The City of Tacoma and Northwest Baptist responded to the request for
5 reconsideration and McRoberts filed a reply.

6 ANALYSIS

7 McRoberts initially challenges the Findings of Fact (Finding 5) and Conclusions of Law
8 (Conclusion 36) as they relate to whether the entire site or just the Haddaway Hall building
9 should be considered as a historic landmark. The facts and the law relevant to this argument
10 have not changed. McRoberts' request for reconsideration on this point is based on the same
11 factual and legal arguments presented at the hearing. The contentions set forth were fully
12 reviewed during the original consideration of the case and were substantively addressed in the
13 Hearing Examiner's decision. No new information or authority was presented on
14 reconsideration that warrants a different analysis or result on this point.

15 The second issue raised by McRoberts seeks modification of the CUP condition of
16 approval requiring off-duty police officers to provide security at events with more than 30
17 guests. (Condition 14). The condition currently states:

18 Condition 14. The Applicant shall provide security utilizing off-duty
19 City of Tacoma Police Officers for all events attended by more than 30
20 guests.

20 McRoberts would like an additional requirement that the officer walk the boundary of the
21 property every 30 minutes to determine if continuous noise is audible at the property boundary.
22 Northwest Baptist asserts that allowing the officer to use discretion in monitoring the property

1 is preferable to dictating a specific duty to walk the site boundary at 30 minute intervals.
2 Northwest Baptist also mentioned the difficulty the City would have enforcing such a
3 condition.

4 The purpose of having security for events held at the Weyerhaeuser Mansion is to help
5 insure that the conditions governing assembly uses contained in the CUP are being observed.
6 This responsibility could involve a number of different duties depending on the particular event
7 and the type of behavior that is encountered. It would not be desirable to dictate the precise
8 methods to be used by the officers on duty. At the same, it would be helpful to add language to
9 Condition 14 clarifying that walking the property boundary would typically be a part of the
10 responsibility of personnel providing security at Mansion events. The condition will be revised
11 to read:

12 Condition 14. The Applicant shall provide security utilizing off-duty
13 City of Tacoma Police Officers for all events attended by more than 30
14 guests. The security officer shall monitor activities for compliance
15 with governing laws, regulations, and CUP conditions. Compliance
16 monitoring shall include walking the perimeter of the property
17 periodically.

18 McRoberts also seeks revision of Condition 15, relating to the construction of a noise
19 reduction wall(s). Condition 15 currently reads:

20 Condition 15. The Applicant must construct a wall, or walls, designed
21 to screen the residence at 4415 North Stevens Street from noise/sound
22 emanating from the Mansion property. The wall(s) shall be
professionally designed with input from the Greenbusch Group or
comparable noise expert. The Applicant shall confer with the property
owners and any noise expert they have retained, when evaluating the
size and location(s) of the wall(s). The City will approve the design
and size of the project giving consideration to the cost and
effectiveness of the proposed structure(s). Landscaping near the
wall(s) will be evaluated based on the final location and its proximity

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to the adjacent property. Permits for the wall(s) shall be obtained. The wall(s) should be installed within six months of final permit approval.

McRoberts is concerned that under the current language of Condition 15 the Applicant might design a huge wall along his property line that would negatively affect the use and enjoyment of his property. He also wants to insure that the wall will meet all applicable code requirements. The revisions to Condition 15 that McRoberts is requesting include requirements on where the walls will be placed and how the wall(s) will be landscaped.

Condition 15 was intentionally worded to allow some flexibility in the design of the sound reduction wall(s). Northwest Baptist and McRoberts each presented detailed testimony from noise experts. These professionals are in a much better position than the Hearing Examiner to evaluate design alternatives and develop a workable solution. The Hearing Examiner has no basis to impose detailed direction on the placement of any noise reduction installation. As to the concern over code compliance, the existing condition requires that permits be obtained for the construction work. Code compliance is evaluated as part of the permit process. McRoberts' concerns are adequately addressed by the existing language of Condition 15 and the request to modify it is properly denied.

Based upon the foregoing analysis, the Hearing Examiner enters the following:

ORDER

McRoberts' Request for Reconsideration is granted in part. Condition 14 of the Conditional Use Permit (CUP) is modified to read:

The Applicant shall provide security utilizing off-duty City of Tacoma Police Officers for all events attended by more than 30 guests. The security officer shall monitor activities for compliance with governing

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laws, regulations, and CUP conditions. Compliance monitoring shall include walking the perimeter of the property periodically.

In all other respects the request for reconsideration is denied.

DATED this 12th day of March, 2015



PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.

EXHIBIT C

CITY OF TACOMA

HISTORIC PRESERVATION PLAN

A COMPREHENSIVE PLAN ELEMENT

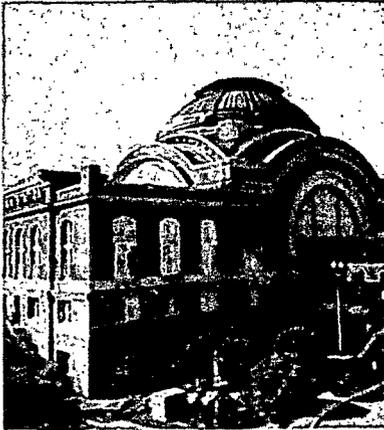


April 12, 2011

Conducted by the Tacoma Planning Commission
and Landmarks Preservation Commission
Consistent with Washington State
Growth Management Requirements



(Adopted on 6/14/11, Amended Ordinance No. 27996)



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CITY OF TACOMA

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IMAGE CREDITS

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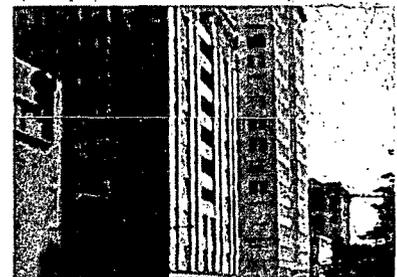
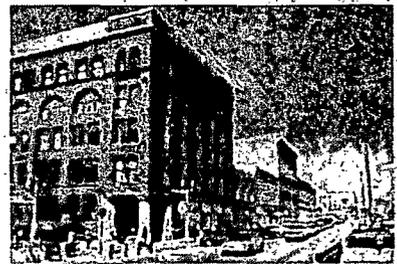
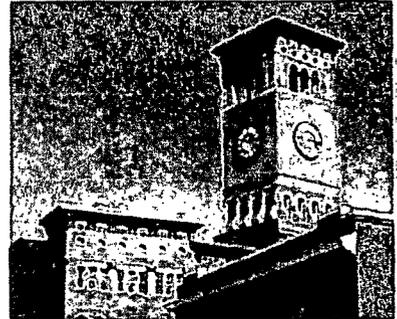
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OVERALL GOALS, POLICIES AND ACTIONS

These goals and policies for historic preservation apply to the overall program and throughout the city.

Goal: A Livable Community With a Strong Sense of History

Innovative policies and procedures should build upon the history of Tacoma and its residents.

Policies:

HP-1 Preserve archaeological resources as part of Tacoma's rich history.

HP-2 Integrate Tacoma's historic resources into community planning efforts.

Goal: A Sustainable Community Supported by Preservation Efforts

Tacoma's preservation program should be at the forefront of the sustainability movement. Land conservation, retaining embodied energy and reduced demolition waste make preservation inherently sustainable.

Policies:

HP-3 Promote preservation's role in community sustainability efforts.

HP-4 Include sustainability objectives in an update to the City's historic design guidelines.

HP-5 Use the City's programs to promote the link between preservation and sustainability.

Goal: An Economically Vibrant Community Supported by Preservation Activities

In Tacoma, preservation contributes significantly to a vibrant local economy. It supports economic development opportunities, retains local businesses and facilitates tourism development.

Policies:

HP-6 Encourage active use of historic resources.

HP-7 Leverage the economic development opportunities provided by Tacoma's historic resources.

Goal: Tacoma's Preservation Program Employs Nationally Recognized Best Practices.

The City of Tacoma will be a national leader in adaptive reuse and historic preservation programs.

Policies:

HP-8 Incorporate new trends and issues in preservation and neighborhood conservation.

HP-9 Promote ease of use, transparency of administration, and predictability in the preservation program.

Goal: Preservation is Integral to Other Community Goals and Policies.

Historic preservation should be integral to City planning programs and balanced with community objectives.

Policies:

HP-10 Integrate historic preservation policies into citywide planning efforts.

HP-11 Capitalize on and promote historic resources in community planning efforts.

Goal: Historic Resources are Integral Features of the Public Realm.

The City should be a leader in preservation through best practices in the management of its own historic facilities.

Policy:

HP-12 Promote best practices in the City of Tacoma's stewardship of historic resources.

MANAGEMENT TOOLS COMPONENT

Management tools are the mechanisms for protecting historic resources and providing technical assistance. Tacoma's primary tools are the ordinances that guide historic preservation efforts as well as underlying zoning regulations, the design review process and design guidelines that manage treatment of the city's historic resources. These provide an effective framework for preservation. In some cases, however, individual tools lack sufficient clarity or they conflict with others.

A diverse assortment of preservation tools should serve Tacoma's needs. These should be based on national standards of best practices, and at the same time should be tailored to Tacoma.

Goal: Historic Resources are Protected from Demolition. Historically significant properties should be protected from demolition whenever possible. This includes those eligible for, or listed in, local, state or national historic registers.

Policies:

- HP-21 Provide effective demolition review procedures.
- HP-22 Provide tools and funding to address preservation emergencies.
- HP-23 Provide incentives to protect historic resources from demolition.
- HP-24 Ensure continuing maintenance of historic buildings.

Goal: Clear and Complete Ordinances Guide the Preservation Program.

The preservation ordinance and other related codes, should be clear and easy to interpret. They should also reflect best practices in organization and content.

Policies:

- HP-25 Update the Landmarks and Historic Special Review Districts Code to reflect current preservation policies and goals.
- HP-26 Use zoning tools to promote historic preservation goals and support an overall heritage conservation system.



An emergency preservation fund should be established to allow for the acquisition of threatened resources.

ORDINANCES AND REGULATIONS

A "bundle" of ordinances establishes the basic rules for construction related to historic resources and sets forth the process for establishing certain protections for them.

In addition to the International Existing Buildings Code (IEBC), key Tacoma regulations that address historic preservation are included in the following sections of the Tacoma Municipal Code:

- Landmarks and Historic Special Review Districts Code (Chapter 13.07)
- Landmarks Preservation Commission Code (Chapter 1.42)
- Zoning (Chapter 13.06)
- Waterfront Structures and Marina Code (Chapter 2.13)
- Environmental Code (Chapter 13.12)



The desired character of traditional areas of the city, such as the North Slope Historic District, should be maintained.

Goal: The City's Project Review and Enforcement Programs Promote Preservation Objectives.

The City's process for project review and approval should be streamlined to provide a positive experience for applicants and to promote both overall, and preservation specific, goals. Enforcement programs should be closely coordinated with the review process to ensure that projects are developed per approved specifications.

Policy:

HP-27 Streamline project review and enforcement to promote preservation objectives.

Goal: Resource Designation Categories Indicate Priorities for Conservation of Resources.

Different types of designation categories should be used to reflect degrees of significance, alternative approaches for protection and different management objectives. Having a range of program tools allows each one to better fit the intent of their use. It also provides options for program flexibility.

Policies:

HP-28 Establish clear categories for resource designation.

HP-29 Schedule designation of historic resources according to clearly defined priorities.

Goal: The Desired Character of Traditional Areas of the City is Maintained.

Preservation and conservation efforts should be guided by standards and criteria that are tailored to Tacoma. These should focus on retaining key features of traditional building while accommodating compatible changes and new investment that respect the established context.

Policy:

HP-30 Provide design guidelines that promote compatible development.

GOAL: AN ECONOMICALLY VIBRANT COMMUNITY SUPPORTED BY PRESERVATION

In Tacoma, preservation contributes significantly to a vibrant local economy. It supports economic development opportunities, retains local businesses and facilitates tourism development.

Historic buildings represent millions of dollars of infrastructure investment made by previous generations. Funds spent renovating these structures have a greater multiplier effect in the local economy than new construction. A higher percentage of each dollar spent goes to labor in preservation projects which results in more jobs for the community and more dollars recirculated in the local economy.

Policy HP-6

Encourage active use of historic resources.

The preservation program should focus on keeping a building in active service and in accommodating compatible alterations. Change that retains the significance of a property is to be accepted and expected. Note that there are, of course, exceptions for special landmarks and historic building museums.

Action HP-6A

Promote adaptive reuse of historic properties.

Regulations and incentives should encourage the re-use of historic structures so they remain part of economically vibrant neighborhoods and areas.

Strategies include:

- Promoting tax incentives, loans and grant programs to encourage the adaptive reuse of historic structures to meet community and market needs.
- Revising zoning regulations and the building code when needed to ensure that they support the re-use of historic structures.

Also see:

- Action HP-23A
Consider establishing a transfer of development rights (TDR) program for historic properties.
- Action HP-26B
Explore context-sensitive zoning.
- Action HP-33C
Extend the range of zoning incentives for historic resources and conservation areas.



A 1912 pamphlet illustrates the long-standing role of tourism in Tacoma's economy.

Policy HP-23

Provide incentives to protect historic resources from demolition.

Incentives should encourage a climate of "good stewardship" for historic resources that helps protect them from neglect or adverse economic conditions. See the Incentives and Benefits section of this chapter for more information on recommended incentives to protect historic resources.

Action HP-23A

Consider establishing a transfer of development rights (TDR) program for historic properties.

A TDR program for historic properties would encourage the preservation of historic structures while enabling increased density in other parts of the city. A demonstration project could be used to test the feasibility of using TDR as an incentive for historic preservation. See *Transfer of Development Rights* at right for additional information.

The program would:

- Allow owners of historic properties to sell development rights.
- Allow the purchaser of the development rights to develop at a greater density or height than would otherwise be allowed.
- Be particularly useful in mixed-use corridors and for special property types, such as institutional facilities.
- Use partnerships with other preservation and conservation organizations, such as the Cascade Land Conservancy, to hold development rights for later transfer.

Also see:

- Action HP-33C
Extend the range of zoning incentives for historic resources and conservation areas.

Action HP-23B

Establish an easement program.

Easement programs offer tax advantages to property owners who make a charitable gift donation of a portion of a historic property, usually the complete exterior envelope. This tool extends greater protection than many other options, and can be used in combination with other tools. A private, non-profit organization should manage the program. The City's role is to cooperate in establishing the program and in making its existence known to property owners.

GOAL: HISTORIC RESOURCES ARE PROTECTED FROM DEMOLITION.

(CONTINUED)

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

A transfer of development rights (TDR) program allows the voluntary transfer of development rights from one property to another. TDR has been used across the country to help relieve the pressure to replace historic buildings in redeveloping areas where current regulations may allow larger or taller structures. For example, a TDR program might allow a historic church located in a redeveloping area zoned for higher commercial uses to receive compensation for unused development rights.

TDR allows some or all development rights to be sold or conveyed from a "sending site" (a historic property) to a "receiving site." Receiving sites must generally be in areas where there is demand for larger buildings than are currently permitted and community support for increased density. Both sending and receiving sites must be subject to regulations that make it possible to calculate development rights, such as downtown or commercial areas with maximum floor area ratio and height standards. Setback and building coverage regulations that may exist in residential areas often make absolute development rights more difficult to calculate.

GOAL: HISTORIC RESOURCES ARE PROTECTED FROM DEMOLITION.

(CONTINUED)



The 1890 Waddell Building at 1502 Pacific Avenue was saved from demolition and rehabilitated to become part the Courtyard by Marriott development.

Policy HP-24

Ensure continuing maintenance of historic buildings.

Historic buildings should be maintained and protected from damage by inappropriate construction techniques.

Action HP-24A

Expand minimum maintenance code requirements.

A minimum maintenance clause in the preservation ordinance should require an owner to keep the building in a sufficient state of repair such that key features are preserved.

- The clause should include provisions to notify the owner that the City is concerned about the condition of the property and indicate that the owner should take appropriate measures.
- The clause empowers the City to make repairs if the owner fails to do so and includes a mechanism for recovering City funds that may be spent in stabilizing the property.
- The City should ensure that property owners are aware of incentive and benefit programs that may be available to assist those who do not have the financial ability to maintain their property.

Also see:

- Action HP-22A
Expand Historic Tacoma's endangered property WATCH list to address a wider range of threats to cultural resources..
- Action HP-27C
Enhance enforcement of preservation codes.
- Action HP-32E
Extend the use of grant and loan programs.

Action HP-24B

Consider a contractor certification program.

A certification program would require a license for a contractor to work on buildings of a high level of historic significance, much as a license is required for an electrician or a plumber. Such a program will reduce permit violations.