☐ EXPEDITE
☐ No Hearing Set
■ Hearing is set
Date: 9/6/2024
Time: 9:00 am
Judge: Egeler

Calendar: Civil

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SAVE THE DAVIS-MEEKER GARRY OAK, Plaintiff, vs. DEBBIE SULLIVAN, in her capacity of Mayor of Tumwater Defendant.	Case No. 24-2-01895-34 DECLARATION OF RONDA LARSON KRAMER IN SUPPORT OF PLAINTIFF'S MOTION TO SET BOND

I, RONDA LARSON KRAMER, make the following declaration:

1. I am one of the attorneys of record for Save the Davis-Meeker Garry Oak (SDMGO). I have knowledge of the facts stated herein and am competent to testify.

2. Attached as **Exhibit A** is a true and correct copy of a risk assessment on the Davis Meeker oak performed by certified arborist Paul Dubois. He emailed me the risk assessment. I've never met him in person. Not a single member of SDMGO, including myself, asked Mr. Dubois to do a risk assessment on the tree. He told me by phone that he did it on his own initiative after seeing a story on the tree in the news. He did it for free, including paying for his gas for the round trip to Tumwater from Keyport.

3. Attached as **Exhibit B** is a true and correct copy of a bio of Mr. Dubois. He emailed it to me.

LARSON LAW, PLLC
P.O. Box 7337
Olympia WA 98507-7337
360-768-0775

4. Attached as **Exhibit C** is a true and correct copy of an email from Mr. Dubois to me in which he describes the depth of his experience working on oak trees, specifically.

5. Attached as **Exhibit D** is a true and correct copy of a letter dated June 7, 2024, from the U.S. Fish and Wildlife Service to the City of Tumwater, which SDMGO obtained from the city via a public records request. Although the letter is addressed "To whom it may concern," one can tell that it is a letter to the City of Tumwater by the wording of the second to the last paragraph, which directly addresses the city when it states, "A permit issued by the FWS under the MBTA could allow you to legally go forward with the Davis-Meeker Garry Oak removal project. Please contact the FWS Migratory Bird Office (permitsr1mb@fws.gov) to begin the process before work is performed."

6. Attached as **Exhibit E** is a true and correct copy of a letter dated July 3, 2024, from the Washington Court of Appeals.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 3rd day of September, 2024, at Olympia, Washington.

Ronda Larson Kramer

RONDA LARSON KRAMER

LARSON LAW, PLLC
P.O. BOX 7337
OLYMPIA WA 98507-7337
360-768-0775

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document on all parties or their counsel of record **via email:**

Jeffrey S. Myers
Jakub L. Kocztorz
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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 4th day of September, at Olympia, WA.

Ronda Larson Kramer

RONDA LARSON KRAMER
Attorney for SDMGO

LARSON LAW, PLLC
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Exhibit A

Keyport Arboriculture Consulting

ARBORIST REPORT and TREE RISK ASSESSMENT

For: Save the Davis-Meeker Gary Oak

7637 Old Highway 99, Tumwater, WA. 98501

The following arborist report outlines one tree, a large Gary Oak *(Quercus garryana*) white oak tree. This evaluation meets the conditions of a basic limited level 2 tree risk assessment. It will discuss the current condition and recommend future dispositions or treatments for the tree.

Davis Meeker Oak Tree

This pro-bono effort is a volunteer opinion by ISA Certified Arborist Paul A. Dubois VI of Keyport Arboriculture Consulting, who is not affiliated with any group, city, contractor, or employer.

The Davis Meeker Gary Oak tree is estimated to be 400 years old. It is a historically significant tree because it is a feature of what once was part of the Oregon Trail—today, living in a growing space next to Old Highway 99 in Tumwater, WA.

Disclosure

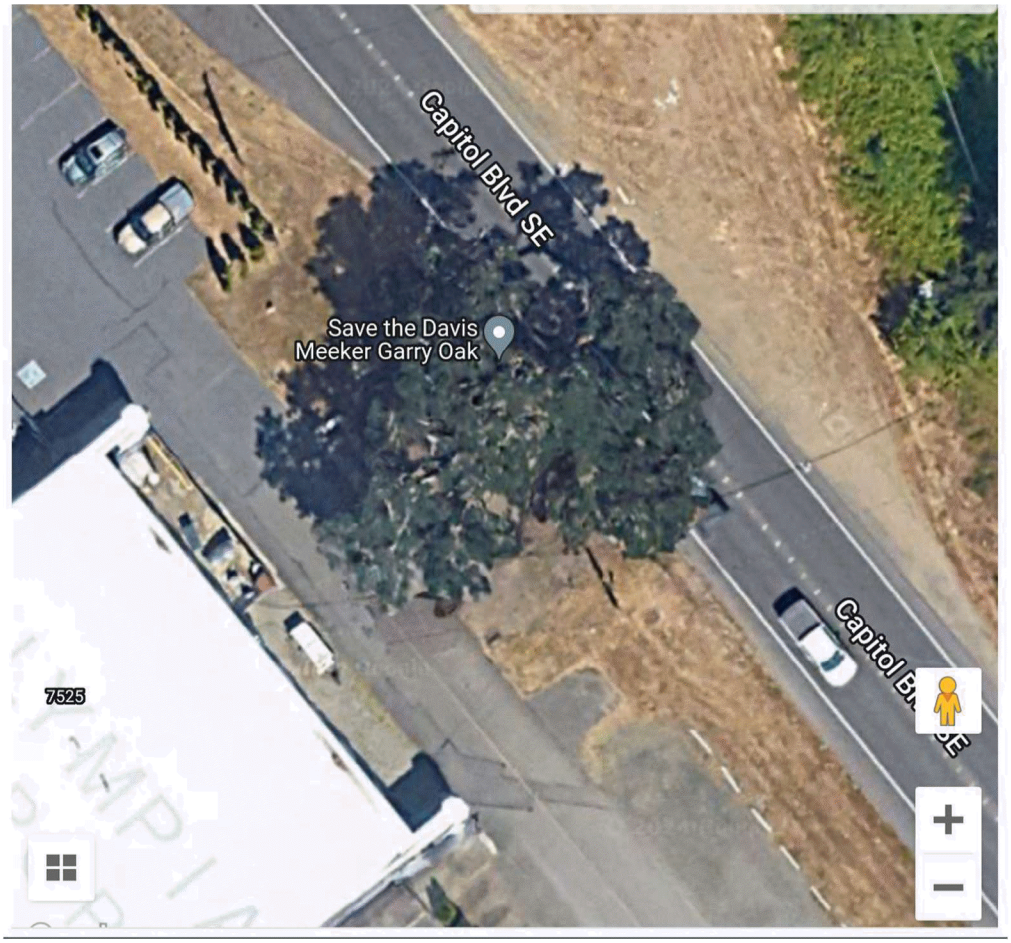
Arborists cannot detect every condition that could lead to the structural failure of the tree. Trees are living organisms that fail in ways we do not fully understand. Conditions are often hidden within trees and below the ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances or for a specified period. Arborists are specialists who use their training, education, knowledge, and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living or working near trees. Tree owners/managers may accept or disregard the arborist's recommendations or seek additional advice and information. The tree's owner/manager makes any decisions regarding treatment or work on the tree. And it is the owner who is responsible for the outcome and consequences. Trees can be managed; they cannot be controlled. To live near trees is to accept some degree of risk. ***The only way to eliminate all risk is to eliminate all trees.***

EXHIBIT A

While not a complete biological report, this report is a comprehensive assessment of the Davis-Meeker Gary Oak tree. It describes observations, including general conditions and past failure, and determines the risk, likelihood, and consequences of future failure. All observations are made from the ground, following the ISA Tree Risk Assessment Guidelines and industry best management practices. The risk assessment considers normal circumstances and typical weather conditions in the Puget Sound region. Information from the previous recent Arborist reports was used as part of important data collection for this risk assessment.

Site

This oak tree lives in compact clay soil and asphalt pavement between a busy highway and an airport service road. Nearby targets that were considered were vehicle and bicycle traffic on the highway. The large airport hangar, the vehicle, bicycle, and pedestrian use of the service roadway, including two parking areas with multiple spaces, and service power lines to the hangar.



Level 2 Basic Tree Risk Assessment

Basic Tree Risk Assessment Form

Client: Save the Davis-Meeker Gary Oak | Date: 6/19/2024 | Time: 0930

Address/Tree location: 7637 Old Highway 99, Tumwater WA. 98501 | Tree no.: 1 | Sheet: 1 of 3

Tree species: Garry Oak / Qruercus garryana | dbh: 66' | Height: 81' | Crown spread dia.: 70'

Assessor(s): Paul Dubois | Tools used: Basic Assessment Tools, see page 3. | Time frame: 2 Years

Target Assessment

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1x Ht.	Target zone: Target within 1.5 x Ht.	Occupancy rate (1–rare, 2–occasional, 3–frequent, 4–constant)	Practical to move target?	Restriction practical?
1	Vechiles and bicycles on Highway 99	Lower imbs	✓			3	No	
2	Airpland Hanger			✓		4	No	
3	Vechicles & Pedestrians on Airport service road	Lower limbs	✓			2	No	
4	North & South Parking			✓		3		Yes

Site Factors

History of failures Large scaffold brance failures.Recent and older past. **Topography** Flat ☒ Slope ☐ _____% **Aspect** _____

Site changes None ☒ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe _____

Soil conditions Limited volume ☒ Saturated ☐ Shallow ☐ Compacted ☒ Pavement over roots ☒ 40% % Describe Highway, Service Road,

Prevailing wind direction SW **Common weather** Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☒ Describe Normal Puget Sound Weather. (NPSW)

Tree Health and Species Profile

Vigor Low ☐ Normal ☒ High ☐ **Foliage** None (seasonal) ☐ None (dead) ☐ Normal 95% % Chlorotic 0 % Necrotic 5 %

Pests/Biotic None observed **Abiotic** _____

Species failure profile Branches ☒ Trunk ☒ Roots ☒ Describe Susceptible to white rot fungal decay, Root dceay, Sudden limb drop. Excellent CODIT reaction, long lived.

Load Factors

Wind exposure Protected ☐ Partial ☒ Full ☐ Wind funneling ☐ _____ **Relative crown size** Small ☐ Medium ☐ Large ☒

Crown density Sparse ☐ Normal ☒ Dense ☐ **Interior branches** Few ☐ Normal ☒ Dense ☐ **Vines/Mistletoe/Moss** ☒ Moss patches throughout

Recent or expected change in load factors _____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☒ LCR 65 %

Dead twigs/branches ☒ 5 % overall Max. dia. 5"

Broken/Hangers Number none observed Max. dia. N/A

Over-extended branches ☒

Pruning history

Crown cleaned ☒ Thinned ☐ Raised ☐

Reduced ☐ Topped ☐ Lion-tailed ☐

Flush cuts ☐ Other Lg newer pruning cuts observed over hwy 99

Small Deadwood in crown overhanging Highway 99

*Small deadwood throughout crown.

Part Size 1" to 5" Fall Distance 30'

Load on defect N/A ☐ Minor ☒ Moderate ☐ Significant ☐

Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☒

Cracks ☐ _____ Lightning damage ☐

Codominant ☒ Codominate scaffold limbs (large) Included bark ☒

Weak attachments ☒ Recent failures Cavity/Nest hole yes % circ.

Previous branch failures ☒ Old and new Similar branches present ☒

Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☒

Conks ☐ Heartwood decay ☒ Decay observed

Response growth Very good response growth throughout crown

Condition(s) of concern Heatwood decay in large scaffold limbs

Part Size _____ Fall Distance _____

Load on defect N/A ☐ Minor ☐ Moderate ☒ Significant ☐

Likelihood of failure Improbable ☐ Possible ☐ Probable ☒ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐

Codominant stems ☒ Included bark ☒ Cracks ☐

Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐

Lightning damage ☐ Heartwood decay ☒ Conks/Mushrooms ☐

Cavity/Nest hole 50 % circ. Depth _____ Poor taper ☐

Lean _____° Corrected? _____

Response growth Good response growth observed

Condition(s) of concern Decay in trunk, codominant stems

Part Size 66" Fall Distance 81'

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☒

Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth _____ Stem girdling ☐

Dead ☐ Decay ☒ Conks/Mushrooms ☐

Ooze ☐ Cavity ☒ 50 % circ.

Cracks ☐ Cut/Damaged roots ☐ Distance from trunk _____

Root plate lifting ☐ Soil weakness ☐

Response growth Collar and root crown indicate good response growth

Condition(s) of concern Decay in root crown/collar

Part Size 66" Fall Distance 81'

Load on defect N/A ☐ Minor ☐ Moderate ☒ Significant ☐

Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Risk Categorization

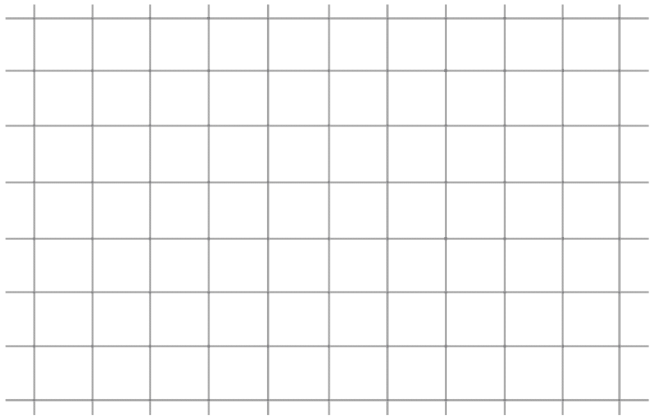
Target (Target number or description)	Tree part	Condition(s) of concern	Likelihood: Failure: Improbable	Failure: Possible	Failure: Probable	Failure: Imminent	Impact: Very low	Impact: Low	Impact: Medium	Impact: High	Failure & Impact (from Matrix 1): Unlikely	Somewhat	Likely	Very likely	Consequences: Negligible	Minor	Significant	Severe	Risk rating (from Matrix 2)
1	Crown & Branches.	Heartwood decay in large scaffold limbs			●				●			●					●		Moderate
1	Crown & Branches	Small diameter dead limbs <5"				●			●				●			●		●	Moderate
1	Trunk & Roots & Root Collar	Decay in in trunk codominate stems Decay in root crown/collar.		●					●		●							●	Low
2	Trunk	Decay, Codominate Stem		●					●		●						●		Low
2	Roots & Root Crown	Decay in root crown / collar		●					●		●						●		Low
3	Crown & Branches	Decay large scaffold limbs			●			●			●							●	Low
3	Roots & Root Collar	Decay in root crown / collar		●				●			●							●	Low
3	Trunk	Decay, codominate stem		●				●			●							●	Low
4	Trunk, Roots & Root Collar	Decay in root crown/collar, Decay in trunk codominate stem,		●				●			●						●		Low
5	Crown & Branches	Heartwood Decay in large scaffold branches			●					●			●		●				Low
5	Trunk, Roots & Root Collar	Decay in root crown/collar Decay in trunk codominate stem		●					●		●					●			Low

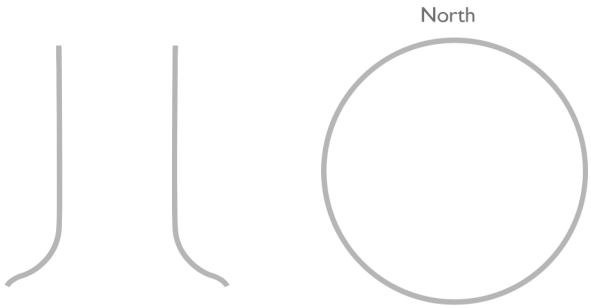
Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low





Notes, explanations, descriptions

Access to trunk, roots and root crown ristricted by locked chain link fence.

Some date such as DBH, cavity % and crown spread, as well as some trunk and root observations

were taken from Tree Risk Assessment by Kevin M. Mc Farland on 6/14/ 2024.

Mitigation options

1. Pruning to remove all deadwood. Selective weight reduction pruning >10% on lower scaffold limbs over Hwy and service road. **Residual risk** low
2. Install support system such as dynamic (compound box) cable system. **Residual risk** low
3. Restrict access beneath tree and parking areas. **Residual risk** low
4. Removal of the tree. **Residual risk** none

Overall tree risk rating Low ☐ Moderate ■ High ☐ Extreme ☐

Overall residual risk None ☐ Low ■ Moderate ☐ High ☐ Extreme ☐ **Recommended inspection interval** 2 years

Data ☐ Final ■ Preliminary **Advanced assessment needed** ☐ No ■ Yes-Type/Reason Aerial inspect by Arborist with extensive experience/knowelege of anceint oak trees.

Inspection limitations ☐ None ☐ Visibility ■ Access ☐ Vines ☐ Root collar buried Describe Locked gate and chain link fence beneath tree.

ISA Basic Tree Risk Assessment

Save The Davis-Meeker Gary Oak

Target Assessment Continued:

Client Save the Davis-Meeker Gary Oak Date 6/19/2024 Time 0930

Address/Tree location 7637 Old Highway 99, Tumwater WA. 98501 Tree no. 1 Sheet 3 of 3

Tree species Garry Oak / Qruercus garryana dbh 66' Height 81' Crown spread dia. 70'

Assessor(s) Paul Dubois Tools used Basic Assessment Tools, see page 3. Time frame 2 Years

Target Assessment

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1x Ht.	Target zone: Target within 1.5 x Ht.	Occupancy rate 1–rare 2 – occasional 3 – frequent 4 – constant	Practical to move target?	Restriction practical?
5	Service power lines, Phone & Cable lines	Lower limbs	✓			4	YES	

Tools Used:

All available tools were not used due to a lack of access (locked fence) to the trunk and root crown.

Tools onsite included: Mallet, Probe, Binoculars, D-tape, and Rangefinder.

Notes:

This assessment was not conducted in isolation but relied in part on previous professional Arborist assessments, including written and verbal public statements and pictures, which provided valuable insights into the tree's history and current condition.

The tree genera *Quercus* are among the species known to drop branches unexpectedly in calm conditions and high temperatures. This is called sudden branch drop (SBD) and is not well understood. Currently, it is impossible to predict failure or mitigate risk due to SBD, and it is not included in this report.

On my visit, I observed nesting birds. The nest is in a cavity roughly halfway up one of the main stems, which is a good indicator of the presence of decay.

Risk Rating

The pre-mitigation risk rating per the basic risk assessment is **moderate**. My observations and previous arborist evaluations have noted decay is present in at least parts of the lower 2/3 of the woody portions of the tree. That decay is the main condition of concern in all the reports. Determining the extent of decay in the upper woody parts is difficult. Before applying the recommended mitigation efforts, I highly recommend an additional aerial/climbing inspection by an arborist familiar with ancient oak trees—specifically White Oaks. One such arborist I recommend, who has over 40 years of experience and is still climbing and working on big old Oaks, is Casey P. Roland of Roland Tree Care in Medford, Oregon. That inspection may change the risk rating and would likely provide information to help choose a mitigation option better. An aerial drone inspection would not be sufficient.

Residual Risk and Mitigation

The following seven actions are recommended and necessary to reduce the current risk assessment rating.

1. Introduction of “Arbor” type wood chip mulch (chipped tree parts) onto the existing root zone to cover the entire zone out to the “Dripline” of the tree.
2. Aeration and Inoculation of the soil within the root zone with endo/ecto mycorrhizal fungal spores compatible with Oak species.

   This is a long-game strategy. Nothing can be done about the decay already in the tree. However, we can improve the tree’s ability to defend against pathogens and strengthen the reaction wood growth process against decay. Compartmentalization of Decay in Trees (CODIT). The process of wood chip mulch breaking down not only helps prevent disease microorganisms such as *Phytophthora* and *Armillaria* from living in the soil, but it also becomes usable beneficial nutrients for the tree—bringing the forest to the tree, so to speak.
   Fertilizing or introducing new soil can have the opposite effect by giving pathogens more favorable conditions to thrive and reproduce.

3. Remove all the rocks up against or touching the root crown. This will allow a critical and vulnerable area where woody roots join the stem to completely dry out and not hold moisture, making it easier for pathogens to enter.

Residual Risk and Mitigation continued.

4. Selective pruning to remove deadwood greater than 1” in diameter and any limbs in active failure. This action alone will move one part of the risk rating (from Matrix 2) from **moderate to low**.

5. Selective pruning for weight reduction in the lower 2/3 of large scaffolding branches. No cuts should be over 3” in diameter and, when possible, made from parts beneath the larger limbs. No pruning or topping of any “green” limbs in the top 1/3 of the tree crown should be made. No more than 10% to 15% of the healthy “green” limbs in the entire crown should be removed during the pruning operation. This will reduce some weight in the decayed or over-extended limbs. All pruning should be done by or under the supervision of an ISA Certified Arborist to ANSI Z-133 requirements and industry best practices.

6. Install a support system, such as a dynamic cable system, per ANSI Z-133 Safety Requirements and ISA best practices and standards. This action will reduce load pressure on codominant and decayed limbs, moving the other risk rating (from Matrix 2) from **moderate to low** and ultimately reducing this tree's overall residual risk rating to **low.**
   ** The recommended aerial inspection can determine the cable system's feasibility, type, and location.*

7. Restrict pedestrian access beneath the tree and move parking away from the dripline to 1.5 times the tree's height or as far as possible. This will eliminate or reduce the target occupancy rate.

   Monitor and inspect the tree at least every two years. Prune as needed. Inspect and adjust the cable system at least every three years. Maintain wood chip mulch in the root zone.

Conclusion

I strongly believe that this special tree can and should be retained. For generations, the benefits this life form has provided humans and our communities are priceless. While constantly evolving, we possess the technology, processes, and science to make informed decisions on how to accomplish best living with and beside old trees in the retrenchment stages of their life span, such as it is. It is easy to cut down and kill it; even 20 or 30 years ago, that may have been the only logical conclusion. Much has changed in our relatively young field of arboriculture, and we have much yet to know.

This report is not intended to disparage or refute the findings of any previous reports or data. Quite the opposite, I could not have completed this report without such work, and I have the utmost respect for anyone who chooses to work on and care for trees. I offer this as a professional opinion and to add to the data already collected and submitted. I am in awe of colleagues in the field of Arboriculture who choose to put themselves into the discussion of this type, as I believe their interests are honorable.

Respectfully Submitted.

Paul A. Dubois VI

Paul A. Dubois VI

ISA Certified Arborist WE-0937A

References

ISA Tree Risk Assessment Manual *Second Edition*

American National Standard for Arboriculture Operations. ANSI Z-133 2017

A New Tree Biology, Shigo & Trees, Associates

Arboriculture Care of Trees, Shrubs, and Vines in the Landscape, Harris

Arborist Report and Tree Risk Assessment by Kevin M. Mc Farland, ISA Certified Arborist PN-0373A City of Tumwater

Arborist Memorandum Tree Solutions Inc. by Tyler Bunton, ISA Certified Arborist PN-8715A

Written & Verbal Statements By:

Registered Consulting Arborist, ISA Board Certified Master Arborist, Scott D. Baker

ISA Certified Arborist, Ray Gleason

ISA Certified Arborist, Beowulf Brower

ISA Certified Arborist Jesse Brighten

Exhibit B

Paul Dubois Biography, July 2024

Currently semi-retired and a small business owner, Paul Dubois began working in the tree industry after being Honorably Discharged from the US Navy.

In 1984, he was hired by the Davy Tree company. In 1991, he became Certified Arborist Number 931 in the Western Chapter of The International Society of Arboriculture and has maintained the credential through continuing education for over 30 years.

Paul opened and successfully operated "Of The Woods Tree Care" in Calistoga, CA, for twenty years. Then, after his company was acquired, he became a District Manager for the Davey Tree Expert Company in the newly created territory for Napa and Sonoma counties for another 8 years.

As a tree company owner and manager, he hired, supervised, and trained tree crews according to ISA, OSHA, and ANSI industry standards. He also provided safety education for tree care, proper tree pruning, removal, and most other arboriculture operations.

Paul is proficient in all aspects of tree work, including large tree removal operations involving rope and rigging systems, Aerial Lift platforms (Bucket Trucks), and large cranes.

Paul's career in the Arboriculture industry spans over 40 years, during which he has made significant contributions to projects in Washington and California. His dedication to his craft is evident in his qualifications, including an undergraduate degree in Fire Science and certifications as an ISA Certified Arborist #WE-0937A, Tree Risk Assessment Qualified, and formerly a Certified Tree Safety Professional. These credentials, combined with his extensive experience, establish him as a trusted professional in his field.

Paul's dedication to his work reflects his personal life. He shares his life with Jennifer, an Electrical Engineer for the US Navy, and they have built a happy life together in Keyport, across the water from Seattle.

Keyport Arboriculture Consulting

Florence Keyport LLC. DBA: Keyport Arboriculture Consulting.

PO BOX 23, Keyport, WA. 98345 (360) 286-3460

CERTIFIED ARBORIST ISA

Paul A. Dubois

ISA Certified Arborist

WE-0937A

ISA QUALIFICATIONS TREE RISK ASSESSMENT

EXHIBIT B

Exhibit C

Gmail Ronda Larson Kramer < >

Re: Oaks in California

1 message

Paul Dubois < > Thu, Aug 22, 2024 at 9:48 AM
To: Ronda Larson Kramer < >

Ronda,
Starting in 1984, I spent most of my career in Arboriculture in Northern California. I primarily worked in Sonoma, Napa, Lake, and Mendocino Counties. I cannot count the number of oak trees that I have had the honor of working on and in. Valley Oaks, Blue Oaks, Coast Live Oaks, and Black Oaks are the most common hardwood trees in the inland coastal region. I have attached a short biography for your reference. Cheers! Paul

Paul A. Dubois
ISA Certified Arborist WE-0937A
Keyport Arboriculture Consulting
(360) 286-3460

Dubois Bio 724.pdf
152K

EXHIBIT C

Exhibit D

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Office of Law Enforcement
3833 S Development Ave, #102
Boise, Idaho 83705

June 7, 2024

To whom it may concern,

It has come to our attention that the City of Tumwater, without permit, intends to knowingly violate federal wildlife law by the removal of a tree, known as the Davis-Meeker Garry Oak, that will destroy an active American kestrel (Falco sparverius) nest that has unfledged young or eggs within it, without first having obtained a permit authorized by the U.S. Fish and Wildlife Service (FWS) to do so.

On June 5, 2024, a professional FWS wildlife biologist, with a background in raptor biology, physically observed, documented and confirmed that it is highly likely that a pair of American kestrels are currently either incubating or brooding young within a cavity of the Davis-Meeker Garry Oak.

The American kestrel is listed under 50 CFR § 10.13 and is federally protected under 16 USC § 703 of the Migratory Bird Treaty Act (MBTA). Unless and except as permitted by regulations, it is unlawful at any time, by any means or in any manner, to take any migratory bird, active nest, or egg of any such bird.

Activities, such as removal of the tree, that result in the take of an American kestrel or the destruction of its active nest, unfledged young, or egg(s), would be a violation of the MBTA and is subject to federal criminal prosecution.

A permit issued by the FWS under the MBTA could allow you to legally go forward with the Davis-Meeker Garry Oak removal project. Please contact the FWS Migratory Bird Office (permitsr1mb@fws.gov) to begin the process before work is performed.

After the nest is determined, by a qualified person, to no longer be active or the young birds have fledged, the nest will no longer be protected under the MBTA and may be removed without permit.

Sincerely,

Richard Bare

Richard Bare
Resident Agent in Charge
Idaho-Oregon-Washington
U.S. Fish & Wildlife Service
Office of Law Enforcement

EXHIBIT D

Exhibit E

Washington State Court of Appeals
Division Two

909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

July 3, 2024

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CASE #: 58881-1-II Save the Davis Meeker Garry Oak, Appellant v. Debbie Sullivan, Respondent

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER BEARSE:

The Save the Davis-Meeker Garry Oak citizen group (SDMGO) appeals the superior court's dissolution of a temporary restraining order (TRO) that prevented the City of Tumwater from cutting down the oak tree. SDMGO now moves for a stay to preserve the tree pending the group's appeal. RAP 8.3; RAP 17.4(b); see also RP at 4 (May 31, 2024) (attached to Notice of Appeal).

SDMGO states that after it filed the appeal, the Tumwater mayor, Respondent Debbie Sullivan, agreed to obtain additional risk assessments for the tree. Stay Mot. at 13. But it contends that Sullivan recently told a local newspaper that the tree "will not be there ultimately." Stay Mot. at 26 (citing Larson Kramer Decl., Exhibit J (article)). So it contends a stay is now necessary under RAP 8.3.

This court grants a temporary stay of the TRO dissolution to allow it to fully consider the stay motion with the benefit of full briefing. RAP 7.3. No bond will be required during this temporary administrative stay, which will automatically dissolve when this court issues a decision on the stay motion. This stay does not extend to any ongoing or future risk assessments.

Respondent is requested to file an answer to the stay motion on or before **July 15, 2024**. Any reply is due on or before **July 18, 2024**. The response and any reply should address the discretionary stay standards under RAP 8.3. They should also address whether RAP

8.1(b)(2) applies instead, which would allow the group to obtain a stay as of right upon the posting of a supersedeas bond or alternate security. SDMGO's other request, for an expedited appeal under RAP 18.12, will be considered when the court rules on the stay motion.

Sincerely,

Derek M. Byrne
Court Clerk