

NO. 58881-1-II

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

SAVE THE DAVIS MEEKER
GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her
capacity of Mayor of Tumwater,

Respondent.

DECLARATION OF
RONDA LARSON
KRAMER IN
SUPPORT OF
MOTION FOR
INJUNCTIVE
RELIEF PURSUANT
TO RAP 8.3

I, RONDA LARSON KRAMER, declare as follows:

1. I am the attorney representing Appellant in this matter. I make this declaration based upon my personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Declaration of Cowlitz Tribe Elder Diane Riley dated May 27, 2024, filed in Thurston County Superior Court Cause No. Case No. 24-2-01895-34.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Stewart Hartman dated May 27,

2024, filed in Thurston County Superior Court Cause No. Case No. 24-2-01895-34.

4. Attached hereto as **Exhibit C** is a true and correct copy of an excerpt of a transcript created by artificial intelligence of the June 4, 2024, Tumwater City Council meeting. This is the meeting in which the mayor agreed to obtain a second assessment of the oak tree. The video of the meeting can be found here: https://www.youtube.com/watch?v=ial_QtYvaGQ&t=13350s

5. Attached hereto as **Exhibit D** is a true and correct copy of a JOLT News article, dated May 12, 2023, entitled, “Tumwater City Council confirms Lisa Parks’ appointment”.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, copied and pasted from <https://goia.wa.gov/relations/centennial-accord>.

7. Attached hereto as **Exhibit F** is a true and correct copy of a letter from E. Ken Choke, Chairman of the Nisqually Indian Tribe, to Tumwater City Council, dated June 4, 2024.

8. Attached hereto as **Exhibit G** is a true and correct copy of a letter from James Macrae, Assistant State Archaeologist with the Department of Archaeology & Historic Preservation, to Tumwater Mayor Debbie Sullivan and the Tumwater City Attorney's Office, dated June 4, 2024.

9. Attached hereto as **Exhibit H** is a true and correct copy of a letter from Tumwater Mayor Debbie Sullivan to James Macrae, Assistant State Archaeologist, dated June 11, 2024.

10. Attached hereto as **Exhibit I** is a true and correct copy of an excerpt of the Thurston County Habitat Conservation Plan dated February 22, 2022, of a pdf from https://www.fws.gov/sites/default/files/documents/Thurston%20County%20HCP_final.pdf, plus electronic markups.

11. Attached hereto as **Exhibit J** is a true and correct copy of an Olympian article, dated May 12, 2024, entitled, “Does Expansion of Airport of Old Highway 99 Play Into Plans to Cut Historic Tree?”

12. Attached hereto as **Exhibit K** is a true and correct copy of the transcript of the May 31, 2024, hearing in Thurston County Superior Court in this case.

13. Attached hereto as **Exhibit L** is a true and correct copy of the Declaration of Ronda Larson Kramer dated May 30, 2024, in Superior Court Cause No. 24-2-01895-34, with attached letter from the Washington Department of Archaeology and Historic Preservation. I filed this document with the superior court at 12:50 p.m. the day before the court hearing. Because I obtained the letter just that morning, I emphasized to the court staff when I dropped off the bench copy around 1:00 p.m. that it was for a hearing the very next morning and that it was of utmost importance that the judge see the document because “this will make her job very easy

tomorrow.” The court staff responded to me confidently, “Oh, she will get it.” I also emailed opposing counsel the same document at 12:53 p.m. the same day. Opposing counsel claimed at the hearing the next day that “there is no pleading that raises archaeological resource laws for the state of Washington. It's not before the court.”

14. Attached hereto as **Exhibit M** is a true and correct copy of an email from US Department of Fish and Wildlife Permits Biologist Jennifer Urmston dated June 5, 2024, to Tanya Nozawa, member of SDGMO.

15. Attached hereto as **Exhibit N** is a true and correct copy of a work order detail report entitled “Meeker Oak – Branches Down on Roadway,” dated May 16, 2023.

16. I attended a June 4, 2024, city council meeting at which 39 members of the public gave testimony in support of retaining the tree. The meeting lasted four hours because there was so much testimony. The speakers were eloquent, and each

time I thought that it could not get any better, the next speaker would outdo the last in terms of persuasiveness and eloquence.

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 2nd day of July, 2024, at Olympia, Washington.

Ronda Larson Kramer

RONDA LARSON KRAMER

Exhibit A

- 1 EXPEDITE
2 No Hearing Set
3 Hearing is set

4 Date:

5 Time:

6 Judge:

7 Calendar:

8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF THURSTON**

10 SAVE THE DAVIS-MEEKER GARRY OAK,

11 Plaintiff,

12 vs.

13 DEBBIE SULLIVAN, in her capacity of Mayor of
14 Tumwater

15 Respondent.

Case No. 24-2-01895-34

DECLARATION OF COWLITZ
TRIBE ELDER DIANE RILEY

16 I, DIANE RILEY, make the following declaration:

17 1. I have knowledge of the facts stated herein and am competent to testify.

18 2. I am an enrolled member and an elder of the Cowlitz Indian Tribe. I make this
19 declaration not in an official capacity as a representative of the Cowlitz Indian Tribe but as an
20 elder of my people who is actively involved in the preservation of Cowlitz values, history, and
21 traditions. I am a member of the group Save the Davis Meeker Garry Oak.

22 3. It is my understanding that for about two weeks, members of our tribal council
23 have been circulating a letter that the tribal council received from the City of Tumwater informing
24 the Tribe that the city was planning to remove the Meeker Oak. This leads me to conclude that
25 the city did not inform the tribe until approximately May 13, 2024. The city is required to provide

EXHIBIT A

1 the Tribe notice and a reasonable opportunity for input. Giving the Tribe only two weeks is not a
2 reasonable opportunity for input.

3 4. I understand that the city's arborist recommended removal in a report dated
4 October 10, 2023. I don't understand why the city waited seven months to inform my Tribe. The
5 significance of this tree and our history with it is so great that there should be no question about
6 trying to find ways to preserve the tree rather than cutting it down without a permit.

7 5. This tree has a tragic period in its long life. It was known as the hanging tree. It
8 was said that Native Americans were hung by non-Indians there without due process. The branch
9 used for that broke off in a major ice storm in the 1990s. The massive healed-over scar from where
10 it broke off can still be seen today on the south side of the lower part of the trunk about six feet
11 up. If the city carries out its plan to remove this tree, I feel like it will be another murder without
12 due process.

13 6. Also, if this tree is cut down, it will forever erase a piece of my personal history
14 and my tribal history. It will make me angry. It will make me feel similar to how I feel when I
15 think about the fact that 160 years ago, the territorial governor promised us in bad faith when I
16 signed the Treaty at Medicine Creek that we would have a reservation on Cowlitz Prairie. But the
17 promise was never kept.

18 7. Unlike the British who did not come to conquer the land but to trade with and
19 blend with the indigenous population, the Americans came with an attitude of wanting to take our
20 lands without compensation, of wanting us to disappear. They renamed everything: our lands and
21 the place names of our rivers and mountains. They have essentially erased all evidence that we
22 had been here. While the British coexisted with Tribes, the Americans demanded separation and
23 exclusion from the Tribes.
24
25

1 8. As with many tribal people, Cowlitz families have strong familial ties to other
2 tribes as we often intermarried for both political and social reasons. I am not only Cowlitz, but
3 my family shares lineage with the Nisqually people and the Kanaka of Hawaii who were
4 indentured workers brought to Southwest Washington in the early 1820's by the Hudson's Bay
5 Company. My great great great grandfather and Kanaka ancestor, Keala Ma'alo, was a
6 contemporary to the Kalama families of the Nisqually. His name appears listed in the HBC
7 journals as a worker and laborer assigned first to Fort Vancouver until 1844 when he was
8 reassigned to Cowlitz Farm when the Puget Sound Agricultural Company (PSAC) was being
9 developed near present-day Toledo.
10

11 9. Because Ma'alo's Nisqually wife and family was at Nisqually, the HBC journals
12 indicate he often traveled between Cowlitz Farm and Ft. Nisqually, and the sheep yards at Mud
13 Bay, for work, family visits, and Hawaiian luaus held by Hawaiian Hudson Bay workers. The
14 Meeker Oak tree has stood next to the Cowlitz Trail for hundreds of years. I can't help but imagine
15 how many times my ancestor walked or rode horseback on the Cowlitz Trail, perhaps taking a
16 rest break beneath the shade and cover of the outstretched branches of this large Oak tree beside
17 the trail.
18

19 10. The Cowlitz Trail is a portion of a water and land transportation system developed
20 and traversed by pre-contact Indian tribes for millennia. The tree would have been approximately
21 200 years old in the early parts of the 19th century, and a young tree during the time that the
22 Cowlitz people dominated the region between the Columbia River and present-day Canada, with
23 their numbers and their vigorous and expansive Cowlitz trade network and political alliances.
24

25 11. Even after the decimation of our numbers by European disease, we gave assistance
to the British fur trappers to establish their forts and fur trade, we offered our women as wives

1 and our men as guides, canoe men, and laborers after the arrival of the American explorers and
2 first settlers who came to settle present day Tumwater, Olympia, and points north in Washington
3 State. Between the 1820s and 1840s, the Meeker Oak tree was already 200 years old and was
4 certainly a familiar landmark for travelers and those portaging to the lands of the Chehalis and
5 Nisqually and other tribes or to the Salish Sea to resume travel by canoe.

6 12. That the mighty Oak tree still stands today, 200 years later, should be seen as
7 remarkable and a kind of miracle. The tree needs to be honored, preserved, and protected – not
8 destroyed – as a living reminder of the shared history of Washingtonians and the persistence,
9 resilience, and contributions made by the Cowlitz people who were so integral to the settling of
10 the Puget Sound region.
11

12 13. Two of the first American settlers to make a land claim near Cowlitz Landing (the
13 beginning point of the Cowlitz Trail) were John R. Jackson and his wife Matilda. Their cabin and
14 homestead in the Chehalis area on Jackson Highway (between Toledo and Chehalis) have been
15 preserved by the State of Washington as The Jackson House State Park Heritage Site. If the state
16 and local jurisdictions can do that to commemorate a settler, why can't they do that for an Oak
17 tree and a tiny piece of land that is so important to the history of the Cowlitz Indian Tribe and
18 other tribes?
19

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

22 EXECUTED this 27th day of May, 2024, at Toledo, Washington.

23
24
25 
DIANE RILEY

Exhibit B

1 EXPEDITE
2 No Hearing Set
3 Hearing is set
4 Date:
5 Time:
6 Judge:

7 Calendar:

8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF THURSTON**

10 SAVE THE DAVIS-MEEKER GARRY OAK,

11 Plaintiff,

12 vs.

13 DEBBIE SULLIVAN, in her capacity of Mayor of
14 Tumwater

15 Respondent.

Case No. 24-2-01895-34

DECLARATION OF STEWART
HARTMAN

16 I, STEWART HARTMAN, make the following declaration:

17 1. I have knowledge of the facts stated herein and am competent to testify.

18 2. I am a member of the group Save the Davis-Meeker Garry Oak. My occupation
19 for about 50 years was contract logging and forester. I have been a lifelong resident here in
20 Tumwater and the Olympia-area for 73 years. Also, my father Kenneth Howard Hartman's
21 mother, Etta Parsons, served terms as secretary of the Nisqually Indian Tribe. After she died, my
22 dad's sister, Eleanor Kover, became secretary of the tribe.

23 3. I have identified and cut down many danger trees in my life.

24 4. The loss of the Old Oak tree at Olympia Airport to me personally would be like
25 losing an old friend that I have known all my life. It is a landmark that has a lot of history that my
father's family were raised with over the years. Over the years, my family and I had meetings

EXHIBIT B

DECLARATION OF STEWART HARTMAN - 1

LARSON LAW, PLLC

P.O. Box 7337

OLYMPIA WA 98507-7337

360-768-0775

1 over many issues under the old Oak tree. It was a nice shady place to park and have conversations.
2 Land use issues were a big topic of our conversations there. I've worked on legislation for 45
3 years, including bills calling for the use of empirical science on land use issues. I worked on many
4 Tumwater land use issues as well.

5 5. I remember my father and grandfather taking me to the tree when I was a boy--
6 they told me how it was used as a hanging tree. That's where the Oregon Trial came through that
7 ended by the brewery. We need to save the tree to teach younger people about history in our State
8 and City of Tumwater. We cannot lose more landmarks due to political reasons.

9 6. Also, based on my 50 years of experience evaluating danger trees, it is my opinion
10 that the Davis Meeker Oak is not a danger tree and does not need to be removed. It is still very
11 healthy. I recommend that decision-makers look to proof of a model that works. I suggest the
12 historic trees at the State capitol grounds that have braces. These trees will provide that model on
13 how to brace a danger tree if it needs to be braced.
14

15 7. As an aside, I'd like to give a little of my family history and connection to this
16 area. My father's grandfather was George Parsons, Sr. He owned the property known as
17 McAllister Springs in the Nisqually Valley. He donated the Springs to the City of Olympia in
18 1941 for its water supply. My sister has the original land donation deed. The political family, the
19 McAllisters, asked George Parsons to donate the property to Olympia in 1941.
20

21 I declare under the penalty of perjury of the laws of the State of Washington that the
22 foregoing is true and correct to the best of my knowledge.
23

24 EXECUTED this 27th day of May, 2024, at Tumwater, Washington.

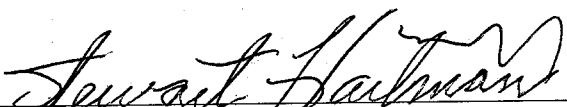
25 
STEWART HARTMAN

Exhibit C

Excerpt of Tumwater City Council Meeting of June 4, 2024

Excluding public comment and including council discussion re: Davis-Meeker Gary Oak Tree

Video and Transcript from:

https://www.youtube.com/watch?v=ial_QtYvaGQ&list=PLE_nN-qDbnQgYIEbBFpMH9GFJyyM3CfSw

Transcript generated by YouTube AI (unedited)

...

COUNCIL DISCUSSION OF PROPOSED ORDINANCE RE: GARRY OAK TREE

3:16:16

item that was added to the council considerations and uh councilman dhof

3:16:23

brought that and and I'm assuming it is the from the email you sent earlier

3:16:28

which was a proposal for an emergency ordinance to preserve the Davis Meer oak tree is that correct thank you mayor

3:16:35

yeah the email sent on June 2nd 2024 with three sample proposals for a

3:16:42

council discussion Angela did raise her hand before we started on this just as

3:16:47

oh I'm sorry Angela go ahead yes mayor did we need a motion to approve the cancellation of the June 18th regular

3:16:54

council meeting that was on our Council considerations okay consent I'm sorry

3:16:59

Council consent it was already done all right go ahead thank you

3:17:07

mayor the email was regarding three sample proposals so as this current state has

3:17:13

been evolving it has been um the ipal codes have been addressed for the reason

3:17:19

for executive branch of government administrative decision so the question I was bringing forward is when it comes

3:17:27

to Municipal codes that's Council that's the legislative branch of government so knowing that the temporary restraining

3:17:34

order expires tomorrow at 5 what does it look like for Council to have a

3:17:39

discussion about updating the municipal code for section 16 for the exemption

EXHIBIT C

3:17:44

and what I was hoping to have a discussion is what would it look like when data is called into question that

3:17:50

if a board or a commission or a council calls into question that data that it is

3:17:56

independently thirdparty assessed for to validate and reproduce and where I'm

3:18:02

getting at is we're council members here tonight and the majority of us have other jobs and other responsibilities

3:18:09

and my job is a chemist I've always been a chemist is been my lifelong dream everything I do

3:18:16

is about science so I'm bringing this back because comments have been made that Council should not rule based on

3:18:22

feelings we should be ruling it based on what's presented to us and that's what I'm going back to is what I know is

3:18:29

science and so I'm asking us to follow the scientific method of when data is called into question that it's not about

3:18:35

the person it is about the data and that's when I'm asking to have a conversation what does it look like for

3:18:41

Council to amend the municipal code to say if data is called into question that it automatically goes to an independent

3:18:48

thirdparty assessment for validation and

3:18:56

reproducibility council member Kathy so um council member dhof uh are

3:19:04

you going to ask three different things and that's just the first one which is to modify the code the question is it's

3:19:12

been coming it's been presented to us that this is Administrative function so what part does council play as a

3:19:18

legislative branch of government do we pass do we discuss the Bellingham recent

3:19:24

example that Tanya also brought up and do we do an ordinance like that an emergency Ordinance do we look at the

3:19:29

municipal codes in the email that I sent for adding trees because it was told trees aren't in there for the waiver

3:19:35

even though objects are a tree is an object so if that needs to be cleared up because it is a unique situation let's

3:19:40

modify that municipal code to add tree organic nonbuilding structure what does it look like for the

3:19:46

exempt of the data to remove something if the data is called into question so could we

3:19:51

do that does it need to be an emergency ordinance I'm still so I mean I'm still

3:19:59

I know I just heard our City attorney say just a discussion what if what would it look like for me to make a motion to

3:20:05

amend the municipal code and with that is an emergency that's the question is

3:20:10

can it be effective immediately or would it have to be an emergency ordinance

3:20:19

oh you you've brought up several different things thank you and I apologize

3:20:24

it's that's I'm hoping to have a discussion is if the temporary restraining order expires tomorrow at

3:20:30

five o'clock and Council wants to update the municipal code so that if data is

3:20:35

called into question for any action that it is independently thirdparty assess before any action or inaction is taken

3:20:44

okay so you so you're saying what you desired to do is update uh title

3:20:51

16 in order to require additional assessment of some

3:20:57

type chapter 16.08 e to update the T Minal code for

3:21:03

any documentation that is called into question by a board a commission or a council that the third-party independent

3:21:10

assessment will be performed to validate and reproduce documentation before any decision or action or non-action is

3:21:17

made so uh first thing would be that we would need an ordinance um to bring

3:21:23

forward to the council for discussion um most of the tree protection ordinance

3:21:29

require is considered development regulation so that requires additional

3:21:34

process to go through the Planning Commission um and have requires a public hearing as well as notice to the state

3:21:42

Etc so what is the difference of declaring an emergency ordinance like Belling did knowing that they will follow up on the due diligence of Those
3:21:50
portions so um an ordinance can be ADT adopted as an emergency it would um
3:21:56
first require that we have an ordinance to bring before the council to vote on um and then it would require unanimous
3:22:03
vote to take effect immediately unanimous or super majority
3:22:09
unanimous so it's super majority of the mayor vetos need a super but you need a unanimous to do an emergency ordinance
3:22:16
because because we're a initiative in referendum City it requires the unanimous vote okay so I
3:22:24
drafted an ordinance which is rough really rough but I drafted it and
3:22:30
put it in the email all right so what you're referring to doesn't meet the minimum qualifications of an ordinance
3:22:40
okay so um
3:22:48
attorney Kirk Patrick what um what calls for a unanimous Council vote why does it
3:22:55
call for a unanimous vote um it has to do so it it's required
3:23:02
by State Statute because because we have the power of initiative and ref
3:23:08
referendum um there's an additional requirement that it be an unanimous vote not a super majority to change our own
3:23:15
ordinance to make it an emergency to make it an emergency guess the question is how do we if it's not an emergency
3:23:22
then how can we have a discussion about not removing the tree until this ordinance can be drafted to meet the
3:23:29
standards because we don't write ordinances so I did the best that I could and apparently that is not
3:23:34
sufficient so what does it look like to make it sufficient to have a discussion
3:23:39
without the tree coming down not even talking about the Federal Regulations or our tribal neighbors and their concerns
3:23:47
I'm just talking about data called into question and using the scientific method that has been around since the 1600s the

3:23:53
same time that tree started growing that that's up to the council
3:24:00
and the mayor if you wish to have a discussion about that um and then direct
3:24:08
staff accordingly um if that's the direction that you want to
3:24:13
go if we were to vote tonight to um
3:24:18
extend this um Beyond tomorrow and these are some of
3:24:25
the reasons that council member dalhoff is putting forth I would also like to
3:24:31
add in um the letter that was received by I
3:24:39
believe the Nali tribe from uh the chairman of the Nali tribe that we put
3:24:46
this off they he didn't name it length of time but that would need to be talked
3:24:52
about but for the for the tribe to be able to check with their um two
3:24:58
different entities about historical and preservation issues so um I would like
3:25:04
to honor that I mean we've even heard here tonight you know what does it mean
3:25:10
to honor our ancestors a tree the native people um all all of us who love it um
3:25:18
all of that kind of thing and so if if we are going to vote to
3:25:25
extend the deadline of 5 o'clock tomorrow I would like it to also include that the
3:25:31
tribes honor what the tribes ask for in their in their letter along with what
3:25:37
council member dohop is speaking
3:25:45
about uh I have two people council member agabi you have a
3:25:52
comment yes thank you mayor uh Karen I'm not sure if you saw the email
3:25:59
from plenti attorney today sometimes this afternoon in that
3:26:06
email the plenti attorney have made some uh
3:26:14
suggested C she said and I'm I'm I don't have the
3:26:20
email I'm just trying to go by recollection that if an assessment was
3:26:26
to be done by the plaintiff uh

3:26:32
a that that a will guarantee or the
3:26:37
insurance will guarantee that if the Tre were to come down and injure somebody
3:26:43
that their insurance would be liable for with that so along those lines have you seen
3:26:51
any email to that
3:26:56
effect I believe I saw the same email that you did so so so
3:27:03
naturally if if if this attorney is making
3:27:11
a assertions or statements that uh if an if a neutral aloris were to cond an
3:27:20
assessment something to happen in the interim that they were going to be responsible
how would you go about
3:27:26
making that a legal
3:27:31
document I'd have to look into that okay thank
3:27:37
you council member Jefferson
3:27:46
you're you're on mute council member Jefferson yes um I took copious notes as um our
3:27:56
community members were talking to us today and I
3:28:02
heard apathy I heard almost like there's a
3:28:09
lack of concern I heard a lack of trust
3:28:16
towards us and what we are saying as council members as
3:28:23
mayor as City administrator I would like to propose a
3:28:32
compromise um I am familiar as a military leader
3:28:38
with risk assessment and mitigating risks we heard our insurance company has
3:28:47
told us you won't be covered if someone should be
3:28:53
injured if that tree should fall and that limb should hurt someone or kill
3:28:59
someone heaven forbid it's a family member so we understand that you know
3:29:05
removing the tree that's a risk mitigation perhaps we can look at
3:29:13

trimming the tree bracing the tree as some members of our community said that
3:29:20
can be done our Native Americans um community
3:29:25
members are very upset with us right now we we got a letter from you know uh
3:29:34
the the redwind uh the I'm looking at it right now from chairman uh Ken
3:29:41
choke the tribe requests that the city delay taken any action to remove the the oak tree
until the tribe has had an
3:29:48
opportunity to complete consultation with the state historic preservation officer and the
tribal historic
3:29:55
preservation officer I think we owe it to them to at
3:30:00
least get that independent third-party analysis I believe that our community
3:30:07
understands that we feel in City leadership that that tree could fall but
3:30:15
let's give 30 days a 60-day extension so we can
3:30:21
listen to what we heard today and
3:30:27
digested can
3:30:32
that uh thank you mayor um I would also like to uh follow up on council member
3:30:38
Doh half's um request we had questions about the
3:30:43
numbers and you know and and while they give me tease me about being the numbers
person but numbers need to mean
3:30:50
something and so I I'm concerned that um I would like to see the that we could
3:30:58
have under these circumstances um or any circumstance moving forward that if we
have um you know difference in data that
3:31:06
we uh take that that step forward to make sure that the data that we've received um
helps us with our decision
3:31:13
moving forward and I um I'm very was moved by the testimony that we heard
3:31:19
tonight um as well and um and in respect and honor to our tribes we we do have a
3:31:26
request from the new um leadership the new uh uh I'm sorry the gentleman from
3:31:33
the nelli tribe who's now the um the head of the tribe uh to to pause and so

3:31:39

I would I don't know what we need to do to do this but um as a as a council and

3:31:45

that we take a pause and allow some of these questions to be answered um and to

3:31:51

seek that third opinion and so that we all have we're and then the community

3:31:56

can see too uh that it's not in good faith that we have made every effort um

3:32:02

rather than you know going for that first one that we made every effort to um to exhaust
the possibilities before

3:32:08

um action needs to be taken or if it is does need to be taken so um I would like

3:32:14

to see that happen this evening uh council member Von Holz thank you

3:32:19

mayor um in regards to what council member Jefferson said we did hear from

3:32:25

our insurance company and they did say that we wouldn't be covered if someone

3:32:31

was killed or injured by the tree they also said that if the numbers were

3:32:36

different if the scientific data was different they would change their

3:32:41

opinion I believe I remember hearing that so I would also so um like to

3:32:48

consider what council member dhof has suggested and um I've already suggested

3:32:55

to administrator parks that we need to do a third independent review of the

3:33:03

findings of this report to honor our community members and all the concerns

3:33:09

that have been brought up uh council member Kathy and then council member alower

oh Council go

3:33:16

ahead I have a this is a legal process question um for the City

3:33:21

attorney as a council you know we can pass motions and resolutions we can pass
ordinances those are two three three

3:33:29

distinct things so as a council we could pass something that said uh that the

3:33:38

coun that uh we are directing staff to seek a thirdparty analysis and that we

3:33:45

are requesting that the tree not come down for a per X period of time but there is

3:33:52

no actual like we could say the tree shall not come down but there's no act

3:33:58

like by just doing a motion as opposed to an ordinance there's no actual legal mechanism to compel the administration
3:34:06
the executive branch to not take action is that correct I believe that's correct
3:34:12
so the mechanism that Council would have to exert would be to pass an ordinance
3:34:18
which because it's regarding a development code has to go through the typical process of a public hearing and
3:34:27
all our typical procedures going through whatever committees it's assigned to unless it's an emergency ordinance that
3:34:34
is enacted correct it would still have to go through those processes um but it could
3:34:41
be enacted as an emergency and then there's certain additional requirements
3:34:46
to go through those processes during the interim controls are there requirements for what
3:34:54
constitutes an emergency like we heard in the opma presentation the definition
3:35:00
of an emergency for a special meeting was a rather High bar I think the examples that he gave were a fire or
3:35:07
contamination of a water source is there a similar what's the threshold for us Public public health and safety um and I
3:35:15
don't have it in front of me to to speak to it directly but it's not as high a threshold as what he was speaking to for
3:35:23
the remote emergency meeting okay I think you so thank you um so about the
3:35:31
emergency ordinance uh an emergency ordinance is why we're here where we are
3:35:38
and why people mistrust us and so forth because uh the mayor you and the city
3:35:45
admin administrator have told us that this is an emergency so that's part of what started this on a
3:35:52
short you know going to court and getting on a short leash and so forth here so we if we um as all the council
3:36:02
members who wait in on something here we unanimously decide to do something with
3:36:10
emergency in it does that and is are we cap capable of doing that
3:36:17

and what would what is that called that's what Michael was asking about and maybe I heard it and
3:36:24
didn't understand that and also if we do it we do not have to have uh 30 days or
3:36:30
60 days or 90 days we could have until certain things are are cleared up and we
3:36:37
report back and we talk about it and whatever because I want to mention one
3:36:42
thing that's off of the you don't have to put this in the in the emergency ordinance but
with the police officer
3:36:50
who received the person of the year here as a as a policeman I was caught by the
3:36:58
fact that our police chief said and implied more than once in this that this
3:37:05
man Officer Clark knows how to do it
3:37:13
together do it together and I want this community that's still here to know
3:37:18
there are those of us here who are trying to do this together we are trying to I am trying
to do it together and we
3:37:26
are looking here for a way to extend this so we can do it together so so we
3:37:32
can make so we can make something happen that that not only Keeps Us in community
3:37:38
but maybe creates a stronger uh community so that's why I appreciate
3:37:44
what council member Hoff has done and the questions that um you know our
colleagues on the wall
3:37:51
over there um are with us on here I guess and uh I
3:37:57
would like to see that happen tonight if we can do that with the high bar of all
3:38:03
council members voting the same way any sorry for the sermon in
3:38:11
between yes go ahead council member D I appreciate this time to have this
3:38:16
discussion different brands of governments and I I see the irony of the opma meetings
act on all this but I also
3:38:23
appreciate that the challenge I'm having is the timeline right and this happening
3:38:29
emergency not emergency right decisions uh factors and then okay so
3:38:35

what is our lane as Council it's a legislative branch of government if the if a a portion of the municipal code is

3:38:42

being used for to make that action then let's update that we've been hearing it's Unique it's different we haven't

3:38:48

has for so let's fix that for the currency and moving forward so what does that look like well we can't do an

3:38:54

emergency ordinance I drafted one not good enough so you need the time to go through the process so how do I ask the

3:38:59

executive branch of government to let us do that process to let us go do that right so I don't know where I'm not

3:39:05

looking at you City attorney looking at mayor what does that look like moving forward is like this is a process trying

3:39:12

to fix the current state and move forward together what does it look like to give us the opportunity when Kevin

3:39:19

McFarland did his assessment he charged the city six hours so could this third party independent assessment happen

3:39:25

tomorrow can it happen tomorrow could you give us that time like I don't know howse if I can't make

3:39:31

emotion my ordinance is not good enough what can I do to ask I understand what

3:39:36

you're asking for so um I would if if I

3:39:41

was to entertain this I would not want any of the arborous or any has been involved in this at any way shape or

3:39:47

form but somebody totally outside the scope of this who's totally under

3:39:52

totally totally independent from all of the rhetoric and all the other things and all of the the preconceived notions

3:40:00

that we've already had how long would it take to do that

3:40:05

um coun uh City administrator Parks how long do you think that would take I'm

3:40:11

I'm going to have to ask Karen whether or not we'd have to do a request for proposals of some sort but um I would

3:40:18

assume so it took Kevin McFarland a few months I don't know if

3:40:24

that was because he was being deliberate or he had other things going on so I can't I
can't I don't know how long it
3:40:29
would take necessarily I would hope we could get something done he charged six hours
for the work so
3:40:36
I that's is but it's the amount of time it takes to actually do the assessment I
3:40:43
six we can put a contract together quickly so says the attorney okay so
3:40:49
um I'm not an arborist right um so I don't know exactly how long it would take I would
say that if this is a path
3:40:57
that the that the mayor would like to go in partnership with the council we can
3:41:03
work on trying to figure out ways and we are currently working on ways to um try
3:41:09
and provide the temporary public safety measures that really need to go into place
sooner than later and during that
3:41:17
time we we've been anticipating needing to do that anyway because of the prospect of
the legal proceedings
3:41:24
continuing for a period of time so we've already started down the path of researching
what our alternatives are in
3:41:30
trying to provide some public safety measures as an interim measure we certainly could
do that and and move
3:41:37
forward with those items as quickly as possible um if you would choose to
3:41:42
select and have a a third party review done we certainly could do that and and
3:41:49
um in the meantime we will remain liable for any risk that happens
3:41:57
I I I am going to indicate that risk liability is
3:42:06
something that a city faces every day whether it's stubbing your toe on a
3:42:12
sidewalk um we pay a lot of money for people to get their TI is replaced as they're
driving over the seal coating um
3:42:18
it is a factor and it is a real factor that we have to consider that being said as I
mentioned
3:42:27
we are looking at ways in which we could try to provide Public Safety in that
3:42:32

intern period of time and if the choice is to move forward with that we will do our best due diligence to make sure that

3:42:39

we were able to accomplish that just begging you mayor to just follow the scienic I have a question first when

3:42:45

when step moment I want I want to say something here so with this change I

3:42:52

also want Council to understand that you are also absorbing the risk of this thing that we would be doing this would

3:42:59

require this will require because we were needing to plan for this if this was delayed in the taking down of the

3:43:06

tree we need to reroute traffic we need to have traffic away from that tree what

3:43:11

does that look like how much does it cost to build a road every body says oh just build a road that is goes by pocket

3:43:19

go for habitat that we do not have mitigated and we're going to have to build a structure that can hold

3:43:26

22,000 vehicles per day so this is not just a little thing so we're going to

3:43:31

have to come up with steps that the council's going to have to be very involved in on how we mitigate this

3:43:38

issue and this is something that we need to do right away we need to you know there's a whole whole lot

3:43:45

here everybody throws out we'll just move the road well that takes engineering design building I've heard

3:43:53

um you know uh taking to part of the tree off well that may work it may not

3:44:01

we will find out if we have a third party arborus but there's a way we have to keep the public away from not having

3:44:10

tens of millions of dollars in lawsuits I've heard here how

3:44:15

little of a risk it is in February and March there were three people killed in the city state of Washington February

3:44:22

and March two in isqua one somewhere else from trees falling on them two of them are motorists so I've heard a lot

3:44:29

of data I take those things into consideration when I have to think about Public

3:44:35

Safety I will be willing to work with coming up with a reasonable time to find
3:44:43
out where we can find another Arbus to get a third-party input and then what that
amounts
3:44:50
to thank you that's all I ask that's all I'm asking is for independent thirdparty assessment
I understand the risk I'm not
3:44:57
questioning the risk I'm just asking to follow the science and the scientific method that's
all I'm
3:45:03
asking so we can put out a proposal we we'll move forward as
3:45:09
quickly as possible all right I have a question mayor mayor one
3:45:15
one second council member gobby uh I'll do coun I go I'll do council member
3:45:20
Kathy then I'll do council member gobby and I saw I saw Council M Jefferson's um hand
up
3:45:28
so this is the vague part that upsets me and upsets the community or that people
3:45:35
I hear from is we have to continue with the items that we were go we were headed
3:45:42
toward or that we were going to do what are these items that you would want
3:45:47
to do with the tree or at the tree or whatever uh in the meantime it's kind of
3:45:54
like the statement where um it's on the website and it was we got it in an email
3:46:01
where um administrator Park she wrote the the
3:46:07
the council I mean the city is not going to do anything right now well so people
3:46:13
went right now means what means how long means you know what are you going to do
3:46:20
when you do it that kind of thing so to say that we're going to get an arborist
3:46:26
but we're going to continue to do the items we were going to do before we talked about
this oh the mitigation part
3:46:32
what are they the mitigation Road R rerouting traffic moving people away
3:46:38
from the tree so I um council member Kathy the statement that's crazy why are
3:46:46
we spending our time on that may I please answer yes question thank you so
3:46:51

the statement on the on the website wasn't intended to be respectful of the legal proceedings that were that were
3:46:57
that were in process we're not going to do anything while we're asked not to do anything by the
3:47:03
law the measures that we're looking at right now one of the things that we did do is we put the fence up around the
3:47:09
base of the tree we are going to be talking to the port of Olympia about them needing to do um added control of
3:47:17
their parking during any and all of their events we have been looking at
3:47:22
what it would take to um uh detour uh close that section of Old Highway 99 and
3:47:29
and Detour traffic there are some concerns about doing that as well in
3:47:35
terms of some of the roads that you are going some of the intersections and the roadway geometry that you're going to be
3:47:42
sending these at this 20,8 around are of concern so we need to look
3:47:47
at how that actually can be done appropriately that's what the engineering department is working on
3:47:52
we're also talking out about potentially shifting and providing at least a temporary lane of travel um to the east
3:48:00
of the existing roadway outside the drip line of the tree as a way to do that on
3:48:05
a temporary basis but those are the things that I meant specifically I don't have the details
3:48:11
for those I don't have the costs of those if close the road for a period of time for more than 12 hours at a time it
3:48:18
requires Council action I believe that's the reference the mayor was making that if we move forward there are things that
3:48:25
the council is going to have to do in order for us to be able to proceed um
3:48:30
and and that's what we're currently looking at and investigating and so this is temporary
3:48:36
what you're talking about temporary for now um and something you were going to do no matter what or we or or but I mean
3:48:46
why why would you be doing all of that before an assessment I mean why are why

3:48:52

are we going to all of this trouble and spending this money I mean I understand not having people Park under it or

3:48:58

something like that but this whole Road thing and whatever why would we be spending money on that until we see what

3:49:05

this assessment is we were planning to do that based on the possibility that

3:49:10

there would be an extended court process that would prevent us from removing the tree which was the intended purpose

3:49:18

is to provide Public Safety that was why we were looking into it already what I understand from the

3:49:24

mayor is that she's willing to put a pause on my what I understood from her

3:49:30

to me as her employee is she's unwilling to look at a reasonable time

3:49:36

frame to have a thirdparty um analysis uh risk assessment completed um I

3:49:43

understand that to be a full risk assessment not necessarily a full risk assessment peer review okay and that and

3:49:50

that in the interim that we needed to try and continue with our work to identify these measures that would

3:49:56

provide um safety to the traveling public in that period of time until

3:50:01

there is a change in the ordinances until there's a change in at this point in time the mayor's decision it that's

3:50:09

why I'm using the word interim or temporary because that's what I understand it to be at this point in

3:50:16

time thank you council member Gabby thank you mayor so I was uh

3:50:25

wondering we don't have to have a date certain with which uh this new har is going to do the

3:50:34

assessment but we do need a time frame with which we will have as our official

3:50:41

time because we are a government entity we need we we do need to say on today

3:50:47

June 4 that we said that uh we would keep the tree up for 3 four months and

3:50:55

this is what is going to happen so I am asking do we need Karen do we need to

3:51:01

have a time frame at least to have the aies be on

3:51:10

board thank you

3:51:16

it's my understanding from the mayor that she would like us to have that third-party review done and I would

3:51:22

assume that and she can clarify that the reasonable time that she mentioned in her first statement was the the time

3:51:29

that it would take for a thirdparty UR to get that risk assessment completed

3:51:34

and again I apologize I don't know how long is a reasonable time in that context we could certainly um evaluate

3:51:42

that and and get back to you and and I'm sure that will be defined by when we get

3:51:49

uh have an arbest they will be able to perform that timeline of when that would be done so and then there would be a

3:51:57

review so I don't know if we can put a timeline on it at this moment that would

3:52:02

be just pure guessing thank you I I also agree with um that

3:52:11

reasonable time because if this tree is at the condition that our arborus has

3:52:18

told us which will take an emergency I understand the grave risk to the

3:52:24

community and the Mayors concerned I would also um ask that you involve our

3:52:31

our native partners and our native tribes because as you can see today with the

3:52:37

conversation um can you approach them and get them involved with the decision making

3:52:43

perhaps so let yes council member Jeffers let me clarify that I have reached out to the

3:52:49

Nali the squaxin the chahalis and the cets and I received information back

3:52:57

except from the cets the cets I did not hear back from I have had uh support

3:53:03

from other tribes and I have talked to other chairs there has been change in

3:53:09

leadership in two of those tribes being the Nali and the Ki

3:53:15

so we are basically starting from Ground Zero developing those relationships uh

3:53:21

council member dhof was actually with me when we had our joint meeting with the squaxin tribe uh earlier and so we do
3:53:29
have those great conversations I have had in the last two weeks numerous
3:53:34
conversations with Dustin who is the uh chair of the chahalis tribe they're very
3:53:41
familiar with what we are talking about and unfortunately we've had change in
3:53:47
leadership and so all my conversations with n squali i have to start
3:53:53
over I understand that I take great value in my relationship with all of the
3:54:01
tribes I was able to get a Joint Council with the squawkin tribe that takes work
3:54:07
that takes relationship building so I really want to set the record straight that I am not
just ignoring the tribes I
3:54:14
very hard to develop a relationship with the tribes and so I just want to make that
3:54:21
record clear that I am in good standing with several tribal chairs and have
3:54:28
those conversations and I fully understand I have two new chairs that I need to develop
a relationship with
3:54:36
because they are brand new this week thank you mayor thank you
3:54:47
so moving forward so I would say at this point for the discussion of this we will
3:54:53
be moving forward with an independent thirdparty arbiter and I want to make it perfectly
clear it is no one who has had
3:54:59
input into this process in any way shape or form at this time because I want it
3:55:06
fully independent with no bias and then we will go ahead and do
3:55:13
that that will give give us an opportunity to understand a timeline when this will happen
and I also put it
3:55:19
on Council that we need to keep this public safe we need to do what we need to do to
mitigate the danger of
3:55:26
individuals being exposed to this tree and could be injured or killed and
3:55:33
I'm putting that on the council to work with me to make sure that happens
3:55:38
because there's limited things I can do as an executive which includes rerouting traffic
and I will have to have

3:55:44

council's assistance in that process thank you mayor all right so that is my

3:55:53

decision all right anything else on this topic thank you for listening so with

END OF COUNCIL DISCUSSION ON PROPOSED ORDINANCE RE: OAK TREE

3:56:00

that we're going to go to committee reports and since we're almost at 11 o'clock I would request that maybe we

3:56:07

skip committee reports for this evening and I I do I just don't think

3:56:14

...

Exhibit D

From: <https://www.thejoltnews.com/stories/tumwater-city-council-confirms-lisa-parks-appointment,10510>

Tumwater City Council confirms Lisa Parks' appointment

Dahlhoff dissents out of respect for Port union members

Posted Friday, May 12, 2023 6:14 pm

By Jerome Tuano

The Tumwater City Council voted 6-1 to confirm the appointment of Lisa Parks as the next city administrator on Tuesday, May 9.

Parks is currently the executive services director at the Port of Olympia, where she has worked since July 2021. Before her time at the Port, she was a planner both for public and private practice and was the executive director of the Port of Douglas County in Wenatchee, Washington for nine years. She has a Bachelor of Arts in Urban and Regional Planning, which she earned from Eastern Washington University.

Councilmember Leatta Dahlhoff was the lone dissenter of Parks' appointment, saying that she was voting "no" out of respect for union members who have given her feedback about Parks' appointment.

The Port of Olympia is currently struggling to sign a contract with the International Longshore and Warehouse Union (ILWU) Local 47B, which represents Port employees at the marina, fuel dock, and boatyard. Negotiations for the contract started in July 2022, but have reached an impasse, with the Public Employment Relations Commission now acting as a mediator following the Port's request.

"I acknowledge my bias with the community members who have reached out to me. I also want to acknowledge my bias as a current union member in my employment, and the bias that I have of my family being involved and engaged with union work for generations," Dahlhoff said.

EXHIBIT D

“With respect to our community and respect to our staff, and respect to our union members... I'm going to respectfully vote no.”

Councilmember Michael Althaus, who was the only other councilmember to speak about Parks' appointment, explained that he voted yes as he ultimately found Parks to be qualified.

“I've spent a lot of time thinking about this decision and the vote and about our role as a council in this process. And it's not a decision that I take lightly or I think that anyone on this council takes lightly,” Althaus said.

Althaus also spoke about the council's role in the hiring process, as they are limited to confirming the mayor's appointment. He said that he was voting not based on whether he preferred another candidate, but on whether Parks was qualified.

The city council also authorized Mayor Debbie Sullivan to sign Parks' employment contract, which sets her starting salary at \$169,788. The initial terms of the contract would be for three years, after which the contract can be renegotiated. Should Tumwater terminate Parks' contract as a matter of the city's right and without cause, Parks would receive a lump sum of six months' pay.

Parks would assume her new position on June 16, replacing John Doan, who is set to retire after serving the post for 13 years.

Parks is the seventh senior manager-director to have left the Port since 2020

Port Commissioner Amy Evans Harding told *The JOLT* that Parks has been important to many of the Port's initiatives but noted that Parks is the sixth senior manager at the Port to have turned over in the last three years.

“Our Strategic Plan clearly recognizes recruiting, retaining, and supporting our team is critical to success. Six out of our seven senior managers have turned over in the last three years. I am hopeful we continue to take steps

to make the Port a better place to work and a trusted community asset,” Evans Harding said.

The Port’s HR and communications team confirmed that before Parks, there have been six senior managers and directors who had left the Port since 2020, but noted that the pandemic affected many employers and local governments.

“It feels important to also remember that the years of the pandemic were marked by considerable movement of jobs and professionals. All employers and local governments saw increased turnover and many, including the Port, eliminated positions over time,” the port commissioner wrote to *The JOLT*.

Senior managers and directors who left the Port since 2020 include:

- Rachael Jamison, Planning, Public Works, and Environmental Director
- Len Faucher, Marine Terminal Director
- Jeri Sevier, Administrative Services Director
- Jennie Foglia-Jones, Communications, Marketing, and Governmental Affairs Senior Manager
- Aletia Alvarez, Capital Assets Senior Manager
- Allyn Roe, Business Development and Real Estate Director

Port Executive Services Director Sam Gibboney congratulated Parks’ appointment at a Port Commission meeting on Monday, May 8. Gibboney commended Parks for her contributions, such as how she led the Budd Inlet cleanup project, secured \$20 million worth of grants and state budget appropriations, and brought in a process for managing capital assets.

“It has been a tremendous honor to work alongside you,” Gibboney said to Parks. “Our working relationship with Tumwater has always been very positive and we look for that to continue.”

Exhibit E

<https://goia.wa.gov/relations/centennial-accord>

Centennial Accord

Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington

I. Preamble and Guiding Principles

This Accord dated August 4, 1989, is executed between the federally recognized Indian tribes of Washington signatory to this Accord and the State of Washington, through its governor, in order to better achieve mutual goals through an improved relationship between their sovereign governments. This Accord provides a framework for that government-to-government relationship and implementation procedures to assure execution of that relationship.

Each Party to this Accord respects the sovereignty of the other. The respective sovereignty of the state and each federally recognized tribe provide paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a complete Accord between the State of Washington and the federally recognized tribes in Washington reflecting a full government-to-government relationship and will work with all elements of state and tribal governments to achieve such an accord.

II. Parties

There are twenty-six federally recognized Indian tribes in the state of Washington. Each sovereign tribe has an independent relationship with each other and the state. This Accord, provides the framework for that relationship between the state of Washington, through its governor, and the signatory tribes.

The parties recognize that the state of Washington is governed in part by independent state officials. Therefore, although, this Accord has been initiated by the signatory tribes and the governor, it welcomes the participation of, inclusion in and execution by chief representatives

EXHIBIT E

of all elements of state government so that the government-to-government relationship described herein is completely and broadly implemented between the state and the tribes.

III. Purposes and Objectives

This Accord illustrates the commitment by the parties to implementation of the government-to-government relationship, a relationship reaffirmed as state policy by gubernatorial proclamation January 3, 1989. This relationship respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the resolution of issues.

This Accord is intended to build confidence among the parties in the government-to-government relationship by outlining the process for implementing the policy. Not only is this process intended to implement the relationship, but also it is intended to institutionalize it within the organizations represented by the parties. The parties will continue to strive for complete institutionalization of the government-to-government relationship by seeking an accord among all the tribes and all elements of state government.

This Accord also commits the parties to the initial tasks that will translate the government-to-government relationship into more-efficient, improved and beneficial services to Indian and non-Indian people. This Accord encourages and provides the foundation and framework for specific agreements among the parties outlining specific tasks to address or resolve specific issues.

The parties recognize that implementation of this Accord will require a comprehensive educational effort to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.

IV. Implementation Process and Responsibilities

While this Accord addresses the relationship between the parties, its ultimate purpose is to improve the services delivered to people by the parties. Immediately and periodically, the parties shall establish goals for improved services and identify the obstacles to the achievement of those goals. At an annual meeting, the parties will develop joint strategies and specific agreements to outline tasks, overcome obstacles and achieve specific goals.

The parties recognize that a key principle of their relationship is a requirement that individuals working to resolve issues of mutual concern are accountable to act in a manner consistent with this Accord.

The state of Washington is organized into a variety of large but separate departments under its governor, other independently elected officials and a variety of boards and commissions. Each tribe, on the other hand, is a unique government organization with different management and decision-making structures.

The chief of staff of the governor of the state of Washington is accountable to the governor for implementation of this Accord. State agency directors are accountable to the governor through the chief of staff for the related activities of their agencies. Each director will initiate a procedure within his/her agency by which the government-to-government policy will be implemented. Among other things, these procedures will require persons responsible for dealing with issues of mutual concern to respect the government-to-government relationship within which the issue must be addressed. Each agency will establish a documented plan of accountability and may establish more detailed implementation procedures in subsequent agreements between tribes and the particular agency.

The parties recognize that their relationship will successfully address issues of mutual concern when communication is clear, direct and between persons responsible for addressing the concern. The parties recognize that in state government, accountability is best achieved when this responsibility rests solely within each state agency. Therefore, it is the objective of the state that each particular agency be directly accountable for implementation of the government-to-government relationship in dealing with issues of concern to the parties. Each agency will facilitate this objective by identifying individuals directly responsible for issues of mutual concern.

Each tribe also recognizes that a system of accountability within its organization is critical to successful implementation of the relationship. Therefore, tribal officials will direct their staff to communicate within the spirit of this Accord with the particular agency which, under the organization of state government, has the authority and responsibility to deal with the particular issue of concern to the tribe.

In order to accomplish these objectives, each tribe must ensure that its current tribal organization, decision-making process and relevant tribal personnel is known to each state agency with which the tribe is addressing an issue of mutual concern. Further, each tribe may establish a more detailed organizational structure, decision-making process, system of accountability, and other procedures for implementing the government-to-government relationship in subsequent agreements with various state agencies. Finally, each tribe will establish a documented system of accountability.

As a component of the system of accountability within state and tribal governments, the parties will review and evaluate at the annual meeting the implementation of the government-to-government relationship. A management report will be issued summarizing this evaluation and will include joint strategies and specific agreements to outline tasks, overcome obstacles, and achieve specific goals.

The chief of staff also will use his/her organizational discretion to help implement the government-to-government relationship. The office of Indian Affairs will assist the chief of staff in implementing the government-to-government relationship by providing state agency directors information with which to educate employees and constituent groups as defined in the accountability plan about the requirement of the government-to-government relationship. The Office of Indian Affairs shall also perform other duties as defined by the chief of staff.

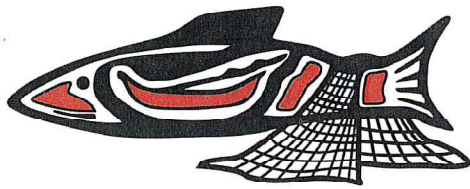
V. Sovereignty and Disclaimers

Each of the parties respects the sovereignty of each other party. In executing this Accord, no party waives any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction. Neither does this Accord diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this Accord parties strengthen their collective ability to successfully resolve issues of mutual concern.

While the relationship described by this Accord provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in their relationship is the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, that party's executive office.

Signatory parties have executed this Accord on the date of August 4, 1989, and agreed to be duly bound by its commitments.

Exhibit F



NISQUALLY INDIAN TRIBE

4820 She-Nah-Num Drive S.E.
Olympia, Washington 98513
Phone: 360.486.9558
Fax: 360.486.9548
www.nisqually-nsn.gov

June 4, 2024

Tumwater City Council
555 Israel Road SW
Tumwater, WA 98501

RE: *Davis Meeker Garry Oak*

Honorable Members of the Tumwater City Council:

The Nisqually Indian Tribe recently initiated consultation with the Washington State Office of Archaeology & Historic Preservation regarding the historic Davis Meeker Garry oak tree located near the Olympia Airport. The tree predates the Treaty of Medicine Creek and is located along a historic trade route (the Cowlitz Trail) utilized by the Tribe for centuries. Prior to the arrival of European settlers the Nisqually people maintained the open prairies of the South Puget Sound where these oak trees thrived by regular burning. Acorns from these native oak trees were an important food source.

The Tribe requests that the city delay taking any action to remove the oak tree until the Tribe has had an opportunity to complete consultation with the State Historic preservation Officer and the Tribal Historic Preservation Officer.

E. Ken Choke
Chairman
Nisqually Indian Tribe

EXHIBIT F

Exhibit G



Allyson Brooks Ph.D., Director
State Historic Preservation Officer

June 4, 2024

RE: Davis-Meeker Oak: Archaeological Permit Requirements under Chapter 27.53 RCW

Honorable Debbie Sullivan
Mayor, City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

City Attorney's Office
555 Israel Road SW
Tumwater, WA 98501

Mayor Sullivan and City Attorney's Office,

Chapter 27.53 RCW and Chapter 25-48 WAC require a permit, administered by the Department of Archaeology and Historic Preservation (DAHP), for the excavation, alteration, or removal of archaeological resources on public and private lands. This is a requirement for all pre-contact archaeological sites and any post-contact historic property that is eligible for the National Register of Historic Places.

DAHP understands that the City of Tumwater intends to remove a tree known as the Davies-Meeker Garry Oak Tree (the Tree). Based on the information DAHP currently has about the Tree and its historic and tribal association, the Tree is an archaeological site or object and therefore protected under state law. The Tree is a registered historic property on the City of Tumwater Historical Register that, based on published accounts, is an historic feature associated with the precontact Cowlitz Trail and historic Oregon Trail. The Tree is also likely eligible for inclusion on the National Register of Historic Places. Consequently, the City of Tumwater must obtain a Washington State Archaeological Excavation and Removal Permit issued by DAHP before the removal or alteration of the Tree. Failure of the City of Tumwater to obtain a permit prior to removal of the Tree is a violation of state law.

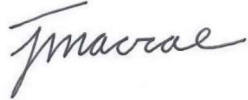
Under RCW 27.53.060, the Tree cannot be knowingly removed, altered, dug into, excavated, damaged, defaced, or destroyed without the City of Tumwater first obtaining a permit from DAHP to do so. Failure to obtain a permit from DAHP prior to removing, altering, digging into, excavating, damaging, defacing, or destroying the Tree will result in penalties from DAHP pursuant to RCW 27.53.095. Such penalties may include, but are not limited to, reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation, reasonable site restoration costs, and civil penalties in an amount of not more than five thousand dollars per violation. Each day of continued violation shall constitute a distinct violation for the purpose of calculating penalties. A violation of Chapter 27.53 RCW is a misdemeanor.

EXHIBIT G



Specific information about Archaeological Excavation and Removal Permits can be found in RCW 27.53 and WAC 25-48. Do not hesitate to contact me further if you have any questions or concerns, or wish to discuss the process of obtaining a permit from DAHP.

With respect,



James Macrae
Assistant State Archaeologist
1110 S. Capitol Way, Suite 30, Olympia WA, 98501
James.macrae@dahp.wa.gov



Exhibit H



June 11, 2024

James Macrae
Assistant State Archaeologist
Department of Archaeology and Historic Preservation
1110 S. Capitol Way Suite 30
Olympia, WA 98501

RE: Davis-Meeker Oak: Archaeological Permit Requirements Under Chapter 27.53 RCW

Dear Mr. Macrae:

We are in receipt of your letter of June 4, 2024, related to the above referenced matter. We are evaluating the information provided to the City, and we will respond following that process.

If you have any questions, please don't hesitate to reach out to my office any time.

Respectfully,

A handwritten signature in blue ink that reads "Debbie Sullivan". The signature is written in a cursive, flowing style.

Debbie Sullivan

Mayor

Tumwater City Hall
555 Israel Road SW
Tumwater WA 98501

www.ci.tumwater.wa.us

EXHIBIT H

Exhibit I

significant numbers of additional people and to need substantial numbers of added single-family housing units and multi-family units in the near future. As the habitat patches become smaller, fewer, and farther apart, the likelihood of each patch continuing to support grassland-dependent species declines as intervening habitat patches are lost. These trends generally affect gophers negatively.

The persistence of Mazama Pocket Gophers on roadsides, vacant lots, lightly grazed pastures, and within commercial timberland suggests that they are relatively resilient, and may be able to persist in rural and low density developed areas. However, recent extinction of the Tacoma pocket gopher indicates that life for gophers in high density residential and commercial areas is hazardous and recruitment and re-colonization is inadequate to maintain local populations. The last possible records of the Tacoma pocket gopher were animals that were killed by domestic cats (*Felis catus*) and identified as gophers by homeowners (Ramsey and Slipp 1974). It is not known if the mortalities from these sources have a significant effect on gopher populations, particularly in less densely settled areas. Domestic dogs (*Canis lupus familiaris*) also are known to kill pocket gophers, but are probably less often free-roaming in unfenced areas. Pocket gophers can damage young trees and, like moles, their diggings can be an untidy nuisance to landowners desiring attractive lawns. They can also be a problem in vegetable gardens and at Christmas tree, berry, and vegetable farms in the area. Mazama Pocket Gophers are currently protected from killing without a permit; the frequency that they might be trapped or poisoned is unknown. When larger populations are suppressed by these methods, they readily recover if habitat remains suitable, but for small and isolated populations, mortality from persecution added to other hazards may lead to extirpation.

Livestock grazing. Gophers may survive in pastures in rural residential areas, but studies in California indicate that gopher density tends to decrease in heavily grazed pastures (Eviner and Chapin 2003). *T. mazama* has persisted on well-managed ranches in Thurston County.

Gravel mining. South Puget Sound prairies are located on glacial outwash gravels. Some of these glacial gravel deposits are very deep and valuable for use in construction and road-building, and prairie sites of significant size may be destroyed by gravel mining. One of the historic sites where Tacoma pocket gophers were collected became a large gravel pit, and 2 gravel pits have been opened on occupied gopher habitat in Pierce County south of Roy, and on historical Rock and Rocky prairies in Thurston County. These sites may be restorable to suitable condition for gophers when gravel removal operations have ceased if adequate layers of friable well-drained subsoil and topsoil are restored.

Airport Management and Development. Pocket gophers occur in grasslands surrounding airport runways and adjoining lands at Olympia and Shelton. Airport safety considerations require that the vegetation be mowed to maintain visibility, eliminate cover for large animals that might pose a hazard for aircraft, and provide a safety margin should aircraft overshoot or land short of the runway. This management benefits gophers by keeping out woody vegetation and maintaining the grassland. Development of aviation facilities and the surrounding port lands at the Olympia Airports pose a potential threat of habitat loss for what may be the largest populations of Mazama Pocket Gophers. The Olympia Airport designated 8.6 ac (3.5 ha) as a Mazama Pocket Gopher habitat conservation area in an interlocal agreement with WDFW as part of the Airport Five Year Development Plan, and any additional development would be subject to Tumwater Critical Area Ordinances. The Port of Olympia is currently updating their master plan. The Plan projects significant future land developed for general aviation (~114 ac (46 ha)), aviation related/compatible industry (~245 ac (99 ha)), and additional area for parallel taxiways (Barnard Dunkelberg & Co. 2011).



Exhibit J

<https://www.theolympian.com/news/local/article289185574.html>

Does expansion of airport or Old Highway 99 play into plans to cut historic tree?

BY [TY VINSON](#) AND

RBOONE@THEOLYMPIAN.COM

UPDATED JUNE 12, 2024 9:49 AM

As Tumwater residents have risen up against plans to remove the city's historic Davis-Meeker oak tree, several have made claims that the city has reasons to cut down the tree other than its poor health that Tumwater Mayor Debbie Sullivan and city staff have cited.

The citizen group Save the Davis-Meeker Garry Oak is calling to save the tree that sits along Old Highway 99. The group says on its website the 400-year-old tree is in the sights of Sullivan, who wants to expand the highway.

"She says she only wants to keep people safe," the group said. "But all arborists except her own have said pruning and cabling are sufficient."

Ron Ranniger, who lives across from the tree, attended a rally at the tree May 25. He said he believes the city of Tumwater and Port of Olympia want to expand the Olympia Regional Airport. But the real reason he thinks the city has for cutting the tree is to expand Old Highway 99 into a four-lane highway.

"It's coming down the road, and they can't do it with that tree," Ranniger said.

During the June 4 Tumwater City Council meeting, arborist Beowulf Brower told the council not to let the Port of Olympia, who owns the Olympia Regional Airport, or anyone else deprive the council members of their ability to represent their constituents.

The Port of Olympia also has put out a Request for Proposals to replace the roof at the adjacent historic Washington State Patrol hangar. Is that also a reason the tree needs to be removed?

The Olympian asked officials with the city of Tumwater and the Port of Olympia to respond to these claims. Mayor Sullivan said a lot of misinformation is being tossed around.

EXHIBIT J

ABOUT THE AIRPORT

City spokesperson Joy Johnston told The Olympian the only reason the city has for considering removal of the tree is because of its health and the danger it poses to passersby.

Johnston said there are no plans to expand the physical footprint of the Olympia Regional Airport.

Warren Hendrickson, director of operations at the Port of Olympia, said the Davis-Meeker tree is located outside the airport's Runway 12-35 Protection Zone and doesn't play a part in any future plans.

"While there have been expressions that there are ulterior motives in play to secretly benefit the airport, nothing could be further from the truth," Hendrickson said. "Whether the tree ultimately remains or is removed will have no bearing on airport operations."

He said the one concern the port does have with the tree is if it were to fall in the direction of the airport, it could severely damage the WSP hangar, which is itself a registered historic structure.

ABOUT THE HIGHWAY

There is a plan to expand Old Highway 99, Johnston said, but drafts for the plan retain the roadway's current alignment around the tree, which was fought for and established 40 years ago.

"I can tell you definitively that the removal of the tree is not related to airport expansion or WSP hangar roof replacement, or Old Highway 99 improvements," she said. "The only reason the city of Tumwater has considered removing the Davis Meeker oak tree is because an analysis has found significant decay in the main stem and scaffold branches and it therefore poses a risk to lives and structures."

Last fall the city of Tumwater conducted a [study and public engagement](#) process for improvements to Old Highway 99, which would include adding lanes as well as roundabouts at intersections. Johnston highlighted that the plan includes a new right-of-way and a median near the Davis-Meeker oak.

The corridor study explicitly states the oak tree would be protected when these improvements move forward.

THE MAYOR CLARIFIES

Sullivan told The Olympian none of the remarks made by the public have anything to do with why the tree might come down. She said it's strictly a public safety issue. A large branch fell from the tree last year, she said, and it's only a matter of time before a heavy limb takes the life of a motorist.

Sullivan said extension of the highway wouldn't be changed if the tree comes down because some form of memorial would be placed where it once stood.

"We have no plans for doing a memorial somewhere else," Sullivan said. "It's an historic place and will stay an historic place, it just won't have the tree standing there."

She said if the historic tree were anywhere else but next to a road, the city would likely just let it be.

Sullivan said the city is still gathering information for a Request for Qualifications for a third-party independent review of assessments done of the tree. She said the contract will likely be in front of Tumwater City Council on July 2.

"We'll see, we'll get another opinion," Sullivan said. "And I want it to be a very comprehensive opinion."

PORT COMMISSION MEETING

The question of whether Olympia Regional Airport is going to physically expand also was raised before the five-member Port of Olympia commission on Monday.

"In light of public comment in recent days, there are no planned projects for the expansion of the airport's footprint," said Airport Senior Manager Chris Paolini, who replaced Hendrickson in that role in April.

In fact, one of the runways at the airport — a crosswind runway — needs to be narrowed and shortened, he said.

Paolini mentioned this in the context of a discussion about hiring an aviation engineering services firm. If the commission approves that contract, one of the

projects that could emerge from it is the design and reconstruction of the crosswind runway.

Commissioner Bob Iyall asked why a runway would be narrowed and shortened.

Paolini said it is overbuilt for the size of aircraft that use it. He estimated that shortening it would reduce its length to around 3,500 feet, down from 4,500 feet.

The runway is also in disrepair. The asphalt conditions need to be confirmed and the subgrade underneath also needs to be checked, Paolini said.

Exhibit K

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

SAVE THE DAVIS-MEEKER GARRY OAK,)
)
 Plaintiff,)
)
 vs.) SUPERIOR COURT
) NO. 24-2-01895-34
 DEBBIE SULLIVAN in her capacity)
 of Mayor of Tumwater,)
)
 Defendant.)

THE HONORABLE ANNE EGELER PRESIDING

Motion hearing report of proceedings
May 31, 2024
2000 Lakeridge Drive SW
Olympia, Washington

Court Reporter
Ralph H. Beswick, CCR
Certificate No. 2023
1606 12th Avenue SW
Olympia, Washington

EXHIBIT K

A P P E A R A N C E S

For the Petitioner: Ronda Larson Kramer
Attorney at Law
PO Box 7337
Olympia, WA 98507

For the Respondent: Jeffrey Scott Myers
Law Lyman Daniel Kamerrer, et al
2674 RW Johnson Blvd SW
Olympia, WA 98508

THE COURT: All right. The next matter I want to take is the save the Davis-Meeker versus Sullivan case. Before we proceed, I have a disclosure to make. I was appointed by the governor and assumed my role in January of 2023. At that time I was required to file as a candidate to hold my seat after the appointment. I had many state and local judges and elected officials, including I believe the mayors of all of the Thurston County cities, endorse me. That includes Debbie Sullivan. For that reason I want to make sure that I, one, disclose it, and two, allow you an opportunity to request that I recuse. Does either party wish to make a motion?

MR. MYERS: Mayor Sullivan does not.

MS. LARSON KRAMER: No, Your Honor. Thank you.

THE COURT: All right. All right. We will proceed then. Let me explain how we got here procedurally. The motion was made on very short notice as an emergency motion last Friday for a tree removal that the court was informed was going to happen on the next business day in the morning before the court day. For that reason, given the emergency situation and the fact that removal of the tree would end any ability to litigate the case, the TRO was entered.

Having seen that when I was then assigned as the judge, I noted a hearing because a hearing needs to be noted to

consider the TRO to ensure that notice is provided and that the parties can be heard. So this was not in response to an *ex parte* request to shorten time of any sort; it was to make sure that we did get this into court properly. The TRO did not contain an end date which was another issue that needed to be addressed promptly.

That being the case, we are going to hear today the motion to dissolve as well as the motion to extend. So we will cover all of those matters today and make sure everyone --

MR. MYERS: Your Honor, I do object to the consideration of the motion to extend. And I'll address that at the end of my motion to dissolve. The --

THE COURT: Mr. Myers, I'm going to hear first the motion to dissolve. I will then rule on that. I will then proceed to hear, if necessary, the motion to extend. At that time you may make such argument if that time arises.

MR. MYERS: Thank you, Your Honor.

THE COURT: You may begin with respect to your motion to dissolve.

MR. MYERS: Your Honor, with respect to our motion, it is considering the motion to dissolve the *ex parte* TRO that was issued by this court on -- a week ago today. We believe that the TRO was issued improperly and that it is deficient in numerous respects with the contents of the TRO

that was presented to the court. First of all, it was improper because there was no notice given as required by RCW 7.40.050 and CR65. Both of those require the party who is seeking a TRO to attempt to notify the others or to demonstrate in their pleadings why notice could not be provided and describe the efforts. The materials that were provided along with the TRO, which were not served on the city until after the TRO had been issued, but the materials that were presented did not describe why a TRO could not be issued with -- without providing prior notice to the City of Tumwater and the city attorney and Mayor Debbie Sullivan.

The city maintains offices here. This dispute has been ongoing and discussed in numerous city council meetings for the better part of a month and a half. There is no reason to believe that parties seeking a restraining order could not have notified the city at least a day before a TRO was sought. Instead, what we got was a voicemail at 8:02 a.m. in which Ms. Larson Kramer stated that she wanted to contact the city attorney so that she could, quote, inform her that I am filing a motion for temporary restraining order today for the Meeker oak.

Well, that is a minimalistic type of notice. It fails to identify the time and place of the making of application, which is the statutory requirement of RCW 7.40.050. It fails to provide a motion. It fails to

provide the basis for a TRO. It failed to serve a complaint. It failed to identify what court the TRO was being sought in. So there was -- it was not adequate notice, any meaningful opportunity for the city to respond. And the failure to provide a notice and a meaningful opportunity to respond, as was held in the *In Re Estate of Smaldino* case, effectively denies due process and renders a TRO issued in that manner void.

The TRO also is drafted in such a way that there are absolutely no findings whatsoever. There is no finding of harm. There is no finding of what injury the plaintiffs would suffer. There is no finding as to why any such harm would be irreparable. There are no findings as to why notice could not be given to the city and why it had to be dispensed with. There are no factual findings at all. There is no end date. There is no provision for conversion of the temporary restraining order into a preliminary injunction in consideration of a proper motion for a preliminary injunction. All of that violates CR 65. There is -- was not even a motion upon which a TRO could properly be issued. There were no findings regarding the public interest, and the threat to public safety that is posed by the unfortunately dieing Davis-Meeker Garry oak, that threat to public safety we believe is a paramount consideration and is motivating why the City of Tumwater is

seeking to make its roadway safe as it has a duty to do for which it can be held liable.

THE COURT: Mr. Myers, should this TRO be dissolved, I have a question for you regarding what will occur after that. Has the city made plans to proceed with removal of the tree if the motion is dissolved, and if so, on what date?

MR. MYERS: The city has a contractor who was on standby for Tuesday afternoon. That was deferred until --

THE COURT: I understand. I'm asking you if I dissolve this TRO today, what will happen? What is the city's intention and is there a date --

MR. MYERS: The city's intention is to notify the contractor to remobilize and to remove the tree in as soon a fashion as time allows. My suspicion is that that would be a matter of a couple of days.

THE COURT: So possibly Monday morning.

MR. MYERS: Possibly.

THE COURT: All right. Thank you.

MR. MYERS: And then finally, as I mentioned, the duty to provide a safe street and a known hazard that has had limbs fall into the street creates a situation where the city has clear liability if it does not act. And by preventing the city from acting, the city would incur substantial liability if someone is injured. And there was

no security whatsoever provided for that. There was no security whatsoever provided for additional costs of the tree removal, and there was no security provided for the closure of the road which may have to result if in fact we are prevented from removing this known hazard in the street.

I want to also call the court's attention to the provisions of CR 65 and what are the consequences where these deficiencies exist and where the -- there is no provision for conversion to a preliminary injunction as was provided in this case. Under CR 65(b), if a TRO is granted without notice, "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time . . . and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and" -- this is important -- "if the party does not do so, the court shall dissolve the temporary restraining order."

The plaintiff in this case has made no provisions for a TRO to be converted to a preliminary injunction. The order that they drafted and presented to the court *ex parte* makes no end date and no provision for converting it to a motion for preliminary injunction. Indeed, by not even filing a motion, the court was prevented from considering the applicable law for a TRO, including possibility of success on the merits, possibility of irreparable harm and weighing

of the need to issue a temporary restraining order. The court was also prevented from considering the security that was necessary.

And in considering the security, I think the court needs to consider what type of damages might exist if that tree fell into the street and hit a passerby, what are the possible damages if it killed a child, what are the possible damages if it maimed a mother. That's the duty that the city is required to prevent and keep its streets in a safe condition for the traveling public.

THE COURT: You have two minutes remaining. Would you like to reserve time for reply?

MR. MYERS: I would just like to suggest in closing -- I'll reserve a minute for reply. The amount of damages should also consider the costs of removal and the cost of road closure. I'm thinking that that would cost \$10,000 a day in order to close Old 99, and this court should -- if it decides that a TRO should remain in place, it should absolutely require a minimum of \$140,000 for those costs and \$10 million to protect the city against the liability that it cannot prevent because of the injunction.

THE COURT: Thank you.

MS. LARSON KRAMER: May I speak from the podium?

THE COURT: You may.

MS. LARSON KRAMER: Thank you, Your Honor. At the

outset plaintiff would request that Your Honor construe plaintiff's motion as one to impose temporary injunction as opposed to one to extend the TRO.

The mayor says that she should be able to cut down this tree and kill the baby birds in it. Aside from the legality, the fact that she is willing to kill baby birds --

THE COURT: I'm going to ask you to slow down, please, so our court reporter can keep up with you.

MS. LARSON KRAMER: Sure. Aside from the legality, the fact that she is willing to kill baby birds is alarming on a personal level. And it is no different from her stance as to the tribes. She is seeking to cut down a tree cherished by tribes against their wishes and without giving them an opportunity for input.

THE COURT: Ms. Larson Kramer, I don't have any tribes appearing in this case. How does your client have standing to raise issues pertaining to the tribes?

MS. LARSON KRAMER: The tribes have expressed their wishes through the declarations, the tribal elder declarations that we have submitted. Suffice to show the standing as far as our group -- I am not -- we are not speaking for the tribes, yes. You're absolutely right. I want to make that clear. And nobody is intending to say we're speaking for the tribes.

THE COURT: And the tribes are not a party.

MS. LARSON KRAMER: You're right. The tribes are not a party. But the fact remains the declarations show that she has failed to do her duty to provide notice to the tribes. So, you know, there's no ambiguity there. So she has not provided them opportunity for input. That is the main point.

This court should put her plans on hold to give the baby birds time, to give the tribes time and to give the council time to exercise its authority and pass a city ordinance that is harder for her it to misconstrue.

Under the archaeological resource law, RCW --

THE COURT: Again, I'm going to ask that you slow down.

MS. LARSON KRAMER: Thank you.

THE COURT: We have a natural tendency to speed up, particularly when we're reading.

MS. LARSON KRAMER: Yes. Under the archaeological resource law, RCW 27.53.060, the mayor cannot cut this tree down without an archaeological excavation and removal permit. The mayor has not applied for the permit. She also cannot cut down the tree without a permit under Tumwater Municipal Code section 2.62.060. The only exception is to do emergency repairs. Removal of the tree is not a repair. Because the baby birds are in the tree,

the federal Migratory Bird Treaty Act does not allow removal of the tree at this time.

Additionally, the mayor's actions have been arbitrary and capricious. Anyone who drives down Henderson Boulevard at Watershed Park after a windstorm knows how many large and dangerous branches fall onto the roadway there. But the City of Olympia doesn't come in and remove all the trees. You don't jump to remove as your first option, even with a regular street tree. And with a culturally significant tree you should be bending over backwards to use mitigation techniques that are less drastic than removal, but the mayor didn't do any of that here.

I want to touch on the mayor's argument that plaintiff should post a bond because there is an imminent threat. The mayor contends someone is going to get killed and the city is going to go bankrupt because the insurer won't insure this tree. I want to point out the mayor's timeline here. Her arborist staff warrants report was in October. For the next seven months the mayor let this tree live. It has now been a year since the branch fell originally. If the mayor was truly worried about imminent threats, she would have gotten someone in there to do emergency pruning. There is no imminent threat. There is no loss of insurance coverage. This is a smoke screen. I would also like to point out that removing a tree of this magnitude is

extremely costly. Pruning is a fraction of the price. If the mayor were truly worried about money, she would have pruned it by now.

There are so many things wrong with the mayor's plan that it boggles the mind how the city council could let things get this bad. The council is the body that makes the laws. The mayor carries them out. She works for them, not the other way around, and yet they stand by and take no action. Voters should take notice. The plaintiff asks the court to issue a temporary injunction to at least July 30th. Thank you.

THE COURT: Thank you.

Mr. Myers, you have one minute remaining.

MR. MYERS: Yes, Your Honor. I'd like to address a couple of things. One, there is no pleading that raises archaeological resource laws for the state of Washington. It's not before the court. The city's ordinance does not apply because a tree is not a structure. And the definition of structure applies to man-made constructs, not trees. The Migratory Bird Treaty Act we cited to you in our reply brief, case law under the federal cases, including ones that are cited in the complaint by the plaintiffs that shows that it is not a violation of the migratory bird act to cut down a tree even where there is a nesting migratory bird. It is not the Endangered Species

Act. It's not applied to a habitat. It applies to hunters going out and shooting migratory birds or intentionally killing them. That is not the case here at all.

And then it's difficult to address the blatant political appeal that is being made here. I'd like the court to address the law, and we've shown you that the law does not allow a TRO in these circumstances.

7
8 THE COURT: Thank you. The court is prepared to
9 rule at this time. This court's ruling must be based
10 solely on the law and cannot consider the political
11 arguments regarding the wisdom of removing or saving the
12 tree. Under the law, a party requesting a temporary
13 restraining order must show three things, a clear legal or
14 equitable right, a well-grounded fear of immediate invasion
15 of that right, and that the act complained of will result
16 in actual and substantial injury to the moving party. All
17 of these requirements have to be met, and the plaintiffs
18 have not met the first criteria.

19 To establish a clear legal or equitable right, the
20 moving party must show that it is likely to prevail on the
21 merits. Here, plaintiffs make a number of claims, and I'll
22 begin with the claim that the legal right arises from the
23 Tumwater Municipal Code. The mayor's decision to proceed
24 is compliant with the code. There was not an obligation to
25 obtain a permit before removing a historic tree as opposed

1 to a historic structure, and the code allows removal of a
2 tree the city determines is posing a hazard.

3 With respect to the newly raised argument regarding RCW
4 27.53.060, the defendant is correct that was not briefed
5 previously. A quick look at that statute reveals that that
6 chapter of the law addresses archaeological resources, not
7 trees, and therefore that is not applicable and it does not
8 provide this court a basis for a finding of clear legal or
9 equitable right.

10 There are allegations of a federal law possibly
11 pertaining to endangered species or migratory birds. This
12 was not clearly established in the briefing. The
13 plaintiffs have not shown a clear legal or equitable right
14 under federal law.

15 They do not have standing to raise arguments on behalf
16 of the tribes regarding notice. That is something that the
17 tribes themselves can, of course, raise. They have not
18 joined in this action.

19 Therefore, the temporary restraining order will be
20 dissolved. However, when asked, the city's attorney stated
21 that the tree may be removed as early as Monday morning.
22 If that were to occur, that would destroy the plaintiffs'
23 ability to appeal this decision to the next court. I am
24 going to provide sufficient time to allow the plaintiffs to
25 make an emergency motion on appeal to the Court of Appeals.

1 Therefore, this temporary restraining order will expire on
2 Wednesday at five p.m.

3 Are there any questions?

4 MS. LARSON KRAMER: No, Your Honor. Thank you.

5 THE COURT: I will prepare an order that conforms
6 with the legal decision that I have entered. That will be
7 entered today.

8 MR. MYERS: Thank you, Your Honor.

9 THE COURT: All right. And that ends this matter
10 for today. Thank you.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, RALPH H. BESWICK, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

- 1. I reported the proceedings stenographically;
- 2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
- 3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
- 4. I have no financial interest in the litigation.

Dated this 31st day of May, 2024

RALPH H. BESWICK, CCR
 Official Court Reporter
 Certificate No. 2023
 1606 12th Avenue SW
 Olympia, WA 98502
 Fax: (360) 754-4060
 beswicr@co.thurston.wa.us

Exhibit L

1 ■ EXPEDITE
2 □ No Hearing Set
3 ■ Hearing is set
4 Date: 5/31/2024
5 Time: 9:00 am
6 Judge: Egeler
7
8 Calendar: Civil

6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF THURSTON**

8 SAVE THE DAVIS-MEEKER GARRY OAK,

Case No. 24-2-01895-34

9 Plaintiff,

10 vs.

DECLARATION OF RONDA
LARSON KRAMER RE.
SUPPLEMENTAL RESPONSE TO
MOTION TO DISSOLVE TRO

11 DEBBIE SULLIVAN, in her capacity of Mayor of
12 Tumwater

13 Defendant.

14 I, RONDA LARSON KRAMER, make the following declaration:

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

17 2. On May 30, 2024, I received via email a letter from the state archaeology
18 department indicating that under RCW 27.53.060, the mayor cannot cut down the Davis Meeker
19 oak tree without an Archeological Excavation and Removal Permit from the state archaeology
20 department. The mayor has not applied for the permit yet. Therefore, cutting down the tree would
21 violate ch. 27.53 RCW. Attached as **Exhibit A** is a true and correct copy of the letter.

22 //

23 //

24 //

EXHIBIT L

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

3 EXECUTED this 30th day of May, 2024, at Olympia, Washington.
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RONDA LARSON KRAMER

1 **CERTIFICATE OF SERVICE**

2
3 I certify that I served a copy of the foregoing document on all parties or their counsel of
4 record as follows:

- 5 E-mail
6 U.S. Mail
7 ABC/Legal Messenger
8 Hand delivered by Ronda Larson Kramer

9 TO:

10 Jeffrey S. Myers, WSBA No. 16390
11 Jakub L. Kocztorz, WSBA No. 61393
12 LAW, LYMAN, DANIEL,
13 KAMERRER & BOGDANOVICH, P.S.
14 P.O. BOX 11880
15 OLYMPIA, WA 98508-1880

16 I certify under penalty of perjury that the foregoing is true and correct.

17 EXECUTED this 30th day of May, at Olympia, WA.

18 

19

RONDA LARSON KRAMER
20 Attorney for SDMGO
21
22
23
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25



Allyson Brooks Ph.D., Director
State Historic Preservation Officer

May 30, 2024

RE: Davis-Meeker Oak: Archaeological Permit Requirements under RCW 27.53

To Whom it may concern,

Washington State Chapter 27.53 RCW and Chapter 25-48 WAC requires a permit, administered by the Department of Archaeology and Historic Preservation (DAHP), for the excavation, alteration, or removal of archaeological resources on public and private lands. This is a requirement for all pre-contact archaeological sites and any post-contact historic property that is eligible for the National Register of Historic Places.

The Davis Meeker Garry Oak Tree is a registered historic property on the City of Tumwater Historical Register, that based on published accounts is a historic feature associated with the Cowlitz Trail and subsequent Oregon Trail. Based on this association it is likely that this resource is eligible for the National Register of Historic Places. The address of the Davis-Meeker oak is 7525 Old Hwy 99, Tumwater, WA 98501.

Therefore, there are archaeological permit requirements, necessary prior to the removal or alteration of the Davis-Meeker Garry Oak Tree.

Specific information about Washington State Archaeological Excavation and Removal Permits can be found in RCW 27.53 and WAC 25-48. Knowing and willful failure to obtain this permit or comply with its requirements is a misdemeanor and may result in civil penalties of not more than five thousand dollars per violation, reasonable investigative costs, and site restoration costs.

Please let me know if you have any questions or concerns.

Sincerely,

James Macrae
Assistant State Archaeologist
James.macrae@dahp.wa.gov

EXHIBIT A



Exhibit M

----- Original Message -----

From: "PermitsR1MB, FW1" <permitsr1mb@fws.gov>

To: [REDACTED]@comcast.net" <[REDACTED]@comcast.net>

Date: 06/05/2024 9:48 AM PDT

Subject: Kestrel Nest in Oak Tree

Hi Tanya,

Thank you for reaching out via ePermits with your concern regarding the kestrel nest in the oak tree. We have received many calls/emails about this issue and have brought the issue to our law enforcement office. They are in communication with the city regarding the potential violation of the Migratory Bird Treaty Act.

Thank you for your concern and for bringing this issue to our attention.

Respectfully,
Jennifer Urmston
Permits Biologist

====

Migratory Bird Permit Office

HI, ID, OR, & WA

503-872-2715

PermitsR1MB@fws.gov

<https://www.fws.gov/program/migratory-bird-permit>

Need ePermits technical support? [Click here](#)

EXHIBIT M

Exhibit N

Work Order Detail Report

5/28/2024

Meeker Oak - Branches Down on Roadway 05/2023

10:44 AM

WO Number: 23-001179

Category: Segment

Status: Complete

Problem: Tree Down/Tree Branches Blocking Hazard

Status Date: 5/16/2023 11:49 am

Main Task: Clear Roadway Obstruction

Asset:

Location: OLD HWY 99 SE

Cause:

Assigned By: 000442 ELDON NEWELL

Assigned Crew:

Assigned Date: 5/16/2023

Supervisor: MARC LAVACK

Start Date: 5/16/2023 7:00 AM

Lead Worker: ELDON NEWELL

End Date: 5/17/2023

Override
Notifications

Priority:

Sched Start Date:

Problem

Account #:

Overdue

Proj No - Acct: 57049\5035

Project ID:

Lead Worker

Project:

Project Name:

Task

Reason:

Supervisor

Received By:

Hard Lock WO

Inspected By:

Contractor:

Publically Available

Inspector Comments:

Request Comments for Work Order

Oak tree cleanup

Location

Department:

Division: Operations

Sub-Division: Street

Area:

Sub-Area:

Owner:

Location:

Classification:

Maintenance Zone:

Alternate Zone:

External Source:

External WO ID:

Work Order Locations

Address

Address 2

X Coord

Y Coord

General Location

OLD HWY 99 SE

EXHIBIT N

Work Order Detail Report

Meeker Oak - Branches Down on Roadway 05/2023

5/28/2024

10:44 AM

Tasks/Resources						
5_ClearRoad Clear Roadway Obstruction						
Crew:	Status:	*Cal'c UC: \$0.00	*Task Cost: \$4,038.82	Start Dt:		
Supervisor:	UOM:	# of Units: 0.00	*Unit Cost: \$0.00	End Dt:		
Employee						
Resource	UOM	Units	*Total Cost	Alt Description	Start Dt	End Dt
001126 JASON MCINTYRE	Hours	1.00	\$29.95		5/17/2023	5/17/2023
000444 CHARLES DEUEL	Hours	5.00	\$172.35		5/17/2023	5/17/2023
000134 WALTER RENAUD	Hours	5.00	\$172.35		5/17/2023	5/17/2023
000824 BRIAN FRANKOWSKI	Hours	5.00	\$172.35		5/17/2023	5/17/2023
001122 DAVID MOORHEAD	Hours	5.00	\$142.25		5/17/2023	5/17/2023
000442 ELDON NEWELL	Hours	2.00	\$74.96		5/16/2023	5/16/2023
<i>Resource Comment: Cleared branches out of highway</i>						
000442 ELDON NEWELL	Hours	4.00	\$149.92		5/17/2023	5/17/2023
<i>Resource Comment: Cleaned up branches and limbs and hauled to weiks</i>						
Material						
Resource	UOM	Units	*Total Cost	Alt Description	Start Dt	End Dt
ST_0000 Street Direct Charge Parts		1.00	\$3,124.69	Sound Urban Fore	10/10/2023	10/10/2023
<i>Resource Comment: SUF Invoice dated 10-10-2023</i>						

Task Material Kit						
5_ClearRoad Clear Roadway Obstruction						
Material Kit	Description	Units	Est Units	UOM	Make	Model
		0	0			

Projected Complete:	Lock: <input type="checkbox"/>	WO Duration	<u>*Actual</u> 10.00	<u>*Estimated</u> 0.00	<u>*Difference</u> 0.00
Repair Type:		Labor Hours	27.00	0.00	0.00
Subcontractor:		Labor Costs	\$914.13	\$0.00	\$0.00
Profit Center:		Material Costs	3,124.69	0.00	0.00
		Fluids Costs	0.00	0.00	0.00
Quantity: 0.00	Lock: <input type="checkbox"/>	Equipment Costs	0.00	0.00	0.00
Unit of Measure: Linear Feet		Contractor Costs	0.00	0.00	0.00
*Unit Cost: \$0.00		Misc. Costs	0.00	0.00	0.00
WO Hours: 0.00		Total Costs	\$4,038.82	\$0.00	\$0.00
		Use Task Info:	True	True	

Billed Party			Billing		
Customer ID:		Customer Number:			
Customer Name:		Last Name:			
Address:		Phone:		Cell #:	
City:		Fax #:			
State:		E-mail:			
Zip:					
Billing Data					
Contact Name:		*Billing Amount:		Billing Required: <input type="checkbox"/>	
Invoice Number:		Date Bill Sent:		Billing Processed: <input type="checkbox"/>	
Incoming Account #:		Payment Received:		Imported to Financials: <input type="checkbox"/>	
		Payment Method:			

Simple Work Orders

Employee: _____ Hours: _____
 End Date: _____ Asset Type: _____

Work Order Detail Report

5/28/2024

Meeker Oak - Branches Down on Roadway 05/2023

10:44 AM

CS

General Ledger:

Job Ledger:

General Key:

Job Key:

General Object:

Job Object:

Item	Tracking	Description	By	Date	Time
Work Order Creation		This work order was created with the Lucity framework.	cdeuel	5/17/2023	9:10 AM
Category Change		from ROW Landscaping to Segment	mlavack	5/17/2023	10:54 AM
Problem Change		from Trim/Remove Vegetation/Trees to Tree Down/Tree Branches Blocking Hazard	mlavack	5/17/2023	10:54 AM
Status Change		From New Work Order to Complete	bfrankowski	5/17/2023	11:49 AM
Leadworker Change		from CHARLES DEUEL to ELDON NEWELL	enewell	5/17/2023	1:07 PM

WO User 1:	WO User 4:	WO Sent Finance:	<input type="checkbox"/>
WO User 2:	User 12:	WO User 7:	<input type="checkbox"/>
WO User 3:	User 13:	WO User 8:	<input type="checkbox"/>
WO User 16:	WO User 23:	WO User 26:	<input type="checkbox"/>
WO User 17:	WO User 24:	WO User 27:	<input type="checkbox"/>
WO User 18:	WO User 9:	WO User 28:	<input type="checkbox"/>
WO User 19:	User 10:	WO User 29:	<input type="checkbox"/>
WO User 20:	User 11 Date:	WO User 30:	<input type="checkbox"/>
WO User 21:	WO User 25 Date:		
WO User 50:			
WO User 51:			
DSD Permit #:	User 15:		
User 14:	WO User 22:		

WO User 31:	WO User 42:		
WO User 32:	WO User 43:		
WO User 33:	WO User 44:		
WO User 34:	WO User 45:		
WO User 35:	WO User 46:		
WO User 36:	WO User 47:		
WO User 37:	WO User 48:		
WO User 38:			
WO User 39:			
WO User 40:			
WO User 41:			

WO User 52:	WO User 62:		
WO User 53:	WO User 63:		
WO User 54:	WO User 64:		
WO User 55:	WO User 65:		
WO User 56:	WO User 66:		
WO User 57:	WO User 67:		
WO User 58:	WO User 68:		
WO User 59:	WO User 69:		
WO User 60:	WO User 70:		
WO User 61:	WO User 71:		
WO User 72:	WO User 82:	WO User 102:	<input type="checkbox"/>
WO User 73:	WO User 83:	WO User 103:	<input type="checkbox"/>
WO User 74:	WO User 84:	WO User 104:	<input type="checkbox"/>
WO User 75:	WO User 85:	WO User 105:	<input type="checkbox"/>
WO User 76:	WO User 86:	WO User 106:	<input type="checkbox"/>

Work Order Detail Report

5/28/2024

Meeker Oak - Branches Down on Roadway 05/2023

10:44 AM

WO User 92 Date:
WO User 93 Date:
WO User 94 Date:
WO User 95 Date:
WO User 96 Date:

WO User 97 Date:
WO User 98 Date:
WO User 99 Date:
WO User 100 Date:
WO User 101 Date:

WO User 77:
WO User 78:
WO User 79:
WO User 80:
WO User 81:

WO User 87:
WO User 88:
WO User 89:
WO User 90:
WO User 91:

WO User 107:
WO User 108:
WO User 109:
WO User 110:
WO User 111:

WO Creator: cdeuel

WO Creation Date: 5/17/2023

PM Trigger:

Rec #: 79045