

**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
BRYAN TELEGIN IN
SUPPORT OF
APPELLANT'S
MOTION TO EXTEND
ADMINISTRATIVE
STAY

I, BRYAN TELEGIN, declare as follows:

1. I am over the age of 18 and make this declaration based upon my own personal knowledge.

2. On July 30, 2024, Plaintiff-Appellant Save the Davis-Meeker Garry Oak ("SDMGO") retained me as co-counsel in this matter. At that time, it was decided that I would take the lead on anticipated future briefing and motions, including Appellants' forthcoming Opening Brief to this Court (due August 30, 2024) and on a motion to set the amount of a

supersedeas bond before the Thurston County Superior Court. It has taken me considerable time to get up to speed with the facts and history of the case.

3. On August 12, 2024, I filed Plaintiff's Motion to Set Amount of Supersedeas Bond with the Thurston County Superior Court. A true and correct copy of that motion, together with the notice of hearing, is attached hereto as **Exhibit 1**. The motion is set to be heard on Friday, September 6, 2024.

4. Attached as **Exhibit 2** hereto is a true and correct of my declaration filed in support of SDMGO's pending Motion to Set Amount of Supersedeas Bond, together with Exhibit C to that declaration (a letter from Washington's Department of Archeology & Historic Preservation ("DAHP") stating that the City of Tumwater may not harm or destroy the Davis Meeker Garry Oak without first obtaining a permit from DAHP pursuant to Washington's Archeological Sites and Resources Law at Chapter 27.53 RCW).

5. Attached as **Exhibit 3** hereto is a true and correct copy of my supplemental declaration filed in support of SDMGO's pending Motion to Set Amount of Supersedeas Bond, together with Exhibits F through I thereto. The exhibits to this declaration contain additional correspondence from DAHP and the Washington Attorney General's Office notifying the City of Tumwater that it may not harm or destroy the Davis Meeker Garry Oak without first obtaining a permit from DAHP pursuant to Washington's Archeological Sites and Resources Law at Chapter 27.53 RCW. For the Court's convenience, I have added running page numbers to Exhibit 3, found at the bottom-right corner of each page.

6. Unfortunately, SDMGO was not able to obtain a hearing date for its pending Motion to Set Amount of Supersedeas Bond prior to August 30, 2024, when the current administrative stay is set to expire. Scheduling that motion was made more difficult by counsel for Respondent's July 25, 2024

notice of unavailability, a true and correct copy of which is attached hereto as **Exhibit 4**.

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

Dated this 14th day of August, 2024.



EXHIBIT 1

Superior Court of Washington, Thurston County

Plaintiff / Petitioner:

SAVE THE DAVIS-MEEKER GARRY OAK

Case No. 24-2-01895-34

Notice of Hearing for Civil Motions

Effective: 01/01/2024
(NTHG)

Defendant / Respondent:

DEBBIE SULLIVAN, in her capacity as
Mayor of Tumwater

To the Court Clerk and all parties:

1. A court hearing has been scheduled for: September 6, 2024 (date).

The hearing will be before the assigned Judge or Commissioner. The hearing will take place at 2000 Lakeridge Drive SW, Building 2; Olympia, WA 98502.

2. The **name** of the motion or type of hearing is: Plaintiff's Motion to Set Amount of
Supersedeas Bond

Required: The motion was filed with this notice or previously on: _____ (date).

3. The hearing should be scheduled as a:

Unlawful Detainer Ex Parte (Wednesday 9:00 Administrative Session – DO NOT GO TO COURT)

Unlawful Detainer Motion (Friday 9:30 a.m.)

Trial Setting under LCR 40 (Friday 9:00 Administrative Session – DO NOT GO TO COURT)

Dispositive Motion -- Summary Judgment, CR 12(b)(6), or CR 12(c) motion (Friday 9:00 a.m.)

Other Civil Motion (Friday 9:00 a.m.)

Warnings!

- If you do not go to the hearing, the court may sign orders without hearing your side.
- You will need to check that the session is available before you schedule a hearing. You can see whether a session is full on the Clerk's website: www.co.thurston.wa.us/clerk.
- If this notice is incomplete or contains an incorrect date, time, or conflicting information, your hearing may not be scheduled, and you will **not** be notified. You can verify whether a hearing was scheduled at: <https://odysseyportal.courts.wa.gov/odyportal>.

- You need to schedule this hearing at least six business days ahead of time. More time is required for dispositive motions (28 days) and some other matters. Consult local and state court rules.

4. Declaration of Service

I declare that on August 12, 2024, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this notice of hearing, the motion, and all paperwork filed along with the motion, to all people listed below in section 6.


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

Signed at Bainbridge Island (city) Washington (State) on August 12, 2024 (date signed).

Bryan Telegin (printed name)
 (signature)

5. Person Scheduling this Hearing:

Name of party: Save the Davis-Meeker Garry Oak

Sign: 

Print Name: Bryan Telegin

WSBA # 46686 (if attorney)

Address: 175 Parfitt Ave SW, Ste. N270

City/State/Zip: Bainbridge Island, WA 98110

Telephone: (206) 453-2884

Email: bryan@teleginlaw.com

Date: August 12, 2024

6. Names and Contact Information for Everyone Notified of this Hearing

Name: Jeffrey Scott Myers

Name: Jakub Lukasz Kocztorz

Attorney for: Defendant

Attorney for: Defendant

WSBA #: 16390

WSBA #: 61393

Address: PO Box 11880, Olympia, WA 98508-1880

Address: PO Box 11880, Olympia, WA 98508-1880

Telephone: (360) 754-3480

Telephone: (360) 754-3480

Name: Ronda Larson Kramer

Name: _____

Attorney for: Plaintiff

Attorney for: _____

WSBA #: 31833

WSBA #: _____

Address: PO Box 7337, Olympia, WA 98507

Address: _____

Telephone: (360) 768-0775

Telephone: _____

1 Hearing Date: September 6, 2024

2 Hearing Time: 9:00 a.m.

3 Judge/Calendar: Hon. Anne Egeler
4

5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF THURSTON

9 SAVE THE DAVIS-MEEKER GARRY
10 OAK,

11 Plaintiff,

12 v.

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

15 Defendant.
16

No. 24-2-01895-34

**PLAINTIFF’S MOTION TO SET
AMOUNT OF SUPERSEDEAS
BOND**

17 **I. INTRODUCTION**

18 Pursuant to Rule 8.1 of the Washington Rules of Appellate Procedure (“RAP”), Plaintiff
19 Save the Davis-Meeker Garry Oak hereby moves this Court for an order setting the amount of a
20 supersedeas bond to stay the effectiveness of this Court’s Order Granting Motion to Dissolve TRO
21 (May 31, 2024) pending review by Division II of the Washington Court of Appeals.

22 **II. EVIDENCE RELIED UPON**

23 This motion relies on the accompanying declaration of Bryan Telegin (August 12, 2024;
24 herein, “Telegin Decl.”) and on the pleadings and filings herein.
25

26 ///

1 **III. OVERVIEW OF THE CASE**

2 On May 24, 2024, Plaintiff Save the Davis-Meeker Garry Oak filed the complaint in this
3 matter seeking to enjoin Debbie Sullivan, the Mayor of the City of Tumwater, from directing a
4 400-year-old oak tree known as the Davis Meeker oak to be cut down. (*See* Complaint for
5 Declaratory and Injunctive Relief, Including Temporary Restraining Order (May 24, 2024).)
6 Plaintiff’s primary claim was that because the tree is listed as an historic property on the City’s
7 Register of Historic Places, it may not be cut down under the City’s Historic Preservation
8 Ordinance without prior review and approval by the Tumwater Historic Preservation Commission.
9 (*Id.* at 6, ¶ 32.)

11 The same day Plaintiff filed the complaint, the Honorable Sharonda D. Amamilo granted
12 Plaintiff’s request for a temporary restraining order (“TRO”), providing that “Defendant shall
13 immediately cease and desist from all efforts to remove the Davis Meeker Garry Oak until further
14 court order.” (Order Granting Temporary Restraining Order (May 24, 2024).) Counsel for the
15 Mayor also filed a motion to dissolve the TRO. (*See* Defendant’s Emergency Motion to Dissolve
16 Temporary Restraining Order) (May 24, 2024).)

18 On May 28, 2024, Plaintiff filed a response to the Mayor’s motion to dissolve the TRO,
19 together with a cross-motion seeking to extend the TRO. (*See* Response to Motion to Dissolve
20 Temporary Restraining Order and Cross-Motion to Extend Temporary Restraining Order to July
21 30, 2024 (May 28, 2024).) Plaintiff later requested that its cross-motion be treated as one for a
22 preliminary injunction. (*See* Telegin Decl., Ex. A at 10 (requesting that this Court “construe
23 plaintiff’s motion as one to impose temporary injunction as opposed to extend the TRO”).
24

25 The cross-motions went to hearing on Friday, May 31, 2024. At the conclusion of that
26 hearing, this Court granted the Mayor’s motion to dissolve the TRO, denying Plaintiff’s cross-

1 motion for a preliminary injunction, and ruling that the Mayor may lawfully cut down the Davis
2 Meeker oak without the approval of the Tumwater Historic Preservation Commission. (*See* Order
3 Granting Motion to Dissolve TRO (May 31, 2024).) Specifically, this Court ruled that “[t]he
4 Mayor’s decision to proceed is compliant with the code” and that “[t]here was not an obligation to
5 obtain a permit before removing a historic tree as opposed to a historic structure[.]” (*Id.* (transcript
6 of Court’s oral ruling at 3:17–20).) On this point, the Court appears to have accepted at face value
7 the argument put forward by the Mayor’s attorney during his oral rebuttal argument, without any
8 citation to the code, that the City’s Historic Preservation Ordinance “does not apply because a tree
9 is not a structure” and that “the definition of structure applies to man-made constructs, not trees.”
10 (Telegin Decl., Ex. A at 13).)

11
12 Following the Mayor’s attorney’s statement that the tree could be cut down as early as
13 Monday, June 3, 2024, this Court did, however, extend the TRO until Wednesday, June 5, 2024,
14 to give Plaintiff “a meaningful right of appeal.” (Order Granting Motion to Dissolve TRO at 1.)

15
16 Following this Court’s ruling, Plaintiff filed an emergency appeal to Division II of the Court
17 of Appeals, and later filed a motion for an injunction on appeal to prevent the Mayor from cutting
18 down the tree. On July 23, 2024, Division II Commissioner Aurora R. Bearse issued a ruling on
19 that motion, holding that the proper procedure for seeking a stay of this Court’s Order allowing the
20 tree to be cut down is to file a motion with this Court to set the amount of a supersedeas bond under
21 RAP 8.1. A copy of Commissioner Bearse’s ruling may be found at Exhibit B to the accompanying
22 Declaration of Bryan Telegin. Pages 2 to 5 of her ruling directed Plaintiff to file a motion with this
23 Court to set the amount of a supersedeas bond under RAP 8.1.

24
25 Under RAP 8.1(b), “Any party to a review proceeding [before the Court of Appeals] has
26 the right to stay enforcement of a money judgment or a decision affecting real, personal or

1 party is likely to incur as a result of not being able to use the property as he or she desires during the
2 course of appellate review. We address each of these values below.

3 **1. There was no money judgment.**

4 Under RAP 8.1(c)(2), the amount of a supersedeas bond must include any money judgment
5 awarded, plus interest. No money judgment was awarded in this case. Thus, this value is zero. .
6

7 **2. At most, the Mayor would be entitled to recoup \$200.00 in attorney’s fees on
8 appeal, if she prevails.**

9 Next, under RAP 8.1(c)(2), the amount of a supersedeas bond must include the value of any
10 attorney fees, costs, and expenses likely to be awarded on appeal. Here, the only statute that would
11 allow the Mayor to recoup fees or costs is RCW 4.84.080, which authorizes a total of \$200.00 in
12 attorney’s fees following a successful appeal. Thus, at most, this value is \$200.00.

13 **3. A stay would cause the Mayor no loss because she is already legally barred under
14 RCW 27.53.060 from cutting the tree down.**

15 Last, under RAP 8.1(c)(2), the amount of a supersedeas bond includes “the loss which the
16 prevailing party in the trial court would incur as a result of the party’s inability to enforce the judgment
17 during review.” In this case, the Mayor would not incur any loss because she cannot cut the tree down
18 anyhow. The Washington Department of Archaeology and Historic Preservation (“DAHP”) has
19 independently determined that under RCW 27.53.060, the Davis Meeker oak may not be cut down.
20 Accordingly, a stay pending appeal would not change the status quo.
21

22 The Mayor’s attorney made clear during the May 31, 2024 hearing that the Mayor desires to
23 cut the tree down, which the Mayor claims is necessary for safety reasons. Plaintiff has put forward
24 expert testimony that the arborist report that the Mayor relied on to reach that conclusion is riddled
25 with errors, omissions, and misrepresentations. (*See* Declaration of Beowulf Brower, ¶¶ 4–8 (May 28,
26 2024).) Regardless, even if the Mayor could enforce this Court’s ruling on appeal, the DAHP has

1 independently concluded that the tree may not be cut down without first obtaining a permit under
2 Washington’s Archeological Sites and Resources Law at Chapter 27.53 RCW.

3 Under Washington’s Archeological Sites and Resources Law, a written permit is required from
4 DAHP prior to undertaking any action that might damage a “historic archeological resource.” This
5 requirement is at RCW 27.53.060(1), which provides:
6

7 On the private and public lands of this state it shall be unlawful for
8 any person . . . to knowingly remove, alter, dig into, or excavate by
9 use of any mechanical, hydraulic, or other means, or to damage,
10 deface, or destroy any historic or prehistoric archaeological resource
11 or site . . . without having obtained a written permit from the director
12 [of the Department of Archeology & Historic Preservation] for such
13 activities.

14 RCW 27.53.060(1).

15 In turn, RCW 27.53.030 defines “historic archeological resource” to mean “those properties
16 which are listed in or eligible for listing in . . . the national register of historic places as defined in
17 the national historic preservation act of 1966.” RCW 27.53.030(9). Thus, when a property is
18 eligible for listing on the national register of historic places, it qualifies as a “historic archeological
19 resource” and may not be harmed without a permit from DAHP pursuant to RCW 27.53.060(1)
20 (quoted above). Failure to comply with this permit requirement is a misdemeanor. RCW 27.53.090.
21 Civil penalties may be assessed up to \$5,000.00 per day for each violation, plus investigative and
22 site-restoration costs. RCW 27.53.095.

23 In this case, independently of this Court’s ruling that the Mayor may lawfully cut the tree
24 down, DAHP has concluded that the Davis Meeker oak likely qualifies for listing on the national
25 register of historic places and therefore may not be cut down without a written permit issued
26 pursuant to RCW 27.53.060(1). In DAHP’s words:

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

1 subsequent Oregon Trail. Based on this association it is likely that
2 this resource is eligible for the National Register of Historic Places.
3 The address of the Davis Meeker oak is 7525 Old Hwy 99,
4 Tumwater, WA 98501.

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

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

13 (Declaration of Ronda Larson Kramer re: Supplemental Response to Motion to Dissolve TRO
14 (May 30, 2024), Ex. A at 1 (emphasis in original; also attached as Exhibit C to the accompanying
15 declaration of Bryan Telegin).)

16 To our knowledge, the Mayor has not sought, let alone obtained, a permit from DAHP to
17 cut down the historic Davis Meeker oak under Washington's Archeological Sites and Resources
18 Law. Thus, the City has no lawful authority to cut the tree down or otherwise destroy it. If the
19 Mayor were to do so now, she would be committing a crime and would be subject to a civil penalty
20 of up to \$5,000.00 per day plus investigative and site-restoration costs.

21 As discussed above, RAP 8.1(c)(2) requires the amount of a supersedeas bond include the
22 loss that the City of Tumwater would incur during the appeal period by being unable to enforce
23 this Court's order that Davis Meeker Garry oak may be cut down. But regardless of whether this
24 Court's order can be enforced or not, the DAHP has independent authority to prohibit the tree from
25 being cut down or otherwise destroyed. The DAHP has stated clearly that the tree cannot, in fact,
26 be cut down without a permit issued pursuant to Washington's Archeological Sites and Resources
Law; a permit which, to our knowledge, the Mayor has not obtained. Thus, the Mayor will suffer
no monetary loss by being unable to enforce this Court's specific order during the pendency of

1 Plaintiff’s appeal. “The supersedeas bond . . . is only intended to indemnify the judgment creditor
2 from losses caused by delay of appeal.” *Muniz v. Vasquez*, 797 S.W.2d 147, 150 (Tex. Ct. App.
3 1990). For purposes of setting an amount for a supersedeas bond, this value, too, is zero.

4 **4. The City of Tumwater’s Historic Preservation Ordinance protects trees as well**
5 **as buildings.**

6 Finally, although not listed as a factor for determining the amount of a supersedeas bond under
7 RAP 8.1, we believe it is highly relevant that during the May 31, 2024 hearing before this Court,
8 counsel for the Mayor misrepresented the scope of the City of Tumwater’s Historic Preservation
9 Ordinance, a true and correct copy of which may be found at Exhibit D to the Declaration of Bryan
10 Telegin.
11

12 As discussed above, during that hearing counsel for the Mayor stated, without qualification
13 (or citation to authority), that the City of Tumwater’s Historic Preservation Ordinance “does not apply
14 because a tree is not a ‘structure.’” (Telegin Decl., Ex. A at 13.) This statement was then repeated in
15 this Court’s oral ruling.¹ But it is demonstrably false. The City’s Historic Preservation Ordinance is
16 decidedly *not* limited to protecting “structures.” Rather, that ordinance protects all “properties” listed
17 on the City’s Register of Historic Places, such as the Davis- eeker oak.
18

19 This can be seen clearly at Section 2.62.060.A of the Tumwater Municipal Code (“TMC”),
20 which provides:

21 No person shall . . . alter, restore, remodel, repair, move, or demolish ***any existing***
22 ***property on the Tumwater register of historic places*** . . . without review by the
23 commission and without receipt of a certificate of appropriateness, or in the case of
24 demolition, a waiver, as a result of the review.
25

26 _____
¹ (See Order Granting Motion to Dissolve TRO (transcript of Court’s oral ruling at 3:17–20, concluding that “[t]here was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure”).

1 TMC 2.62.060.A (emphasis added). This section of the City’s Historic Preservation Code prohibits
2 the destruction of any “property” listed on the City’s historic register without first obtaining the
3 approval of the Tumwater Historic Preservation Commission (the local body charged with issuing
4 certificates of appropriateness and waivers thereto). This protection is not limited to historic
5 “structures,” but applies by its terms to all listed historic “properties.”
6

7 In turn, TMC 2.62.030.L defines “historic property” to mean “*real property* together with
8 improvements thereon, except property listed in a register primarily for objects buried below
9 ground[.]” TMC 2.62.030.L (emphasis added). Here again, the City’s Historic Preservation Ordinance
10 is not limited to protecting “structures.” Rather, the ordinance protects any listed historic “real
11 property.”
12

13 Applied here, even assuming that the Davis Meeker oak is not a “structure,”² it is
14 unquestionably a “property” listed on the City’s Register of Historic Places. Indeed, it is the City’s
15 property, which is why the Mayor claims authority to cut it down.

16 In turn, the Davis Meeker oak is unquestionably “real property,” the classic definition of which
17 is “*Land and anything growing on, attached to, or erected on it, excluding anything that may be*
18 *severed without injury to the land.*” *Property*, Black’s Law Dictionary (12th ed. 2024).³
19

20 In short, the Davis Meeker oak is “property.” The tree is “real property.” And it is an historic
21 property listed on the City’s Register of Historic Places. It is, therefore, protected by the City’s Historic
22 Preservation Code and may not be destroyed without prior approval by the Tumwater Historic
23 Preservation Commission under the plain language of TMC 2.62.060.A. Because counsel for the
24

25 ² Contrary to the assertion of the Mayor’s attorney, the City’s definition of a “structure” does not
26 “appl[y] only to man-made constructs.” (Telegin Decl., Ex. A at 13.) Rather, the definition—found at TMC
2.62.030.W—provides only that structures are “[g]enerally constructed by man,” not that they always are
constructed by man.

³ This entry of Black’s Law Dictionary may be found at Exhibit E to the Declaration of Bryan Telegin.
The sub-entry for “real property” may be found at page 3 of that exhibit.

1 mayor misrepresented the scope of the City’s Historic Preservation Ordinance, the supersedeas bond
2 should be set at a nominal amount.

3
4 **V. CONCLUSION**

5 For all of the reasons above, pursuant to RAP 8.1, Plaintiff Save the Davis-Meeker Garry
6 Oak respectfully requests that this Court set the amount of a supersedeas bond for the Court’s May
7 31, 2024 Order Granting Motion to Dissolve TRO pending review by Division II of the Washington
8 Court of Appeals. The bond should be set at \$200.00.

9
10 A proposed order is submitted herewith.

11 Dated this 12th day of August, 2024.

12 Respectfully submitted,

13 TELEGIN LAW PLLC

14
15 By: 

16 Bryan Telegin, WSBA No. 46686
17 175 Parfitt Way SW, Ste. N270
18 Bainbridge Island, WA 98110
19 Tel: (206) 453-288
E-mail: bryan@teginlaw.com

20 LARSON LAW, PLLC

21
22 By: s/ Ronda Larson Kramer

23 Ronda Larson Kramer, WSBA No. 31833
24 PO Box 7337
25 Olympia, WA 98507
26 Tel: (360) 768-0775
E-mail: ronda@larsonlawpllc.com

*Attorneys for Plaintiff Save the Davis-Meeker
Garry Oak*

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2024, I caused to be served a true and correct copy of the foregoing Plaintiff's Motion to Set Amount of Supersedeas Bond on each of the persons and in the manners listed below.

Jeffrey Scott Myers
Law Lyman Daniel Kamerrer et al
PO Box 11880
2674 R W Johnson Blvd SW
Olympia, WA 98508-1880
jmyers@lldkb.com
Attorney for Defendant Debbie Sullivan
Via U.S. Mail

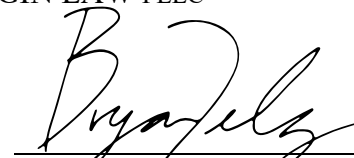
Jakub Lukasz Kocztorz
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Olympia, WA 98508-1880
jmyers@lldkb.com
Attorney for Defendant Debbie Sullivan
Via Hand Delivery & U.S. Mail

Ronda Larson Kramer
Larson Law PLLC
Of Attorneys for Plaintiff Save the Davis-Meeker Garry Oak
Via email to ronda@larsonlawpllc.com

Dated: August 12, 2024

TELEGIN LAW PLLC

By:



Bryan Telegin, WSBA No. 46686
*Counsel for Plaintiff Save the Davis-Meeker
Garry Oak*

EXHIBIT 2

1 Hearing Date: September 9, 2024

2 Hearing Time: 9:00 a.m.

3 Judge/Calendar: Hon. Anne Egeler
4

5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF THURSTON

9 SAVE THE DAVIS-MEEKER GARRY
10 OAK,

11 Plaintiff,

12 v.

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

15 Defendant.
16

No. 24-2-01895-34

**DECLARATION OF BRYAN
TELEGIN IN SUPPORT OF
PLAINTIFF'S MOTION TO SET
AMOUNT OF SUPERSEDEAS
BOND**

17 I, BRYAN TELEGIN, declare as follows:

18 1. I am one of the attorneys for Plaintiff Save the Davis-Meeker Garry Oak herein. I am
19 over the age of 18 and make this declaration based upon my own personal knowledge.

20 2. Attached hereto as **Exhibit A** is a true and correct copy of the Verbatim Report of
21 Proceedings filed with Division II of the Washington Court of Appeals in Appeal No. 58881-1-II. The
22 Verbatim Report of Proceedings is a transcript of the oral argument before this Court on May 31, 2024
23 in the above-captioned matter.

24 3. Attached hereto as **Exhibit B** is a true and correct copy of Commissioner Bearse's July
25 23, 2024 Ruling Denying Stay Under RAP 8.3 Without Prejudice to Obtaining a Stay under RAP
26

1 8.1(b)(2), Determining Appealability, and Accelerating Appeal in Appeal No. 58881-1-II currently
2 pending before Division II of the Washington Court of Appeals.

3 4. Attached hereto as **Exhibit C** is a true and correct copy of a May 30, 2024 letter from
4 James Macrae, Assistant State Archeologist for the Washington Department of Archeology & Historic
5 Protection, re: Davis-Meeker Oak: Archaeological Permit Requirements under RCW 27.53.
6

7 5. Attached hereto as **Exhibit D** is a true and correct copy of the City of Tumwater's
8 Historic Preservation Ordinance, codified at Chapter 2.62 of the Tumwater Municipal Code and
9 available online at [https://www.codepublishing.com/WA/Tumwater/#!/Tumwater02/Tumwater](https://www.codepublishing.com/WA/Tumwater/#!/Tumwater02/Tumwater0262.html#2.62)
10 [0262.html#2.62](https://www.codepublishing.com/WA/Tumwater/#!/Tumwater02/Tumwater0262.html#2.62). A copy of this letter was previously submitted in this matter as Exhibit A to the May
11 30, 2024 Declaration of Ronda Larson Kramer re: Supplemental Response to Motion to Dissolve
12 TRO.
13

14 6. Attached hereto as **Exhibit E** is a true and correct copy of the entry for "property" as
15 found in Black's Law Dictionary, 12th edition, 2024.

16 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
17 is true and cored.

18 Dated this 12th day of August, 2024, at Bremerton, Washington.

19
20
21 
22 _____
Bryan Telegin

Exhibit C



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,

A handwritten signature in black ink that reads 'James Macrae'.

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



EXHIBIT 3

1 Hearing Date: September 6, 2024

2 Hearing Time: 9:00 a.m.

3 Judge/Calendar: Hon. Anne Egeler
4

5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF THURSTON

9 SAVE THE DAVIS-MEEKER GARRY
10 OAK,

11 Plaintiff,

12 v.

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

15 Defendant.
16

No. 24-2-01895-34

**SUPPLEMENTAL
DECLARATION OF BRYAN
TELEGIN IN SUPPORT OF
PLAINTIFF’S MOTION TO SET
AMOUNT OF SUPERSEDEAS
BOND**

17 I, BRYAN TELEGIN, declare as follows:

18 1. I am one of the attorneys for Plaintiff Save the Davis-Meeker Garry Oak herein. I am
19 over the age of 18 and make this declaration based upon my own personal knowledge. I make this
20 declaration in support of Plaintiff’s pending Motion to Set Amount of Supersedeas Bond (Aug. 14,
21 2024).

22 2. Attached hereto as **Exhibit F** is a true and correct copy of a letter dated June 4, 2024
23 from the Washington Department of Archeology and Historic Preservation (“DAHP”) to the City of
24 Tumwater and its mayor, Debbie Sullivan. Plaintiff obtained a copy of this letter through a public
25 records request to the City of Tumwater. The stated purpose of the letter is to notify the City of
26

Exhibit F



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.

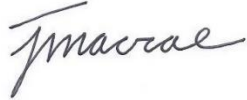
DAHP understands that the City of Tumwater intends to remove a tree known as the Davies-Meeker Garry Oak Tree (the Tree). Based on the information DAHP currently has about the Tree and its historic and tribal association, the Tree is an archaeological site or object and therefore protected under state 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.



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 G



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

Agriculture & Health Division

PO Box 40109 • Olympia, WA 98504-0109 • 360-586-6500

July 11, 2024

Jeffery S. Meyers
Attorney at Law
Law, Lyman, Daniel, Kamerrer & Bogdonovitch, P.S.
2674 RW Johnson Blvd SW
Tumwater, WA 98512

RE: **Davis-Meeker Garry Oak Tree (45 TN 548)**

Dear Jeffery Myers:

I am an Assistant Attorney General and represent the Washington State Department of Archaeology and Historic Preservation (DAHP). It is in that capacity that I send this letter.

The Davis-Meeker Garry Oak Tree (the Tree) is a recorded archaeological site, known by its Smithsonian Trinomial 45 TN 548. Chapter 27.53 RCW and WAC Chapter 25-48 require the City of Tumwater (City) to obtain an Archaeological Excavation and Removal Permit (Permit) from DAHP before the Tree is removed, altered, dug into, excavated, damaged, defaced, or destroyed. Should the City fail to obtain a permit as required by law, DAHP will issue penalties against the City to the maximum extent allowed by law pursuant to RCW 27.53.095 and WAC 25-48-041. 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 constitutes a distinct violation of RCW 27.53.060 subject to the maximum penalties available by law.

The Tree constitutes an archaeological object and/or an archaeological resource contained within an archaeological site, placing it well within DAHP's regulatory authority and subjecting the City to the permitting requirements of Chapter 27.53 RCW and WAC Chapter 25-48. Chapter 27.53 protects archaeological sites from, amongst other things, destruction or alteration.¹ Such disturbance or alteration to archaeological sites subjects the violator to penalties under RCW 27.53.095.

¹ RCW 27.53.060.

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Jeffery S. Meyers

July 11, 2024

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Archaeological sites are locations that contain archaeological objects.² Archaeological objects include any item that “comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products.”³ Trees can comprise physical evidence of indigenous and subsequent cultures.

DAHP’s rules support this interpretation. The rules use the same definitions for archaeological site⁴ and archaeological object⁵ as the statute, and provide for the same enforcement and penalties.⁶ WAC 25-48-041 also protects archaeological resources from alteration, excavation, or removal absent a permit.⁷ Archaeological resources include “any material remains of human life or activities which are of archaeological interest, including all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized.”⁸ Material remains of human life are of archaeological interest when they are “capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.”⁹ Trees can be material remains of human life and of archaeological interest, based on a plain reading of the DAHP rules.

DAHP has correctly interpreted its statutes and rules to mean that trees that have archaeological or historical significance are archaeological objects or archaeological resources within archaeological sites subject to DAHP permitting requirements, and has done so publically for years. For example, DAHP’s website¹⁰ and the *Field Guide to Washington Archaeology*, produced in 2003, both reference permitting requirements for trees.¹¹ In fact, a search of DAHP’s WISAARD (Washington Information System for Architectural and Archeological Records Data) system indicates that at least 458 recorded archaeological sites are trees. DAHP’s interpretation of Chapter 27.53 RCW and WAC Chapter 25-48 is consistent with the plain meaning of the statute.

Based on the information available to DAHP, including but not limited to the Tree’s relationship to the Oregon Trail and the Tree’s significance to local Tribes, the Tree is a monument that comprises physical evidence of indigenous and subsequent cultures and is of archaeological

² RCW 27.53.030

³ RCW 27.53.030

⁴ WAC 25-48-020(9)

⁵ WAC 25-48-020(8)

⁶ WAC 25-48-041

⁷ WAC 25-48-041(1)(a)

⁸ WAC 25-48-020(10)

⁹ WAC 25-48-020(12)

¹⁰ Available at <https://dahp.wa.gov/archaeology>

¹¹ Available at https://dahp.wa.gov/sites/default/files/Field%20Guide%20to%20WA%20Arch_0.pdf

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Jeffery S. Meyers

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interest. As such, the Tree has been recorded as an archaeological site in Washington and is subject to the protections contained in Chapter 27.53 RCW and Chapter 25-48 WAC.

With respect to the City's assertions related to the dispositive nature of Judge Anne Egeler's statements on the record, Judge Egeler expressly called out that the issue had not been briefed prior to the hearing, and that her Honor's consideration of Chapter 27.53 was "brief." Judge Egeler's apparent consideration of DAHP's statutory authority was limited to a short statement from the bench.

As DAHP understands it, the issue before the Judge Anne Egeler on the Temporary Restraining Order was whether Save the Davis-Meeker Garry Oak (SDMGO) had established a clear legal or equitable right to relief. Judge Egeler ruled that SDMGO had not established such a right. SDMGO clearly has no right to vindicate DAHP's interest in archaeological permitting related to the Tree. DAHP is the sole authority within Washington authorized to issue Archaeological Excavation and Removal Permits allowing for disturbance of archaeological sites. As you know, DAHP was not a party to the case before Judge Egeler, and DAHP was not asked to provide input as an *Amici*. As such, Judge Egeler's Ruling is, at most, limited to the parties and is not binding on DAHP. DAHP further understands that on July 3, 2024 the Commissioner of the Court of Appeals, Division II granted a short-term stay of the dissolution of the Temporary Restraining Order. Such a stay does not prohibit the City from working to obtain a DAHP permit related to the Tree.

DAHP is aware of the City's concerns with respect to potential liability related to the Tree. However, it is also aware that the City has agreed following its June 4, 2024 Tumwater City Council meeting to obtain the service of another arborist to make additional determinations with respect to the health of the Tree. If the city is concerned about timeframes with respect to the Tree, emergency permitting from DAHP is available for circumstances where a Permit may need to be obtained on an expedited basis. WAC 25-48-095 outlines the process for the issuance of an emergency Permit, which require a shorter application process and are valid for 30-60 days, depending on the circumstance.

DAHP has now notified the City on three separate occasions that work on the Tree, including but not limited to removing or damaging the Tree, requires a Permit. This notice first occurred by email from Assistant State Archaeologist James Macrae dated May 30, 2024, second by letter from Assistant State Archaeologist James Macrae dated June 4, 2024, and finally by this letter.

The City is under clear notice of its legal obligation to obtain a Permit under state law prior to commencing work which removes, alters, digs into, excavates, damages, defaces, or destroys the Tree. Again, DAHP will issue penalties against the City to the maximum extent allowed by RCW 27.53.095 for failure to obtain a Permit from DAHP for damaging or removing the tree.

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Jeffery S. Meyers

July 11, 2024

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Please have the City contact my client at its earliest convenience to discuss obtaining an Permit if it still wishes to remove, alter or damage the Tree, including for the purpose of obtaining an arborist evaluation if that evaluation requires defacing or damaging the tree in any way. DAHP greatly appreciates the City's future compliance with Washington State laws and rules governing cultural resources.

Sincerely,



Christopher P. Wright
Assistant Attorney General
Attorney for DAHP

cc: James Macrae, Assistant State Archaeologist

CPW:MW

EXHIBIT 4

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

NO. 58881-1-II

SAVE THE DAVIS-MEEKER GARRY
OAK,

Plaintiff,

vs.

DEBBIE SULLIVAN, in her capacity of
Mayor of Tumwater,

Defendant.

NOTICE OF UNAVAILABILITY

TO: THE CLERK OF THE COURT

AND TO: ALL COUNSEL

PLEASE TAKE NOTICE that the undersigned attorney, Jeffrey S. Meyers, will be out of the office and unavailable from August 6, 2024 through August 16, 2024.

The parties are requested to set no trial, hearings, depositions, or other matters during the referenced dates. During these absences, the undersigned shall be unavailable to actively respond to any pleadings, discovery, or motions that may be filed, and requests that no discovery or other proceedings be scheduled during that period or immediately thereafter to preclude adequate preparation.

The undersigned respectfully requests the Clerk of the Court transmit this information whenever any motion or other matter is set within the time period stated above.

1 DATED this 25th day of July, 2024.

2 LAW, LYMAN, DANIEL, KAMERRER
3 & BOGDANOVICH, P.S.

4 

5 Jeffrey S. Myers, WSBA # 16390
6 Attorney for Respondent
7 P.O. Box 11880, Olympia, WA 98508
8 Phone: (360) 754-3480 Fax: (360) 357-3511
9 Email: jmyers@lldkb.com

10 **CERTIFICATE OF ECF FILING & SERVICE**

11 I hereby certify under penalty of perjury under the laws of the State of Washington that on this
12 date, I caused to be electronically filed the foregoing document, and this Certificate of Filing & Service,
13 through the WA Appellate Court E-filing portal which will send notice of filing to all counsel below:

14 **Plaintiff's Attorney:**

15 Ronda Larson Kramer
16 LARSON LAW, PLLC
17 P.O. Box 7337
18 Olympia, WA 98507-7337
19 ronda@larsonlawpllc.com

20 DATED this 25th day of July 2024.

21 */s/ Lisa Gates*

22 _____
23 Lisa Gates, Legal Asst.

TELEGIN LAW PLLC

August 14, 2024 - 1:42 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 58881-1
Appellate Court Case Title: Save the Davis Meeker Garry Oak, Appellant v. Debbie Sullivan, Respondent
Superior Court Case Number: 24-2-01895-3

The following documents have been uploaded:

- 588811_Affidavit_Declaration_20240814134118D2149205_6224.pdf

This File Contains:

Affidavit/Declaration - Other

The Original File Name was 2024 08 14 Telegin Decl. ISO Motion to Extend Administrative Stay FINAL.pdf

A copy of the uploaded files will be sent to:

- jkocztorz@lldkb.com
- jmyers@lldkb.com
- lisa@lldkb.com
- ronda@larsonlawpllc.com

Comments:

Sender Name: Jamie Telegin - Email: jamie@teginlaw.com

Filing on Behalf of: Bryan James Telegin - Email: bryan@teginlaw.com (Alternate Email: bryan@teginlaw.com)

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Bainbridge Island, WA, 98110

Phone: (206) 453-2884 EXT 102

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