

1  EXPEDITE  
2  No Hearing Set  
3  Hearing is set  
4 Date:  
5 Time:  
6 Judge:  
7  
8 Calendar:

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.

RESPONSE TO MOTION TO  
DISSOLVE TEMPORARY  
RESTRAINING ORDER AND CROSS-  
MOTION TO EXTEND TEMPORARY  
RESTRAINING ORDER TO  
JULY 30, 2024

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

13 Defendant.

14 **INTRODUCTION**

15 On Friday, this Court granted a temporary restraining order (TRO) to prevent Tumwater  
16 Mayor Debbie Sullivan from causing irreparable harm to Plaintiffs, tribes and the greater  
17 community by cutting down a 400-year-old Oregon white oak (“Garry” oak) that is on the  
18 historic register and that shelters an uncommon leucistic (white) kestrel<sup>1</sup> incubating eggs.  
19 Federal law forbids cutting of the tree before her chicks have fledged. Plaintiff moves for an  
20 extension of the temporary restraining order to July 30, 2024, to give the kestrels time to fledge.  
21 No bond is necessary because there is no imminent threat. The city’s insurance is not  
22 threatening to drop coverage. Also, the mayor waited seven months before telling the tribes at  
23 the midnight hour what she was planning to do. This violates their right to have a reasonable  
24  
25

<sup>1</sup> Video/photo of this beautiful and uncommon falcon are here <https://www.davis-meecker-oak.org/media-releases>.

1 opportunity for input.

## 2 **BACKGROUND**

3  
4 In Tumwater’s form of government, its mayor is sometimes called a “strong” mayor, but  
5 this is a misnomer. The mayor has no vote on the city council unless there is a tie, which is rare  
6 given that there is an odd number of council members. It is the council that makes the laws.  
7 The council is the city’s legislative body. The mayor merely carries out the laws that the council  
8 deems fit to enact. As such, the council is who has authority to stop this atrocious violation of  
9 the law by the mayor. The Plaintiff prays that somebody on the city council will step up and  
10 help the Meeker oak, that somebody on the council will make a motion to pass an emergency  
11 ordinance requiring a special permitting process before this tree is ever cut down and requiring  
12 a consulting group of arborists (volunteer and/or paid) to advise the city arborist on how to care  
13 for and preserve this tree. The expectation is that they would then recommend the least harmful  
14 action, a relatively light pruning, perhaps combined with reducing the parking near the tree and  
15 removing the asphalt from on top of its roots. Either way, the Plaintiff also prays that the city  
16 will move the road.  
17

18 In the meantime, Plaintiff will continue using the courts. Ultimately, Plaintiff will seek  
19 full attorney costs and fees from the city to reimburse Plaintiff for actions that are necessary,  
20 but which should not have been, had the mayor not violated the laws.  
21

## 22 **ARGUMENT**

### 23 **A. The Mayor Is Relying on a Flawed Risk Assessment**

24 The arborist’s report produced for the City of Tumwater condemning this tree contains  
25 a litany of errors. Decl. of Beowulf Brower. And it also does not account for the unique qualities  
of this species. Oak has an amazing ability to heal after a wound and compartmentalize the

1 wound, building structure around it that is even stronger than the original wood. This new wood  
2 is not only physically stronger but also chemically more resistant to decay. Its thickened cells  
3 are fully capable of preventing the spread of decay and of keeping the tree standing indefinitely.

4 Id.

5 **B. The Mayor Violated the Law Requiring Her to Obtain a Permit.**

6 The mayor has ordered the removal of the Meeker oak without a permit, despite the fact  
7 that one cannot legally demolish a structure on the historic register without a permit. TMC  
8 § 2.62.060 and TMC § 2.62.030 require a permit to demolish a historic structure. There is no  
9 exception. The mayor has turned those codes on their head, claiming that an emergency allows  
10 destruction. But those codes say that emergencies allow bypassing of the permit requirement  
11 to do emergency repairs. Cutting down a tree is not a repair. The mayor's motion should be  
12 denied.  
13

14 **C. The Mayor Cannot Cut the Tree Down When the Kestrels Are Nesting In It.**

15 The mayor cannot remove the Meeker oak because there are nesting birds in it. *See* Decl.  
16 of Michelle Peterson; Decl. of Steve Layman. To remove it now would violate the Migratory  
17 Bird Treaty Act (MBTA). That act broadly applies, by its plain terms, to the killing of any  
18 migratory bird "at any time, by any means or in any manner." 16 U.S.C. § 703(a). The Court  
19 should grant the motion to extend the TRO to give the chicks time to fledge.  
20

21 **D. The Mayor Violated RCW 70A.65.305 By Failing to Adequately Notify Tribes.**

22 The mayor notified the tribes a mere two weeks before she planned to cut down the tree.  
23 Decl. of Diane Riley. And yet, seven months earlier, her arborist issued the report upon which  
24 her decision relies. Notifying tribes at the midnight hour does not satisfy the requirement to  
25 "offer early, meaningful, and individual consultation with any affected federally recognized  
tribe", as required by RCW 70A.65.305. This statute applies to funding decisions that affect

1 cultural resources. Taking down a 400-year-old hardwood tree like this giant oak is estimated  
2 to cost \$100,000. The mayor may have money set aside but putting that much money into such  
3 a project by definition is a funding decision. Even if it were not, Chapter 43.376 RCW required  
4 the mayor to give the tribes a meaningful opportunity to weigh in. The Court should deny the  
5 motion to vacate the TRO based on this alone.

6 **E. The Mayor Is Not Being Forthcoming Regarding Insurance.**

7 The mayor claims that the city insurance company reviewed the city arborist's report  
8 and recommended removal of the tree. Decl. of Beowulf Brower. But Plaintiff called the  
9 insurance office and was told that they never recommend removal of trees. They leave the  
10 decision up to the customer. Plaintiff then did a public records request and found the  
11 correspondence between the city attorney's office and the insurance company. The assistant  
12 city attorney started the conversation by saying "I am reaching out because we are getting some  
13 pushback to remove a historical, but now very dead, oak tree in Tumwater." Decl. of Beowulf  
14 Brower (Emphasis added), para. 28. The tree is very much alive.

15 What is worse, the City Attorney later asked the insurance company to try to sway the  
16 City Council to remove the tree. *Id.* This is outrageous. Plaintiff hopes that shedding light on  
17 this conduct by the city mayor and city attorney's office can spur action by the city council to  
18 stop this process in its tracks. Either way, the Court should deny the motion to dissolve the  
19 TRO.  
20

21 **F. Plaintiff Has Standing.**

22 The mayor claims that Plaintiff does not have standing. However, an organization speaks  
23 for its members. "Organizations have standing to assert the interests of their members, so long  
24 as members of the organization would otherwise have standing to sue, the purpose of the  
25 organization is germane to the issue, and neither the claim nor the relief requires the

1 participation of individual members." *Five Corners Family Farmers v. State*, 173 Wash.2d 296,  
2 304, 268 P.3d 892 (2011) (citing *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*,  
3 146 Wash.2d 207, 213-14, 45 P.3d 186, 50 P.3d 618 (2002)); *see also Save a Valuable Env't v.*  
4 *City of Bothell*, 89 Wash.2d 862, 866, 576 P.2d 401 (1978).

5 The declarations of Cowlitz Tribal Elder Diane Riley, former Cowlitz Tribal Chairman  
6 Bill Iyall, and Stewart Hartman more than satisfy the need to show that members of the  
7 organization would otherwise have standing to sue.

8  
9 **G. The Mayor Received Sufficient Notice.**

10 The mayor claims that she did not receive sufficient notice of the hearing in which the  
11 TRO was entered. But the Decl. of Ronda Larson Kramer filed on Friday states that she called  
12 the city attorney's office on Friday morning before the ex parte hearing and left a message  
13 telling them that Plaintiff was filing a motion for TRO. Also, in Thurston County, the time of  
14 the hearing is in the court rules. All the city attorney had to do was google "ex parte Thurston  
15 County" and they would have found the answer to any uncertainty regarding the time. Every  
16 ex parte hearing in this county is between 8:30 am and 9:00 am.

17 **H. No Bond Is Warranted; There Is No Imminent Threat.**

18 The mayor seeks to make Plaintiff pay a bond, claiming without evidence that there is  
19 an emergency and the city may lose insurance coverage. The Declaration of Beowulf Brower  
20 sufficiently disposes of this claim by showing that there was no emergency.

21 Moreover, the mayor received her arborist's report saying the tree should come down  
22 seven months ago in October. Then the mayor waited four months to put work out for bid and  
23 another five months to even bring it before the Historic Preservation Commission. This shows  
24 she did not truly believe that an imminent threat existed.

25 Moreover, the Tree Solutions report that is part of the city arborist's report actually does

1 not recommend removal. It recommends actions that will keep the tree in place.

2  
3 **CONCLUSION**

4 The Court should deny Defendant’s motion to dissolve the TRO and should extend the  
5 TRO to July 30, 2024 so that the kestrel chicks can hatch and to give the Plaintiffs their day in  
6 court. If the Court does not extend the TRO, the tree will be cut and can never be replaced,  
7 rendering moot the Plaintiff’s right to have a fact-finding hearing and to have a court enter  
8 conclusions of law.

9 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of May, 2024.

10 LARSON LAW, PLLC

11 *Ronda Larson Kramer*

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13 

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RONDA LARSON KRAMER, WSBA #31833  
Attorney for SDMGO

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 28th day of May, at Olympia, WA.

18 

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19 RONDA LARSON KRAMER  
 20 Attorney for SDMGO