

1 Hearing Date: September 6, 2024

2 Hearing Time: 9:00 a.m.

3 Judge/Calendar: Hon. Anne Egeler
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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

1 Tumwater that it may not harm or destroy the Davis-Meeker Garry Oak without first obtaining a
2 permit from DAHP pursuant to Chapter 27.53 RCW.

3 3. Attached as **Exhibit G** hereto is a true and correct copy of a letter dated July 11, 2024
4 from Assistant Attorney General Christopher P. Wright to Jeffrey Myers, counsel for Debbie Sullivan,
5 Mayor of the City of Tumwater. In this letter, Mr. Write explains in great detail why the Davis-Meeker
6 Garry Oak is protected as an archeological resource under Chapter 27.53 RCW and why the City must
7 obtain a permit from the DAHP before taking any action that may harm or destroy the tree. Plaintiff
8 obtained a copy of this letter through a public records request to the City of Tumwater.
9

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

12 Dated this 14th day of August, 2024, at Bremerton, Washington.

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16 Bryan Telegin

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Exhibit F



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.

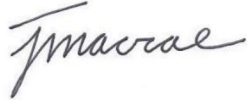
DAHP understands that the City of Tumwater intends to remove a tree known as the Davies-Meeker Garry Oak Tree (the Tree). Based on the information DAHP currently has about the Tree and its historic and tribal association, the Tree is an archaeological site or object and therefore protected under state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



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

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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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 14, 2024, I caused to be served a true and correct copy of
3 the foregoing Supplemental Declaration of Bryan Telegin in Support of Plaintiff's Motion to Set
4 Amount of Supersedeas Bond on each of the persons and in the manners listed below.

5
6 Jeffrey Scott Myers
7 Law Lyman Daniel Kamerrer et al
8 PO Box 11880
9 2674 R W Johnson Blvd SW
10 Olympia, WA 98508-1880
11 jmyers@lldkb.com
12 Attorney for Defendant Debbie Sullivan
13 *Via U.S. Mail*

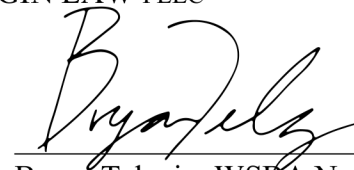
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15 Jakub Lukasz Kocztorz
16 Law Lyman Daniel Kamerrer et al
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18 2674 R W Johnson Blvd SW
19 Olympia, WA 98508-1880
20 jmyers@lldkb.com
21 Attorney for Defendant Debbie Sullivan
22 *Via Hand Delivery & U.S. Mail*

23
24 Ronda Larson Kramer
25 Larson Law PLLC
26 Of Attorneys for Plaintiff Save the Davis-Meeker Garry Oak
Via email to ronda@larsonlawpllc.com

Dated: August 14, 2024

TELEGIN LAW PLLC

By:



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