

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.

SUPPLEMENTAL
DECLARATION OF
RONDA LARSON
KRAMER

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. On Thursday, June 23, 2024, at approximately 9:00 p.m. at night, I received a text message from Tanya Nozawa informing me that someone had talked to her and would not tell her their name but had said the mayor accepted a bid to remove the Davis Meeker oak and had directed that

this work be done during the Memorial Day Weekend (i.e., the weekend that started the next day) “when nobody was around.”

3. When I read the message, I was getting into my car to drive home from a meeting where a group of us had been figuring out how to save the tree from the mayor’s efforts to cut it down. I realized then that the only opportunity to stop the mayor from cutting the tree down was in 12 hours from that point, during the ex parte calendar on Friday, between 8:30 a.m. and 9:00 a.m. in Thurston County Superior Court. The court’s ex parte calendar is limited to that time every court day. See <https://www.thurstoncountywa.gov/departments/superior-court/ex-parte/ex-parte-main-campus>. There is no procedure that allows a party to bring an ex parte matter at any other time in Thurston County.

4. I went home and spent the entire night researching the Migratory Bird Treaty Act and the Tumwater ordinances and drafting the pleadings necessary to file a motion for temporary restraining order.

5. The next morning, at 8:00 a.m., I called Karen Kirkpatrick, the city attorney for the City of Tumwater. I called her direct number ((360) 754-4127) listed on the WSBA directory. She did not answer. Her voicemail message was in the first person singular, which told me it was her direct line. I left a message stating that I was filing a motion for TRO “today” for the Davis Meeker oak.

6. Not only do local procedures prohibit ex parte matters at any time outside of 8:30 a.m. to 9:00 a.m. every court day, but in this case there would have been no way to prevent the tree from being cut down without getting a TRO ex parte that Friday morning. It would do no good to get a TRO on Tuesday of the next week. The mayor was planning to have the tree cut down over the weekend “when nobody was around.”

7. At 10:30 a.m. on Friday morning, after obtaining the TRO, I drove to city hall and informed the person sitting at the front counter that I would like to serve legal papers on the

mayor, and I asked how that could be done. She said she would find out. She left and was gone for several minutes. Then the city attorney's paralegal, Sharleen Johansen, emerged from the back and came out into the lobby to greet me. I told her I had papers to serve on the mayor. She indicated that she (Ms. Johansen) would take them on behalf of the mayor. She then looked through the stack of papers briefly while I waited. Then we parted and she took the papers with her.

8. If it were not for the fact that I found out a mere 12 hours earlier that the mayor was secretly going to have the tree cut down that weekend, I would have been able to provide more notice to the mayor of my motion for TRO.

9. Attached hereto as **Exhibit A** is a true and correct copy of a letter from the U.S. Fish and Wildlife Service to the City of Tumwater, dated June 7, 2024.

10. Attached hereto as **Exhibit B** is a true and correct copy of an email chain originating from Scott Baker, dated April 12, 2024, to Assistant City Attorney Davis Abbott.

11. Attached hereto as **Exhibit C** is a true and correct copy of an email chain originating from Lisa Parks, dated March 20, 2024, regarding city's communication plan for removal of the Davis Meeker Oak.

12. Attached hereto as **Exhibit D** is a true and correct copy of the communication plan that was attached to the above Exhibit C.

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 18th day of July, 2024, at Olympia, Washington.



RONDA LARSON KRAMER

Exhibit A



United States Department of the Interior

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



June 7, 2024

To whom it may concern,

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

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

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

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

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

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

Sincerely,

Richard Bare

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

EXHIBIT A

Exhibit B

From: [Karen Kirkpatrick](#)
To: [Davis Abbott](#); [Sharleen Johansen](#)
Subject: Re: Davis Meeker Oak
Date: Friday, April 12, 2024 11:40:41 AM

Thanks.

Davis, I think you can simply respond back that you have forwarded this on to the city administrator.

Karen Kirkpatrick | City Attorney
City of Tumwater
555 Israel Road SW | Tumwater, WA 98501
(360)754-4121 | kkirkpatrick@ci.tumwater.wa.us
www.ci.tumwater.wa.us

From: Sharleen Johansen <SJohansen@ci.tumwater.wa.us>
Sent: Friday, April 12, 2024 11:33 AM
To: Davis Abbott <DAbbott@ci.tumwater.wa.us>; Karen Kirkpatrick <KKirkpatrick@ci.tumwater.wa.us>
Subject: RE: Davis Meeker Oak

Thanks! I've forwarded this to Brittany and Lisa since they are tracking comments.

Sharleen

From: Davis Abbott <DAbbott@ci.tumwater.wa.us>
Sent: Friday, April 12, 2024 10:56 AM
To: Karen Kirkpatrick <KKirkpatrick@ci.tumwater.wa.us>
Cc: Sharleen Johansen <SJohansen@ci.tumwater.wa.us>
Subject: FW: Davis Meeker Oak

I got another random email about the oak tree.

Davis Abbott | Assistant City Attorney
Tumwater City Attorney's Office
555 Israel Road SW | Tumwater, WA 98501
www.ci.tumwater.wa.us

From: Scott Baker <[\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)>
Sent: Friday, April 12, 2024 10:30 AM
To: Davis Abbott <DAbbott@ci.tumwater.wa.us>
Subject: Davis Meeker Oak

EXHIBIT B

You don't often get email from [\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com). [Learn why this is important](#)

Hello Davis,

If you want to talk about the tree I would be happy to chat with you. I helped save that tree when the road was improved in the late 70's. I visit the tree often and my company has looked at it recently.

The consultant report that you have is an embarrassment to any knowledgeable arborist.

By the way...the tree is not dead! It has a full and vigorous canopy.

Please give me a call if you are interested in learning more about tree risk assessment.

Respectfully, Scott

206-601-3297

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Scott D. Baker, RCA

Registered Consulting Arborist

Board Certified Master Arborist

Tree Risk Assessment Qualification Instructor

Honorary Life member International Society of Arboriculture

Ancient Forest Society

Seattle, Washington

Exhibit C

From: [Ann Cook](#)
To: [Lisa Parks](#)
Cc: [Chuck Denney](#); [Debbie Sullivan](#); [Margo Hoffman](#)
Subject: RE: Historic preservation commission
Date: Wednesday, March 20, 2024 9:40:20 AM
Attachments: [2023-10-27 Garry Oak Order of Process and Comms updated 2-23 3-11.pdf](#)

Oops – forgot to attach.

From: Lisa Parks <LParks@ci.tumwater.wa.us>
Sent: Wednesday, March 20, 2024 9:36 AM
To: Ann Cook <ACook@ci.tumwater.wa.us>
Cc: Margo Hoffman <MHoffman@ci.tumwater.wa.us>
Subject: RE: Historic preservation commission

I don't have a list of highlighted, pending items, can you please share?

Warm regards,

Lisa Parks | City Administrator (she/her)
City of Tumwater
555 Israel Road SW | Tumwater, WA 98501
O (360) 754-4120
lparks@ci.tumwater.wa.us | www.ci.tumwater.wa.us

From: Ann Cook <ACook@ci.tumwater.wa.us>
Sent: Wednesday, March 20, 2024 9:32 AM
To: Lisa Parks <LParks@ci.tumwater.wa.us>
Cc: Chuck Denney <CDenney@ci.tumwater.wa.us>; Debbie Sullivan <DSullivan@ci.tumwater.wa.us>;
Margo Hoffman <MHoffman@ci.tumwater.wa.us>
Subject: RE: Historic preservation commission

Everything that's been done is checked off—the pending items are highlighted in yellow.

From: Lisa Parks <LParks@ci.tumwater.wa.us>
Sent: Wednesday, March 20, 2024 9:30 AM
To: Ann Cook <ACook@ci.tumwater.wa.us>
Cc: Chuck Denney <CDenney@ci.tumwater.wa.us>; Debbie Sullivan <DSullivan@ci.tumwater.wa.us>;
Margo Hoffman <MHoffman@ci.tumwater.wa.us>
Subject: RE: Historic preservation commission

Thanks, Ann

I think this is the version I already have of the plan, but at this point I'm looking for confirmation that the plan has been executed?

Warm regards,

EXHIBIT C

Lisa Parks | City Administrator (she/her)
City of Tumwater
555 Israel Road SW | Tumwater, WA 98501
O (360) 754-4120
lparks@ci.tumwater.wa.us | www.ci.tumwater.wa.us

From: Ann Cook <ACook@ci.tumwater.wa.us>
Sent: Wednesday, March 20, 2024 9:26 AM
To: Lisa Parks <LParks@ci.tumwater.wa.us>
Cc: Chuck Denney <CDenney@ci.tumwater.wa.us>; Debbie Sullivan <DSullivan@ci.tumwater.wa.us>; Margo Hoffman <MHoffman@ci.tumwater.wa.us>
Subject: RE: Historic preservation commission

From: Lisa Parks <LParks@ci.tumwater.wa.us>
Sent: Wednesday, March 20, 2024 9:12 AM
To: Ann Cook <ACook@ci.tumwater.wa.us>
Cc: Chuck Denney <CDenney@ci.tumwater.wa.us>; Debbie Sullivan <DSullivan@ci.tumwater.wa.us>; Margo Hoffman <MHoffman@ci.tumwater.wa.us>
Subject: Historic preservation commission
Importance: High

Good morning,

We're getting calls this morning with questions about the Davis Meeker Garry Oak tree discussion that's happening tomorrow night – and CM Cathey asked about notification to the public and to people who have already commented on the tree last night. I need to know how, when and to whom we have already provided notice to – I believe we had discussed Facebook post(s) as well as an email to all people on the comment record, at a minimum – and, if possible, I'd like the HPC meeting to be elevated on the website so it shows up on the front page without someone having to click on the "show more" button.

Please let me know the specifics of our plan as soon as possible.

Thank you.

Warm regards,

Lisa Parks | City Administrator (she/her)
City of Tumwater
555 Israel Road SW | Tumwater, WA 98501
O (360) 754-4120
lparks@ci.tumwater.wa.us | www.ci.tumwater.wa.us

Exhibit D



Davis Meeker Garry Oak Tree

Project Date: October 2023 – TBD

Project Description: Communicate with the community members and stakeholders how the City manages Davis Meeker Garry Oak Tree on Old Highway 99.

Communication Goal	Effectively communicate the tree's condition, risk, recommended action, mitigation, and engagement opportunities.
Key Message(s)	Honor the significance and importance of the tree through community engagement activities.
Target Audience(s)	General public, Tree stakeholder list, identified partners

EXHIBIT D

Roles & Area of Responsibility or Authority and Subject Matter Experts

Authority: Recommendation or decision authority defined by TCM, State law, or Department responsibilities

Role: Defined by Work responsibilities or Board/Commission role

Department, Council, Board/Commission	Authority or Role	Decision Authority and Responsibilities	Staff	Subject Matter Expert
CAO	A	Risk and Legal Review	Karen Kirkpatrick	WCIA
CDD	A	Tree Removal Permit Review and Approval Determination of Applicable Code Provisions Determination of Mitigation Review Alternate Assessment/Treatment	Mike Matlock	City Arborist
EXD	Role	Mayor/Council Communications Internal/External Communications	Lisa Parks Ann Cook	
PRD	Role	Mitigation -- Tree Planting	Chuck Denney	City Arborist
TED	A	ROW Tree Health and Assessment Tree Removal Permit Application Treatment/Removal of Tree	Brandon Hicks Mary Heather Ames/Ops	City Arborist
City Council	A	Consideration of Recommendation from Historic Preservation Commission to Delist Tree from Tumwater Historic Register	Debbie Sullivan Lisa Parks	
Historic Preservation Commission	A	Certificate of Appropriateness for Removal of Tree Decision to Delist Tree from Tumwater Historic Register Recommendation to City Council Community Engagement Activities & Events	Chuck Denney	
Tree Board	R	Community Engagement Activities & Events	Alyssa Jones-Wood	

Order of Process and Communications Milestones

Task Deadline	Distribution	Content or Deliverable	Assigned to	Live Date	Status
Ongoing	Incoming inquiries and comments	Track and forward to subject matter expert	Margo Hoffman	Oct. 23	Ongoing
March 1	City Council	Email from City Administrator: Arborist Report, Risk Recommendation, Process	Mike/Ann draft to Lisa	March 1	
March 4	Internal	Council Work Session Staff Report/Presentation	Mike Matlock	March 8	X
March 4	Tree Removal Permit Submitted	TED	Mary Heather		X
March 4	Conditional Tree Removal Permit <ul style="list-style-type: none"> Removal from Historic Register Mitigation 	CDD	Mike Matlock		X
Week of March 4	Email/Listserv: Tree Stakeholder List	Message to Stakeholders	Ann/Margo		X
Week of March 4	Email/Letter: Tribes, County, Individuals	Message to Partners	Ann/Mayor		X
Week of March 11	Phone Calls: Stakeholders Tribes, County, Individual	Follow-up to email/Letter	Stakeholder worksheet		X
Week of March 11	Media	News Release w/Photos	Ann Cook		
Week of March 11	Facebook: Posts	Photo w link to Article #1	Margo Hoffman		X
March 7	2 Week Public Notice	Paid Notice Olympian	Chuck Denney		X
March 11	Historic Preservation Commission	Posted on website			
March 11	City Council Work Session	Arborist Report, Risk Recommendation, Process	Mike Matlock		X
March 11	Tree Board	Informational	Alyssa Jones-Wood		X
March 15	Tumwater on Tap	Article #1	Ann/Margo		
Week of March 18	Facebook: Posts	Photo w link to Article #1	Margo Hoffman		
Week of March 18	Email/Listserv: Tree Stakeholder List	HPC meeting info	Ann/Margo		
March 21	Historic Preservation Commission	Action Item: Certificate of Appropriateness for Removal Decision to Delist	Chuck Denney		
		Recommendation to City Council			
April 2	City Council	Action Item: Historic Preservation Commission Recommendation to Delist	Chuck Denney		
Week of April 8	Community Engagement: Commemoration, Interpretation and Mitigation Activities	Tree Board Historic Preservation Commission	Alyssa Jones-Wood Chuck Denney		