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July 11, 2024

Jeffery S. Meyers  
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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.<sup>1</sup> Such disturbance or alteration to archaeological sites subjects the violator to penalties under RCW 27.53.095.

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<sup>1</sup> RCW 27.53.060.

ATTORNEY GENERAL OF WASHINGTON

Jeffery S. Meyers

July 11, 2024

Page 2

Archaeological sites are locations that contain archaeological objects.<sup>2</sup> 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.”<sup>3</sup> Trees can comprise physical evidence of indigenous and subsequent cultures.

DAHP’s rules support this interpretation. The rules use the same definitions for archaeological site<sup>4</sup> and archaeological object<sup>5</sup> as the statute, and provide for the same enforcement and penalties.<sup>6</sup> WAC 25-48-041 also protects archaeological resources from alteration, excavation, or removal absent a permit.<sup>7</sup> 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.”<sup>8</sup> 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.”<sup>9</sup> 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 website<sup>10</sup> and the *Field Guide to Washington Archaeology*, produced in 2003, both reference permitting requirements for trees.<sup>11</sup> 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

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<sup>2</sup> RCW 27.53.030

<sup>3</sup> RCW 27.53.030

<sup>4</sup> WAC 25-48-020(9)

<sup>5</sup> WAC 25-48-020(8)

<sup>6</sup> WAC 25-48-041

<sup>7</sup> WAC 25-48-041(1)(a)

<sup>8</sup> WAC 25-48-020(10)

<sup>9</sup> WAC 25-48-020(12)

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

<sup>11</sup> Available at [https://dahp.wa.gov/sites/default/files/Field%20Guide%20to%20WA%20Arch\\_0.pdf](https://dahp.wa.gov/sites/default/files/Field%20Guide%20to%20WA%20Arch_0.pdf)

ATTORNEY GENERAL OF WASHINGTON

Jeffery S. Meyers

July 11, 2024

Page 3

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.

ATTORNEY GENERAL OF WASHINGTON

Jeffery S. Meyers

July 11, 2024

Page 4

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