

1 Hearing Date: April 3, 2026
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,

No. 24-2-01895-34

11 Plaintiff,

**REPLY IN SUPPORT OF
12 PLAINTIFF’S MOTION TO
13 AMEND COMPLAINT**

14 v.

15 LEATTA DAHLHOFF, in her capacity
16 of Mayor of Tumwater,¹

17 Defendant.

18 **I. INTRODUCTION**

19 Since the earliest days of this lawsuit, the parties have disputed whether the mayor of the
20 City of Tumwater is required to obtain a permit from the Department of Archeology and Historic
21 Preservation (“DAHP”) as required by Washington’s Archeological Sites and Resources law,
22 chapter 27.53 RCW, prior to undertaking any physical alteration of the historic Davis Meeker
23 Oak. This issue was argued at the initial TRO hearing on May 30, 2024, after DAHP first informed
24 the mayor that the tree is a protected archeological resource. The parties litigated this issue
25 extensively for two years in front of the Washington Court of Appeals, during which time the
26 mayor strenuously opposed any obligation to obtain a DAHP permit before cutting the tree down.
See Declaration of Bryan Telegin in Support of Plaintiff’s Motion to Amend Complaint (Mar. 16,

¹ Substituted defendant per pending motion to amend.

1 2026) (herein, “Telegin Decl.”), Ex. F at 27, 31–38; Ex. G at 7–21. The mayor’s private attorney
2 contested the permit requirement directly to DAHP, after DAHP repeatedly informed the mayor
3 (in great detail) that the tree cannot be altered in any way without its prior approval. *See id.*, Exs.
4 C, D, & E. Most recently, the mayor’s attorney wrote to the undersigned that a DAHP permit is
5 not “legally required,” but that the mayor’s voluntary choice to obtain such a permit “makes the
6 current litigation moot.” *Id.*, Ex. I.

7 Now, the mayor’s office makes the same argument in its reply to our motion to amend the
8 complaint, asserting that because the City of Tumwater has now “obtained the required permit
9 from DAHP on January 8, 2026,” there is no longer a judiciable controversy for the Court to
10 adjudicate. Resp. at 1:21–22. That argument should be rejected, just as it was rejected at the Court
11 of Appeals.²

12 The question of whether the mayor must obtain a DAHP permit is not moot. The only
13 judicial statement in the record addressing this issue arose at the preliminary stage, where the
14 Court indicated that chapter 27.53 RCW did not appear to apply to the tree. That statement was
15 not a final merits determination. Yet it remains the only judicial guidance currently in the record.
16 Without a definitive ruling, that unresolved but operative statement leaves the governing legal
17 standard unclear and continues to affect the parties’ positions with respect to future work on the
18 tree.

19 This is especially concerning given that neither the prior mayor (Debbie Sullivan) nor the
20 new mayor (Leatta Dahlhoff) has withdrawn or recanted the position repeatedly staked out by the
21 mayor’s attorney that no DAHP permit is required. Plaintiff Save the Davis-Meeker Garry Oak’s
22 (“SDMGO”) motion to amend the complaint should be granted so that this issue may be formally
23 adjudicated and to ensure the continued protection of the historic Davis Meeker oak as the law
24 requires.

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26 ² *See* Declaration of Bryan Telegin in Support of Plaintiff’s Reply on Partial Summary
Judgment (Dec. 19, 2025), Exs. C & D (motion to dismiss and order denying motion). In the mayor’s
prior motion to dismiss, which the Court of Appeals denied, she specifically cited her voluntary
willingness to obtain a DAHP permit as a basis for her mootness argument. *See id.*, Ex. C at 2.

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II. ARGUMENT

As an initial matter, the mayor has a heavy burden to demonstrate that the DAHP permit issue is moot and that there is no longer a justiciable controversy. In Washington, it is black-letter law that “[v]oluntary cessation of allegedly illegal conduct does not moot a case because there is still a likelihood of the illegal conduct recurring.” *State v. City of Sunnyside*, 3 Wn.3d 279, 313, 550 P.3d 31 (2024) (quoting *State v. Ralph Williams’ N.W. Chrysler Plymouth, Inc.*, 82 Wn.2d 265, 272, 510 P.2d 233 (1973)). Courts must “beware of efforts to defeat injunctive relief by protestations of reform.” *Braam v. State*, 150 Wn.2d 689, 709, 81 P.3d 851 (2003)) (quoting *Ralph Williams’ N.W. Chrysler*, 87 Wn.2d 298 (1976)). Instead, “a plaintiff may pursue injunctive relief unless it is ‘**absolutely clear** that [the allegedly illegal] behavior will not reoccur.” *City of Sunnyside*, 3 Wn.3d at 313–14 (quoting *Braam*, 150 Wn.2d at 709) (emphasis added).

Here, there is no doubt the mayor’s office (a) has attempted to have the historic Davis Meeker oak cut down without a permit from DAHP, and (b) has repeatedly contested any assertion by SDMGO—and by DAHP itself—that the tree is a protected archeological resource under state law. The question, then, is whether the mayor’s office has shown that it is “absolutely clear” that future, similar attempts at altering the tree without a DAHP permit will not reoccur. The answer to that question is “no,” the mayor has not met her burden of proof.

For example, there is still no evidence that the mayor has actually “obtained the required permit” as stated in her response. Resp. at 1:21–22. The DAHP permit attached as Exhibit 7 to the Second Declaration of Alyssa Jones Wood (“Wood Decl.”) does not, in fact, appear to be a permit to physically alter the tree. The scope of work denoted on the face of that permit is described merely as “[m]onitoring of tree inspection,” and the final “special condition” printed on the permit clearly specifies that an additional, future DAHP permit will be needed to make physical changes to the tree itself. *See* Wood Decl., Ex. 7 at 1 (DAHP permit providing: “Any proposed branch pruning in the future shall require an additional amendment to this permit with more specific information about the scope and location of the pruning”). The DAHP may have issued a permit for monitoring and tree inspection. But it is still an open question whether the mayor will, in fact, choose to obtain a DAHP permit before making physical alterations to the tree, especially given

1 the repeated statements and litigation position of her attorney that no such permit is legally
2 required.

3 Next, the record contains no evidence that the current mayor has any intention of obtaining
4 a DAHP permit before physically altering the tree. The new mayor—Leatta Dahlhoff—could have
5 filed a declaration in support of the City’s response to our motion, attesting under oath that she
6 believes and acknowledges (contrary to the position of her attorney) that a DAHP permit is
7 required by state law. But she has not done so. Thus, all we know of her intentions is what her
8 private attorney has represented—namely, that no permit is required—and that she personally
9 intends to follow the new Prager report which envisions potentially significant pruning and other
10 physical alterations to the tree.³

11 The mayor’s silence on this issue is highly significant given that it was the mayor’s office
12 specifically—not the “city” as a whole—that made the decision last time to cut down the historic
13 Davis Meeker oak without any permits whatsoever, as the Court of Appeals determined. *See*
14 *Telegin Decl., Ex. H at 4* (Court of Appeals concluding that “**Mayor Sullivan made the decision**
15 to remove the tree in order to ‘protect the public and the City from potential liability’”) (emphasis
16 added). The mayor’s office has always claimed unilateral authority to determine how the tree will
17 be managed.⁴ And it has always been the mayor’s office—not the City as a whole, inclusive of all
18 the various decision-making bodies—that has pressed for the tree’s removal. That is why we seek
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20 ³ *See* Declaration of Leatta Dahlhoff, ¶ 4 (Dec. 10, 2024) (explaining: “As incoming mayor of
21 the City of Tumwater, **I intend** to follow the recommendations provided by Prager to restore the health
22 of the tree rather than remove it.”) (emphasis added). *See also* Declaration of Alyssa Jones Woods
23 (Dec. 9, 2025), Ex. 5 at 8 (Prager report describing future pruning plan, including “reduc[tion of] up
to 15 percent of the length of exterior branches,” “targeted reduction of live foliage,” and removal of
“unstable dead branches 2-inches in diameter and larger throughout [the] crown”).

24 ⁴ *See, e.g.,* Declaration of Mayor Sullivan, ¶ 7 (May 12, 2025) (Mayor Sullivan explaining:
25 “After careful consideration of the second option, **I** made a final decision to implement Option B as
26 the recommendation of Prager & Associates. This decision revises **my** previous determination and
now **chooses** to retain the tree, pursuing a strategy of mitigation and maintenance instead of removal”)
(emphasis added). This declaration, previously submitted to the Court of Appeals, was filed with this
Court as Exhibit 6 to the December 12, 2025, Declaration of Jeffrey S. Myers re Motion for Partial
Summary Judgment.

1 leave specifically to substitute the new mayor as the party defendant, not the city as a whole. That
2 is also why we originally sued Ms. Sullivan in her official capacity as mayor of the City of
3 Tumwater—we sued her office, not her as an individual, since it was officially her office that
4 made the decision to destroy the tree.

5 Finally, even if the mayor had obtained a DAHP permit to alter the tree, and even if the new
6 mayor had filed a declaration acknowledging under oath that a DAHP permit is legally required
7 before the tree may be altered in any way, that still would not moot the DAHP claim that the
8 parties have actively litigated since the earliest days of this lawsuit. Under Washington law, a
9 voluntary cessation of illegal conduct does not moot a claim for relief. Despite such hypothetical
10 “protestations of reform,” there would not be anything stopping the mayor from simply changing
11 her mind, agreeing with her attorney, and foregoing a DAHP permit once this lawsuit is over.
12 What this case needs—what the historic Davis Meeker oak needs—is a final determination by a
13 court of law that the tree is a protected archeological resource and that it cannot be altered without
14 the prior written approval of DAHP in accordance with Washington law.

15 III. CONCLUSION

16 The DAHP claim is not moot. The parties have actively litigated this issue since the outset
17 of this case, with the mayor’s office repeatedly asserting that no DAHP permit is legally required.
18 The current mayor has not disavowed that position under oath or otherwise, causing significant
19 uncertainty as to how the tree will be protected (or not protected) in the future. A change in
20 conduct, without any change in the asserted legal position, does not eliminate the controversy.

21 Plaintiff respectfully requests that the Court grant SDMGO’s motion to amend so that this
22 unresolved legal question may be adjudicated on the merits. A definitive ruling is necessary to
23 clarify the legal requirements governing future work on the tree and to ensure compliance with
24 Washington law by the office that exercises authority over the tree’s management.

25 A revised proposed order is submitted herewith.

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Dated this 1st day of April, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2026, I caused to be served a true and correct copy of the foregoing document on each of the people listed below in the manner indicated.

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Dated: April 1, 2026

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