

EXPEDITE  
 Hearing is set:  
Date: September 6, 2024  
Time: 9:00 a.m.  
Judge/Calendar: Hon. Anne Egeler

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON**

SAVE THE DAVIS-MEEKER GARRY OAK,  
  
Plaintiff,  
  
vs.  
  
DEBBIE SULLIVAN, in her capacity of Mayor  
of Tumwater,  
  
Defendant.

**NO. 24-2-01895-34**  
  
**DEFENDANT’S RESPONSE TO  
MOTION TO SET AMOUNT OF  
SUPERSEDEAS BOND**

**I. INTRODUCTION**

Plaintiff’s motion to set the amount of supersedeas presents a single question: what amount of money is necessary to protect the interests of the Defendant Mayor Debbie Sullivan and the City of Tumwater if plaintiff supersedes this court’s ruling that the temporary restraining order (TRO) obtained by the plaintiff was improper. Because the City has substantial interests in maintaining the right of way where the hazard tree in question is located, the Court should require a substantial supersedeas bond.

**II. STATEMENT OF FACTS**

This case arises from an appeal of this court’s prior order entered on May 31, 2024. That order dissolved a TRO obtained *ex parte* without notice to the City as being improper. The TRO was obtained without filing any motion for its issuance, apparently solely on the basis of the Complaint. The Complaint raised two claims. First, it claimed that it would violate the City’s Historic Preservation Ordinance

1 because a permit is needed to “demolish a historic structure”. Complaint at 5:17; 6:16. Secondly, the  
2 complaint alleged that the proposed action would violate the Migratory Bird Treaty Act, 16 U.S.C. 706  
3 because there was a nest of birds in the tree. Complaint at 4:10; 6:9.

4 The TRO was granted without prior notice of the time and place of the hearing in violation of  
5 RCW 7.40.050. It did not contain any findings as to the basis for the TRO or why it was granted without  
6 notice despite the requirements of CR 65(b). It was issued without any bond, despite the requirements of  
7 CR 65(c) and RCW 7.40.080. Moreover, the TRO contained no expiration date even though CR 65(b)  
8 provides that it will expire no later than 14 days from its issuance. It did not contain any procedures to  
9 convert it to a preliminary injunction, despite the requirements of CR 65(b).

10 The City moved to dissolve the TRO, noting its noncompliance with these statutory requirements  
11 and court rules. See Motion to Dissolve at 3-6. The City argued that Plaintiff is not entitled to a TRO  
12 under Washington law on either ground cited in the Complaint and asked that the court allow it to address  
13 a clear hazard created by the tree’s decaying condition. Motion to Dissolve at 3. The City supported its  
14 argument that a substantial bond should have been required by submitting the Declaration of Mayor  
15 Debbie Sullivan which estimated the potential liability for failing to remove a known hazard could easily  
16 exceed \$10,000,000.00. Sullivan Decl. at 2:19.

17 In response, the plaintiff argued that the risk assessment performed by the City’s arborist was  
18 flawed and there was no emergency threat justifying a bond. Response at 2:23 -3:4. Plaintiff argued that  
19 a permit was needed to demolish a “historic structure.” *Id.* at 3:8. They argued that because kestrel  
20 hatchlings were present, the court should extend the TRO to the end of July to allow them to fledge. *Id.* at  
21 3:15. Plaintiff then raised new issues, arguing that the City was required to consult with Tribes under  
22 RCW 70A.65.305 and that they had standing to raise such claims. *Id.* at 3:21.

