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.	***CORRECTED*** MOTION FOR INJUNCTIVE RELIEF PURSUANT TO RAP 8.3

I. IDENTITY OF MOVING PARTY

Appellant Save the Davis Meeker Garry Oak (SDMGO) seeks the relief designated in Part II.

II. EMERGENCY RELIEF REQUESTED

SDMGO requests an emergency injunction pending appeal to prevent the Respondent, Tumwater Mayor Debbie Sullivan, from ordering the cutting down of the 400-year-old Davis Meeker oak tree in Tumwater, Washington. SDMGO requests that the injunction expressly state that the mayor is *not*

enjoined from obtaining one or more additional risk assessments of the tree. SDMGO requests expedited consideration of this emergency motion under RAP 17.4(b).

To minimize any negative impact of the injunction on the mayor's interests, SDMGO also requests an expedited decision on the merits of this appeal pursuant to RAP 18.12.

III. EVIDENCE RELIED UPON

This motion relies upon the following declarations:

- Declaration of Ronda Larson Kramer in support of Motion for Injunctive Relief Pursuant to RAP 8.3 (July 1, 2024) (herein "Larson Kramer Dec.");
- Declaration of Beowulf Brower in support of Motion for Injunctive Relief Pursuant to RAP 8.3 (July 1, 2024) (herein "Brower Dec.");
- Declaration of Janet Witt in support of Motion for Injunctive Relief Pursuant to RAP 8.3 (July 1, 2024) (herein "Witt Dec.");

- Declaration of Steve Layman in support of Motion for Injunctive Relief Pursuant to RAP 8.3 (July 2, 2024) (herein "Layman Dec."); and
- Declaration of Laura Young in support of Motion for Injunctive Relief Pursuant to RAP 8.3 (July 1, 2024) (herein "Young Dec.").

IV. FACTS RELEVANT TO MOTION

Next to Olympia Airport in the City of Tumwater stands a 400-year-old Oregon white oak ("Garry" oak) called the Davis Meeker oak. It is on the Tumwater Register of Historic Places, having been a landmark on the Cowlitz Trail for centuries, and later the Oregon Trail. Young Dec., Ex. A.

A. The Tree Was and Is Important to Native Americans

This tree was on a camas prairie. Young Dec. at para. 5. It is estimated that there were 800 to 1,000 Indigenous people living between the prairie where the tree stood and the land northward and eastward to the falls (present-day Tumwater Falls) and the bay (present-day Budd Inlet). Young Dec. at para.

4. Those people were all forced to leave their villages after the regional Indian War in 1855 and 1856. Young Dec. at para. 4. This tree is known as one of the few territorial trees in the area used to hang Indigenous people as a method of forced property eviction before and during the Indian War of 1855 to 1856. *Id*.

The tree is on the traditional Cowlitz Trail, which later became the Oregon Trail. Young Dec. at para. 7. The trail was at least 9,000 years old and was a major trading route. *Id*. The tree is a Native American burial marker. Young Dec. at para. 13. Old oak trees were commonly used as grave markers because they lived so long and remained standing so long after the tree had died. *Id*.

There is a long history of Native Americans' bones and burial remains being stolen by individuals and institutions, which continues to present day. *Id*. Because of this, Native Americans are reluctant to publicize the fact that the Davis Meeker oak is a grave marker. Young Dec. at para. 15. The relatives of those buried there still live locally and are aware of,

and sickened by, the City of Tumwater's recent efforts to remove the tree. *Id*. They relate that when people were hung from the tree, their bodies were buried on top of these people's relatives' graves. *Id*.

B. A Pair of Kestrels Is Nesting In the Tree

A pair of American kestrels is presently using a nest cavity in the tree high up. Young Dec. at para. 22; Layman Dec. at para. 5. A family of kestrels will often reuse nest cavities year after year, down through the generations. Layman Dec. at para. 3.

C. Airport Expansion

The Port is currently updating the Olympia Airport's master plan. Witt Dec. at para. 2. The unadopted draft indicates that the preferred option (of several alternatives outlined in the plan) includes significant future development of airport land to accommodate future commercial (passenger and cargo) operations. *Id*. On February 28, 2023, Warren Hendrickson, the then-senior manager of the Olympia Airport, explained that

by 2040, the forecast potential is 20,000 passengers per month using the Olympia Airport. Witt Dec. at para. 3 and Ex. A at 3.

The Davis Meeker oak is located adjacent to the runway protection zone of the main north/south runway (Runway 17/35). Witt Dec. at para. 4. A 2003 Environmental Assessment for a Runway Relocation and Extension Project stated that the oak tree hinders flexibility in the use of Runway 17/35 because the tree constitutes an "obstruction" that dictates "precision instrument approach minimums" to the runway. Witt Dec. at para. 4, Ex. B.

D. Events Leading to Mayor's Efforts to Cut Down the Tree

On May 16, 2023, the tree dropped a limb, which required cleanup by the City of Tumwater. Larson Kramer Dec., Ex. N. One month later, Lisa Parks left her job as executive services director for the Port of Olympia and became the new City Administrator for the City of Tumwater. Larson Kramer Dec., Exhibit D.

At a March 21, 2024, meeting of the Tumwater Historic Preservation Commission, the mayor asked the Tumwater Historic Preservation Commission to make a recommendation to the city council to delist the tree from the Tumwater Register of Historic Places. Brower Dec. at para. 3. If something is listed on the historic register, city code requires the historic commission to issue a waiver of a certificate of appropriateness before the item can be destroyed. *Id*. Apparently to avoid having to jump through this hoop, the mayor asked the commission to simply recommend removing the tree from the register. *Id*. The historic commission rejected the request unanimously. Brower Dec. at para. 4.

The mayor subsequently reinterpreted city code and claimed that she did not need a decision delisting it anyway. Brower Dec. at para. 5. At the end of a Tumwater city council work session on May 14, 2024, the mayor stated that staff plans to move forward with removal of the tree regardless. Brower Dec., Ex. B, at 5.

City Administrator Lisa Parks provided the council with a memo for that May 14, 2024, work session in which she set out the reasons for the mayor's decision to remove the tree. Brower Dec., Ex. A. The memo contains several half-truths and falsehoods. *See* Brower Dec., paras. 8-11. For example, she wrote that the branch landed "partially in the south bound lane" of road. But photos of the fallen branch show that only the small tips of the branch crossed the white fog line. Brower Dec., Ex. C, Ex. D and Ex. E.

Public records requests revealed other troubling communications. In one email chain, City Administrator Lisa Parks told staff in October 2023 to not tell the public or anyone outside the city government about the plans to remove the tree. Brower Dec., Ex. N. Ms. Parks wrote, ". . . there shouldn't be any agendas that have this topic as an item listed . . . I would ask that any . . . conversations about the topic remain internal to this group." *Id*., Ex. N at 2.

Another city employee explained the reason for keeping it a secret was to "get ahead of any backlash." *Id*., Ex. N at 1. Still another employee said that Ms. Parks was disregarding "all kinds of things that need to get done." He further wrote, "Mum's the word I guess—we are not 'sharing' the possibility that the tree may be removed to anyone yet." *Id*.

Another internal email suggests that after removing the tree, the city might consider grinding the stump so as to remove the possibility of the tree regrowing, since that would result in the legal protections for the tree continuing and could interfere with road improvements. *See* Brower Dec., Ex. G at 1 ("That'll create a situation where we are re-growing the Davis/Meeker Oak and all the protections that come w/it. I'm fine w/that but you may have some opinion of road/bike lane/etc – impacts."). In a similar vein, email correspondence between the city's permit department and planning department suggests that the tree removal was part of road improvements. Brower Dec., Ex. O.

E. The City Relied on a Flawed Arborists Report.

The city's removal plans relied on the report of city arborist Kevin McFarland that recommends removal of the tree. Brower Dec., Ex. Q. But in an earlier internal email, Mr. McFarland directly contradicted his own subsequent report: "The risk assessment is not complete, but it is my opinion that the tree does not pose a extreme or high risk…." Brower Dec., Ex. R.

Mr. McFarland also noted that the type of tree species was such that it could remain standing for a long time even with internal rot: "Considering the species of tree which can be structurally sound or not prone to failure if the main stem is compromised (somewhat) the existence of a decay column or cavity within the base up through the main stem may not be a total reason to condemn the tree." *Id*.

McFarland went on to write that the tree needed additional assessment. As a result, the city hired Tree Solutions to do an inspection, after which Tree Solutions agreed the tree

was not high risk: “It is my opinion that this tree should be managed as a veteran tree . . . If this tree is retained, it should be reassessed with sonic tomography in five years.” Brower Dec., Ex. Q at 11. Strangely, McFarland’s subsequent final report on October 10, 2023, said the tree needed to be removed. Brower Dec., Ex. Q at 4.

McFarland’s October 2023 report contains many errors. Brower Dec., para. 30. First, there was a failure of duty of care/due diligence in the failure to recommend a biological survey of the tree to protect wildlife critical habitat, given that a pair of kestrels is using a nest cavity in the tree. *Id*.

Second, the most obvious and impactful mistake is found in the Risk Rating Matrices, a standardized rating scale used to categorize risk. Brower Dec., para. 31. The arborist repeats a mistake three consecutive times, leading to an artificial inflation of the risk posed by the tree. A proper application of the rating scale would result in a moderate risk instead of high risk. *Id*.

Notably, Mr. McFarland lacks a tree risk assessment qualification. Brower Dec., para. 10. An independent arborist performed a risk assessment on the tree recently and found the risk to be moderate. Brower Dec., Ex. S. The independent arborist has a tree risk assessment qualification. Brower Dec., para. 32.

In addition, the city arborist's lack of consideration of any mitigation efforts other than full removal constitutes a breach in the expected duty of care assigned to a historic tree. Brower Dec., para. 39.

There has been no documented tree care performed for decades by the City of Tumwater on this tree. Brower Dec., para. 40. The tree care has been performed by volunteers. *Id*. By combining a scientifically-backed assessment, well-informed pruning, and a simple cable system, any risk that exists can be mitigated to an acceptable level, as determined by the relevant tree managers. *Id*.

F. The Public Outcry Has Been Significant.

Since the public was first made aware of the mayor's plans to remove the tree, it has rallied to the support of the tree. At a June 4, 2024 city council meeting, 39 people testified in support of the tree, causing the meeting to run four hours in length. Larson Kramer Dec., at para. 16. Many people also contacted United States Fish and Wildlife Service to report the city's pending violation of the Migratory Bird Treaty Act, and the service had its law enforcement arm reach out to the mayor's office. Larson Kramer Dec., Ex. M.

After the public testimony and pleading by city council members at the June 4 council meeting, the mayor agreed to obtain another risk assessment. Larson Kramer Dec., Ex. C, at 11 and 14 (time 3:39:36 and 3:44:35) (video available at https://www.youtube.com/watch?v=iaI_QtYvaGQ). A publicly available agenda indicates that the mayor will present a contract for a follow up assessment to the city council on July 2, 2024.

V. GROUNDS FOR RELIEF

RAP 8.3 provides that "[e]xcept when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review . . , to insure effective and equitable review, including authority to grant injunctive or other relief to a party." Under RAP 8.3, this court has the power to issue an injunction pending the outcome of an appeal "to preserve the fruits of the appeal in the event it should prove successful." *Columbian Pub. Co. v. City of Vancouver*, 36 Wn. App. 25, 27 n.1, 671 P.2d 280 (1983). The Washington Supreme Court has held that when ruling on a motion for injunctive relief pending appeal, an appellate court should consider the merits of the underlying appeal only to the extent necessary to determine if it raises "debatable issues." *Id*. Moreover, "if the harm is so great that the fruits of a successful appeal will be totally destroyed pending its grounds for relief and argument resolution, relief should be granted, unless the

appeal is totally devoid of merit." *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986).

Here, this appeal clearly raises more than debatable issues and an injunction is necessary to preserve an important 400-year-old oak tree that is historically, culturally, and ecologically irreplaceable. This Court should enjoin the mayor from cutting down the tree pending this Court's final resolution of this appeal.

A. The Appeal Raises Debatable Issues

1. Application of the Historic Tree Code Is Clearly Debatable.

The court ruled that the historic code does not apply, finding that it applies only to structures and not trees: "There was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure, and the code allows removal of a tree the city determines is posing a hazard." Larson Kramer Dec., Ex. K at 14-15. But it is clearly debatable that the mayor acted arbitrarily and capriciously when she failed

to follow the city's own ordinances governing objects on the historic register.

As the court noted, heritage trees can be cut down if they are a hazard. TMC 16.08.080(E). The city has a lot of trees designated as heritage trees. But the heritage trees are not all on the historic register. Those that are on the historic register are subject to the historic preservation code. There is no exception to the historic code's permit requirement in cases where an object on the historic register is allegedly at risk of falling down.

The idea that the historic code applies only to physical structures is belied by the fact that the code defines historic property as real property and any improvements thereon that are on the historic register. TMC 2.62.030(L). Real property is the earth and includes trees.

The ordinance provides that no historic property may be altered without a certificate of appropriateness issued by the historic preservation board. TMC 2.62.050(D)(2). Similarly, to destroy a historic property on the register requires a waiver of a

certificate of appropriateness. TMC 2.62.050(D)(3). The ground on which the oak tree stands is on the register and the oak tree is on the register. Thus, it is clearly debatable whether the mayor needed a waiver of a certificate of appropriateness to remove the tree.

The court erroneously believed that the heritage tree code is what the court was supposed to look to. Larson Kramer Dec., Ex. L, at 14-15. But the heritage tree code is a general statute because it has a much broader categorization. This tree falls within a specific characterization: it is on the historic register. "[W]hen two statutes are concurrent, the specific statute prevails over the general." *State v. Shriner*, 101 Wn.2d 576, 681 P.2d 237 (1984). Because the specific statute of the historic code applies, it prevails over the general statute under the heritage tree ordinance. It is clearly debatable whether the historic code applies.

2. It Is Clearly Debatable Whether the Archeological Statutes Apply.

The Court failed to read the document that SDMGO filed mid-day the day before the May 31, 2024, court hearing (along with a bench copy). *See* Larson Kramer Dec. at para 13. That document was a declaration with an attached letter from the assistant state archaeologist stating that pursuant to RCW 27.53.060, the tree cannot be cut down without a permit from the Department of Archaeology and Historical Preservation (DAHP). Hence, it is more than clearly debatable whether the mayor must obtain a permit under that statute before having the tree cut down.

The reason the court failed to read the document could have been related to the speed at which the court set things in motion. The court set the hearing on May 31, which was only three days after May 28, when the court signed the order setting the hearing. Then, when the undersigned raised the archaeology permit issue in oral argument, the court did not take under

advisement what it thought was a new issue. It should have at least delayed its ruling long enough to look into this issue.

The court also misunderstood that trees can be archaeological resources: "A quick look at that statute reveals that that chapter of the law addresses archaeological resources, not trees, . . ." Larson Kramer Dec., Ex. K at 15. The Court's mistake indicates a lack of experience with Indigenous culture, which includes a longstanding practice of culturally modifying trees.

It is clearly debatable whether the oak tree is capable of being an archaeological site.

3. It Is Clearly Debatable Whether the Migratory Bird Treaty Act Applies.

The Court ruled that the Migratory Bird Treaty Act was inapplicable even though kestrels are nesting in the oak tree: "There are allegations of a federal law possibly pertaining to endangered species or migratory birds. This was not clearly established in the briefing." Larson Kramer Dec., Ex. K, at 15.

The Migratory Bird Treaty Act (MBTA) plainly prohibits what the mayor is planning to do: cut down a tree with nesting kestrels in it. SDMGO's briefing stated that the act "broadly applies, by its plain terms, to the killing of any migratory bird 'at any time, by any means or in any manner.' 16 U.S.C. § 703(a)." SDMGO's briefing included declarations proving that kestrels were nesting in the tree. It is unclear why the court viewed this claim as "not clearly established".

It is possible that the court was misled by the mayor's briefing, which used an expired version of the MBTA to claim that it is legal to kill a migratory bird if the killing is merely incidental to some other action. That version of the law was a Trump-era interpretation that President Biden eliminated in 2021:

> We now revoke that rule . . . . The immediate effect of this final rule is to return to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and longstanding agency practice prior to 2017.

Final Rule of the Fish and Wildlife Service, effective 12/3/2021 (https://www.federalregister.gov/documents/2021/10/04/2021-21473/regulations-governing-take-of-migratory-birds-revocation-of-provisions). Regardless, SDMGO's briefing would have been more detailed had the court not given a mere three days between the court's order setting of the hearing and the hearing itself.

4. It is clearly debatable whether SDMGO has standing to raise the issue of inadequate notice to the tribes.

It is clearly debatable whether SDMGO has standing raise the issue regarding the mayor failing to abide by the laws that require her to give the tribes reasonable notice of her plans to cut down the tree. The court ruled, "They do not have standing to raise arguments on behalf of the tribes regarding notice. That is something that the tribes themselves can, of course, raise. They have not joined in this action." Larson Kramer Dec., Ex. K at 15.

Pursuant to the Centennial Accord, the mayor was required to make every effort to provide written notice to the affected tribes in advance to allow for the tribes to give adequate and meaningful input and response regarding her plans to cut down the oak tree. Larson Kramer Dec., Ex. E; *see* Centennial Accord guidelines at https://goia.wa.gov/relations/millennium-agreement/implementation-guidelines/section-ii-consultation-process. The report condemning the tree was issued in October 2023, and the mayor then waited six months to tell the tribes that she was going to cut the tree down. Larson Kramer Dec., Ex. A at para. 3; Brower Dec., Ex. Q. Because she waited until the midnight hour, the Nisqually Tribe was put in the awkward position of having to write a letter to the Tumwater City Council on June 4, 2024, asking that the removal be delayed to give the tribe an opportunity to investigate the matter further. Larson Kramer Dec., Ex. F.

SDMGO member Diane Riley is a tribal elder of the Cowlitz Tribe. She provided an eloquent declaration to the superior court explaining her own special relationship to the tree, as well as her tribe's special relationship to the tree, and the harm she personally would suffer if the mayor carried out the plans to remove the tree. Larson Kramer Dec., Ex. A. Ms. Riley is afforded the protections of the Centennial Accord by virtue of her membership in the Cowlitz Tribe. The Centennial Accord protects tribes, but by the same token, it protects the people who are members of those tribes. The accord would not be much good if it did not protect the very people who are members of the tribes at issue.

Even people who are not tribe members arguably have standing to make the mayor follow the law before cutting down the tree, including following the Centennial Accord. To have standing, a party's interest must be different than that of the public at large. But that is simply to demark a party from people

with an abstract interest. Everyone has an interest in seeing the law followed.

For example, if the city of Seattle was going to illegally tear down the Space Needle, a citizen can sue to stop it and they cannot be prevented just because everyone loves the Space Needle. Finding that a party does not have standing just because the interest is shared with others is not the way that rule is supposed to operate.

An association has standing to bring suit on behalf of its members when the following criteria are satisfied: (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L.Ed.2d 383 (1977); *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 304, 268 P.3d 892 (2011) (citing *Int'l Ass'n of*

Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 213-14, 45 P.3d 186, 50 P.3d 618 (2002)); *see also Save a Valuable Env't v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978).

Diane Riley, Stewart Hartman, and Laura Young are all members of SDMGO and each of them has standing to sue in their own right to make sure the mayor is following the law in regard to the tree. Each has a special relationship personally with the tree that is different than that of the public at large. Larson Kramer Dec., Ex. A, Ex. B; Young Dec.

Additionally, each has ancestors who used the tree as a meeting place and a landmark on the Cowlitz Trail/Oregon Trail. They therefore are legally entitled to sue to force the mayor to follow the law—to dot her i's and cross her t's before cutting down this historic and culturally sacred tree. Therefore, it is clearly debatable whether SDMGO has standing to sue to make the mayor follow the Centennial Accord.

B. The Fruits of this Appeal Are Likely to be Lost Absent an Injunction Pending Appeal.

In addition to presenting debatable issues, SDMGO, its members, and the environment will suffer the very harm this appeal is meant to prevent should injunctive relief be denied - namely, the destruction of a 400-year-old tree that is singular in its habitat services and its cultural and historical value. Once the tree is cut down, there will be no way for that harm to be undone. Two state agencies have expressed serious concern about the mayor's plans to remove the tree. *See supra*, Part IV.F and *infra*, Part V.C.

Moreover, unless this Court issues an injunction, the mayor's plans to remove the tree appear predetermined, regardless of the fact that the mayor is having a follow-up risk assessment done. After the mayor agreed to have a follow-up assessment done, the mayor told the Olympian a week later, without qualification, that the tree will not be there ultimately. Larson Kramer Dec., Ex. J.

In similar situations, the Washington Supreme Court has granted emergency injunctive relief to prevent logging pending appeal. In *Shamley v. City of Olympia*, citizens of Olympia sued to enjoin the City from awarding a contract to harvest timber in the "Old Olympia Watershed." *See* 47 Wn.2d 124, 125, 286 P.2d 702 (1955). After the superior court dismissed their complaint, the citizens moved the Supreme Court for a temporary restraining order to prevent the city from awarding a contract to log the area. *Id*. at 126. The citizens also sought an injunction pending appeal to "preserve the natural beauty" of the Old Olympia Watershed. *Id*. at 125.

The Supreme Court granted the citizens a temporary restraining order and also an injunction pending appeal. *Id*. at 126-27. The Court explained that an appellate court has "inherent power to grant an injunction in aid of its appellate jurisdiction." *Id*. at 126 (citing *Nw. Imp. Co. v. McNeil*, 98 Wn. 1, 167 P. 115 (1917)). The Court further explained that absent an injunction prohibiting logging in the Old Olympia

Watershed, "the subject matter of the [appeal] will have been destroyed, and a successful prosecution of appellants' appeal will avail them nothing." *Id*. at 127.

Like the appellants in *Shamley*, SDMGO seeks to preserve an important and very old tree that is valuable for its natural beauty and ecological values, in addition to its cultural and historical values. As in *Shamley*, the end goal of the appeal will be permanently mooted, and the tree and the kestrel family will be permanently harmed or destroyed, if an injunction is not issued. An injunction is, therefore, necessary to preserve the fruits of this appeal pending this Court's ultimate resolution.

C. The Court Should Not Require a Bond.

RAP 8.3 provides, in part, that "the appellate court will *ordinarily* condition the order [granting an injunction pending appeal] on furnishing a bond or other security" (emphasis added). The rule's use of the phrase "ordinarily" indicates that this Court has discretion to deny a bond in individual cases.

Submitted herewith as Ex. G to the Declaration of Ronda Larson Kramer is a letter from the Washington Department of Archaeology and Historic Preservation ("DAHP") to the mayor stating that the tree is an archaeological site. In Washington, it is unlawful for any person to alter or damage an archaeological site without a permit issued by the DAHP. This prohibition applies to private and public lands alike:

> On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate ... , or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, . . . without having obtained a written permit from the director for such activities.

RCW 27.53.060. *See also* WAC 2 5-48-030 (prohibition applies to "the alteration, digging, excavating, or removal of archeological objects or sites").

SDMGO is not aware of any evidence that the mayor has applied for a permit from the DAHP to alter, damage, or destroy the oak tree. The mayor's letter in response to the DAHP simply

stated that the mayor is evaluating the information and "will respond following that process." *See* Larson Kramer Dec., Ex. H. SDMGO is not aware of a follow-up response by the mayor.

The prohibitions at RCW 27.53.060 and WAC 25-48-030 clearly call into doubt the legality of the mayor's plans to remove the tree without a permit from DAHP. Under these circumstances, where it is doubtful that the mayor has acquired all requisite permits and approvals to begin work, a bond should not be required while this matter is resolved in front of this Court.

D. To Minimize Any Harm to the Mayor, SDMGO Requests an Expedited Decision on the Merits of this Appeal.

Finally, RAP 18.12 authorizes this Court to "set any review proceeding for accelerated disposition." To minimize the injunction's impact on the mayor, and to ensure that it lasts no more than necessary, SDMGO requests an expedited hearing and decision on the merits of this appeal following completion of the briefing schedule.

VI. CONCLUSION

Irreparable harm is certain to occur if removal of the Davis Meeker oak tree is not enjoined. The merits of the case are more than debatable. The Court should enjoin the mayor from proceeding with removal of the tree pending the Court's final resolution of this appeal. The Court should specify that any injunction does not prevent the mayor from undertaking further risk assessments of the tree in the meantime.

VII. CERTIFICATE OF COMPLIANCE

I certify that this motion contains 4,972 words, in compliance with RAP 18.17(b)

RESPECTFULLY SUBMITTED this 2nd day of July, 2024.

LARSON LAW, PLLC

Ronda Larson Kramer

Ronda Larson Kramer
WSBA No. 31833
Attorney for Plaintiff