

1 Hearing date: July 17, 2026

2 Hearing time: 9:00 a.m.

3 Judge/Calendar: Judge 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,

11 Plaintiff,

12 v.

13 LEATTA DALHOFF, in her capacity of
14 Mayor of Tumwater

15 Defendant.
16

No. 24-2-01895-34

**PLAINTIFF’S COMBINED REPLY
IN SUPPORT OF SECOND
MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
MOTION FOR RELEASE OF
BOND; AND RESPONSE TO
DEFENDANT’S CROSS MOTION
FOR SUMMARY JUDGMENT**

17
18 **INTRODUCTION**

19 The overarching argument in the Mayor of Tumwater’s response to our second motion for
20 summary judgment is that she now agrees with us and admits that the Davis Meeker Oak is a
21 protected archaeological resource under chapter 27.53 RCW, Washington’s Archeological Sites
22 and Resources law. As such, Mayor Dahlhoff states that her office “will obtain all permits required
23 by law” prior to altering the tree, “including historic preservation permits required from the
24 Department of Archeology and Historic Preservation (DAHP) under RCW 27.53.060.” Decl. of
25 Leatta Dahlhoff, ¶ 2 (May 21, 2026). The Mayor also admits that before “pruning” the tree, “the
26 City must obtain an amendment to [its current] DAHP permit.” *Id.* These admissions concede the
central issue in SDMGO's third claim for relief: the historic Davis Meeker Oak is protected by

1 Washington's archaeological statute and cannot be altered without a DAHP permit. The City
2 litigated the opposite position for more than two years, and Mayor Dahlhoff continued to defend
3 that position for six months after taking office. Her declaration now acknowledges that a DAHP
4 permit is, in her own words, "required by law."

5 Ordinarily, such an admission would resolve the issue. Because the Mayor now
6 acknowledges that the Davis Meeker Oak is protected by chapter 27.53 RCW and that a DAHP
7 permit is legally required before the tree may be altered, there is no remaining dispute as to the
8 dispositive issue presented by SDMGO's third claim for relief. Judgment should therefore be
9 entered in SDMGO's favor on that claim.

10 Instead, the Mayor argues that these admissions entitle her to prevail. But that is not how
11 admissions work. A party does not litigate a claim for years, oppose it at every stage, and then
12 avoid judgment by conceding at the last minute the very legal position advanced by the opposing
13 party. The appropriate consequence of the Mayor's concession is entry of judgment in SDMGO's
14 favor.

15 In light of the Mayor's admission that the Davis Meeker Oak is protected under chapter
16 27.53 RCW and her representation that the City will obtain all legally required permits before
17 undertaking future alterations, SDMGO no longer seeks a permanent injunction requiring the City
18 to obtain a DAHP permit before altering the tree. The Mayor's admissions eliminate the need for
19 that prospective relief. They do not, however, eliminate the need for a judgment. The Court should
20 enter judgment declaring that the Davis Meeker Oak is a protected archaeological resource under
21 chapter 27.53 RCW. Such a judgment will conclusively resolve the parties' dispute and ensure that
22 the City's legal obligations do not depend on the views of future administrations.

23 **EVIDENCE RELIED UPON**

24 This motion relies on the declaration of Bryan Telegin in support of Plaintiff's Motion to
25 Amend the Complaint (March 16, 2026), and exhibits attached thereto (referenced herein as
26 "Telegin. Decl."). This motion also relies on the declaration of Leatta Dalhoff in support of the
City's Motion for Summary Judgment, dated May 21, 2026 (referenced herein as "Dalhoff Decl.").

1 Finally, this motion relies on the declaration of Alyssa Jones Wood, and exhibits attached thereto,
2 filed by the City in response to SDMGO's first Motion for Partial Summary Judgment, dated
3 December 9, 2025 (referenced herein as "Jones Wood Decl.").

4 ARGUMENT

5 **A. A declaratory judgment is the appropriate remedy given the Mayor's admission that the**
6 **Davis Meeker Oak is a protected archeological resource under chapter 27.53 RCW.**

7 The City resists entry of a declaratory judgment, arguing that, because it now agrees with
8 us on the law, "there is no present threat of an invasion of a legal right." City Resp. and Cross-Mot.
9 ("City Resp.") at 6-7 (June 1, 2026). According to the City, the controversy is no longer "actual
10 and not hypothetical," because the parties agree that the tree is a protected archeological resource.
11 City Resp. at 7-8 (internal quotations omitted). That argument fails under the law and the facts,
12 turning the natural consequence of Mayor's admission on its head. Having litigated this issue
13 through multiple rounds of briefing, an appeal, and renewed summary judgment proceedings, the
14 City cannot avoid entry of judgment simply by conceding the dispositive issue after the Court has
15 already been asked to resolve it.

16 For more than two years, the Mayor's office disputed that chapter 27.53 RCW applies to
17 the Davis Meeker oak, argued that DAHP was wrong in finding the tree to be protected, and
18 maintained that no permit from DAHP was required prior to making any physical alterations to the
19 tree. *See* Telegin Decl., Ex. F at 33 (Sept. 13, 2024, COA Resp. Br.); *id.*, Ex. E (June 28, 2024,
20 letter from Jeffrey S. Myers to DAHP contesting DAHP's June 4, 2024, letter); *id.*, Ex. F at 27,
21 31-38 (Sept. 13, 2024, COA Resp. Br.) (arguing that "[o]n the merits, RCW 27.53.060 is not
22 applicable to the [Davis Meeker oak], nor is the tree even within DAHP's purview"); *id.*, Ex. G at
23 7-21 (Oct. 31, 2024, Respondent's Answer to DAHP Amicus Brief) (arguing that "the tree is not
24 an archaeological object under RCW 27.53"). Now, after extensive litigation, the City concedes
25 exactly what SDMGO has argued from the outset: the tree is protected by Washington law, and a
26 DAHP permit is required for any physical alterations. Yet the City's position is that these
admissions eliminate any basis for entering judgment. City Resp. at 7.

1 That position misunderstands the role admissions play in civil litigation. There is an explicit
2 role for admissions where, for example, discovery rules explicitly authorize requests for admission
3 to narrow disputes and establish facts. *See* CR 36(a). Their purpose is to simplify litigation and
4 facilitate adjudication on the merits rather than eliminate otherwise valid claims. *See* CR 36(b); *see*
5 *also Peralta v. State*, 187 Wn.2d 888, 865-96 (2017) (“Admissions reduce the time required to try
6 a case. Indeed, they often make summary judgment possible.”) (quoting 8A Charles Alan Wright
7 et al., *Federal Practice and Procedure* § 2252, at 522 (2d ed. 1994)). Here, the Mayor’s latest
8 admission does not immunize her from final judgment; rather, it confirms that judgment should be
9 entered consistent with the legal obligations that the Mayor has now admitted exist.

10 The City's proposed order illustrates the flaw in its position. It asks the Court to deny
11 declaratory relief because the City presently represents that it intends to comply with chapter 27.53
12 RCW. But voluntary compliance with a legal obligation does not extinguish a claim for declaratory
13 relief after the parties have fully litigated the legal issue and the defendant has conceded the
14 plaintiff's interpretation of the governing law. If accepted, the City's approach would permit a
15 defendant to resist a claim through years of litigation, concede the dispositive legal issue only after
16 the plaintiff has incurred the expense of proving it, and then avoid the entry of judgment altogether.

17 Also, the present dispute has not been rendered entirely “hypothetical,” as the City argues,
18 by virtue of the Mayor’s concession that chapter 27.53 RCW applies. City Resp. at 8. Even if the
19 current mayor no longer intends to cut down the tree, the City has repeatedly confirmed that it
20 intends to conduct future maintenance work on the tree, and that future work is scheduled for actual
21 physical alterations. Mayor Dahlhoff states that root-zone management is expected to begin this
22 fall and acknowledges that the City must obtain an amendment to its existing DAHP permit before
23 proceeding. Dahlhoff Decl. ¶ 2. Likewise, the City's Treatment Plan for the Davis Meeker oak calls
24 for soil management in 2026 followed by pruning treatments in subsequent years. Jones Wood
25 Decl. ¶ 5, Ex. 5 (introducing the Treatment Plan for the Davis Meeker Garr oak, which “calls for
26 soil management in year one (2026), followed by pruning treatment in years 2 or 3 (2026-2028)”).

1 The City's Treatment Plan contemplates ongoing risk assessment, monitoring, and adaptive
2 management on both annual and five-year cycles. Jones Wood Decl., Exhibit 5 at 14.

3 That same plan recommends reducing the tree's live canopy by up to ten percent and
4 notably cautions that future management decisions will require decisionmakers to balance pruning
5 objectives against the tree's photosynthetic capacity and overall health. *See* Jones Wood Decl.,
6 Exhibit 5 at 8. Because the tree may be irreparably damaged by these future activities, these are
7 precisely the types of decisions that need to be overseen by DAHP under chapter 27.53 RCW. This
8 is also precisely why a declaratory judgment is needed—to clarify, for all future decisionmakers
9 and administrations, that the tree is a protected archeological resource that may not be altered
10 without a permit from DAHP, as Mayor Dahlhoff now concedes.

11 **B. Under the Uniform Declaratory Judgment Act, SDMGO is entitled to declaratory relief.**

12 The Mayor argues that because the City now agrees with SDMGO's interpretation of
13 chapter 27.53 RCW, there is no longer a justiciable controversy and no basis for declaratory relief.
14 City Resp. at 1. The City further contends that “Plaintiff is not entitled to relief under Ch. 27.53
15 RCW because the City is in compliance with the statute.” *Id.* at 2. Neither argument holds.

16 Washington's Uniform Declaratory Judgments Act (“UDJA”), RCW Chapter 7.24,
17 expressly authorizes courts to declare the rights and legal relations of parties whose rights are
18 affected by a statute. RCW 7.24.010, .020. The UDJA provides a clear cause of action for obtaining
19 declaratory judgment on the DAHP claim. The UDJA is meant to be liberally construed and
20 administered. RCW 7.24.120. *See also, e.g., Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173,
21 187 (2007) (holding that under the UDJA, “[o]f course, no additional private right of action is
22 necessary for parties to seek a declaratory judgment whenever their rights are affected by a
23 statute”).

24 Washington Courts “utilize the common law doctrine of standing to clarify the boundaries
25 of this broad statutory right.” *Washington State Housing Finance Comm'n v. National Homebuyers*
26 *Fund, Inc.*, 193 Wn.2d 704, 711 (2019). In doing so, the reviewing court must first ask “whether
the interest sought to be protected is arguably within the zone of interests to be protected or

1 regulated by the statute or constitutional guarantee in question.” *Id.* at 711-12 (internal quotations
2 omitted). If so, the court then determines “whether the challenged action has caused injury in fact,
3 economic or otherwise, to the party seeking standing.” *Id.* at 712 (internal quotations omitted). In
4 asking these questions, courts should be mindful that “the injury in fact test is not meant to be a
5 demanding requirement.” *City of Burlington v. Washington State Liquor Control Bd.*, 187 Wn.
6 App. 853, 869 (2015), as amended (June 17, 2015) (explaining “if a litigant can show that a
7 potential injury is real, that injury is sufficient for standing”).

8 In this case, SDMGO’s interests fall squarely within the zone of interests protected by
9 chapter 27.53 RCW. To determine the zone of interests protected by a statute, courts “look to the
10 statute's purpose and operation.” *Washington State Hous. Fin. Comm’n*, 193 Wn.2d at 715 (citing
11 *Five Corners Fam. Farmers v. State*, 173 Wn. 2d 296, 304-05 (2011)). Here, Legislature expressly
12 declared in Washington’s Archeological Sites and Resources Law that “the public has an interest
13 in the conservation, preservation, and protection of the state's archaeological resources, and the
14 knowledge to be derived and gained from the scientific study of these resources.” RCW 27.53.010.
15 SDMGO seeks precisely what the statute was enacted to protect—preservation of the Davis Meeker
16 Oak as an archaeological resource and assurance that any alteration of that resource occurs only
17 after review and approval by DAHP. SDMGO’s interest in ensuring compliance with the statutory
18 permitting process therefore lies at the heart of the statute’s purpose.

19 Second, SDMGO readily satisfies the injury in fact requirement. This case arose because
20 the previous mayor attempted to remove the tree, and then repeatedly denied that chapter 27.53
21 RCW applied. But even focusing solely on the City’s present position, the threat of injury remains
22 the same. By its own admission, the City intends to undertake a multi-year management plan for
23 the tree, involving continued assessments, physical testing, and future alterations to the tree. Jones
24 Wood Decl. ¶ 4-5, Ex. 5 (introducing the Treatment Plan for the Davis Meeker oak, which “calls
25 for soil management in year one (2026), followed by pruning treatment in years 2 or 3 (2026-
26 2028)”). The plan contemplates reduction pruning, possible cabling, root-zone management, and
ongoing annual and five-year risk assessments. *Id.* It specifically recommends reducing the tree’s

1 live canopy by five to ten percent and recognizes future management decisions will require
2 balancing pruning objectives against the tree's photosynthetic capacity and overall health. *Id.* at 8.
3 Those decisions necessarily involve future judgments concerning the extent and nature of physical
4 alterations to this archaeological resource.

5 Such activities directly affect the historic resource that SDMGO's members value, enjoy,
6 and seek to preserve. *See* Pl. 2d. Mot. for Summ. J. at 10 (explaining how irreparable, irreversible
7 harm would be caused by altering or destroying the Davis Meeker oak). Under the lenient standard
8 for injury in fact—one that is not meant to be a demanding test of magnitude, but rather a test of
9 perceptible or tangible harm—SDMGO clearly can show that the potential injury caused by
10 alterations to the historic Davis Meeker Oak tree is real. *See City of Burlington*, 187 Wn. App. at
11 869 (“[J]udicial appraisal of the *extent* of harm is not contemplated.”). Whether viewed based on
12 the prior mayor's earlier efforts to remove the tree or the current mayor's plans to alter it,
13 SDGMO's members face a concrete and tangible injury. Any unauthorized alteration of the Davis
14 Meeker oak would impair the aesthetic, historic, and cultural interests of the community members
15 represented in this lawsuit, with a longstanding connection to the tree.

16 Nor does the current mayor's position guarantee compliance by future administrations.
17 Municipal policies change, officials change, and circumstances change. The Mayor's present
18 admission is significant and binding on her office in this case; but it does not erase the underlying
19 history and dispute over what the law requires.

20 If the City's concession is genuine, then a declaratory judgment merely formalizes and
21 memorializes what the City now admits—that the Davis Meeker Oak is a protected archeological
22 resource and that the Mayor's Office may not alter or otherwise physically modify without first
23 obtaining a permit from DAHP. Such a declaration will eliminate any future uncertainty over
24 whether chapter 27.53 RCW applies to the tree and will ensure that the City's legal obligations do
25 not change with future administrations.
26

1 **C. Migratory Bird Treaty Act Claim**

2 A significant portion of the City’s response is dedicated to disputing whether SDMGO has
3 a right of action under the Migratory Bird Treaty Act (“MBTA”), a claim that we did not raise in
4 our second motion for partial summary judgment. To clarify, we do not intend to pursue this claim
5 and stipulate to its dismissal pursuant to CR 41(a).

6 **D. Release of Supersedeas Cash Deposit**

7 Last, in 2024, SDMGO was required to post a \$10,000 supersedeas cash deposit to obtain
8 and defend a stay during its appeal. The purpose of a supersedeas bond or cash deposit is to preserve
9 the status quo during appeal and to protect the opposing party in the event the appellant does not
10 prevail. Once the appeal is resolved in favor of the party who posted the bond, the basis for retaining
11 those funds no longer exists.

12 Here, SDMGO prevailed in the Court of Appeals on a core legal issue—whether the mayor
13 may act unilaterally with respect to the Davis Meeker oak without involvement of the city’s historic
14 commission. The supersedeas deposit has therefore served its purpose.

15 Because there is no remaining basis to hold the funds, the Court should direct the Clerk to
16 release the \$10,000 supersedeas cash deposit to SDMGO.

17 **CONCLUSION**

18 For all of the reasons above, Plaintiff Save the Davis Meeker Garry Oak respectfully
19 requests that this Court grant its second motion for summary judgment declaring that the mayor of
20 Tumwater is required to obtain a permit from DAHP under Washington’s Archeological Sites &
21 Resources Law prior to removing, altering, damaging, defacing, or destroying the historic tree.
22 SDMGO also asks the Court to direct the release of the supersedeas bond.

23 An updated proposed order is submitted herewith.
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1 Dated this 6th day of July, 2026.

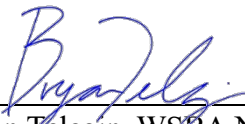
2 TELEGIN LAW PLLC

LARSON LAW, PLLC

3

4

By:


Bryan Telegin, WSBA No. 46686
Abigail McCeney, WSBA No. 63974

By:


Ronda Larson Kramer,
WSBA No. 31833

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*Attorneys for Plaintiff Save the Davis-Meeker
Garry Oak*

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2026, I served a true and correct copy of the foregoing document on each of the persons listed below, and in the manner indicated.

Jeffrey Scott Myers
Jakub Lukasz Kocztorz
Law Lyman Daniel Kamerrer et al
PO Box 11880
2674 R W Johnson Blvd SW
Olympia, WA 98508-1880
jmyers@lldkb.com
jmyers@lldkb.com
Attorneys for Defendant Debbie Sullivan
*Via e-mail to jmyers@lldkb.com, jkocztorz@lldkb.com,
lisa@lldkb.com, & tam@lldkb.com*

Ronda Larson Kramer
Larson Law PLLC
Of Attorneys for Plaintiff Save the Davis-Meeker Garry Oak
Via email to ronda@larsonlawpllc.com

Dated: July 6, 2026

TELEGIN LAW PLLC

By: 
Jamie Telegin, Legal Assistant