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

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

LEATTA DAHLHOFF, in her capacity of Mayor of
Tumwater

Defendant.

Case No. 24-2-01895-34

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, INCLUDING TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

1. The Mayor of Tumwater has ordered, without a permit, the removal of a 400-year-old Oregon white oak (“Garry” oak) that is on the historic register. It is known as the Davis Meeker Garry Oak. It stands next to the Olympia Airport on Old Highway 99. Plaintiff, a citizen’s group called Save the Davis-Meeker Garry Oak (SDMGO), opposes removal for a variety of reasons. These include (1) the oak tree appears to have nesting birds in it; (2) the mayor is misapplying a municipal code meant to save historic structures in a way that destroys a historic structure without a permit; and (3) the mayor is relying on a flawed arborist’s tree hazard report. The mayor has indicated that she plans to have the tree removed during the Memorial Day weekend, meaning sometime between today (Friday) and midnight Monday. Decl. of Tanya Nozawa, para. 5.

1 **JURISDICTION**

2 2. This Court has jurisdiction over Plaintiff’s claims because this is a civil action
3 brought against agencies of the State of Washington and Plaintiff maintains its principal place
4 of business in this county.

5 **PARTIES**

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7 3. Plaintiff, Save the Davis-Meeker Garry Oak, is a local citizen action group
8 dedicated to protecting the Davis-Meeker Garry Oak and the birds that need it today and
9 tomorrow, using science, advocacy, education, and on-the-ground conservation. See
10 <https://www.davis-meeker-oak.org/>. Founded in 2024, its Facebook group currently has 147
11 members.

12 4. The Mayor of Tumwater is the administrator of the city government of
13 Tumwater. She is not a member of the council and has no vote on the council except in the event
14 of a tie. She presides over council meetings, however. (The council is the city’s legislative body
15 and passes the laws that the mayor carries out). The Mayor of Tumwater is sued in her official
16 capacity. Debbie Sullivan served as Mayor at the time of the events described in this complaint.
17 Leatta Dahlhoff is the current Mayor.

18 **BACKGROUND**

19
20 5. On May 21, 2024, the City of Tumwater held its regularly scheduled council
21 meeting. At that meeting, the city’s attorney, Karen Kirkpatrick, explained to the council what
22 legal authority the mayor was relying on to remove the tree (a registered historical landmark)
23 without a permit. Decl. of Ronda Larson Kramer. Under Tumwater Municipal Code § 2.62.060,
24 there is a requirement to get a permit to demolish a historic structure. Ms. Kirkpatrick claimed,
25 incorrectly, that the mayor does not need a permit to demolish a historic structure if it falls

1 within an exception. The exception the city is relying on is in subsection (B)(3) of that same
2 code, which allows only emergency repairs, not demolition, of a historic structure without a
3 permit.

4 6. Subsection (B)(3) of TMC § 2.62.060 cross-references a definition in TMC
5 § 2.62.030(K), which defines “emergency repair” as “work necessary to prevent destruction or
6 dilapidation to real property or structural appurtenances thereto immediately threatened or
7 damaged by fire, flood, earthquake or other disaster.” When the city attorney claimed that this
8 code allowed destruction of the historic tree without a permit, she did not explain why the city
9 was not considering less drastic risk mitigation measures instead, since pruning and cabling
10 truly did constitute “repair work” that could be done without a permit, and arborists testified at
11 the council meeting that pruning and cabling would be more than sufficient.

12 7. At the city council meeting, the public outcry was profound. Decl. of Ronda
13 Larson Kramer, at para. 5. Every person who gave comments was against the mayor’s plan.
14 Arborists also testified that the city’s arborist report was greatly flawed. *Id.*

15 8. Meanwhile, the tree apparently has nesting birds in it. Decl. of Tanya Nozawa,
16 at para. 6. The mayor has indicated an intention to cut down the tree this weekend. *Id.* At para.
17 5.

18 9. Prior to the city council meeting, on April 18, 2024., the Tumwater Historic
19 Commission voted unanimously not to de-list the tree from the historic register. See
20 [https://www.thejoltnews.com/stories/tumwater-commission-recommends-keeping-davis-
21 meeker-oak-on-historical-register,15380](https://www.thejoltnews.com/stories/tumwater-commission-recommends-keeping-davis-meeker-oak-on-historical-register,15380).

22 10. The city was required to notify the tribes before cutting the tree. They apparently
23 were not notified. A third party notified them instead just recently, and they indicated they want
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1 to have time to review this before providing feedback. Decl. of Ronda Larson Kramer, at para.
2 6.

3 ARGUMENT

4 11. During public comment both before and during the May 21, 2024, city council
5 meeting, certified arborists pointed out that the tree is structurally sound, in contrast to the city
6 arborist’s report. Decl. of Tanya Nozawa, at para. 3. At least one of the non-city arborists pointed
7 out that city arborist provided a low-budget assessment, which is wholly inappropriate given the
8 historical importance of this tree. *Id.* Because the mayor disregarded all public comment, as well
9 as the Tumwater Municipal Code, as discussed below, the decision to remove the tree is arbitrary
10 and capricious.

12 12. Tumwater cannot remove the Davis-Meeker Oak because it would violate the
13 Migratory Bird Treaty Act (MBTA). That act broadly applies, by its plain terms, to the killing
14 of any migratory bird “at any time, by any means or in any manner.” 16 U.S.C. § 703(a). MBTA
15 Section 2(a) makes it unlawful to, among other things, “kill” or “take” a migratory bird (or its
16 nest or eggs), acts that are punishable under Section 6(a) as misdemeanor crimes.¹ Courts have
17 been faced with defining what constitutes a “taking” of migratory birds under the MBTA.
18 Although the statute itself does not define the term “take,” the MBTA regulations define the
19 term “take” as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect.”² In general, the
20 courts have looked at three different types of actions or omissions that result in the taking of
21 migratory birds: 1. direct and intentional acts or omissions; 2. direct and unintentional acts or
22 omissions; and 3. indirect and unintentional acts or omissions (incidental take).

25 ¹ 16 U.S.C. §§ 703(a), 707(a). Knowingly taking a migratory bird to sell or with the intention of selling it is a felony
crime under § 707(b).

² 50 C.F.R. § 10.12.

1 13. Failure to comply with the MBTA may result in either felony or misdemeanor
2 penalties, depending on the type of violation.³ Under MBTA Section 6(a), “any person,
3 association, partnership, or corporation” who violates the Act or its regulations is guilty of a
4 misdemeanor and can be fined no more than \$15,000 and/or a maximum jail sentence of six
5 months.⁴

6 14. Unlike the Endangered Species Act, the MBTA does not include a citizen suit
7 provision that allows “any person” to enforce the MBTA provisions in court.⁵ However, citizen
8 suits are allowed under the Administrative Procedure Act’s (APA’s) prohibition against
9 unlawful agency action.⁶ Section 702 of the APA “entitle[s]” a “person” who is “adversely
10 affected or aggrieved by agency action” to have a court review the challenged action.⁷ The U.S.
11 Court of Appeals for the Ninth Circuit has allowed civil suits seeking to enjoin government
12 actions that take or have the potential to take birds protected to proceed under the APA.⁸

13 15. Because removal of the oak this weekend would result in the taking of migratory
14 birds, the MBTA prohibits the mayor from carrying out her plan to cut down the 400-year-old
15 oak tree.

16 16. Tumwater’s municipal code also prohibits the mayor from carrying out her plan
17 to cut down the tree without a permit. TMC § 2.62.060 and TMC § 2.62.030 plainly require a
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21 ³ 16 U.S.C. § 707(a)–(b).

22 ⁴ *Id.* § 707(a).

23 ⁵ Compare 16 U.S.C. § 706 (authorizing Department of the Interior (DOI) to enforce MBTA provisions), with 16
24 U.S.C. § 1540(g) (allowing “any person” to file a lawsuit to enforce the Endangered Species Act).

25 ⁶ See 5 U.S.C. § 702 (“A person suffering legal wrong because of agency action, or adversely affected or aggrieved
by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”).

⁷ *Id.*

⁸ See, e.g., *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1203, 1204 (9th Cir. 2004) (holding that “anyone who is
‘adversely affected or aggrieved’ by an agency action alleged to have violated the MBTA has standing to seek
judicial review of that action”); *Humane Soc’y of the U.S. v. Glickman*, 217 F.3d 882, 886 (D.C. Cir. 2000) (citing 5
U.S.C. § 702 of the APA; *Am. School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902); and *Noble v. Union
River Logging Co.*, 147 U.S. 165 (1893), as authority allowing for judicial review of government actions regarding
compliance with the MBTA).

1 permit to demolish a historic structure. There is no exception. The permit is waived to repair a
2 historic structure, assuming there is an emergency where a repair can prevent destruction of a
3 nearby building. The tree is next to a building. It can be pruned to prevent destruction of the
4 building. The pruning can be done without a permit. But nowhere does the law allow the historic
5 tree to be removed without a permit.

6 17. Washington’s Archaeological Sites & Resources Law—chapter 27.53 RCW—
7 provides that one must obtain a permit from the Department of Archaeology and Historic
8 Preservation (“DAHP”) before altering, defacing, or destroying an “archaeological resource.”
9 DAHP has determined that the Davis Meeker Garry oak tree is a protected archaeological
10 resource and that a permit is required under RCW 27.53.060(1) before to performing any work
11 on the tree. The Mayor’s office has contested this determination by DAHP.

12
13 **CLAIMS**

14 **Count One**

15 **The Proposed Action Violates the MBTA**

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17 31. The mayor’s plan contravenes the plain language and conservation purpose of
18 the MBTA. Defendant also violated MBTA by failing to evaluate all reasonable alternatives,
19 such as delaying action until after nesting season and/or pruning and cabling.

20 **Count Two**

21 **Defendant Violated Tumwater Municipal Code**
22 **and Her Action is Arbitrary and Capricious**

23 32. Defendant violated TMC § 2.62.060 and TMC § 2.62.030, which require a
24 permit to demolish a historic structure. There is no exception. The only exception is when
25 the historic object is to be repaired. The mayor never suggested repair—i.e., pruning and

1 cabling. She failed to evaluate all reasonable alternatives. Moreover, she failed adequately
2 to respond to public comments, including comments urging her to consider obtaining a
3 neutral arborist's risk assessment using better technology than that used by the city arborist.
4 Additionally, the Tumwater Historic Commission voted unanimously not to de-list the tree
5 previously. All this the mayor disregarded arbitrarily.

6 **Count Three**

7 33. Defendant violated and/or plans to violate RCW 27.53.060(1), which
8 requires a permit from DAHP to, *inter alia*, remove, alter, damage, deface, or destroy any
9 historic or prehistoric archaeological resource or object.
10

11 **REQUEST FOR RELIEF**


12 WHEREFORE, Plaintiff respectfully requests this Court:

- 13
- 14 A. Declare that the decision to remove the tree violates the MBTA,
15 TMC § 2.62.060 and TMC § 2.62.030 and Administrative Procedure Act;
- 16 B. Declare that the City of Tumwater is required to obtain a permit from DAHP
17 under Washington's Archeological Sites & Resources Law prior to removing, altering,
18 damaging, defacing, or destroying the historic tree;
- 19 C. Grant an immediate Temporary Restraining Order restraining the Tumwater
20 mayor from removing the tree pending further order of this Court;
- 21 D. Grant a permanent injunction barring removal of the tree;
- 22 E. Award Plaintiff its costs of litigation; and
- 23 F. Grant Plaintiff such other relief as the Court deems just and proper.
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1 RESPECTFULLY SUBMITTED this 8th day of May, 2026.

2 TELEGIN LAW PLLC

LARSON LAW, PLLC

3
4 By: 
5 Bryan Telegin, WSBA No. 46686
6 Abigail McCeney, WSBA No. 63974

By: 
Ronda Larson Kramer,
WSBA No. 31833

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 8, 2026, I served a true and correct copy of the foregoing
3 document on each of the persons listed below, and in the manner indicated.

4 Jeffrey Scott Myers
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7 PO Box 11880
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16 *Via email to ronda@larsonlawpllc.com*

17 Dated: May 8, 2026

18 TELEGIN LAW PLLC

19 By: 

20 Jamie Telegin, Legal Assistant