

1 Hearing Date: December 26, 2025

2 Hearing Time: 9:00 a.m.

3 Judge/Calendar: Hon. Anne Egeler
4

5
6
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,

**PLAINTIFF’S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

12 v.

13 DEBBIE SULLIVAN, in her capacity of
14 Mayor of Tumwater

15 Defendant.

16
17 **I. INTRODUCTION**

18 This lawsuit was filed on May 24, 2024, to stop Debbie Sullivan, the mayor of Tumwater,
19 from cutting down a 400-year-old Oregon white oak tree known as the Davis Meeker oak. This
20 tree is listed as an historic property on the City of Tumwater’s Register of Historic Places. Under
21 the plain language of the city’s historic preservation ordinance—chapter 2.62 of the Tumwater
22 Municipal Code (“TMC”)—the tree may not lawfully be cut down or otherwise destroyed without
23 prior review and approval by the Tumwater Historic Preservation Commission. To date, the
24 Commission has not authorized the tree to be cut down. Nor has the mayor sought the
25 Commission’s approval to do so.

26 On May 24, 2024, Plaintiff Save the Davis-Meeker Garry Oak (“SDMGO”)—a coalition
of individuals with deep personal, emotion, and cultural attachments to the Davis Meeker oak—

1 moved this Court for a TRO after discovering that Mayor Sullivan planned to have the tree cut
2 down over the Memorial Day weekend in 2024. After initially granting the TRO, this Court
3 dissolved it but temporarily stayed the dissolution to allow SDMGO time to file an emergency
4 appeal. SDMGO promptly did so, and recently the Court of Appeals held that this Court erred in
5 dissolving the TRO, and that the mayor has no authority to cut the tree down without first seeking,
6 and obtaining, the approval of the Historic Preservation Commission.

7 SDMGO now asks this Court for final declaratory and injunctive relief on its claim relating
8 to the City's historic preservation ordinance. Specifically, SDMGO asks this Court for an order
9 granting summary judgment (1) declaring that any effort by the mayor to have the Davis Meeker
10 oak cut down must first be reviewed and approved by the Tumwater Historic Preservation
11 Commission and (2) permanently enjoining the mayor from having the tree cut down without first
12 obtaining such approval.

13 **II. EVIDENCE RELIED UPON**

14 This motion relies on the accompanying declarations of Tanya Nozawa (May 24, 2024;
15 herein, "Nozawa Decl."), Diane Riley, (May 27, 2024; herein, "Riley Decl."), Bill Iyall (May 28,
16 2024; herein, "Iyall Decl."), Stewart Hartman (May 27, 2024; herein, "Hartman Decl."), Beowulf
17 Brower (May 28, 2024; herein, "Brower Decl."), Debbie Sullivan (May 24, 2024; herein, "Sullivan
18 Decl."), Ronda Larson Kramer (May 24, 2024; herein, "Kramer Decl."), all of which were
19 previously filed with the Court in support of the Parties' prior litigation before this Court on the
20 issuance of a temporary restraining order in May of 2024.

21 After this case was appealed, additional declarations were submitted to the Court of
22 Appeals. Those declarations of Beowulf Brower (July 2, 2024; herein "Brower Supp. Decl."),
23 Laura Young (July 2, 2024; herein, "Young Decl."), Ronda Larson Kramer (July 18, 2024; herein
24 "Kramer Supp. Decl."), are attached as Exhibits A through C to the Declaration of Bryan Telegin
(Oct. 24, 2025; herein "Telegin Decl.")

25 ///

26 ///

1 III. OVERVIEW OF THE CASE

2 A. The Davis Meeker Oak Tree

3 Next to Olympia Airport in the City of Tumwater stands a 400-year-old Oregon white oak
4 (“Garry” oak) known as the Davis Meeker oak. It is on the Tumwater Register of Historic Places,
5 having been a landmark on the Cowlitz Trail for centuries, and later the Oregon Trail. Nozawa
6 Decl. ¶ 2; Riley Decl. ¶ 9.

7 The Cowlitz Trail is part of an ancient water and land transportation route used by
8 Indigenous peoples since time immemorial. Riley Decl. ¶ 10. The tree is situated on the original
9 Cowlitz Prairie, which extended from Vancouver, Washington, to Puget Sound. Iyall Decl. ¶ 3. In
10 this area, Garry oaks were cultivated by native peoples for thousands of years through regular
11 burning of the prairies, limiting the growth of other trees and allowing the oaks to survive. *Id.*

12 As explained in the declaration of Laura Young, an archivist and founding board member
13 of the Squaxin Museum Library and Research Center, this particular tree was likely physically
14 modified by Indigenous peoples to serve as a trail marker. Young Decl. ¶ 12. In addition, “camas,
15 wild carrots, [and] onions were harvested at this ancient site, with the tree providing shade as a
16 resting place after Tribal people finished a day of gathering and harvesting the gifts of the land.”
17 *Id.* ¶ 9.

18 The tree is historically and culturally significant for its place in the tragic story of violence
19 toward native peoples in our region. “This tree is known as one of the few territorial trees in the
20 area used to hang Indigenous People as a method of forced property eviction before and during the
21 regional Indian War of 1855–1856. After settlers arrived, vigilantes used it to hang Native
22 Americans from one of its branches.” *Id.* ¶ 4. The branch used for these vigilante hangings broke
23 off in an ice storm in the 1990s, but “the massive healed-over scar from where it broke off can still
24 be seen today.” Riley Decl. ¶ 5.

25 As described by Bill Iyall, chairman of the Cowlitz Tribe from 2008 to 2020, “[t]he meeker
26 oak is a fixture in our community.” Iyall Decl. ¶ 3. Among countless stories, Stewart Hartman—a
member of SDMGO and lifelong Tumwater resident—recalls that “I remember my father and

1 grandfather taking me to the tree when I was a boy—they told me how it was used as a hanging
2 tree. That’s where the Oregon Trail came through that ended by the brewery,” and “[o]ver the years,
3 my family and I had meetings over many issues under the old Oak tree. It was a nice shady place
4 to park and have conversations.” Hartman Decl. ¶¶ 4 & 5. Mr. Hartman concludes, “[t]he loss of
5 the Old Oak tree at Olympia Airport to me personally would be like losing an old friend that I have
6 known all my life.” *Id.* ¶ 4.

7 In May 2023, a limb fell from the tree, and the tips on the limb “barely crossed the fog line
8 on the west side of the road,” which was Old Highway 99. Brower Decl. ¶ 6. The mayor used this
9 incident as a springboard for launching a campaign to have the tree removed.

10 In March 2024, the mayor asked the Tumwater Historic Preservation Commission to delist
11 the tree from the historic register in her efforts to have the tree removed. Bower Supp. Decl. ¶ 3.
12 The Commission declined to delist the tree. *Id.* ¶ 4. The mayor then tried to get the city’s insurance
13 carrier to recommend removal of the tree to the City Council, but the insurance carrier declined to
14 do so. Brower Decl. ¶¶ 26-29.

15 During the risk assessment process, the city’s contract arborist asked another company,
16 Tree Solutions, to conduct sonic tomography to assess the extent of the decay at the base of the
17 tree. Brower Decl. ¶ 9. In a memo, Tree Solutions recommended saving the tree with retrenchment
18 and concluded that there was more than enough healthy wood to retain the tree *Id.* ¶¶ 9, 16.
19 Ultimately the city’s contract arborist drafted a report that contradicted this and recommended the
20 immediate removal of the entire tree. Sullivan Decl. ¶ 2. The contract arborist buried the Tree
21 Solutions memo in the middle of his report. Tree Solutions’ owner then wrote to the city to say that
22 the contract arborist’s report was “an embarrassment to all knowledgeable arborists.” Kramer Supp.
23 Decl., Ex. B at 2.

24 Later, ignoring public outcry to save the tree, the mayor decided to have the tree
25 surreptitiously cut down in 2024, during the early morning of the Tuesday following Memorial
26 Day Weekend. She signed a contract on the Friday of that weekend. It required the work to be done
at night and to not exceed the span of one day. Kramer Supp. Decl., ¶¶ 2–8; Sullivan Decl. ¶ 6;

1 Telegin Decl., Ex. D, Contract to Remove the Tree (May 24, 2024); Telegin Decl., Ex. E (Request
2 for Quotations, requiring removal to be done at night and within one day); Telegin Decl., Ex. F
3 (tree removal company’s estimate, specifying “night work”). The mayor relied on the “emergency
4 repair” exemption in the TMC as justification for removing the tree without first obtaining a permit
5 or approval from the Commission. *See* Compl. for Decl. and Inj. Relief Including TRO ¶¶ 5-6 (May
6 24, 2024).

7 **B. The City’s Historic Preservation Ordinance**

8 The official listing of the Davis Meeker oak on the City of Tumwater’s Register of Historic
9 Places triggers the protections of the city’s historic preservation ordinance, codified at Chapter 2.62
10 of the TMC, a true and correct copy of which may be found in Appendix A hereto.

11 The purpose of the city’s historic preservation ordinance is to “provide for the
12 identification, evaluation, and protection of historic resources within Tumwater.” TMC 2.62.010.
13 The ordinance is administered by a seven-member body known as the Tumwater Historic
14 Preservation Commission (“the Commission”). “The major responsibility of the historic
15 preservation commission is to identify and actively encourage the conservation of the city’s historic
16 resources by initiating and maintaining a register of historic places and reviewing proposed changes
17 to register properties; to raise community awareness of the city’s history and historic resources;
18 and to serve as the city’s primary resource in matters of history, historic planning, and
19 preservation.” TMC 2.62.040(D).

20 The Commission is tasked with reviewing proposed actions that could damage or destroy
21 any property listed on the Tumwater Register of Historic Places. Under the city’s historic
22 preservation ordinance, no person may damage or destroy a property listed on the register without
23 first obtaining a “certificate of appropriateness” from the Commission, or, in the case of demolition,
24 a “waiver” of the certificate requirement (also issued by the Commission.) As stated at TMC
25 2.62.060(A):

26 No person shall . . . alter, restore, remodel, repair, move, or demolish any existing
property on the Tumwater register of historic places . . . without review by the

1 commission and without receipt of a certificate of appropriateness, or in the case of
2 demolition, a waiver, as a result of the review.

3 TMC 2.62.060(A).

4 When a property owner desires to demolish a property listed on the city’s historic register,
5 TMC 2.62.060(C)(3) outlines the mandatory “waiver” process referenced above. In that process,
6 the owner must first meet with the Commission and attempt to find less destructive alternatives.
7 The Commission may attach conditions of approval or require mitigation and has discretion to
8 allow or prohibit the proposed demolition from occurring. *See generally* TMC 2.62.060(C)(3).

9 **C. Procedural Background**

10 **1. Prior Superior Court Proceedings**

11 Acting on a tip from an insider the day before, SDMGO filed a complaint on May 24, 2024,
12 for declaratory and injunctive relief and a request for a temporary restraining order (“TRO”) to stop
13 the mayor of Tumwater from cutting down the Davis Meeker oak without having first obtained
14 permission from the Commission. *See* Compl. at 5-7. SDMGO later obtained, through a public
15 records request, the contract to remove the tree. The contract showed that the mayor had signed to
16 remove the tree the same day that SDMGO filed its complaint. *See* Telegin Decl., Ex. D. The
17 complaint also alleged violations of the federal Migratory Bird Treaty Act as American kestrels
18 were nesting in the tree at the time of the proposed cutting. *Id.* at 4-5.

19 That same day, May 24, 2024, the Honorable Sharonda D. Amamilo granted SDMGO’s
20 request for a TRO, providing that “Defendant shall immediately cease and desist from all efforts
21 to remove the Davis-Meeker Garry Oak until further court order.” Order Granting Temporary
22 Restraining Order (May 24, 2024). Later that same day, the mayor moved to dissolve the TRO. *See*
23 Defendant’s Emergency Motion to Dissolve Temporary Restraining Order (May 24, 2024).) The
24 newly assigned Judge Anne Egeler set a hearing on the mayor’s motion to occur one week later on
25 May 31, 2024.

26 On May 28, 2024, SDMGO filed a response to the mayor’s motion to dissolve the TRO,
together with a cross-motion seeking to extend the TRO at least long enough to allow the kestrel

1 chicks to fledge. *See* Response to Motion to Dissolve Temporary Restraining Order and Cross-
2 Motion to Extend Temporary Restraining Order to July 30, 2024 (May 28, 2024).

3 The cross-motions went to hearing on Friday, May 31, 2024. At the conclusion of that
4 hearing, the superior court granted the mayor’s motion to dissolve the TRO, denying SDMGO’s
5 cross-motion for an extension of the TRO, and ruling that the mayor may lawfully cut down the
6 Davis Meeker oak without the approval of the Tumwater Historic Preservation Commission. *See*
7 Order Granting Motion to Dissolve TRO (May 31, 2024). Specifically, the superior court ruled that
8 “[t]he mayor’s decision to proceed is compliant with the code” and that “[t]here was not an
9 obligation to obtain a permit before removing a historic tree as opposed to a historic structure[.]”
10 *Id.* (transcript of court’s oral ruling at 14:22-25). The superior court also ruled that SDMGO did
11 not “clearly establish[.]” that killing the kestrel chicks would violate the Migratory Bird Treaty Act.
12 *Id.* (transcript of court’s oral ruling at 15:9-11).

13 Following the mayor’s attorney’s statement that the mayor was mobilizing to have the tree
14 removed as early as the next business day, Monday, June 3, 2024, the superior court extended the
15 TRO until Wednesday, June 5, 2024, to give SDMGO “a meaningful right of appeal.” Order
16 Granting Motion to Dissolve TRO at 1. SDMGO appealed the superior court’s rulings on May 31,
17 2024. The Court of Appeals granted an expedited appeal on July 23, 2024. Comm’r’s Ruling, *Save*
18 *the Davis-Meeker Garry Oak v. Sullivan*, No. 58881-1-II, at 6 (July 23, 2024).

19 During the course of the appeal, SDMGO moved again for an injunction pending the
20 outcome of the Court of Appeals’ decision. The Court of Appeals granted that motion but directed
21 SDMGO to return to this Court for the setting of a supersedeas bond. This Court subsequently
22 granted SDMGO’s request to set a bond, and the Court set the bond amount at \$10,000.00. SDMGO
23 promptly paid the bond, and it is still being held by this Court.

24 2. Court of Appeals Decision

25 On July 15, 2025, the Court of Appeals held that the superior court erred in concluding that
26 the city’s Historic Preservation Ordinance did not require the mayor to obtain the Historic
Commission’s approval prior to removing the tree. The Court of Appeals’ unpublished opinion is

1 attached hereto as Appendix B and may be found at *Save the Davis-Meeker Garry Oak v. Sullivan*,
2 2025 WL 1938162 (July 15, 2025.) The Court of Appeals remanded to this Court for reinstatement
3 of the TRO and further proceedings. *Id.* at 13.

4 In its final order, the Court of Appeals held that based on a plain reading of the code, “the
5 Garry oak does fall within the code’s definition of ‘[h]istoric property,’ as the tree is ‘listed in a
6 local register of a certified local government or the National Register of Historic Places.’”
7 Unpublished Opinion at 9 (citing TMC 2.62.030(L). The Court of Appeals also found that the Garry
8 oak “likely falls within the definition of ‘site,’ as defined in TMC 2.62.030(T), as the register
9 outlines the tree’s ‘historical cultural [and] archaeological significance.’” *Id.* The Court of Appeals
10 confirmed that “anyone seeking to remove the Garry oak would need to obtain a certificate of
11 appropriateness under chapter 2.62 TMC,” so long as no exemptions apply. *Id.*

12 The Court of Appeals also held that the Garry oak meets the definition of both a “heritage
13 tree” and an “historic tree” under TMC 16.08.030, and therefore the protections for trees and
14 vegetation in TMC chapter 16.08 apply to the Garry oak as well. *Id.* at 11.

15 The Court of Appeals also rejected the mayor’s claim that the city can cut down the tree
16 without the Historic Commission’s approval because of the dead or hazardous tree exemption in
17 chapter 16.08 TMC (the city’s more general tree code.) The Court of Appeals found that, “as it
18 relates to historic trees, chapter 2.62 TMC supersedes the tree code found in chapter 16.08 TMC,
19 because TMC 16.08.070(S) states that “[i]n addition to the provisions of this chapter the cutting or
20 clearing of historic trees requires the issuance of a certificate of appropriateness *in accordance with*
21 *TMC Chapter 2.62.*” Unpublished Opinion at 12; TMC 16.08.070(S). In other words, both the tree
22 code and historic preservation code make clear that the tree cannot be cut down without the Historic
23 Commission’s approval.

24 IV. STANDARD OF REVIEW

25 Summary judgment is warranted when there is no genuine issue of material fact, and the
26 moving party is entitled to judgment as a matter of law. CR 56(c). “A material fact is one upon
which the outcome of the litigation depends.” *Kim v. O’Sullivan*, 133 Wn. App. 557, 559 (2006.)

1 The reviewing court “views all facts and reasonable inferences in the light most favorable to the
2 nonmoving party.” *Id.* “[I]ssues of law are not resolved in either party’s favor, but are reviewed de
3 novo.” *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 208 (1994).

4 V. ARGUMENT

5 A. Under the city’s historic preservation ordinance, the mayor may not cut down 6 the tree without prior approval of the Tumwater Historic Preservation Commission.

7 The Davis Meeker oak is on the city’s historic register. Under the plain language of the
8 city’s historic preservation ordinance, the tree cannot be cut down without prior approval of the
9 Tumwater Historic Preservation Commission. As discussed above, TMC 2.62.060(A) provides
10 unambiguously that “[n]o personal shall . . . alter, restore, remodel, repair, move, or demolish *any*
11 *existing property on the Tumwater register of historic places . . .* without review by the commission
12 and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a
13 result of the review” (emphasis added). A “waiver of a certificate of appropriateness,” means that
14 “the commission has reviewed the proposed whole or partial demolition of a local register property
15 or in a local register historic district and failing to find alternatives to demolition has issued a waiver
16 of a certificate of appropriateness which allows the building official or director of community
17 development to issue a permit for demolition.” TMC 2.62.030(Y). This prohibition applies to any
18 “property” listed on the City of Tumwater’s Register of Historic Places.

19 The Court of Appeals has made it clear from its recent order that the Davis Meeker oak is
20 an historic property under TMC 2.62.030(L) *See* Unpublished Opinion at 9. Tumwater’s historical
21 register has a full webpage dedicated to the tree, where the tree is categorized as an historic property
22 with historical significance. *Id.* Because “the tree falls within the purview of chapter 2.62 TMC,
23 the mayor is obligated to obtain a permit or approval prior to removing the tree. *See* Unpublished
24 Opinion at 10 (holding that “[u]nless an exemption applies . . . anyone seeking to remove the Garry
25 oak would need to obtain a certificate of appropriateness under chapter 2.62 TMC”).

26 While the code does contain some exceptions to the certificate of appropriateness
requirement, those do not apply in this case. Under TMC 2.62.060(B), there are limited

1 circumstances under which a property listed on the city’s Register of Historic Places may be altered
2 without first obtaining the commissioner’s permission. Those limited exemptions are:

- 3 1. Ordinary repair and maintenance;
- 4 2. Painting as part of ordinary repair and maintenance that is consistent with the historic
5 register designation report for the property;
- 6 3. Emergency measures defined in TMC 2.62.030; and
- 7 4. Resurfacing of areas such as parking lots, trails, sidewalks, and streets with materials that
8 are consistent with the historic register designation report for the property.

9 TMC 2.62.060(B).

10 The Court of Appeals confirmed that none of the listed exemptions apply here. *See*
11 Unpublished Opinion at 12. Specifically, the Court of Appeals reasoned that, even if the tree were
12 to fall under “emergency measures” exemption, this provision refers to “[e]mergency repair[s]” in
13 TMC 2.62.030(K) and “does not allow for removal of the tree without a certificate of
14 appropriateness.” *Id.* The Court of Appeals also concluded that any allowances afforded to trees in
15 chapter 16.08 TMC are superseded by TMC Chapter 2.62, which do not allow for tree removal
16 without a permit. *Id.*

17 In sum, the Davis Meeker Oak is a property listed on the city’s Register of Historic Places.
18 The tree is a real property, as well as a historic site. The tree is, therefore, protected by the city’s
19 historic preservation ordinance. Under the plain language of TMC 2.62.060(A), the tree may not
20 be altered or destroyed without prior approval by the Tumwater Historic Preservation Commission.
21 There is no dispute as to whether the mayor took the necessary steps, let alone any steps at all, to
22 submit her recommendation for tree removal to the Commission for review. Nor did the mayor
23 attempt to find less destructive alternatives.

24 Given the Court of Appeals’ recent ruling, this Court should enter a declaratory judgment
25 ruling that the Davis Meeker Garry oak may not be altered, harmed, or destroyed absent prior
26 approval by the Tumwater Historic Preservation Commission.

1 **B. The mayor should be permanently enjoined from having the tree cut down**
2 **without first obtaining approval from the city’s Historic Preservation**
3 **Commission.**

4 In addition to entering a declaratory ruling that the tree cannot be cut down without the
5 prior approval of the Historic Preservation commission, this Court should permanently enjoin the
6 mayor from altering or destroying the tree absent such approval. To obtain a permanent injunction,
7 the moving party must show: “(1) that he or she possesses a clear legal or equitable right, (2) that
8 he or she has a well-grounded fear of immediate invasion of that right, and (3) that the acts
9 complained of either are resulting in or will result in actual or substantial injury to him.” *Glob.*
10 *Neighborhood v. Respect Washington*, 7 Wn.App.2d 354,386, 434 P.3d 1024, 1042 (2019) (citing
11 *Washington Federation of State Employees v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983).)

12 **1. SDMGO has a clear legal right to require that the tree is not cut down**
13 **without approval of the Commission.**

14 “When deciding whether a party has a clear legal or equitable right, the court examines the
15 likelihood that the moving party will prevail on the merits.” *Kucera v. State, Dep’t of Transp.*, 140
16 Wn.2d 200, 216, 995 P.2d 63, 72 (2000) (citing *Rabon v. City of Seattle*, 135 Wash.2d 278, 285,
17 957 P.2d 621 (1998)). Here, the Court of Appeals has already answered that question, holding
18 unambiguously that the Davis Meeker oak may not be cut down without the prior approval of the
19 Tumwater Historic Preservation Commission, and finding in its decision that the superior court
20 erred when it concluded that SDMGO lacked a clear legal or equitable right to enjoin the mayor’s
21 unlawful destruction of the tree. Unpublished Opinion at 13.

22 As discussed above, the historic preservation ordinance, codified at chapter 2.62 of the
23 TMC, unambiguously states that the mayor is obligated to obtain a certificate of appropriateness
24 waiver from the Commission before she can cut down the Davis Meeker oak. *See generally*
25 Unpublished Opinion. Plaintiff SDMGO—a coalition of individuals with deep personal, emotional,
26 and cultural attachments to the Davis Meeker oak—has a legal right to the protection of this historic
 tree under the plain language of the city’s Historic Preservation Ordinance. *See Kucera*, 140 Wn.2d

1 at 212 (finding that because the trial court found the requirements of SEPA were applicable, the
2 property owners had demonstrated a clear legal right.)

3 **2. SDMGO has a well-grounded fear that the Davis Meeker oak will be cut**
4 **down, and its right is being invaded by the mayor's threats to remove**
5 **the tree without permission from the Commission.**

6 In *Kucera v. State, Dept. of Transp.*, the Washington Supreme Court found that where
7 property owners have a legal right to require the State to comply with the procedural requirements
8 of SEPA, those property owners clearly demonstrated a well-grounded fear of immediate invasion
9 of that right when the State failed to comply with SEPA's procedural requirements. *Kucera*, 140
10 Wn.2d at 217, 72.

11 Similarly, here, SDMGO has a legal right to require the mayor to comply with the historic
12 preservation ordinance. The mayor has failed to comply with the necessary procedural
13 requirements that the TMC requires for alteration or destruction of an historic property. She has
14 continued to defend her right to have the tree removed up through and including oral argument
15 before the Court of Appeals. In this way, the mayor threatens to have the tree destroyed without
16 obtaining the necessary approval from the city's Historic Preservation Commission and before the
17 Commission has undertaken a thorough review of alternative mitigation measures. Brower Supp.
18 Decl. ¶ 3. The mayor's continued assertion of a unilateral right to remove the tree, without any
19 prior review or approval by the Tumwater Historic Preservation Commission, represents a direct
20 invasion of SDMGOs rights under the historic preservation ordinance, and SDMGO has a well-
21 grounded fear that, absent a permanent injunction from this Court, the mayor will make good on
22 her plans to have the tree removed.

23 **3. Removing the tree will result in actual and substantial injury.**

24 The irreparable, irreversible harm that would be caused by destroying the Davis Meeker
25 oak is precisely the kind of harm that injunctions are designed to prevent. *See Kucera*, 140 Wn.2d
26 at 221, 995 P.2d at 74 (quoting *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 796,
638 P.2d 1213 (1982)). Actions that cause harm to the environment "are frequently enjoined due

1 to the irreparable nature of environmental injury.” *Id.* at 210 (citing *Amoco Prod. Co. v. Village of*
2 *Gambell, AK*, 480 U.S. 531, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).)

3 The Davis Meeker Garry oak is incredibly important to the surrounding community.
4 Members of SDMGO have shared how “[t]he significance of this tree and [their] history with it is
5 so great that there should be no question about trying to find ways to preserve the tree rather than
6 cutting it down without a permit.” Riley Decl. ¶ 4. For some individuals, “if this tree is cut down,
7 it will forever erase a piece of [their] personal history and [their] tribal history.” Riley Decl. ¶ 6.
8 *See also* Hartman Decl. ¶ 4 (“The loss of the Old Oak tree at Olympia Airport to me personally
9 would be like losing an old friend that I have known all my life.”.) The demolition of the Davis
10 Meeker oak “would prevent [some] from ever visiting [their] family’s living history again.” Young
11 Decl. ¶ 20. There is no question that removal of the tree would result in actual, substantial, and
12 irreparable harm to the many members of SDMGO and the surrounding community who enjoy and
13 value the tree, and who wish to continue doing so for many years to come. If the tree is cut down,
14 it will be gone forever.

15 The Court of Appeals has held that Mayor Sullivant has a clear duty under the Tumwater
16 Municipal Code to obtain the approval of the Tumwater Historic Preservation Commission prior
17 to alteration or destruction of any property on the city’s historic register, including specifically the
18 historic Davis Meeker oak. SDMGO has a well-grounded fear that the mayor will have the tree
19 removed in violation of that duty, and if executed, removal of the historic tree would result in
20 actual, substantial, and irreparable harm to SDMGO and its members. Thus, in addition to issuing
21 a declaratory order that the mayor may not have the tree removed without first obtaining the
22 approval of the Tumwater Historic Preservation Commission, this Court should permanently enjoin
23 the mayor from altering, removing, or otherwise harming the tree without first obtaining such
24 approval. Such is required by the plain language of the Tumwater Municipal Code.

25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VI. CONCLUSION

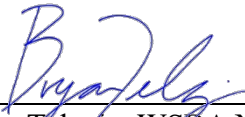
For all of the reasons above, Plaintiff Save the Davis Meeker Garry Oak respectfully requests that this Court grant this motion for summary judgment and (1) declare that the mayor’s decision to have the historic Davis Meeker oak cut down violates Tumwater historic preservation ordinance and (2) permanently enjoin the mayor from having the tree cut down without first obtaining the approval of the city’s Historic Preservation Commission.

A proposed order is submitted herewith.

Dated this 5th day of November, 2025.

TELEGIN LAW PLLC

LARSON LAW, PLLC

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

By: 
Ronda Larson Kramer,
WSBA No. 31833

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2025, I served a true and correct copy of the foregoing Plaintiff’s Motion for Partial Summary Judgment and Declaration of Bryan Telegin in Support of Plaintiff’s Motion for Partial Summary Judgment 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: November 5, 2024

TELEGIN LAW PLLC

By: 

Jamie Telegin, Legal Assistant

Appendix A

APPENDIX A

Tumwater Municipal Code, Chapter 2.62—Historic Preservation Ordinance

From the City's online municipal code website at:

<https://www.codepublishing.com/WA/Tumwater/#!/Tumwater02/Tumwater0262.html#2.62>

Sections:

- 2.62.010 Purpose.
- 2.62.020 Short title.
- 2.62.030 Definitions.
- 2.62.040 Tumwater historic preservation commission.
- 2.62.050 Tumwater register of historic places.
- 2.62.060 Review of changes to Tumwater register of historic places properties.
- 2.62.070 Relationship to zoning.
- 2.62.080 Review and monitoring of properties for special property tax valuation.

2.62.010 Purpose.

The purpose of this chapter is to provide for the identification, evaluation, and protection of historic resources within Tumwater and preserve and rehabilitate eligible historic properties within the city for future generations through special valuation, a property tax incentive, as provided in Chapter 84.26 RCW in order to:

- A. Safeguard the heritage of Tumwater as represented by those buildings, districts, objects, sites and structures which reflect significant elements of the city's history;

- B. Foster civic and neighborhood pride in the beauty and accomplishments of the past, and a sense of identity based on the city's history;
- C. Stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects;
- D. Assist, encourage and provide incentives to private owners for preservation, restoration, redevelopment and use of outstanding historic buildings, district, objects, sites and structures;
- E. Promote and facilitate the early identification and resolution of conflicts between preservation of historic resources and alternative land uses; and
- F. Conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

(Ord. 1400, Added, 10/19/1993)

2.62.020 Short title.

This chapter shall be known and may be cited as the “historic preservation ordinance” of the city of Tumwater.

(Ord. 1400, Added, 10/19/1993)

2.62.030 Definitions.

The following words and terms when used in this chapter shall mean as follows, unless a different meaning clearly appears from the context:

- A. “Tumwater historic inventory” or “inventory” means the comprehensive inventory of historic resources within the boundaries of the city.
- B. “Tumwater historic preservation commission” or “commission” means the commission created by TMC 2.62.040.
- C. “Tumwater register of historic places,” “local register,” or “register” means the local listing of properties provided for in TMC 2.62.050.
- D. “Actual cost of rehabilitation” means costs incurred within twenty-four months prior to the date of application and directly resulting from one or more of the following: (1) improvements to an existing building located on or within the perimeters of the original structure; or (2) improvements outside of but directly attached to the original structure which are necessary to make the building fully usable but shall not include rentable/habitable floor space attributable to new construction; or (3) architectural and engineering services attributable to the design of the improvements; or (4) all costs defined as “qualified rehabilitation expenditures” for purposes of the federal historic preservation investment tax credit.
- E. A “building” is a structure constructed by human beings. This includes both residential and nonresidential buildings, main and accessory buildings.
- F. “Certificate of appropriateness” means the commission has reviewed the proposed changes to a local register property or within a local register historic district and certified the changes as not adversely affecting the historic characteristics of the property which contribute to its designation.

G. “Certified local government” or “CLG” means the local government has been certified by the State Historic Preservation Officer as having established its own historic preservation commission and a program meeting federal and state standards.

H. “Class of properties eligible to apply for special valuation in Tumwater” means all properties listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until Tumwater becomes a certified local government (CLG). Once a CLG, the class of properties eligible to apply for special valuation in Tumwater means only properties listed on the Tumwater register of historic places or properties certified as contributing to the Tumwater register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

I. “Cost” means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

J. A “district” is a geographically definable area – urban or rural, small or large – possessing a significant concentration, linkage, or continuity of sites, buildings, structures, and/or objects united by past events or aesthetically by plan or physical development.

K. “Emergency repair” means work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.

L. “Historic property” means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is listed in a local register of a certified local government or the National Register of Historic Places.

M. “Incentives” are such rights or privileges or combination thereof which the city council, or other local, state, or federal public body or agency, by virtue of applicable present or future legislation, may be authorized to grant or obtain for the owner(s) of register properties. Examples of economic incentives include but are not limited to tax relief, conditional use permits, rezoning, street vacation, planned unit development, transfer of development rights, facade easements, gifts, preferential leasing policies, beneficial placement of public improvements or amenities, or the like.

N. “Local review board” or “board” used in Chapter 84.26 RCW and Chapter 254-20 WAC for the special valuation of historic properties means the commission created in TMC 2.62.040.

O. “National Register of Historic Places” means the national listing of properties significant to our cultural history because of their documented importance to our history, architectural history, engineering, or cultural heritage.

P. An “object” is a thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Q. “Ordinary repair and maintenance” means work where the purpose and effect of such work is to correct any deterioration or decay of or damage to the real property or structure appurtenance therein and to restore the same, as nearly as may

be practicable, to the condition prior to the occurrence of such deterioration, decay, or damage.

R. “Owner” of property is the fee simple owner of record as exists on the Thurston County assessor’s records.

S. “Significance” or “significant” used in the context of historic significance means the following: a property with local, state, or national significance is one which helps in the understanding of the history of the local area, state, or nation (whichever is applicable) by illuminating the local, statewide, or nationwide impact of the events or persons associated with the property, or its architectural type or style in information potential. The local area can include Tumwater, Thurston County, or southwest Washington, or a modest geographic or cultural area, such as a neighborhood. Local significance may apply to a property that illustrates a theme that is important to one or more localities; state significance to a theme important to the history of the state; and national significance to property of exceptional value in representing or illustrating an important theme in the history of the nation.

T. A “site” is a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains, or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now nonexistent building or structure if the location itself possesses historic cultural or archaeological significance.

U. “Special valuation for historic properties” or “special valuation” means the local option program which when implemented makes available to property owners a special tax valuation for rehabilitation of historic properties under which the assessed value of an eligible historic property is determined

at a rate that excludes, for up to ten years, the actual cost of the rehabilitation. (Chapter 84.26 RCW.)

V. “State Register of Historic Places” means the state listing of properties significant to the community, state, or nation but which do not meet the criteria of the National Register.

W. A “structure” is a work made up of interdependent and interrelated parts in a definite pattern of organization. Generally constructed by man, it is often an engineering project.

X. “Universal Transverse Mercator” or “UTM” means the grid zone in metric measurement providing for an exact point of numerical reference.

Y. “Waiver of a certificate of appropriateness” or “waiver” means the commission has reviewed the proposed whole or partial demolition of a local register property or in a local register historic district and failing to find alternatives to demolition has issued a waiver of a certificate of appropriateness which allows the building official or director of community development to issue a permit for demolition.

Z. “Washington State Advisory Council’s Standards for the Rehabilitation and Maintenance of Historic Properties” or “State Advisory Council’s Standards” means the rehabilitation and maintenance standards used by the Tumwater historic preservation commission as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

(Ord. O2017-015, Amended, 04/17/2018; Ord. 1400, Added, 10/19/1993)

2.62.040 Tumwater historic preservation commission.

A. Creation and Size. There is hereby established a Tumwater historic preservation commission, consisting of seven members, as provided in subsection C of this section. Members of the Tumwater historic preservation commission shall be appointed by the mayor and approved by the city council and shall be residents of the city except as provided in subsection (B)(2) of this section.

B. Composition of the Commission.

1. All members of the commission must have a demonstrated interest and competence in historic preservation and possess qualities of impartiality and broad judgment.

2. The commission shall always include at least two professionals who have experience in identifying, evaluating, and protecting historic resources and are selected from among the disciplines of history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography, American studies, law, and real estate. The commission action that would otherwise be valid shall not be rendered invalid by the temporary vacancy of one or all of the professional positions, unless the commission action is related to meeting certified local government (CLG) responsibilities cited in the certification agreement between the mayor and the State Historic Preservation Officer. Furthermore, exception to the residency requirement of commission members may be granted by the mayor and city council in order to obtain representatives from these disciplines.

3. In making appointments, the mayor may consider names submitted from any source, but the mayor shall

notify history and city development-related organizations of vacancies so that names of interested and qualified individuals may be submitted by such organizations for consideration along with names from any other source.

C. Terms. The original appointment of members to the commission shall be as follows: three for two years, two for three years, and two for four years. Thereafter, appointments shall be made for a three-year term. Vacancies shall be filled by the mayor for the unexpired term in the same manner as the original appointment.

D. Powers and Duties. The major responsibility of the historic preservation commission is to identify and actively encourage the conservation of the city's historic resources by initiating and maintaining a register of historic places and reviewing proposed changes to register properties; to raise community awareness of the city's history and historic resources; and to serve as the city's primary resource in matters of history, historic planning, and preservation.

In carrying out these responsibilities, the historic preservation commission shall engage in the following:

1. Conduct and maintain a comprehensive inventory of historic resources within the boundaries of the city and known as the Tumwater historic inventory; publicize and periodically update inventory results. Properties listed on the inventory shall be recorded on official zoning records with an "HI" (for historic inventory designation). This designation shall not change or modify the underlying zone classification.

2. Initiate and maintain the Tumwater register of historic places. This official register shall be compiled of buildings, structures, sites, objects, and districts identified

by the commission as having historic significance worthy of recognition by the city and encouragement of efforts by owners to maintain, rehabilitate, and preserve properties.

3. Review nominations to the Tumwater register of historic places according to criteria in TMC 2.62.050 and adopt standards in its rules to be used to guide this review.

4. Review proposals to construct, change, alter, modify, remodel, move, demolish, and significantly affect properties or districts on the register as provided in TMC 2.62.060; and adopt standards in its rules to be used to guide this review and the issuance of a certificate of appropriateness or waiver.

5. Provide for the review either by the commission or its staff of all applications for approvals, permits, environmental assessments or impact statements, and other similar documents pertaining to identified historic resources or adjacent properties.

6. Conduct all commission meetings in compliance with Chapter 42.30 RCW, Open Public Meetings Act, to provide for adequate public participation and adopt standards in its rules to guide this action.

7. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic resources.

8. Establish liaison support, communication and cooperation with federal, state, and other local government entities which will further historic preservation objectives, including public education, within the city area.

9. Review and comment to the city council on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of the city, other neighboring communities, the county, the state or federal governments, as they relate to historic resources of Tumwater.
10. Advise the city council generally on matters of Tumwater history and historic preservation.
11. Perform other related functions assigned to the commission by the city council.
12. Provide information to the public on methods of maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities.
13. Officially recognize excellence in the rehabilitation of historic buildings, structures, sites and districts, and new construction in historic areas; and encourage appropriate measures for such recognition.
14. Be informed about and provide information to the public and city departments on incentives for preservation of historic resources including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties.
15. Submit nominations to the State and National Registers of Historic Places.
16. Investigate and report to the city council on the use of various federal, state, local or private funding sources available to promote historic resource preservation in Tumwater.

17. Serve as the local review board for special valuation and:

- a. Make determination concerning the eligibility of historic properties for special valuation;
- b. Verify that the improvements are consistent with the Washington State Advisory Council's Standards for Rehabilitation and Maintenance;
- c. Enter into agreements with property owners for the duration of the special valuation period as required under WAC 254-20-070(2);
- d. Approve or deny applications for special valuation;
- e. Monitor the property for continued compliance with the agreement and statutory eligibility requirements during the ten-year special valuation period; and
- f. Adopt bylaws and/or administrative rules and comply with all other local review board responsibilities identified in Chapter 84.26 RCW.

18. The commission shall adopt rules of procedure to address subsections (D)(3), (4), and (6) of this section.

E. Compensation. All members shall serve without compensation.

F. Rules and Officers. The commission shall establish and adopt its own rules of procedure, and shall select from among its membership a chairperson and such other officers as may be necessary to conduct the commission's business.

G. Commission Staff. Professional staff assistance shall be provided to the commission by city staff as may be necessary to aid the commission in carrying out its duties and responsibilities under this section.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O2000-002, Amended, 01/18/2000; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.050 Tumwater register of historic places.

A. Criteria for Determining Designation in the Register. Any building, structure, site, object, or district may be designated for inclusion in the Tumwater register of historic places if it is significantly associated with the history, architecture, archaeology, engineering, or cultural heritage of the community; if it has integrity; is at least fifty years old, or is of lesser age and has exceptional importance; and if it falls in at least one of the following categories:

1. Is associated with events that have made a significant contribution to the broad patterns of national, state, or local history.
2. Embodies the distinctive architectural characteristics of a type, period, style, or method of design or construction, or represents a significant and distinguishable entity whose components may lack individual distinction.
3. Is an outstanding work of a designer, builder, or architect who has made a substantial contribution to the art.

4. Exemplifies or reflects special elements of the city's cultural, social, economic, political, aesthetic, engineering, or architectural history.
5. Is associated with the lives of persons significant in national, state, or local history.
6. Has yielded or may be likely to yield important archaeological information related to history or prehistory.
7. Is a building or structure removed from its original location but which is significant primarily for architectural value, or which is the only surviving structure significantly associated with a historic person or event.
8. Is a birthplace or grave of a historical figure of outstanding importance and is the only surviving structure or site associated with that person.
9. Is a cemetery, which derives its primary significance from age, from distinctive design features, or from association with historic events, or cultural patterns.
10. Is a reconstructed building that has been executed in a historically accurate manner on the original site.
11. Is a creative and unique example of folk architecture and design created by persons not formally trained in the architectural or design professions, and which does not fit into formal architectural or historical categories.

B. Process for Designating Properties or Districts to the Tumwater Register of Historic Places.

1. Any person may nominate a building, structure, site, object, or district for inclusion in the Tumwater register of

historic places. Members of the historic preservation commission or the commission as a whole may generate nominations. In its designation decision, the commission shall consider the Tumwater historic inventory and the Tumwater comprehensive plan.

2. In the case of individual properties, the designation shall include the UTM reference and all features, interior and exterior, and outbuildings which contribute to its designation.

3. In the case of districts, the designation shall include description of the boundaries of the district; the characteristics of the district, which justify its designation; and a list of all properties including features, structures, sites, and objects, which contribute to the designation of the district.

4. The historic preservation commission shall consider the merits of the nomination, according to the criteria in this section and according to the nomination review standards established in rules, at a public meeting. Adequate notice will be given to the public, the owner(s) and the authors of the nomination, if different, and lessees, if any, of the subject property prior to the public meeting according to standards for public meetings established in rules and in compliance with Chapter 42.30 RCW, Open Public Meetings Act. Such notice shall include publication in a newspaper of general circulation in Tumwater, and posting of the property. If the commission finds that the nominated property is eligible for the Tumwater register of historic places, the commission shall make recommendation to the city council that the property be listed in the register with owner's consent. The city council shall make the final designation of the subject property to

the Tumwater register of historic places. The public, property owner(s) and the authors of the nomination, if different, and lessees, if any, shall be notified of the listing.

5. Properties listed on the Tumwater register of historic places shall be recorded on official zoning records with an “HR” (for historic register) designation. This designation shall not change or modify the underlying zone classification.

C. Removal of Properties from the Register.

1. Owner Appeal for Removal. The property owner may appeal to the Tumwater city council in writing to remove the designation of their property to the Tumwater register of historic places citing the circumstances which warrant the removal. The Tumwater city council will act within ninety days of the written appeal with the recommendation of the Tumwater historic preservation commission.

2. Tumwater Historic Preservation Commission Process for Removal. In the event that any property is no longer deemed appropriate for designation to the Tumwater register of historic places by the Tumwater historic preservation commission, the commission may initiate removal from such designation by the same procedure as provided for in establishing the designation, subsection (B)(4) of this section. A property may be removed from the Tumwater register without the owner’s consent.

D. Effects of Listing on the Register.

1. Listing on the Tumwater register of historic places is an honorary designation denoting significant association with the historic, archaeological, engineering, or cultural heritage of the community. Properties are listed

individually or as contributing properties to a historic district.

2. Prior to the commencement of any work on a register property, excluding ordinary repair and maintenance and emergency measures defined in TMC 2.62.030 and those exemptions listed in TMC 2.62.060, the owner must request and receive a certificate of appropriateness from the commission for the proposed work. Violation of this rule shall be grounds for the commission to review the property for removal from the register.

3. Prior to whole or partial demolition of a register property, the owner must request and receive a waiver of a certificate of appropriateness.

4. Properties listed on the Tumwater register of historic places may be eligible for a special tax valuation on their rehabilitation (TMC 2.62.080).

(Ord. O2017-015, Amended, 04/17/2018; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.060 Review of changes to Tumwater register of historic places properties.

A. Review Required. No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the Tumwater register of historic places or within a historic district on the Tumwater register of historic places without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review. Historic cemeteries shall be reviewed under subsection C of this section and in compliance with TMC Chapter 12.40.

The review shall apply to all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form. Information required by the commission to review the proposed changes is established in rules.

B. Exemptions. The following activities do not require a certificate of appropriateness or review by the commission:

1. Ordinary repair and maintenance;
2. Painting as part of ordinary repair and maintenance that is consistent with the historic register designation report for the property;
3. Emergency measures defined in TMC 2.62.030; and
4. Resurfacing of areas such as parking lots, trails, sidewalks, and streets with materials that are consistent with the historic register designation report for the property.

C. Review Process.

1. Requests for Review and Issuance of a Certificate of Appropriateness or Waiver. An applicant shall file their building permit application with a request for review or issuance of a certificate of appropriateness with the department of community development. The building official or director of community development shall report any application for a permit to work on a designated Tumwater register property or in a Tumwater register historic district to the commission. If the activity is not exempt from review, the commission shall notify the applicant of the review requirements. The building official or director of community development shall not issue any such permit until a certificate of appropriateness or a

waiver is received from the commission but shall work with the commission in considering building and fire code requirements.

2. Commission Review. The owner or his/her agent (architect, contractor, lessee, etc.) shall apply to the commission for a review of proposed changes on a Tumwater register property or within a Tumwater register historic district and request a certificate of appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. All such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations within thirty days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time.

The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision, including how the project addresses the Secretary of the Interior's Standards for the Treatment of Historic Properties (and as amended). Rehabilitation will be the default Secretary of Interior standard used, unless the applicant and the commission mutually agree to use one of the other three types of Secretary of the Interior's standards: preservation, restoration, or reconstruction.

Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits

granted. If the owner agrees to the commission's recommendations, a certificate of appropriateness shall be awarded by the commission according to standards established in the commission's rules.

The commission's recommendations and, if awarded, the certificate of appropriateness shall be transmitted to the building official or director of community development. If a certificate of appropriateness is awarded, the building official or director of community development may then issue the permit.

3. Demolition. A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Tumwater register property or in a Tumwater register historic district. The owner or his/her agent shall apply to the commission for a review of the proposed demolition and request a waiver. The applicant shall meet with the commission in an attempt to find alternatives to demolition. These negotiations may last no longer than forty-five days from the initial meeting of the commission, unless either party requests an extension. If no request for an extension is made and no alternative to demolition has been agreed to, the commission shall act and advise the building official or director of community development in charge of issuing a demolition permit of the approval or denial of the waiver of a certificate of appropriateness. Conditions in the case of granting a demolition permit may include allowing the commission up to forty-five additional days to develop alternatives to demolition. When issuing a waiver the commission may require the owner to mitigate the loss of the Tumwater register property by means determined by the commission at the meeting. Any conditions agreed to by the applicant in this

review process shall become conditions of approval of the permits granted. After the property is demolished, the commission shall initiate removal of the property from the register.

4. Appeal of Approval, Denial, or Waiver of a Certificate of Appropriateness. The commission's decision regarding an approval, denial or waiver of a certificate of appropriateness may be appealed to the hearing examiner within ten days. The appeal must state the grounds upon which the appeal is based. The appeal shall be reviewed by the hearing examiner only on the records of the commission. Appeal of the hearing examiner's decision regarding an approval, denial, or waiver of a certificate of appropriateness may be appealed to superior court.

(Ord. O2017-015, Amended, 04/17/2018; Ord. O2014-018, Amended, 12/16/2014; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

2.62.070 Relationship to zoning.

Properties designated to the register shall be subject to the provisions set forth herein, as well as the bulk, use, setback, and other controls of the zoning district in which they are located. Nothing contained herein shall be construed to be repealing, modifying, or waiving any zoning provisions.

(Ord. 1400, Added, 10/19/1993)

2.62.080 Review and monitoring of properties for special property tax valuation.

A. Timelines.

1. Applications shall be forwarded to the commission by the assessor within ten days of filing.

2. Applications shall be reviewed by the commission before December 31 of the calendar year in which the application is made.
3. Commission decisions regarding the applications shall be certified in writing and filed with the assessor within ten days of issuance.

B. Procedure.

1. The assessor forwards the application(s) to the commission.
2. The commission reviews the application(s), consistent with its rules of procedure, and determines if the application(s) are complete and if the properties meet the criteria set forth in WAC 254-20-070(1) and listed in TMC 2.62.050.
 - a. If the commission finds the properties meet all the criteria, then, on behalf of the city, it enters into a historic preservation special valuation agreement (set forth in WAC 254-20-120 and in subsection D of this section) with the owner. Upon execution of the agreement between the owner and commission, the commission approves the application(s).
 - b. If the commission determines the properties do not meet all the criteria, then it shall deny the application(s).
3. The commission certifies its decisions in writing and states the facts upon which the approvals or denials are based and files copies of the certifications with the assessor.

4. For approved applications:
 - a. The commission forwards copies of the agreements, applications, and supporting documentation (as required by WAC 254-20-090(4) and identified in subsection (C)(2) of this section) to the assessor;
 - b. Notifies the State Historic Preservation Officer and the Department of Revenue that the properties have been approved for special valuation; and
 - c. Monitors the properties for continued compliance with the agreements throughout the ten-year special valuation period.
5. The commission determines, in a manner consistent with its rules of procedure, whether or not properties are disqualified from special valuation either because of:
 - a. The owner's failure to comply with the terms of the agreement; or
 - b. Because of a loss of historic value resulting from physical changes to the building or site.
6. For disqualified properties, in the event that the commission concludes that a property is no longer qualified for special valuation, the commission shall notify the owner, assessor, and State Review Board in writing and state the facts supporting its findings.

C. Criteria.

1. Historic Property Criteria. The class of property eligible to apply for special valuation in Tumwater means

only properties listed on the Tumwater register of historic places or properties certified as contributing to a Tumwater register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

2. Application Criteria. Complete applications shall consist of the following documentation:

- a. A legal description of the historic property;
- b. Comprehensive exterior and interior photographs of the historic property before and after rehabilitation;
- c. Architectural plans or other legible drawings depicting the completed rehabilitation work;
- d. Notarized affidavit attesting to the actual cost of the rehabilitation work completed prior to the date of application and the period of time during which the work was performed and documentation of both to be made available to the commission upon request; and
- e. For properties located within historic districts, in addition to the standard application documentation, a statement from the Secretary of the Interior or appropriate local official, as specified in local administrative rules or by the local government, indicating the property is a certified historic structure, is required.

3. Property Review Criteria. In its review the commission shall determine if the properties meet all the following criteria:

- a. The property is historic property;

- b. The property is included within a class of historic properties determined eligible for special valuation by the city under subsection (C)(1) of this section;
- c. The property has been rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) (and identified in TMC 2.62.030) within twenty-four months prior to the date of application; and
- d. The property has not been altered in any way which adversely affects those elements which qualify it as historically significant as determined by applying the Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties (WAC 254-20-100(1) and listed in subsection (C)(4) of this section).

4. Rehabilitation and Maintenance Criteria – The Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties. The following rehabilitation and maintenance standards shall be used by the board as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified:

- a. Rehabilitation.
 - i. Every reasonable effort shall be made to provide a compatible use for a historic property, which requires minimal alteration of the building, structure, or site and its environment, or to use a historic property for its originally intended purpose.

ii. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

iii. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

iv. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

v. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

vi. Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different

architectural elements from other buildings or structures.

vii. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

viii. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.

ix. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

x. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

b. Maintenance.

i. Buildings and structures shall not be allowed to deteriorate beyond the point where routine maintenance and repair will return them to good condition.

ii. Buildings shall be kept in a safe and habitable condition at all times. Structural defects and

hazards shall be corrected. Any condition which constitutes a fire hazard shall be eliminated.

iii. Buildings shall be protected against ongoing water damage due to defective roofing, flashing, glazing, caulking, or other causes. Moisture condensation resulting from inadequate heat or ventilation shall be eliminated if present at levels sufficient to promote rot or decay of building materials.

iv. Deteriorated exterior architectural features and any broken or missing doors and windows shall be repaired or replaced.

v. Painted exterior surfaces shall be maintained and repainted as necessary to prevent a deteriorated appearance or damage to the substrate. Exterior masonry surfaces shall be tuck pointed where required to maintain the mortar in good condition. Finished tuck pointing shall match the original mortar joint in hardness and appearance.

D. Agreement. The following historic preservation special valuation agreement shall be used by the board as the minimum agreement necessary to comply with the requirements of RCW 84.26.050(2):

This Historic Preservation Agreement is entered into on this _____ day of _____ 20__ by and between _____ (hereinafter referred to as APPLICANT) and _____ (hereinafter referred to as LOCAL REVIEW BOARD).

WHEREAS APPLICANT is the owner of record of the historic property commonly known as _____ located at _____, State of Washington, as more fully described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as PROPERTY); and

WHEREAS APPLICANT has requested special valuation of the PROPERTY pursuant to chapter 84.26 RCW; and

WHEREAS the LOCAL REVIEW BOARD has determined that the PROPERTY has been substantially rehabilitated within the two year period preceding the date of application and the actual cost of said rehabilitation equals or exceeds twenty-five percent of the assessed valuation of the PROPERTY prior to the improvements; and

WHEREAS the LOCAL REVIEW BOARD has verified that the PROPERTY is historic property that falls within a class of properties determined eligible for special valuation by local ordinance or administrative rule; and

WHEREAS the LOCAL REVIEW BOARD finds that the rehabilitation work has not altered the PROPERTY in any way which adversely affects those elements which qualify it as historically significant;

NOW THEREFORE, in recognition of the foregoing, the APPLICANT enters into this Agreement with the LOCAL REVIEW BOARD and agrees to adhere to the following terms and conditions for the ten-year period of the special valuation classification:

1. APPLICANT agrees to comply with the Washington State Advisory Council's Standards for the Maintenance and Rehabilitation of Historic

Properties as set forth in Exhibit B, which is attached hereto and by this reference incorporated herein.

2. APPLICANT agrees the property shall not be altered without the prior written consent of the LOCAL REVIEW BOARD signed by a duly authorized representative thereof. No construction, alteration or remodeling or any other action shall be undertaken or permitted to be undertaken which would affect the historic character of the PROPERTY which classifies it as eligible for special valuation, or which would affect the appearance of the PROPERTY as depicted in the photographs attached hereto and incorporated herein by this reference as Exhibits ____ through ____, or which would adversely affect the structural soundness of the PROPERTY; or refinishing of presently existing parts or elements of the PROPERTY subject to this Agreement, damage to which has resulted from casualty loss, deterioration or wear and tear, shall be permitted without the prior approval of the LOCAL REVIEW BOARD, provided that such reconstruction, repair, repainting, or refinishing is performed in a manner which will not alter the appearance of those elements of the PROPERTY and shall include, but not be limited to, any substantial structural change or any change in design, color or materials.

3. APPLICANT agrees the PROPERTY shall not be demolished without the prior written consent of the LOCAL REVIEW BOARD.

4. APPLICANT agrees to make historic aspects of the PROPERTY accessible to the public one day each

year if the PROPERTY is not visible from a public right of way.

5. APPLICANT agrees to monitor the PROPERTY for its continued qualification for special valuation and notify the appropriate County Assessor within 30 days if the PROPERTY becomes disqualified because of:

- a. a loss of historic integrity,
- b. sale or transfer to new ownership exempt from taxation, or
- c. sale or transfer to new ownership which does not intend to agree to the terms of this Agreement nor file a notice of compliance with the County Assessor.

6. The APPLICANT and LOCAL REVIEW BOARD both agree that there shall be no changes in standards of maintenance, public access, alteration, or report requirements, or any other provisions of this Agreement, during the period of the classification without the approval of all parties to this Agreement.

Term of the Agreement. This Agreement shall take effect immediately upon signature and remain in effect until the property is no longer eligible for special valuation either through disqualification under RCW 84.26.080 or upon expiration of the ten-year

period of special valuation commencing January 1, 20__ and ending December 31, 20__.

Hold Harmless. The APPLICANT or its successors or assigns shall hold the State and the LOCAL REVIEW BOARD harmless from any and all liability and claims which may be asserted against the State and the LOCAL REVIEW BOARD as a result of this Historic Preservation Special Valuation Agreement or the participation by the APPLICANT in the Special Valuation Program.

Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of Washington.

E. Appeals. Any decision of the board acting on any application for classification as historic property, eligible for special valuation, may be appealed to superior court under RCW 34.04.130 in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization.

(Ord. O2017-015, Amended, 04/17/2018; Ord. O96-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

Appendix B

July 15, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SAVE THE DAVIS-MEEKER GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her capacity of Mayor
of Tumwater,

Respondent.

No. 58881-1-II

UNPUBLISHED OPINION

CRUSER, C.J.—At the center of this case is a 400-year-old Garry oak tree, known as the Davis Meeker Garry Oak Tree. The tree is located in Tumwater, Washington, and is listed on the city’s historical register as historic property. In 2023, a limb fell from the tree, causing concern and prompting Mayor Debbie Sullivan to commission a risk assessment and report on the health of the tree. Based on the findings of that report, the city decided to remove the tree in the interest of protecting the public. In May 2024, Save the Davis-Meeker Garry Oak, a local advocacy group (Group), filed a complaint for declaratory and injunctive relief and requested a temporary restraining order. The superior court granted the temporary restraining order request, and the city immediately moved to dissolve the temporary restraining order. After hearing arguments from the parties, the superior court granted the city’s motion to dissolve the temporary restraining order, finding that the mayor was not obligated to obtain a permit to remove the tree based on the court’s

reading of relevant municipal codes and state statutes.¹ Accordingly, the court found that the Group failed to establish a clear legal or equitable right, the first element a petitioner seeking a temporary restraining order is required to demonstrate. The Group appeals the order dissolving the temporary restraining order.

We hold that the superior court erred in concluding that the mayor was not required to obtain a permit prior to removing the tree under the Tumwater Municipal Code. We reverse and remand for reinstatement of the temporary restraining order and further proceedings consistent with this opinion.

FACTS

I. BACKGROUND

The Garry oak tree at the center of this case is listed on Tumwater’s historical register.² The tree is categorized on the register as historic property. According to the register, “[t]he tree is significant as a specimen tree of the Garry oak species, believed to be approximately 400 years old.” *Id.* The register explains that the tree provided resources for the Coastal Salish Indigenous people. Adding to the tree’s historical significance, it is rooted on the Cowlitz Trail, the northern branch of the Oregon Trail. *Id.*

In May 2023, according to Mayor Sullivan, “a substantial limb fell partially onto the southbound lanes of Old Highway 99.” Clerk’s Papers (CP) at 116. After the incident, the city

¹ The superior court judge who granted the temporary restraining order was a different judge than the one who granted the motion to dissolve the temporary restraining order.

² *Historical Register: Davis Meeker Garry Oak Tree*, CITY OF TUMWATER, <https://www.ci.tumwater.wa.us/Home/Components/FacilityDirectory/FacilityDirectory/48/3381> [<https://perma.cc/P4HM-4LNM>].

commissioned Sound Urban Forestry to assess the tree. The assessment was performed by a certified arborist and urban forester who is contracted with the city of Tumwater as a tree protection professional. The arborist assigned the tree a high-risk rating. The arborist provided the following comments and recommendation in his report:

With the exception of the recent large branch failures, the Meeker Oak appears to be in very good health. The crown density, leaf color, leaf size and internode growth all indicate a vigorous tree. However, there are structural concerns associated with the significant decay found in the stem base, lower main stem, east facing co-dominant stem and large scaffold branches. Probable future failures include large diameter scaffold branches from the east facing co-dominant stem and the entire west facing co-dominant stem at the union. The associated inclusions and stress loads will contribute to future failures. Structural support systems in conjunction with pruning were considered but the extent of decay in the main stem and upper east side of the canopy removes that as a mitigation option in my opinion.

The other mitigation options are retrenchment pruning and removal. A considerable amount of thought has been put into my final recommendation. The retrenchment option would be controversial to say the least along with the potential of its ineffectiveness. The targets^[3] around this veteran tree are many and high-use and the risk rating would remain high. If the City of Tumwater and the community opts for retrenchment pruning, there will be a need for the development of pruning specifications and a long-term management plan.

Based on my findings and information I have been provided, I am recommending removal.

Id. at 41.

The arborist's report included a memorandum from consulting arborists, whose services the arborist requested "to obtain additional information about the extent of decay at the base of the tree to provide the City of Tumwater with a more informed risk assessment and management recommendations." *Id.* at 48. In the memorandum, the consulting arborist stated:

³ "Targets" in the report refer to Highway 99, parking areas, power-lines, and the aircraft hangar near the tree. CP at 40.

The tomogram indicates there is slightly more sound wood than is required to support the tree. However, due to the extent of the decay and thin shell wall around measuring points 3, 4, and 18 it is my opinion that this tree should be managed as a veteran tree and have retrenchment pruning performed to reduce the tree height and spread by approximately 15 feet. Reducing the tree height and spread will result in lowered wind loads acting on the trunk and branch unions resulting in a lower likelihood of failure.

If this tree is retained, it should be reassessed with sonic tomography in five years to determine if the decay is continuing to spread and what the remaining shell wall is at that time. Additionally, 4 to 6 inches of wood chip mulch should be added within the dripline of the tree to improve soil conditions. The wood chip mulch should be kept 12 inches from the base of the tree.

Id.

Based on the consulting arborists' report, Mayor Sullivan made the decision to remove the tree in order "to protect the public and the City from potential liability." *Id.* at 34.

II. PROCEDURAL HISTORY

The Group, "is a local citizen action group dedicated to protecting the Davis-Meeker Garry Oak and the birds that need it today and tomorrow, using science, advocacy, education, and on-the-ground conservation." *Id.* at 166. On May 24, 2024, the Group filed a complaint for declaratory and injunctive relief in Thurston County Superior Court. The Group asked the superior court to grant a temporary restraining order (TRO) to prevent Sullivan from removing the tree pending further order from the court, and then to grant a permanent injunction barring removal. The Group also sought declaratory judgment that the decision to remove the tree violated the Migratory Bird

Treaty Act of 1918 (MBTA), 16 U.S.C. §§ 703-712, Tumwater Municipal Code (TMC) 2.62.060, TMC 2.62.030, and the Administrative Procedure Act, ch. 34.05 RCW.⁴

The superior court granted the requested TRO, ordering the mayor to “immediately cease and desist from all efforts to remove the Davis Meeker Garry Oak until further court order.” CP at 26. The same day, the mayor filed an emergency motion to dissolve the TRO. The mayor argued that the TRO was deficient because it was issued without notice, it failed to require a bond, and it failed to provide an end date.

On May 31, 2024, the court granted Sullivan’s motion to dissolve the TRO, but first extended the TRO until June 5, 2024, “to provide sufficient time to allow the plaintiffs to make an emergency motion on appeal.” *Id.* at 155. The court issued a short, written order, consisting of two sentences, to this effect. In its oral ruling, the court made the following statements:

THE COURT: . . . Under the law, a party requesting a temporary restraining order must show three things, a clear legal or equitable right, a well-grounded fear of immediate invasion of that right, and that the act complained of will result in actual and substantial injury to the moving party. All of these requirements have to be met, and the plaintiffs have not met the first criteria.

To establish a clear legal or equitable right, the moving party must show that it is likely to prevail on the merits. Here, plaintiffs make a number of claims, and I’ll begin with the claim that the legal right arises from the Tumwater Municipal Code. The mayor’s decision to proceed is compliant with the code. 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.

With respect to the newly raised argument regarding RCW 27.53.060, the defendant is correct that was not briefed previously. A quick look at that statute reveals that that chapter of the law addresses archaeological resources, not trees,

⁴ In June 2024, the Group sought to remove its action to the federal court based on federal question jurisdiction. The federal district court ordered that the case be remanded to Thurston County Superior Court, finding that the Group’s “removal of the state court case under 28 U.S.C. §§ 1441 and 1446 is not effective, and it does not invoke this Court’s jurisdiction.” *Id.* at 337.

No. 58881-1-II

and therefore that is not applicable and it does not provide this court a basis for a finding of clear legal or equitable right.

Id. at 154-55.

The Group sought emergency review from this court. In the emergency appeal, the Group argued that the superior court “failed to consider RCW 27.53.060, under which the mayor cannot cut down the Davis Meeker oak tree without an Archeological Excavation and Removal Permit from the state archaeology department.” *Id.* at 165. The Group also argued that removing the tree without a permit would violate the Tumwater Municipal Code. In July 2024, this court granted an expedited appeal. Comm’r’s Ruling, *Save the Davis-Meeker Garry Oak v. Sullivan*, No. 58881-1-II, at 6 (Wash. Ct. App. July 23, 2024).

ANALYSIS

The Group argues that portions of the Tumwater Municipal Code, such as Tumwater’s historic preservation ordinance (ch. 2.62 TMC) and the city’s tree and vegetation protection ordinance (ch. 16.08 TMC), as well as chapter 27.53 RCW, apply to the Garry oak, and therefore the mayor’s decision to remove the tree without obtaining the necessary permits violated the code and the state statute. The mayor responds that chapter 2.62 TMC (the historic preservation ordinance) does not apply to the tree, but even if it does, the decision to remove the tree was not in violation of the code because an exemption found in TMC 2.62.060(B)(3) applied. The mayor also argues that a different chapter of the municipal code, ch. 16.08 TMC, applies to the tree, and although that chapter also requires a permit prior to tree removal, a similar exemption for hazardous trees applies (TMC 16.08.075(D)(3)), and thus, the decision to remove the tree did not violate either relevant chapter of the TMC. Finally, the mayor contends that chapter 27.53 RCW does not apply to the Garry oak, as the tree is not an archeological object.

We hold that the superior court erred in concluding that no permit was required to remove the tree under the TMC, based on the trial court’s belief that the code provision did not apply to historic trees and only applied to historic structures. Further, we hold that as it relates to historic trees, chapter 2.62 TMC supersedes the tree code found in chapter 16.08 TMC, because TMC 16.08.070(S) states that “[i]n addition to the provisions of this chapter, the cutting or clearing of historic trees requires the issuance of a certificate of appropriateness *in accordance with TMC Chapter 2.62.*” (Emphasis added.) As such, the superior court erred in finding that “the code allows removal of a tree the city determines is posing a hazard,”⁵ because the exemption for hazard trees found in chapter 16.08 TMC does not apply to the tree, and the “[e]mergency measures” outlined in chapter 2.62 TMC refer only to “[e]mergency repair[s]” and do not allow for the removal of the tree without a certificate of appropriateness.

I. STANDARD OF REVIEW

We review orders dissolving temporary restraining orders for abuse of discretion, and we review question of law involved in such orders de novo. *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 104, 297 P.3d 677 (2013).

II. TUMWATER MUNICIPAL CODE

The Group argues that because the tree is listed on Tumwater’s historical register, the mayor must obtain approval from the Tumwater Historic Preservation Commission before removing the tree, relying on ch. 2.62 TMC. According to the Group, the city’s historic preservation ordinance, ch. 2.62 TMC, applies to the tree because the statute applies to any “property” listed on Tumwater’s Register of Historic Places, which the code defines as real

⁵ VRP at 14-15.

property. The Group maintains that the tree constitutes both “real property” and a historic “site” within the meaning of the code. *See* TMC 2.62.030, 2.62.050, 2.62.060. The Group argues, moreover, that the exemptions listed in chapter 2.62 of the code do not apply to the Garry oak.

The mayor asserts that the city’s decision to remove the tree did not violate the municipal code. According to the mayor, the historic preservation ordinance applies only to structures, and thus does not forbid removal of the tree because the tree is not a structure. The mayor also argues that the Garry oak is properly regulated as a heritage tree, and therefore a more specific chapter of the code applies—chapter 16.08, which addresses the protection of trees and vegetation. Under chapter 16.08, the mayor contends, the city is allowed to remove the tree without a permit because TMC 16.08.075(D)(3) exempts dead or hazardous trees from the tree removal permit requirement. Regardless of which chapter of the code governs the tree, the mayor argues, an exemption to the permit requirement applies due to the hazard the tree presents.

In its reply brief, the Group argues that the exemptions to obtaining a tree removal permit under chapter 16.08 TMC do not apply in this case, as “the exemptions in the tree code are exemptions from the tree code, not exemptions from the historic code.” Reply Br. of Appellant at 14. The Group maintains that removal of a historic tree requires a “certificate of appropriateness from the Tumwater Historic Preservation Commission.” *Id.*

A. Chapter 2.62 TMC: The Historic Preservation Ordinance

The purpose of Tumwater’s historic preservation ordinance is “to provide for the identification, evaluation, and protection of historic resources within Tumwater and preserve and rehabilitate eligible historic properties.” TMC 2.62.010. This includes “[s]afeguard[ing] the heritage of Tumwater as represented by those buildings, districts, objects, sites and structures

which reflect significant elements of the city’s history.” TMC 2.62.010(A). Relevant definitions listed in the historic preservation ordinance include:

K. “Emergency repair” means work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.

L. “Historic property” means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is listed in a local register of a certified local government or the National Register of Historic Places.

....

P. An “object” is a thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

....

T. A “site” is a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains, or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now nonexistent building or structure if the location itself possesses historic cultural or archaeological significance.

....

W. A “structure” is a work made up of interdependent and interrelated parts in a definite pattern of organization. Generally constructed by man, it is often an engineering project.

TMC 2.62.030.

Based on a plain reading of the code, we disagree with the Group’s contention that the Garry oak meets the definition of “structure.” However, we agree with the Group that the Garry oak does fall within the code’s definition of “[h]istoric property,” as the tree is “listed in a local register of a certified local government or the National Register of Historic Places.” TMC 2.62.030(L). Tumwater’s historical register dedicates a full webpage to the Davis Meeker Garry Oak Tree. *Historical Register: Davis Meeker Garry Oak Tree, supra*. The register states that the tree is “[l]isted on the Tumwater Register of Historic Places,” and categorizes the tree as “Historic

No. 58881-1-II

Propert[y].” *Id.* The webpage discusses the historical significance of the Davis Meeker Garry Oak Tree. Based on this description, we further agree with the Group that the Garry oak likely also falls within the definition of “site,” as defined in TMC 2.62.030(T), as the register outlines the tree’s “historic cultural [and] archaeological significance.” Accordingly, the tree falls within the purview of chapter 2.62 TMC.

Section 2.62.060 TMC governs “review of changes to Tumwater register of historic places properties.” (Boldface omitted.) Under this section, “[n]o person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the Tumwater register of historic places or within a historic district on the Tumwater register of historic places without review by the commission and without receipt of a certificate of appropriateness.” TMC 2.62.060(A). A “waiver of a certificate of appropriateness,” means that “the commission has reviewed the proposed whole or partial demolition of a local register property or in a local register historic district and failing to find alternatives to demolition has issued a waiver of a certificate of appropriateness which allows the building official or director of community development to issue a permit for demolition.” TMC 2.62.030(Y). The review requirement applies to “all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form.” TMC 2.62.060(A). Therefore, unless an exemption applies—which we discuss below—anyone seeking to remove the Garry oak would need to obtain a certificate of appropriateness under chapter 2.62 TMC.

B. Chapter 16.08 TMC: Protection of Trees and Vegetation

Chapter 16.08 TMC addresses the protection of trees and vegetation. The purposes of this chapter include “retain[ing] trees and vegetation for their positive environmental effects including,

No. 58881-1-II

but not limited to, the protection of wildlife habitat,” and “promot[ing] identification and protection of trees that have historical significance; are unusual due to their size, species, or age; are unusual for their aesthetic quality; or have other values or characteristics that make them worthy of protection.” TMC 16.08.020(C)-(D). The code includes the following classifications of trees:

L. “Hazardous tree” means any tree that, due to its health or structural defect, presents a risk to people or property.

M. “Heritage tree(s)” means tree(s) designated by the city and their owners as historical, specimen, rare, or a significant grove of trees.

N. “Historic tree” means any tree designated as an historic object in accordance with the provisions of TMC Chapter 2.62.

TMC 16.08.030.

Again, the Davis Meeker Garry Oak Tree is listed on Tumwater’s Register of Historic Places, and is categorized as a historic property. *Historical Register: Davis Meeker Garry Oak Tree, supra*. Accordingly, the tree meets the definition of a “heritage tree” as the city has designated it to be historical. Because the tree also meets the definition of “historic object” as defined in TMC 2.62.030(P) (“An ‘object’ is a thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment”), it also falls within the definition of a “[h]istoric tree” under TMC 16.08.030(N).

Because the tree is a heritage tree, “[a] tree removal permit is required for removal.” TMC 16.08.075(D)(1). According to the code, “[t]he city tree protection professional shall evaluate any heritage trees prior to a decision on the removal permit. Recommendations for care, other than removal, will be considered.” TMC 16.08.075(D)(2). As is true with the protections outlined in chapter 2.62, the protections in chapter 16.08 apply to the Garry oak, and the superior court erred

in concluding that “[t]here was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure.” Verbatim Rep. of Proc. (VRP) at 14.

C. Applicability of Exemptions Listed in the Municipal Code

We now turn to the question of whether an exemption from the certificate of appropriateness and the tree removal permit requirements applied in this case.

The trial court found that even if the Tumwater Municipal Code applied to the Davis Meeker Garry Oak Tree, exemptions within the Code allowed the mayor to remove the tree without seeking a certificate of appropriateness or tree removal permit. We disagree.

Under the historic preservation ordinance TMC 2.62.060(B)(3), neither a certificate of appropriateness nor review by the commission is required for any property listed on the register for “[e]mergency measures defined in TMC 2.62.030.” However, “emergency measures” refers to “[e]mergency repair[s],” which is defined as “work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.” TMC 2.62.030(K). The “[e]mergency repair[s]” exemption found in TMC 2.62.030(K) does not allow for removal of the tree.

Although TMC 16.08.075(D)(3) purports to allow for the removal of a heritage tree without a tree removal permit after verification by the city tree professional, TMC 16.08.070(S) provides that “[i]n addition to the provisions of this chapter, the cutting or clearing of historic trees requires the issuance of a certificate of appropriateness *in accordance with TMC Chapter 2.62.*” (Emphasis added.) Thus, as it relates to historic trees, chapter 2.62 TMC supersedes the tree code found in

chapter 16.08 TMC. The seeming inconsistencies in the Tumwater Municipal Code are not for us to resolve.⁶

III. THE TRO

To obtain a TRO, the petitioner must establish “(1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) conduct that has or will result in actual and substantial injury.” *Travis v. Tacoma Pub. Sch. Dist.*, 120 Wn. App. 542, 553, 85 P.3d 959 (2004). In dissolving the TRO, the superior court determined that the Group had not satisfied the first element of establishing a clear legal or equitable right. Whether the Group established a clear legal or equitable right involves questions of both law and fact. With respect to the legal question, the superior court, as we note above, erroneously concluded that the tree did not fall within the purview of the Tumwater Municipal Code, and therefore, the city was not obligated to obtain a permit or approval prior to removing the tree. This erroneous determination of law led the superior court to conclude that the Group lacked a clear legal or equitable right.

CONCLUSION

The superior court took an erroneous view of the law in its application of the Tumwater Municipal Code. Because this erroneous view of the law caused the superior court to hold that the Group could not establish a clear legal or equitable right, the first element it needed to show to obtain a TRO, we remand for reinstatement of the TRO and further proceedings consistent with this opinion.

⁶ In light of our holding as it relates to the Tumwater Municipal Code, we need not address the application of chapter 27.53 RCW.


No. 58881-1-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




CRUSER, C.J.

We concur:



MAXA, J.



VELJACIC, J.