

1 Hearing Date: April 3, 2026
2 Hearing Time: 9:00 a.m.
3 Judge/Calendar: Hon. Anne Egeler
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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF THURSTON

9 SAVE THE DAVIS-MEEKER GARRY
10 OAK,

No. 24-2-01895-34

11 Plaintiff,

**PLAINTIFF’S MOTION TO
AMEND COMPLAINT**

12 v.

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

15 Defendant.
16

17 **I. INTRODUCTION**

18 Plaintiff Save the Davis-Meeker Garry Oak (“SDMGO”) hereby moves to amend its
19 Complaint for Declaratory and Injunctive Relief filed on May 24, 2024. SDMGO moves to
20 formally include the claim that under RCW 27.53.060(1)—Washington’s Archeological Sites and
21 Resources law—the City of Tumwater must obtain a permit from the Washington Department of
22 Archaeology and Historic Preservation (“DAHP”) prior to performing any work on the historic
23 Davis Meeker oak tree. Given that the parties have already engaged in extensive litigation on the
24 merits of this claim, we believe it is already a part of this case. To clarify any disagreement with
25 the City, and to the extent the Court deems it necessary, SDMGO asks the Court grant leave to
26 formally amend the complaint to include this claim pursuant to CR 15(a) and (b). SDMGO also

1 requests that the caption be amended to substitute the current Mayor of Tumwater, Leatta Dahlhoff,
2 in her official capacity, for former Mayor Debbie Sullivan.

3 II. EVIDENCE RELIED UPON

4 This motion relies on the accompanying declaration of Bryan Telegin (March 5, 2026;
5 herein, “Telegin Decl.”) and on the pleadings and filings herein.

6 III. OVERVIEW OF THE LAW

7 Under CR 15(a), a party may amend its pleadings by leave of court and leave to amend
8 “shall be freely given when justice so requires.” Washington courts apply this rule liberally,
9 particularly where amendment will promote resolution of the merits, avoid multiplicity of litigation,
10 and will not prejudice the opposing party. *See Del Guzzi Const. Co. v. Glob. Nw., Ltd., Inc.*, 105
11 Wash. 2d 878 (1986).

12 CR 15(b) enables a plaintiff to amend its complaint to conform to the evidence in the case.
13 The rule contains two related components. Under the first part of the rule, when issues not expressly
14 raised in the pleadings are tried and litigated by the express or implied consent of the parties, those
15 issues are treated as part of the lawsuit. *See* CR 15(b).¹ This reflects the general principle that
16 unpleaded claims become part of the case when the parties litigate them as such.

17 The second part of the rule is similar, although it addresses the scenario where evidence is
18 offered on an unpleaded issue and the opposing party objects.² In that scenario, the court is
19 instructed to “freely” grant amendment of the pleadings when doing so will aid the presentation
20 of the merits of the case, so long as the opposing party is not prejudiced. *See id.* If necessary, the
21 court may grant a continuance to cure any potential prejudice. *Id.*

22
23 ¹ “When issues not raised by the pleadings are tried by express or implied consent of the parties, they
24 shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as
25 may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion
of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of
these issues.” CR 15(b).

26 ² “If evidence is objected to at the trial on the ground that it is not within the issues made by the
pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the
merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission
of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant
a continuance to enable the objecting party to meet such evidence.” CR 15(b).

1 Washington courts recognize that CR 15(b) exists to promote judicial efficiency and avoid
2 unnecessary duplication of litigation. Thus, even when an issue was not expressly pleaded, “a trial
3 court may amend pleadings to conform to the evidence and issues actually litigated before the court
4 to avoid the necessity of a new trial and a multiplying of lawsuits.” *Gravity Segregation, LLC v.*
5 *Reeves*, 16 Wn. App. 2d 1045 (2021) (citing *Green v. Hooper*, 149 Wn. App. 627, 636, *review*
6 *denied*, 166 Wn.2d 1034 (2009)).

7 IV. OVERVIEW OF THE CASE

8 This matter returns to this Court following appellate proceedings during which time the
9 parties litigated, and the City actively contested, whether the City is required to obtain a DAHP
10 permit before removing or altering the historic Davis Meeker oak tree. The Court of Appeals
11 resolved the case on municipal code grounds and expressly declined to reach the merits of whether
12 chapter 27.53 RCW applies to alteration or removal of the Davis Meeker oak. Although not
13 expressly stated in the complaint, SDMGO’s claim that the Davis Meeker Garry oak tree is a
14 protected archeological resource under RCW 27.53.060(1) has been central to the parties’ dispute
15 from the earliest stages of this litigation. The Court of Appeals’ mandate restored jurisdiction to
16 this Court without resolving that statutory question.

17 On May 30, 2024—the day before the hearing on the City’s motion to dissolve the original
18 temporary restraining order (“TRO”) in this case—DAHP sent a letter to the City explaining that
19 the City may not lawfully remove or alter the Davis Meeker oak without first obtaining a permit
20 under Washington’s Archeological Sites and Resources Law, chapter 27.53 RCW. *See* Telegin
21 Decl., Ex. A (May 30, 2024, letter from DAHP). SDMGO submitted that letter to this Court that
22 same day as part of a supplemental declaration to its previously filed response to the City’s motion
23 to dissolve the TRO. *Id.* Telegin Decl., Ex. B (May 30, 2024, Decl. of Ronda Larson).

24 At the TRO hearing the next day, this Court ruled that chapter 27.53 RCW does not appear
25 to protect trees as archeological objects. *See* Order Granting Mot. to Dissolve TRO (May 31, 2024).
26 But the Court’s discussion of that issue was limited to assessing the claim’s likelihood of success
for purposes of granting preliminary relief and was not based on a fully developed evidentiary or
legal record. *Id.*

1 In the months that followed the TRO hearing, DAHP issued two additional substantive
2 letters reiterating that the City is required to obtain a permit before altering or removing the tree.
3 *See* Telegin Decl., Ex. C (June 4, 2024, letter from DAHP to mayor); *see also id.*, Ex. D (July 11,
4 2024, letter from DAHP to Jeffrey S. Myers). In its June 4, 2024, letter to the City and City
5 Attorney’s Office, DAHP expressly stated that “Chapter 27.53 RCW and Chapter 25-48 WAC
6 require a permit . . . for the excavation, alteration, or removal of archaeological resources” referring
7 specifically to the Davis Meeker oak. Telegin Decl., Ex. C (June 4, 2024, letter from DAHP to
8 mayor).

9 The City affirmatively contested DAHP’s June 4, 2024, letter and cited this Court’s
10 preliminary ruling on the TRO dissolution as justification for its position that no permit is
11 necessary. *See* Telegin Decl., Ex. E (June 28, 2024, letter from Jeffrey S. Myers to DAHP, asserting
12 that “the Thurston County Superior Court already determined that the archeological statute did not
13 prevent removal of the tree”). On July 11, 2024, DAHP sent another letter to the mayor’s attorney,
14 comprehensively explaining and reiterating why the City is required to obtain a permit from DAHP
15 before the tree is removed, altered, dug into, excavated, damaged, defaced, or destroyed, and
16 threatened to assess civil penalties if the City did not comply. *See* Telegin Decl., Ex. D (July 11,
17 2024, letter from DAHP to Jeffrey S. Myers).

18 Following dissolution of the TRO, the parties continued to litigate the DAHP permitting
19 issue before the Court of Appeals. The City argued strenuously to the Court of Appeals that chapter
20 27.53 RCW does not apply, asserting that the Davis Meeker oak is not an archaeological object
21 and that DAHP’s interpretation is not entitled to deference. *See* Telegin Decl., Ex. F at 27, 31–38
22 (Sept. 13, 2024, Respondent’s Brief) (arguing that “[o]n the merits, RCW 27.53.060 is not
23 applicable to the [Davis Meeker oak], nor is the tree even within DAHP’s purview”). The City
24 further asserted this position in response to an amicus brief from DAHP, arguing that “the tree is
25 not an archaeological object under RCW 27.53.” Telegin Decl., Ex. G at 7–21 (Oct. 31, 2024,
26 Respondent’s Answer to DAHP Amicus Brief).

The Court of Appeals expressly acknowledged that this Court had issued a preliminary
ruling on the applicability of chapter 27.53 RCW at the initial TRO hearing and quoted that ruling

1 in its opinion. Telegin Decl., Ex. H at 5–6 (July 15, 2025, Unpublished Opinion). However, the
2 Court of Appeals ultimately resolved the appeal on other grounds—holding that the City violated
3 the Tumwater Municipal Code (“TMC”)—and declined to resolve the merits of the DAHP
4 permitting issue. *Id.* at 13, n. 6. After resolving the appeal on other grounds, the Court of Appeals
5 remanded the matter back to this Court in its mandate of August 19, 2025.

6 Because the DAHP claim was never adjudicated on a full merits record, and because the
7 parties continue to dispute whether DAHP approval is legally mandatory, amendment is necessary
8 to allow the Court to resolve that question in an orderly and definitive manner.

9 V. ARGUMENT

10 A. The DAHP Issue Has been Actively Litigated Since the Outset, Squarely 11 Supporting Amendment Under CR 15(b)

12 At this point, the parties have already spent a great deal of time litigating the merits of
13 SDMGO’s claim that the City is required to obtain a permit from DAHP before altering or
14 removing the Davis Meeker oak tree. The City opposed the merits of this claim to the Court of
15 Appeals, arguing that because the Davis Meeker oak tree is not an archeological object it is not
16 subject to DAHP permitting. *See* Telegin Decl., Ex. H at 6 (July 15, 2025, Unpublished Opinion)
17 (noting that “the mayor contends that chapter 27.53 does not apply to the Garry oak, as the tree is
18 not an archeological object”); *see also* Telegin Decl., Ex. F at 27 (Sept. 13, 2024, Respondent’s
19 Brief) (arguing that “[o]n the merits, RCW 27.53.060 is not applicable to the [Davis Meeker oak],
20 nor is the tree even within DAHP’s purview”). The City has actively opposed the merits of this
21 claim to DAHP, stating that the City disagrees with DAHP and that it is not required to obtain a
22 permit. Telegin Decl., Ex. E (June 28, 2024, letter from Jeffrey S. Myers to DAHP). The City made
23 its opposition even clearer in its answer to DAHP’s amicus brief filed with the Court of Appeals.
24 Telegin Decl., Ex. G at 7–21 (Oct. 31, 2024, Respondent’s Answer to DAHP Amicus Brief). The
25 City has also opposed the claim to SDGMO directly, sending an email to SDMGO’s counsel
26 asserting that even though it had obtained permits, the City “does not believe that such permits are
legally required.” Telegin Decl., Ex. I (May 1, 2025, email from Mayor Sullivan’s attorney).

1 At the TRO stage, this Court addressed chapter 27.53 RCW in the context of ruling on
2 SDMGO’s likelihood of success in prevailing on the lawsuit. Order Granting Mot. to Dissolve TRO
3 (May 31, 2024) (finding that RCW 27.53 does not apply). Thus, the Court’s discussion of that issue
4 was not a final ruling on the merits, and SDMGO’s current request to amend its complaint is not
5 an attempt to relitigate or reconsider a decided claim. Instead, it is the procedural mechanism
6 necessary to allow the Court to resolve an issue that has been actively litigated but never formally
7 pleaded or decided.

8 Under CR 15(b), the amount of litigation over this claim would ordinarily mean that the
9 claim is treated as part of the case. However, SDMGO acknowledges that the City technically
10 objected to this Court’s consideration of the DAHP claim at the initial TRO hearing, placing this
11 motion under the second prong of CR 15(b). *See* Telegin Decl., Ex. J at 13 (May 31, 2024, Verbatim
12 Report of Proceedings) (arguing that the DAHP permit claim goes beyond the pleadings and should
13 not be considered).

14 Nevertheless, under the second part of CR 15(b), leave to amend should be freely granted
15 because amendment will plainly aid in the presentation of the merits and will not prejudice the
16 City. *See* CR 15(b). The City has long had actual notice of SDMGO’s DAHP claim and has already
17 developed and presented its defenses in multiple forums. The final merits hearing in this case is not
18 scheduled until October 19, 2026, leaving ample time—approximately seven months—for any
19 additional preparation that the City might need. *See* Order Setting Case Schedule (Oct. 23, 2025).
20 Even if the Court were to find potential prejudice, CR 15(b) authorizes a continuance, though none
21 is warranted here.

22 It is also worth noting that the TRO dissolution hearing occurred on a severely shortened
23 timeline, depriving SDMGO of a meaningful opportunity to include this claim at that stage.
24 SDMGO had only three judicial days’ notice before the hearing and did not learn that the hearing
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1 had been set until the same day its response was due. Had ordinary briefing timelines applied, the
2 DAHP claim could have been timely included.³

3 **B. Amendment is Independently Warranted Under CR 15(a)**

4 Even apart from CR 15(b), amendment is independently warranted under CR 15(a), which
5 directs that leave shall be freely given when justice so requires. Allowing amendment here will
6 promote resolution of the merits, avoid duplicative litigation, and cause no prejudice to the City.
7 As a practical matter, granting leave to amend is the most judicially efficient course. If amendment
8 were denied, SDMGO would file a separate action asserting the same DAHP claim and seek
9 consolidation, needlessly multiplying proceedings. CR 15(b) exists precisely to avoid that result.
10 *See Gravity Segregation*, 16 Wn. App. 2d at 1045.

11 **VI. CONCLUSION**

12 For all of the reasons above, and pursuant to Rule 15(a) and (b), Plaintiff Save the Davis-
13 Meeker Garry Oak respectfully requests that this Court grant this Motion to Amend Complaint.

14 A proposed order is submitted herewith.

15 Our proposed First Amended Complaint is attached hereto as Attachment A.

16 Dated this 16th day of March, 2026, at Bremerton, Washington.

17 Presented by:

18 TELEGIN LAW PLLC

LARSON LAW, PLLC

19
20 By: 

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

By: 

Ronda Larson Kramer,
WSBA No. 31833

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

24
25 _____
26 ³ Normally, under Thurston County LCR 5, briefs must be filed at least six business days before the hearing, and opposing briefs and all related materials must be submitted three business days before the hearing. Because the hearing and briefing schedule was set on a shortened time, SDGMO did not have the allotted time to attach the May 30, 2024, letter from DAHP to its response to the City's Motion to Dissolve the TRO.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 16, 2026, I caused to be served a true and correct copy of the
3 foregoing document on each of the people listed below in the manner indicated.

4 Jeffrey Scott Myers
5 Jakub Lukasz Kocztorz
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11 Ronda Larson Kramer
12 Larson Law PLLC
13 Of Attorneys for Plaintiff Save the Davis-Meeker Garry Oak
14 *Via email to ronda@larsonlawpllc.com*

15 Dated: March 16, 2026

16 TELEGIN LAW PLLC

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Jamie Telegin, Legal Assistant

ATTACHMENT A

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

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

LEATTA DAHLHOFF, in her capacity of Mayor of
Tumwater

Defendant.

Case No. 24-2-01895-34

PROPOSED

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

INTRODUCTION

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

1 **JURISDICTION**

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

5 **PARTIES**

6
7 3. Plaintiff, Save the Davis-Meeker Garry Oak, is a local citizen action group
8 dedicated to protecting the Davis-Meeker Garry Oak and the birds that need it today and
9 tomorrow, using science, advocacy, education, and on-the-ground conservation. See
10 <https://www.davis-meeker-oak.org/>. Founded in 2024, its Facebook group currently has 147
11 members.

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

18 **BACKGROUND**

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

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

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

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

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

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

22 10. The city was required to notify the tribes before cutting the tree. They apparently
23 were not notified. A third party notified them instead just recently, and they indicated they want
24
25

1 to have time to review this before providing feedback. Decl. of Ronda Larson Kramer, at para.
2 6.

3 ARGUMENT

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

11
12 12. Tumwater cannot remove the Davis-Meeker Oak because it would violate the
13 Migratory Bird Treaty Act (MBTA). That act broadly applies, by its plain terms, to the killing
14 of any migratory bird “at any time, by any means or in any manner.” 16 U.S.C. § 703(a). MBTA
15 Section 2(a) makes it unlawful to, among other things, “kill” or “take” a migratory bird (or its
16 nest or eggs), acts that are punishable under Section 6(a) as misdemeanor crimes.¹ Courts have
17 been faced with defining what constitutes a “taking” of migratory birds under the MBTA.
18 Although the statute itself does not define the term “take,” the MBTA regulations define the
19 term “take” as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect.”² In general, the
20 courts have looked at three different types of actions or omissions that result in the taking of
21 migratory birds: 1. direct and intentional acts or omissions; 2. direct and unintentional acts or
22 omissions; and 3. indirect and unintentional acts or omissions (incidental take).

23
24
25 ¹ 16 U.S.C. §§ 703(a), 707(a). Knowingly taking a migratory bird to sell or with the intention of selling it is a felony
crime under § 707(b).

² 50 C.F.R. § 10.12.

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

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

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

16 16. Tumwater’s municipal code also prohibits the mayor from carrying out her plan
17 to cut down the tree without a permit. TMC § 2.62.060 and TMC § 2.62.030 plainly require a
18
19

20
21 ³ 16 U.S.C. § 707(a)–(b).

⁴ *Id.* § 707(a).

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

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

⁷ *Id.*

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

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

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

12
13 **CLAIMS**

14 **Count One**

15 **The Proposed Action Violates the MBTA**

16
17 31. The mayor’s plan contravenes the plain language and conservation purpose of
18 the MBTA. Defendant also violated MBTA by failing to evaluate all reasonable alternatives,
19 such as delaying action until after nesting season and/or pruning and cabling.

20 **Count Two**

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

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

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

6 **Count Three**

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

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests this Court:

- 13
- 14 A. Declare that the decision to remove the tree violates the MBTA,
15 TMC § 2.62.060 and TMC § 2.62.030 and Administrative Procedure Act;
- 16 B. Declare that the City of Tumwater is required to obtain a permit from DAHP
17 under Washington's Archeological Sites & Resources Law prior to removing, altering,
18 damaging, defacing, or destroying the historic tree;
- 19 C. Grant an immediate Temporary Restraining Order restraining the Tumwater
20 mayor from removing the tree pending further order of this Court;
- 21 D. Grant a permanent injunction barring removal of the tree;
- 22 E. Award Plaintiff its costs of litigation; and
- 23 F. Grant Plaintiff such other relief as the Court deems just and proper.
24
25

1 RESPECTFULLY SUBMITTED this _____ day of April, 2026.

2
3
4 TELEGIN LAW PLLC

LARSON LAW, PLLC

5
6
7 By: _____
8 Bryan Telegin, WSBA No. 46686
9 Abigail McCeney, WSBA No. 63974

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Ronda Larson Kramer,
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