

☐ EXPEDITE
☒ Hearing is set:
Date: December 26, 2024
Time: 9:00 a.m.
Judge/Calendar: Hon. Anne Egeler

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

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

DEBBIE SULLIVAN, in her capacity of Mayor
of Tumwater,

Defendant.

NO. 24-2-01895-34

DECLARATION OF JEFFREY S.
MYERS RE MOTION FOR PARTIAL
SUMMARY JUDGMENT

I, Jeffrey S. Myers, hereby states and declares as follows:

1. I am the attorney for Defendant Mayor Debbie Sullivan, who has been sued in her official capacity as Mayor of the City of Tumwater in the above entitled matter. I am over the age of 18, am competent to testify herein, and make this declaration based upon personal knowledge.

2. Following the issuance of the Court of Appeals Opinion and Mandate to the trial court for further proceedings, I tried to contact counsel for the plaintiffs in this matter to discuss what further relief they believed might be appropriate. I hoped that we could reach an agreement to follow the ruling issued by the Court of Appeals without the need for expending further funds on a contested court motion. I sent an email to plaintiff's counsel on September 26, 2025 asking what process they envisioned be pursued in light of the Court of Appeals ruling and the City's decision to pursue mitigation rather than removal of the Davis Meeker Garry Oak. This email is attached as **Exhibit 1**. Plaintiff's counsel did not respond.

DECLARATION OF JEFFREY S. MYERS RE MOTION
FOR PARTIAL SUMMARY JUDGMENT – 1

Cause No.: 24-2-01895-34

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 R.W. JOHNSON RD. TUMWATER, WA 98512
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880
(360) 754-3480 FAX: (360) 357-3511

1 3. On October 3, 2025, I received the trial scheduling questionnaire that the plaintiffs are
2 required to serve on opposing parties from plaintiffs' counsel. Their email did not address my questions
3 about how to proceed, so I followed up with a reply asking what processes they envisioned following the
4 Court of Appeals ruling. My October 3, 2025 email exchange with plaintiffs' counsel is attached as
5 **Exhibit 2**. Plaintiff's counsel did not respond..

6
7 4. On October 22, 2025, I received an email from court staff responding to an ex parte
8 communication that was sent by plaintiffs' counsel seeking dates for a summary judgment motion. That
9 email is attached as **Exhibit 3**. Counsel for plaintiffs had not contacted me about scheduling such a motion
10 or what relief such a motion would be seeking. I was omitted from their communications with the Court
11 staff about such a motion. I responded by phoning Mr. Telegin to discuss scheduling of such a motion
12 and hopefully avoidance of a contested motion if an agreement was possible consistent with the Court of
13 Appeals ruling. Mr. Telegin abruptly stated that he was unwilling to discuss the case with me and refused
14 to discuss the scheduling or relief he was seeking. He stated that he did not wish to discuss his "legal
15 strategy" with me. He then terminated the phone call. I immediately sent him an email confirming the
16 conversation and his refusal to discuss scheduling of his planned summary judgment motion or the status
17 of the case with me, which is attached as **Exhibit 4**. Again, plaintiff's counsel did not respond.

18
19 5. The City has informed plaintiff since June 5, 2025 that it would not be removing the Davis
20 Meeker Garry Oak until further information was obtained and alternatives were considered. During
21 consideration of the appeal of this matter, which was granted on an expedited basis, Plaintiffs moved for
22 extensions of time to refile their reply brief. In so moving, they acknowledged that the City was no longer
23 planning to cut down the tree. In support of a request to delay compliance with the court's order to refile
24
25
26

1 their reply brief, Plaintiff claimed that circumstances had materially changed. On October 10, 2024,
2 SDMGO asserted:

- 3 • Since [expedited review was sought], circumstances have changed. The mayor no
4 longer is threatening to immediately cut down the historic tree. (Reply in Support of
5 Motion for Extension at 2).
- 6 • In short, the circumstances that led SDMGO to request expedited review no longer
7 exist. The mayor no longer has imminent plans to remove the tree. She does not even
8 possess the very study she now says she needs to evaluate the tree's condition and to
9 determine how the tree should be managed in the future. (Reply in Support of Motion
10 for Extension at 2-3).

11 6. The City twice moved to dismiss the case as moot in light of the plaintiff's
12 acknowledgement that there was no immediate threat to cut the tree down. In support of those motions,
13 the City filed two declarations by Mayor Debbie Sullivan explaining the city's decisions to obtain a second
14 opinion, and based on that second opinion, its decision to pursue mitigation of the tree's health and
15 retention of the tree instead of removal of the tree. The declarations of Debbie Sullivan (exhibits thereto
16 omitted) dated July 15, 2024 and May 12, 2025 are attached as **Exhibits 5 and 6**. In response, Plaintiff
17 argued that a voluntary change of plans did not moot the case and urged the court to decide the appeal on
18 the merits. The Court did so and issued its opinion holding that approval of the Tumwater Historic
19 Preservation Commission is required prior to removal of the Davis Meeker Garry Oak. The City did not
20 appeal that decision and it is the law of the case.

21 **I make this declaration under penalty of perjury under the laws of the state of Washington.**

22 Dated this 12th day of December 2025 at Tumwater, Washington.

23
24 

25 Jeffrey S. Myers, WSBA #16390
26

Exhibit 1

Jeff Myers

From: Jeff Myers
Sent: Friday, September 26, 2025 1:21 PM
To: 'Bryan Telegin'; Jakub Kocztorz
Cc: Ronda Larson Kramer; Jamie Telegin
Subject: RE: SDMGO v. City of Tumwater, Thurston County Sup. Ct. No. 24-2-01895-34

Thanks Bryan.

What do you envision is left following the court of appeals determination, especially given the City's pursuit of mitigation rather than removal of the DMGO?

Jeff

Jeffrey S. Myers

Law, Lyman, Daniel, Kamerrer
& Bogdanovich, P.S.
2674 R.W. Johnson Blvd. SW
Tumwater, WA 98512

Mailing Address
P.O. Box 11880
Olympia, WA 98508

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From: Bryan Telegin <bryan@teleginlaw.com>
Sent: Friday, September 26, 2025 1:18 PM
To: Jeff Myers <jmyers@lldkb.com>; Jakub Kocztorz <jkocztorz@lldkb.com>
Cc: Ronda Larson Kramer <ronda@larsonlawpllc.com>; Jamie Telegin <jamie@teleginlaw.com>
Subject: SDMGO v. City of Tumwater, Thurston County Sup. Ct. No. 24-2-01895-34

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Mr. Myers and Mr. Kocztorz,

Pursuant to Thurston County LCR 40, attached is the notice of assignment, notice of trial setting, and blank scheduling questionnaire in the above referenced case.

-Bryan Telegin
Counsel for SDMGO

Bryan Telegin

Telegin Law pllc
216 6th Street
Bremerton, WA 98337
Tel: 1.206.453.2884, ext. 101
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<http://teleginlaw.com>

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Exhibit 2

Jeff Myers

From: Jeff Myers
Sent: Friday, October 3, 2025 11:27 AM
To: 'Jamie Telegin'; Jakub Kocztorz; Lisa Gates; tam truong
Cc: Bryan Telegin; Ronda Larson Kramer
Subject: RE: SDMGO v. Debbie Sullivan: Scheduling Questionnaire

Jamie, Bryan

I asked last week what the plaintiffs envision occurring on remand, and perhaps my question was overlooked. Perhaps you just want to wait until after the mayoral election, but I would like to figure out what further processes you envision following the Court of Appeals ruling.

Jeff

Jeffrey S. Myers

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& Bogdanovich, P.S.
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From: Jamie Telegin <jamie@teleginlaw.com>
Sent: Friday, October 3, 2025 11:24 AM
To: Jakub Kocztorz <jkocztorz@lldkb.com>; Jeff Myers <jmyers@lldkb.com>; Lisa Gates <lisa@lldkb.com>; tam truong <tam@lldkb.com>
Cc: Bryan Telegin <bryan@teleginlaw.com>; Ronda Larson Kramer <ronda@larsonlawpllc.com>
Subject: SDMGO v. Debbie Sullivan: Scheduling Questionnaire

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Good morning,

Please see the attached Scheduling Questionnaire filed with the court today.

Thank you,

Jamie Telegin
Legal Assistant/Office Manager

Telegin Law pllc
216 6th Street
Bremerton, WA 9833
Tel: 1.206.453.2884, ext. 102
Email: jamie@teleginlaw.com
<http://teleginlaw.com>

Exhibit 3

Jeff Myers

From: Stephanie Foster <stephanie.foster@co.thurston.wa.us>
Sent: Wednesday, October 22, 2025 8:06 AM
To: Jamie Telegin
Cc: ronda@larsonlawpllc.com; bryan@teleginlaw.com; Jeff Myers; Jakub Kocztorz
Subject: RE: Save the Davis-Meeker Gary Oak v. Sullivan - Case No. 21-2-01895-34
Attachments: Notice of Hearing - Civil 11.28.23.pdf

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Good morning,

Thank you for reaching out. Superior court staff do not note hearings or reserve hearing slots. Once you have identified an open court session by visiting [Civil / Criminal Available Hearing Times](#), parties would then note the hearing through the clerk's office by filing a Notice of Hearing – Civil, form attached.

Please note, dispositive motions require noting 28 days in advance. Be sure to consult local and state court rules.

[Washington State Court Rules for Superior Court](#)

[Thurston County Superior Court Local Court Rules](#)

As always, feel free to reach out with any additional questions.

Best,

Stephanie Foster

Stephanie Foster

Judicial Assistant to Judge Carol Murphy & Judge Anne Egeler

Thurston County Superior Court
Main Campus Court Administration

IMPORTANT: To avoid inappropriate *ex parte* contact with the Court, always include opposing parties and/or counsel in emails to this address.

To manage the extreme volume of e-mails received by the court and better enable us to focus on priorities, the court does not accept bench copies via email.

Thank you for your compliance with the court's expectations!



Think Green. Before printing this e-mail ask yourself: "Do I need a hard copy?"

From: Jamie Telegin <jamie@teleginlaw.com>
Sent: Tuesday, October 21, 2025 11:13 AM
To: Stephanie Foster <stephanie.foster@co.thurston.wa.us>
Subject: Save the Davis-Meeker Gary Oak v. Sullivan - Case No. 21-2-01895-34

Ms. Foster,

Plaintiff's counsel would like to schedule a motion for summary judgment to be heard on December 5, 2025, at 9:00 a.m. Looking at the online calendar, it appears that Judge Egeler has two spots available. Do we schedule this through you?

Thank you,

Jamie Telegin
Legal Assistant/Office Manager

Telegin Law pllc
216 6th Street
Bremerton, WA 9833
Tel: 1.206.453.2884, ext. 102
Email: jamie@teleginlaw.com
<http://teleginlaw.com>

Exhibit 4

Jeff Myers

From: Jeff Myers
Sent: Wednesday, October 22, 2025 11:35 AM
To: Bryan Telegin; ronda@larsonlawpllc.com
Subject: SDMGO v. Sullivan

Good morning,

Earlier this morning I received an email from the Superior court's judicial assistant about a possible summary judgment motion for December 5. Since you had not contacted me about such a motion, even for scheduling purposes, this came as a surprise. I sent you an email on September 26 and again on October 3 asking what you envisioned would happen on remand. You chose not to respond in any way. Instead, you directly contacted the court without the courtesy of copying our office.

Today I called to discuss next steps with Bryan, who stated he wasn't interested in talking or informing me what relief you would be asking from the court, so we could avoid a contested motion proceeding. At present, the City is pursuing the mitigation strategy and evaluation of the tree as per the second arborist report. Do you want that activity stopped? It would be helpful to discuss your objections and what relief is being sought via a summary judgment motion.

I understand if my call caught Bryan off guard and he was not ready to discuss. My suggestion to him was that we discuss a stipulated order without expending additional funds in a contested motion proceeding. You both have made clear your concerns about such expenditures and my client shares the desire to minimize expense. However, by refusing to talk to me, you are forcing such expense, not only for the City, but for your own clients. I believe there is a more productive way to achieve a resolution here, which is to discuss, in good faith, what relief you are seeking.

Please let me know if you are willing to have such a discussion and when you may be available.

Jeffrey S. Myers

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& Bogdanovich, P.S.
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Exhibit 5

**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

**DECLARATION OF
MAYOR DEBBIE
SULLIVAN**

Debbie Sullivan hereby states and declares as follows;

1. I am over the age of 18, am competent to testify herein and make this declaration on personal knowledge. I am the Mayor of the City of Tumwater and defendant in this matter.
2. On June 4, 2024, I presided over a city council meeting that involved comments from numerous members of the public asking the City to reconsider removal of the Davis Meeker Garry Oak (DMGO). The public asked for consideration of alternatives to removal, including mitigation measures, and to get additional information about the condition of the tree. At the

conclusion of the meeting, I stated that the City would obtain a second, independent opinion to evaluate the tree. I stated that the opinion would need to be from a qualified arborist who had no involvement with the tree but would be totally independent.

3. To carry out the third-party review, the City issued a request for qualifications (RFQ) seeking qualified arborists capable of carrying out an independent assessment of the condition of the tree. The RFQ was issued by the City on July 3, 2024, and responses are due to the City on July 18, 2024. We have yet to hire an arborist.

4. Any decision about whether to remove the DMGO or to pursue mitigation strategies has been deferred until after the independent assessment is completed. I have not prejudged the outcome of this assessment, as alleged by Ms. Larson Kramer and the plaintiffs. Ms. Larson Kramer bases her allegations on a newspaper article where I responded to a question about whether the road would be widened if the tree were removed. I responded that it would not, as the site would remain historically significant,

although, in that hypothetical scenario, the tree would not be there. The question itself assumed removal of the tree.

5. The Motion for an Injunction distorts what I said and misquotes me. Motion at 26. I did not tell “the Olympian a week later, without qualification, that the tree will not be there ultimately.” Motion at 26. The Motion does not even accurately state what the Olympian article attached to Ms. Larson Kramer’s declaration says. The article says that if the tree is removed, the road will not be widened and there will be a memorial there.

6. Any decision about the tree’s removal will be made only after the independent assessment. Plaintiff’s suggestion that there is an ulterior motive to remove the tree to allow widening of the road is categorically false. There are no plans to expand or relocate the roadway, whether the tree is there or not. Whether the tree must be removed, or whether mitigation measures are feasible will not be decided until the RFQ process is completed and a second opinion obtained. If there was any other intention, the City could have proceeded to remove the tree when the

plaintiffs failed to file a timely motion within the 5 days allowed by the Superior Court and allowed the order vacating the TRO to become effective. I did not do so, but instead asked for a second opinion.

7. At present the City faces significant legal risks of liability if the tree were to drop a limb or collapse. The tree is located in the City owned right of way for Old Highway 99, one of the most traveled roadways in the City. The tree canopy, consisting of large branches and stems hangs directly over the roadway. My motivation here is to protect the safety of the traveling public and prevent liability of the City. At present, the City has a report classifying the tree as a "high risk" and recommending removal. If the City were to leave it in place and a member of the public were injured or killed, the City could be liable for millions of dollars for failing to provide a roadway that was safe and failing to remove a known hazard. Every day that passes subjects the City to additional risk of substantial legal liability.

8. We are proceeding with hiring an arborist qualified to render an independent opinion about the tree. We anticipate that this evaluation will be completed and a report is estimated to be rendered by the end of August. By that time, any migratory birds nesting in the tree will have fledged and are not expected to impact the decision. The decision is about the risks to public safety posed by decay and rot that was reported to be present in the DMGO by the City's tree professional.

DATED this 12th day of July, 2024 at Tumwater, Washington.


Debbie Sullivan

Exhibit 6

FILED
Court of Appeals
Division II
State of Washington
5/12/2025 3:33 PM

**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

**DECLARATION OF
MAYOR DEBBIE
SULLIVAN**

Debbie Sullivan hereby states and declares as follows:

1. I am over the age of 18, am competent to testify herein and make this declaration on personal knowledge. I am the Mayor of the City of Tumwater and defendant in this matter.

2. On June 4, 2024, I presided over a city council meeting that involved comments from numerous members of the public asking the City to reconsider removal of the Davis Meeker Garry Oak (DMGO). The public asked for consideration of alternatives to removal, including mitigation measures, and to get additional information about the condition of the tree. At the

conclusion of the meeting, I stated that the City would obtain a second, independent opinion to evaluate the tree.

3. To carry out the third-party review, the City issued a request for qualifications (RFQ) seeking qualified arborists capable of carrying out an independent assessment of the condition of the tree. The RFQ was issued on July 3, 2024.

4. After reviewing several responses to the RFQ, the City retained Todd Prager & Associates (“Todd Prager”) as the independent arborist qualified to render an independent opinion about the tree. Todd Prager & Associates was selected and prepared a scope of work in August 2024. On August 22, 2024, the City wrote to the Department of Archeology and Historic Preservation (DAHP) to request emergency permits for the investigation, if such permits were considered necessary. **Exhibit 1.** On August 23, 2024, DAHP responded that permits were needed for invasive investigations, but not for non-invasive evaluation such as sonic tomography or visual inspections.

Exhibit 2.

5. The City had Todd Prager proceed with non-invasive investigations while it applied for DAHP permits for the remaining activities. An archeologist was hired and an application was submitted to DAHP on October 24, 2024.

Exhibit 3. On December 2, 2024, DAHP granted the permits.

Exhibit 4.

6. Todd Prager completed its investigation and on February 7, 2025 issued a report recommending mitigation and maintenance instead of removal. **Exhibit 5.** The report conducted more extensive testing and included additional tests not conducted by the prior arborist, including additional sonic tomography and more intrusive testing than was conducted by the initial arborist. Specifically, the report recommended Option B which includes:

- Tree retention;
- Reduction pruning to reduce risk of branch failure;
- Installing supplemental support to further reduce risk of branch failure and reduce the likelihood of target impacts;

- Root zone management to improve soil and root zone conditions; and
- Ongoing monitoring on a five year or less interval to proactively address ongoing risks.

7. Todd Prager presented their recommendation to me and later reviewed their report during a City Council Work Session to review its recommendations. After careful consideration of the second opinion, I made a final decision to implement Option B as the recommendation of Prager & Associates. This decision revises my previous determination and now chooses to retain the tree, pursuing a strategy of mitigation and maintenance instead of removal.

8. To implement the new recommendations, a cost estimate was prepared and presented to the City Council showing expected costs of \$29,672.50 to \$49,722.50. **Exhibit 6.** The Mayor requested an appropriation to financially support the ongoing costs of tree mitigation and maintenance. The Council then adopted Resolution 2025-009 which provided the necessary funding and under which I am “authorized to take any and all

actions necessary and proper to carry out measures including mitigation and maintenance activities to retain the tree in a safe condition.” A copy of Resolution 2025-009 is attached as **Exhibit 7.**

9. The funding provided includes costs necessary to seek permits. Consistent with our approach to obtaining permits for the investigation, the City will seek permits from DAHP for the necessary maintenance in order to preserve the tree. I will be periodically reporting to the Council on the tree’s condition and make additional recommendations on the long-term funding, mitigation and maintenance of the Davis Meeker Garry Oak Tree. Any change to the decision to mitigate and maintain the tree will be reported to Council prior to any action being implemented.

DATED this 12th day of May, 2025 at Tumwater, Washington.

Signed by:

945DD615DF7D4C0...
Debbie Sullivan