IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NO. 58881-1-II

SAVE THE DAVIS-MEEKER GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her capacity of Mayor of Tumwater,

Respondent.

APPELLANT'S ANSWER TO RESPONDENT MAYOR DEBBIE SULLIVAN'S MOTION TO DISMISS APPEAL

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INTRODUCTION

One year after the historic Davis Meeker oak dropped a branch, and a mere week after the citizen group filed its complaint in this case, the superior court expedited review and ruled on the merits. It held that the mayor of the City of Tumwater could remove the tree without a permit. No issues are left pending in the superior court. If this Court grants the mayor's motion to dismiss the appeal as moot, it will make the superior court's rushed (and erroneous) merits ruling res judicata. This would make it virtually impossible to obtain a fair hearing on the issues. And that would violate the right to due process. The mayor continues to maintain that she needs no permit to remove the tree, since that is what the superior court held. A future mayor could make the same claim. Thus, that issue is capable of repetition and of evading review.

This is the mayor's second motion to dismiss this appeal as moot based on a voluntary suspension of her year-long campaign to remove the tree. The Court correctly denied the

mayor's prior motion, ruling that a defendant's voluntary cessation of illegal conduct does not moot a case because there is still a likelihood of the illegal conduct recurring. Ruling Denying Mot. to Dismiss Appeal at 2 (Dec. 6, 2024). The Court should deny the current motion to dismiss for the same reason. The mayor's voluntary cessation of illegal conduct does not moot this appeal so long as she is free to change her mind.

EVIDENCE RELIED UPON

This Answer relies on the accompanying declaration of Bryan Telegin ("Telegin Decl.") and on the pleadings and filings herein.

FACTS RELEVANT TO ANSWER

A. The mayor continues to assert that she has unilateral authority to remove the tree without permits.

In this appeal, appellant Save the Davis-Meeker Garry Oak ("SDMGO") challenges respondent Mayor Sullivan's year-long, unilateral campaign to remove a 400-year-old Oregon white oak tree known as the Davis Meeker oak. This tree is listed as an historic property on the City of Tumwater's

Register of Historic Places. It served as a trail marker on the ancient Cowlitz Trail for hundreds of years, and later the Oregon Trail. CP 16; CP 73. The tree is of deep cultural and historical significance to local tribal members, and to the members of SDMGO. CP 72; CP 77–78.

As a property on the City's historic register, the Davis Meeker oak is protected by the City's Historic Preservation Ordinance at chapter 2.62 of the Tumwater Municipal Code ("TMC"). That ordinance provides that properties on the historic register may not be "alter[ed]" or "demolish[ed]" without the prior approval of the Tumwater Historic Preservation Commission. TMC 2.62.060(A). The full text of the Tumwater Historic Preservation Ordinance may be found at Appendix A to SDMGO's Opening Brief ("Op. Br.").

In addition to the tree being on the city's historic register, the Washington Department of Archeology and Historic Preservation ("DAHP") has determined that the Davis Meeker oak is a protected archeological resource under Washington's

Archeological Sites and Resources Law at chapter 27.53 RCW. CP 140. Under that law, the tree may not be "alter[ed[]," "d[ug] into," "damage[d]," "deface[d]," or "destroy[ed]" without first obtaining a written permit from DAHP. RCW 27.53.060(1)). *See also* Reply Brief of Appellant (Sept. 23, 2024) (herein, "Reply Br."), Appendix C (July 11, 2024, letter from DAHP explaining "[t]he Davis-Meeker Garry Oak Tree . . . is a recorded archaeological site, known by its Smithsonian Trinomial 45 TN 548. Chapter 27.53 RCW and WAC Chapter 25-48 require the City of Tumwater (City) to obtain an Archaeological Excavation and Removal Permit (Permit) from DAHP before the Tree is removed, altered, dug into, excavated, damaged, defaced, or destroyed").

SDMGO's first issue in the appeal is whether the mayor may alter or destroy the tree without first obtaining the approval of the Tumwater Historic Preservation Commission, as required by TMC 2.62.060(A). *See* Op. Br. at 3–4. SDMGO's second issue is whether the mayor may alter or destroy the tree without

obtaining a permit from DAHP. *Id*. at 4. It is SDMGO's position that the mayor may not alter or destroy the tree without first obtaining the written approval of both the Tumwater Historic Preservation Commission and DAHP. *See, e.g., id.* at 22, 31.

Regardless of her recent decision to retain the tree, the mayor continues to assert that she has sole, unbridled authority to decide the tree's fate and that she may alter or destroy it however she wants regardless of what the Historic Preservation Commission or DAHP may have to say about it. *See* Telegin Decl., Exhibit A, Email from mayor's attorney dated 5/1/2025 ("we do not believe that such permits are legally required . . . ."). In her Opening Brief, the mayor reasoned that the Historic Preservation Ordinance does not apply to the tree, because it "is a living organism, not a 'structure'", and Washington's Archeological Site and Resources Law does not apply because it "applies to things that are remains of human civilization, not living trees." Brief of Respondent at 18 & 37 (Sept. 13, 2024).

B. Based on a deeply flawed assessment by the city's arborist, the mayor began a unilateral campaign to remove the tree.

For more than a year, Mayor Sullivan has pursued a unilateral campaign to remove the Davis Meeker oak, based on her unsupported belief that the tree is hazardous. In her motion to dismiss, the mayor implies that it was the City of Tumwater *as a whole* that decided to have the tree cut down. *See* Mot. at 1 (referring to "*the City's* initial determination to remove the tree") (emphasis added). But that is a significant distortion of the facts. It was not "the City" but the mayor herself who asserted unilateral authority to remove the tree without having to seek the approval of any other person, department, or agency, including the Tumwater Historic Preservation Commission and DAHP.

As discussed in SDMGO's response to the mayor's prior motion to dismiss, Mayor Sullivan's campaign to destroy the tree began with a request to the Tumwater Historic Preservation Commission to have the tree delisted from the City's historic

register so that it would no longer be protected by the Historic Preservation Ordinance. CP 90. That effort failed because the Historic Commission declined to delist the tree. CP 16. The Historic Commission has never approved the mayor's plan to cut down the tree or to alter it in any way.

The mayor then asked the City's insurance carrier to recommend removal of the tree to the City Council. CP 86. That effort failed too. The City's insurance carrier did not recommend removal. CP 85–86. The City Council never approved the mayor's campaign to remove the tree.

Failing to garner the approval of the City Council or Historic Commission, Mayor Sullivan took matters into her own hands, claiming unilateral authority to decide whether the tree should be cut down. On May 21, 2024, without any approval of the City Council, Historic Commission, or DAHP, the mayor announced that she had put out a request for bids in February to have the tree cut down. CP 17. She later decided unilaterally and behind closed doors to have the tree destroyed

over the Memorial Day weekend, "when everyone was out of town." CP 17.

In her current motion to dismiss, the mayor states that her campaign to remove the tree "was based on the professional evaluation of [the city's] tree professional in 2023." Mot. at 3. But that is only half the story. In 2023, the City obtained an independent arborist evaluation of the tree by Tree Solutions, Inc. that did not recommend removal but instead opined, "this tree should be managed as a veteran tree." CP 48. Using sonic tomography, that same report concluded that there was "more sound wood than is required to support the tree." CP 48. The report recommended "a pruning regiment [sic] to lower leverage on branches over the road." CP 83. The mayor disregarded that report, choosing instead to rely on a report by the city's own tree professional that recommended complete removal and which contained a "litany of errors." CP 79.

C. Judge Amamilo issued a temporary restraining order.

After receiving leaked information that Mayor Sullivan was planning to have the tree cut down over the Memorial Day weekend, on the Friday morning before that weekend, SDMGO filed a complaint and obtained a temporary restraining order ("TRO") from the *ex parte* department of the Thurston County Superior Court. The Honorable Sharonda D. Amamilo issued the TRO. CP 26–27.

Beyond a TRO, SDMGO's complaint requested a ruling that removal of the tree requires the approval of the Tumwater Historic Preservation Commission. CP 9–11. Consistent with SDMGO's first issue presented in this appeal, it has always been SDMGO's position that under the plain language of the City's Historic Preservation Ordinance, the mayor may not alter or destroy the tree without the prior approval of the Tumwater Historic Preservation Commission.

D. Judge Egeler dissolved the TRO and ruled on the merits.

On the same day that Judge Amamilo granted the TRO, the mayor moved to dissolve it. She argued, *inter alia*, that the City's Historic Preservation Ordinance "does not apply" (notwithstanding the tree's listing on the City's historic register) because the tree is not a man-made "structure." CP 64–65. When Judge Anne Egeler was assigned to the case, she immediately put it on a fast track. CP 106. By then, it had been a year since the branch had dropped. But the mayor had wrongly claimed in her declaration to the superior court that the branch had dropped in February 2024, which may have caused the court to believe there was a true emergency. CP 33. In reality, it had dropped in May 2023, and SDMGO pointed that out during the May 31, 2024, hearing. VRP 12 ("It has now been a year since the branch fell originally. If the mayor was truly worried about imminent threats, she would have gotten someone in there to do emergency pruning. There is no

imminent threat. There is no loss of insurance coverage. This is a smoke screen."). *See also* CP 40 (indicating first risk assessment was performed on June 14, 2023).

One week after SDMGO filed its complaint and obtained the TRO, Judge Egeler granted the mayor's motion and set the TRO to expire a week later (allowing a short window for SDMGO to appeal). Judge Egeler also held, on the merits, that "[t]here was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure," affirming the mayor's position that the Historic Preservation Ordinance does not apply. CP 154.

The superior court also rejected SDMGO's argument that the mayor must obtain a permit from DAHP before she can lawfully alter or cut down the Davis Meeker oak. The superior court ruled that no such approval is required, because "[a] quick look at that statute reveals that that chapter of the law addresses archeological resources, not trees." CP 155. The mayor herself has cited this holding as a definitive ruling that she is not legally

required to obtain a permit from DAHP before altering or destroying the tree. *See* Telegin Decl., Ex. B at 3 (June 28, 2024, letter from Jeffrey S. Myers to DAHP, asserting "the Thurston County Superior Court already determined that the archeological statute did not prevent removal of the tree").

These two holdings—that the mayor may alter or destroy the tree without the approval of the Tumwater Historic Preservation Commission and that she may do so without a DAHP permit—went far beyond dissolving the TRO. They effectively decided (and denied) SDMGO's case on the merits.

E. This Court ruled that the appeal may proceed under RAP 2.2(a)(3) as an appeal as of right.

SDMGO appealed the superior court's order on May 31, 2024. Over the mayor's objection that the order could not be appealed because it was "interlocutory," not "final,"[1] this Court ruled that SDMGO's appeal could proceed under RAP 2.2(a)(3), which allows an appeal of right when the challenged

[1] *See* Response to Motion for Injunctive Relief Pursuant to RAP 8.3 at 10 (July 15, 2024).

decision "in effect determines the action" or "discontinues the action." *See* Ruling Denying Stay Under RAP 8.3 Without Prejudice to Obtaining a Stay under RAP 8.1(B)(2), Determining Appealability, and Accelerating Appeal at 5 (July 23, 2024).

Applying RAP 2.2(a)(3) to the present appeal, this Court found that "[g]iven that the superior court effectively determined the City's right to remove the tree, and because it appears no other issues remain pending in the superior court," SDMGO's appeal could proceed under RAP 2.2(a)(3). *Id*. In making that ruling, this Court correctly observed that the superior court's order went beyond merely dissolving the TRO. Instead, the superior court resolved the case on the merits, holding (a) that the mayor has legal authority to cut down the Davis Meeker oak, and (b) that she may do so without first obtaining approval from the Tumwater Historic Preservation Commission or DAHP.

Soon after this appeal was filed, SDMGO moved for an injunction under RAP 8.3 to prevent the mayor from cutting the tree down before the appeal is resolved. *See* Motion for Injunctive Relief Pursuant to RAP 8.3 (July 2, 2024). This Court ruled that the appropriate mechanism to prevent the mayor from destroying the tree on appeal is to seek a supersedeas bond from the superior court under RAP 8.1(b)(2). *See* Ruling Denying Stay Under RAP 8.3 Without Prejudice to Obtaining a Stay under RAP 8.1(B)(2), Determining Appealability, and Accelerating Appeal at 4–5. The superior court set the bond amount at $10,000.00. Reply Br., Appendix E (superior court order setting bond). SDMGO promptly paid it to keep the tree from being destroyed before this appeal is resolved. *See* Notice of Cash Supersedeas (Sept. 12, 2024).

F. This Court denied the mayor's first motion to dismiss for mootness.

On October 14, 2024, after this appeal was fully briefed and the supersedeas bond was paid, the mayor moved to dismiss

on mootness grounds. *See* Respondent's Motion to Dismiss Appeal (Oct. 14, 2024). In that motion, the mayor argued that because she had voluntarily decided to obtain a second opinion about the health and condition of the tree and suspended her efforts to have the tree immediately cut down, the appeal was moot and should be dismissed.

This Court denied that motion, observing that while the mayor was in the process of obtaining a second opinion, she continued to maintain that she "'is not bound by its results.'" Ruling Denying Mot. to Dismiss Appeal at 2 (Dec. 6, 2024) (quoting Mayor's reply). The motion was denied because "absent the appeal bond, the only thing keeping the oak tree standing is Sullivan's voluntary delay." *Id*.

G. The mayor continues to claim that she alone has authority to decide whether to save or destroy the tree.

In her current motion to dismiss, the mayor again argues that this appeal is moot and should be dismissed. This time, her basis is that she now "chooses" not to destroy the tree and is

pursuing "a strategy of mitigation and maintenance instead of removal." Sullivan Decl., ¶ 7. The mayor also discusses the City Council's recent appropriation of funds to carry out unspecified "mitigation and maintenance activities." *See id.*, ¶ 8 & Ex. 7, § 2.

ARGUMENT

A. If the Court dismisses the appeal as moot, SDMGO will never get a fair hearing on the merits.

The superior court committed procedural errors by ruling on the merits one week after SDMGO filed its complaint. SDMGO has yet to receive a fair hearing in superior court. If the appeal is dismissed as moot, it cannot go back and get a fair hearing because the claims would be barred by the doctrine of res judicata. As such, the claims are capable of repetition but evading review. An appellate court may consider technically moot issues that are "capable of repetition yet easily evade review." *State v Clark*, 91 Wn. App. 581, 584, 958 P 2d 1028 (1998).

The mayor continues to maintain that she needs no permit to remove the tree, since that is what the superior court held. A future mayor could make the same claim. A dismissal by this Court would make it so that no one could stop a mayor from making such a claim in the future and carrying out a removal. The Court should deny the motion.

B. The mayor's voluntary choice to retain the tree does not moot SDMGO's request for injunctive relief.

In Washington, voluntary cessation of allegedly illegal conduct does not moot a claim for relief. *State v. City of Sunnyside*, 3 Wn.3d 279, 313, 550 P.3d 31 (2024). Instead, "a plaintiff may pursue injunctive relief unless it is 'absolutely clear that [the allegedly illegal] behavior will not reoccur.'" *Id.* at 313–14 (quoting *Braam v. State*, 150 Wn.2d 689, 709, 81 P.3d 851 (2003)).

This rule—that voluntary cessation does not moot a claim for relief—follows the long-standing practice of the federal courts, under which "the standard for determining

whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.,* 528 U.S. 167, 170, 120 S. Ct. 693 (2000) (citing *U.S. v. Concentrated Phosphate Expert Ass'n,* 393 U.S. 199, 203, 89 S. Ct. 361 (1968)).

"The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to recur lies with the party asserting mootness." *Id*. "[A] defendant claiming that its voluntary compliance moots a case bears a formidable burden." *Id*., 528 U.S. at 170. The reason why voluntary cessation "does not ordinarily render a case moot" is that "dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1152 (9th Cir. 2019) (citations and internal quotation marks omitted).

In terms of mootness, little has changed since the last time the mayor moved to dismiss this appeal as moot. Appropriation or no appropriation, and aside from the supersedeas bond paid by SDMGO, the only thing preventing the mayor from destroying the historic Davis Meeker oak is still her own will. Her change of heart is only "final" (*id*., ¶ 7) to the extent she chooses not to change her mind again. And she may still change her mind at any time absent a ruling from this Court that she may not alter or destroy the tree without the prior approval of the Tumwater Historic Preservation Commission and DAHP.

Critically, the mayor still takes the position that she—and she alone—has authority to decide whether the tree should be saved or destroyed. Nothing in her motion or supporting declaration recants her consistent position throughout this case that she alone has sole authority to decide the tree's future. For example, nowhere does the mayor admit that before she may legally alter or demolish the tree, she must obtain the approval

of the Tumwater Historic Preservation Commission as required by the plain language of the Tumwater Municipal Code.

Further, while the mayor states that she will voluntarily obtain a permit from DAHP before cutting limbs and taking other actions that will alter the tree, she continues to assert that a DAHP permit is not "legally required." *See* Telegin Decl., Ex. A (email from Mayor Sullivan's attorney, asserting "we do not believe that such permits are legally required"). The mayor also states that the superior court "already determined" that such a permit is not required (*id*., Ex. B at 3).

Nor has the mayor disclosed exactly what she intends to do to the tree. In her declaration, Mayor Sullivan says that she now "chooses" to pursue "Option B" of the new arborist report. Sullivan Decl., ¶ 7. That option involves "reduction pruning to reduce risk of branch failure." *Id*., ¶ 6. But nowhere does the mayor disclose exactly how much of the tree will be pruned, or how many (or which) limbs will be cut off. Her motion references a "cost estimate" presented to the City Council for

review. Mot. at 4. Presumably, that cost estimate might contain details of the work the mayor plans to undertake. But the cost estimate was not filed with this Court or otherwise provided to Appellants. *See* Sullivan Decl., Ex. 6 at 1 (May 12, 2025) (citing, but failing to attach, the cost estimate as Attachment C to the April 15, 2025, memorandum to the City Council).

The Court should deny the mayor's new motion to dismiss.

C. SDMGO's appeal of the superior court's substantive rulings is not moot.

Even if the mayor's voluntary suspension of her campaign to cut down the Davis Meeker oak could moot SDMGO's claim for injunctive relief, "[a] case becomes moot only when it is impossible for a court to grant *any effectual relief whatever* to [the] prevailing party." *Knox v. Serv. Emps. Int'l Union, Local 100*, 567 U.S. 298, 307, 132 S. Ct. 2277, 2287 (2012) (emphasis added; internal quotations omitted). *See also City of Sequim v. Malkasian*, 157 Wn.2d 251, 259, 157

P.3d 943 (2006) ("an issue is not moot if a court can provide *any* effective relief") (emphasis added). Moreover, "as long as the parties have a concrete interest, *however small*, in the outcome of the litigation, the case is not moot." *Ellis v. Brotherhood of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 466 U.S. 435, 442, 104 S. Ct. 1883 (1984) (emphasis added).

Applied here, this appeal seeks not only to reverse the superior court's dissolution of the TRO, but also to reverse that court's substantive rulings on the merits of SDMGO's legal claims. Specifically, SDMGO seeks reversal of the superior court's rulings that (a) the mayor is not legally required to obtain the approval of the Tumwater Historic Preservation Commission before demolishing or altering the tree (because the tree is not a "structure"), and (b) that the mayor is not legally required to obtain a permit from DAHP before doing the same (because Washingtons' archeological statute does not apply to trees). *See, e.g.,* Op. Br. at 2 (discussing requests for relief).

Absent a ruling by this Court reversing the superior court, SDMGO would likely be bound by these rulings under principles of res judicata and collateral estoppel, unable to object to any future plan by the mayor to alter or destroy the tree on these grounds. Thus, even if SDMGO's claim for injunctive relief were moot (which it is not), this Court may still grant effective relief by reversing the superior court's rulings on the merits of SDMGO's case.

Indeed, a ruling by this Court reversing the superior court is still of obvious importance because, according to the mayor herself, she plans to alter the tree through unspecified "reduction pruning," but does not intend to first seek or obtain the approval of the Historic Preservation Commission as required by the plain language of the Tumwater Historic Preservation Ordinance. Under that ordinance, the Commission is the administrative body within the City of Tumwater charged with "[r]eview[ing] proposals to construct, change, alter, modify, remodel, move, demolish, and significantly affect

properties or districts" listed on the City's historic register. TMC 2.62.040.D.5. It is imperative that this Court reverse the superior court's ruling that the tree is not protected by the City's Historic Preservation Ordinance, lest the mayor (or anyone else within the City government) be free to destroy or significantly alter it without any review by the body charged with safeguarding the City's historic properties.

Likewise, there is still a clear need for this Court to review the superior court's ruling that Washington's Archeological Sites and Resources Law does not apply to the Davis Meeker oak simply because it is a tree. That ruling has been contested not only by SDMGO, but also by DAHP, the state agency charged with administering that law.

The mayor has now stated, begrudgingly, that she will obtain a DAHP permit before altering the tree. Yet, she continues to maintain that such a permit is not "legally required," she has asserted that it has already been determined that the archeological statute does not apply to the tree, and she

may change her mind at any point about voluntarily obtaining a permit (especially if a permit is denied). As above, it is imperative that this Court reverse the superior court's ruling that the tree is not protected by Washington's Archeological Sites and Resources Law, lest the mayor (or anyone else) be free to destroy or significantly alter it without any review by the state agency charged with safeguarding Washington's archeological and historic resources.

Even if the mayor's voluntary "choice" to now maintain the tree could moot SDMGO's request for injunctive relief, it does not moot SDMGO's challenge to the superior court's rulings on the merits of its case. This Court may still grant effective relief by reversing the superior court's ruling that the mayor may alter or destroy the tree without first obtaining the approval of the Tumwater Historic Preservation Commission and DAHP. For this reason, too, the mayor's motion should be denied.

D. Even if it were moot, this Court should apply the public interest exception and decide the appeal.

Finally, even if this appeal *were* entirely moot and even if this Court could not grant *any* effective relief, the appeal should still be decided under Washington's public interest exception to the mootness doctrine.

In Washington, the Court of Appeals "may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved." *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). *See also Ctr. for Biological Diversity v. Dep't of Fish and Wildlife*, 14 Wn. App. 2d 945, 985, 474 P.3d 1107 (2020) ("this court applies the principle of mootness with some flexibility, and if the matter is one of significant public interest, courts may review [the case] even if it is moot") (citing *Sudar v. Dep't of Fish & Wildlife Comm'n*, 187 Wn. App. 22, 35, 347 P.3d 1090 (2015)).

"To determine whether a case presents an issue of continuing and substantial public interest," Washington courts consider three factors: "'(1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.'" *State v. Beaver*, 184 Wn.2d 321, 330, 358 P.2d 385 (2015) (quoting *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012)).

Applied here, this appeal clearly raises issues of a public (not private) nature, involving a continuing controversy over the regulations that apply and are intended to preserve the historic Davis Meeker oak for future generations. The tree is a registered historic property of great cultural and historic value not just to local tribal members, but to the members of SDMGO and the public at large. This appeal raises the fundamental question of whether this historic tree (or any historic tree, for that matter) is protected by Washington's Archeological Sites and Resources Law and the City's Historic Preservation

Ordinance, or whether it can be altered or destroyed without any regulatory oversight, like any other common tree in the State of Washington.

An authoritative decision from this Court would clearly be desirable to guide public officials in their future dealings with the tree, including but not limited to Mayor Sullivan. The mayor offers no indication that she will seek or obtain the approval of the Tumwater Historic Preservation Commission prior to making future alterations to the tree or prior to having it cut down, as she may still decide to do. The mayor begrudgingly says that she will obtain a DAHP permit but disagrees that doing so is legally required. An authoritative decision from this Court is necessary to ensure that all future alterations to this historic tree are reviewed and approved by the proper administrative bodies—the Tumwater Historic Preservation Commission and DAHP. A decision would also be helpful for resolving similar cases in the future involving other historic trees in Washington state.

Finally, there is a clear likelihood that the issues presented in this appeal will recur in the future. Following her campaign to have the tree destroyed, the mayor now says it should be monitored in perpetuity to "proactively address ongoing risks." Sullivan Decl., ¶ 6. As the tree is monitored over time and new actions become necessary to preserve it or new questions are raised about whether to remove it, it will be important for the mayor and her successors to know who they must go to for approval—namely, the Tumwater Historic Preservation Commission and DAHP.

It is important for this Court to decide this appeal to make clear that the Davis Meeker oak is protected by the City's Historic Preservation Ordinance and Washington's Archeological Sites and Resources Law (the application of which continues to be contested by Mayor Sullivan). It also is important for the Court to decide the appeal to ensure that all future actions that may alter or destroy the tree will be reviewed by the state and local agencies charged with its protection and

preservation for future generations. Under Washington's public interest exception to the mootness doctrine, this Court should deny the mayor's motion and decide the appeal.

CONCLUSION

For the foregoing reasons, the Court should dismiss the mayor's second motion to dismiss on mootness grounds.

CERTIFICATE OF COMPLIANCE

I certify that this motion contains 4,951 words, in compliance with RAP 18.17(b)

RESPECTFULLY SUBMITTED this 26th day of May, 2025.

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