

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

SAVE THE DAVIS MEEKER
GARRY OAK,

Appellant,

v.

DEBBIE SULLIVAN, in her
capacity of Mayor of Tumwater,

Respondent.

APPELLANT'S
MOTION TO EXTEND
ADMINISTRATIVE
STAY

I. IDENTITY OF MOVING PARTY

Appellant Save the Davis Meeker Garry Oak
("SDMGO") seeks the relief designated in Part II.

II. RELIEF REQUESTED

SDMGO requests that this Court extend the
administrative stay that is currently in place from August 30 to
September 13, 2024. The purpose of this request is to provide
SDMGO sufficient time to obtain a supersedeas bond to stay

the effectiveness of the superior court’s TRO dissolution order challenged in this appeal.

III. EVIDENCE RELIED UPON

This motion relies on the accompanying declaration of Bryan Telegin (“Telegin Decl.”) and on the pleadings and filings herein.

IV. FACTS RELEVANT TO MOTION

On July 3, 2024, this Court administratively stayed the TRO dissolution order challenged in this appeal in order to allow the parties to fully brief Appellants’ Motion for Injunctive Relief Pursuant to RAP 8.3. (*See* A Ruling by Commissioner Bearse (July 3, 2024).) The purpose of SDMGO’s motion for injunctive relief was to prevent Respondent Debbie Sullivan, Mayor of the City of Tumwater, from ordering the destruction of a 400-year-old historic tree known as the Davis-Meeker Garry Oak, which is listed on the City of Tumwater’s Register of Historic Places.

At the completion of the parties' briefing on that motion, on July 23, 2024, this Court issued its Ruling Denying Stay Under RAP 8.3 Without Prejudice to Obtaining a Stay under RAP 8.1(B)(2), Determining Appealability and Accelerating Appeal. In that ruling, this Court denied SDMGO's request for injunctive relief under RAP 8.3. However, this Court extended the administrative stay until August 30, 2024, in order to give SDMGO time to seek and obtain a supersedeas bond from the superior court to stay the effectiveness of the TRO dissolution under RAP 8.1(B)(2).

SDMGO filed its motion seeking a supersedeas bond with the Thurston County Superior Court on August 12, 2024. A copy of that motion and supporting declarations may be found at Exhibits 1 through 3 to the accompanying declaration of Bryan Telegin. Mr. Telegin was retained as co-counsel for Appellant on July 30, 2024, and is expected to take the lead on future briefing. (Telegin Decl., ¶ 2.)

Unfortunately, due to limited remaining open slots on the superior court's calendar, SDMGO was not able to obtain a hearing date for the superior court supersedeas motion prior to August 30, 2024, the date on which the current administrative stay is scheduled to expire. Instead, that motion is noted to be heard on Friday, September 6, 2024. (*Id.*, ¶¶ 2–3, 6). Scheduling this motion was further complicated by the notice of unavailability filed by counsel for Respondent on July 25, 2023, notifying SDMGO that he would not be available for a hearing between August 6 and August 16, 2024. (*Id.*, ¶ 6 & Ex. 4).

V. ARGUMENT

SDMGO now requests that this Court extend the administrative stay to September 13, 2024. This would provide sufficient time for the superior court to rule on SDMGO's pending motion to obtain a supersedeas bond, noted to be heard on September 6, 2024. Extending the stay to September 13, 2024, would also provide a short, additional time for SDMGO to file a motion with this Court pursuant to RAP 8.1(h) for

review of the superior court's order if the bond amount is excessive.

The requested extension would not be prejudicial to Respondent. As documented in several written communications from the Washington Department of Archeology & Historic Preservation ("DAHP") and the Washington Attorney General's Office, the City of Tumwater may not legally harm or destroy the Davis Meeker Garry Oak without first obtaining a permit from DAHP pursuant to Washington's Archeological and Resources Law at Chapter 27.53 RCW. In addition to being the state agency responsible for issuing archeological permits under Chapter 27.53 RCW, DAHP also has authority to impose substantial civil penalties for violations of that law. *See* RCW 27.53.090.

On June 4, 2024, DAHP sent a letter to Respondent Debbie Sullivan notifying her that "[u]nder RCW 27.53.060, the Tree cannot be knowingly removed, altered, dug into, excavated, damaged, defaced, or destroyed without the City of

Tumwater first obtaining a permit from DAHP to do so.”
(Telegin Decl., Ex. 2 at 4–5). DAHP went on to explain that the
City will face significant monetary penalties if it harms the tree
without a permit:

Failure to obtain a permit from DAHP prior to removing, altering, digging into, excavating, damaging, defacing, or destroying the Tree will result in penalties from DAHP pursuant to RCW 27.53.095. Such penalties may include, but are not limited to, reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation, reasonable site restoration costs, and civil penalties in an amount of not more than five thousand dollars per violation. Each day of continued violation shall constitute a distinct violation for the purpose of calculating penalties. A violation of Chapter 27.53 RCW is a misdemeanor.

(Telegin Decl., Ex. 3 at 5.)

Later, on July 11, 2024, the Washington Attorney General’s Office sent a letter to counsel for Respondent, notifying him in no uncertain terms that the City has zero authority to cut the tree down without first obtaining a permit from DAHP. (Telegin Decl., Ex. 3 at 7–10.) In this letter, the

Attorney General's Office explains that "[t]he Davis-Meeker Garry Oak Tree (the Tree) is a recorded archeological site, known by its Smithsonian Trinomial 45 TN 548." (*Id.* at 7.) "The Tree constitutes an archeological object an/or an archeological resource contained within an archaeological site, placing it well within DAHP's regulatory authority and subjecting the City to the permitting requirements of Chapter 27.53 RCW and WAC Chapter 25-48." (*Id.*) The letter concludes:

The City is under clear notice of its legal obligation to obtain a Permit under state law prior to commencing work which removes, alters, digs into, excavates, damages, defaces, or destroys the Tree. ***Again, DAHP will issue penalties against the City to the maximum extent allowed by RCW 27.53.095 for failure to obtain a Permit from DAHP for damaging or removing the tree.***

(*Id.* at 9 (emphasis added).)

As clearly stated by DAHP and the Washington Attorney General's Office, the City of Tumwater has no authority to harm or destroy the Davis-Meeker Garry Oak without first obtaining a permit from DAHP pursuant to Washington's

Archeological and Resources Law at Chapter 27.53 RCW. To our knowledge, the City has not obtained such a permit. As such, extending the administrative stay in this case will not prejudice the City, which is already and independently prohibited by DAHP under state law from harming or destroying the tree.

VI. CONCLUSION

For the reasons above, Appellant Save the Davis-Meeker Garry Oak respectfully requests that the current administrative stay be extended to September 13, 2024.

VII. CERTIFICATE OF COMPLIANCE

I certify that this motion contains 1,103 words, in compliance with RAP 18.17(b)

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RESPECTFULLY SUBMITTED this 14th day of
August, 2024.

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August 14, 2024 - 1:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 58881-1
Appellate Court Case Title: Save the Davis Meeker Garry Oak, Appellant v. Debbie Sullivan, Respondent
Superior Court Case Number: 24-2-01895-3

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