

NO. 58881-1-II

**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.

DECLARATION OF  
STEVE LAYMAN  
IN SUPPORT OF  
MOTION FOR  
INJUNCTIVE  
RELIEF PURSUANT  
TO RAP 8.3

I, STEVE LAYMAN, declare under the penalty of perjury under the laws of the State of Washington that I have read the following declaration, have personal knowledge as to its contents, and it is true and correct to the best of my knowledge.

1. I live on Whidbey Island, I am 77 years old, and I am a raptor biologist with a kestrel interest. I've been involved in raptor conservation my whole life. I have a zoology degree from Central Washington University. I've been paid to do field

work on goshawks and spotted owls in California and other places over the years.

2. I viewed a video taken on May 25, 2024, by Michelle Peterson, of a kestrel flying out of a nest cavity taking off at the Meeker oak tree. This video is absolutely fascinating. Observing wildlife is true theater in the round—natural history in the round.

3. A family of kestrels will often reuse nest cavities year after year, down through the generations. Holes are in short supply. They evolved when there were all sorts of ages of trees, with holes mostly created by woodpeckers. There are not very many trees with vacant holes anymore. If there are not many nest cavities, this can negatively impact the population numbers.

4. In the case of the Meeker oak, the female kestrel appears to be either light colored or leucistic, although not albino. The gene for leucism causes a bird to have dark eyes but to lack normal pigment. It is not a gene that is selected for.

It's a liability because it causes the bird to not blend into its surroundings.

5. In early June, I visited the tree myself and observed the kestrels but did not have binoculars and therefore was unable to determine if one was leucistic or not. I was informed that the kestrel in the video had been filmed coming out of the nest cavity after being in it for 45 minutes. In the video, because the male did not replace her in the nest cavity, this indicates to me that there are chicks. Males and females take turns sitting on eggs. When the female left the nest hole in the video, the male would have gone inside to take a turn at sitting on the eggs, had there been only eggs. This causes me to believe there are hatched nestlings. Also, the fact that the female spent 45 minutes in the nest cavity causes me to believe the chicks are very young.

6. The tree itself is an iconic tree. As a biologist, I see that tree as a potential teaching tool. The future of all wildlife is in proximity to people. The tree is a reason to

celebrate. Schoolchildren could be brought there and taught about ecology and could take its acorns and plant them in their yards and in parks.

7. People can help kestrels by mounting bird boxes that have adequately large holes and placing them along the side of buildings and in trees, high up. The higher the better because it gives the kestrels security from cats and dogs. However, 13 feet is doable if you don't have a longer ladder. The hole of the nest box ideally should be unobstructed and be next to open spaces where they can hunt. The nest box should be cleaned out every few years.

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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 2nd day of July, 2024, at Clinton, Washington.

A handwritten signature in black ink, appearing to read "Steve Layman", written in a cursive style.

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STEVE LAYMAN