



COUNTY COMMISSIONERS

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District One

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District Two

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District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE THURSTON COUNTY  
HEARING EXAMINER**

In the Matter of the Application of	)	NO. 2014101571
	)	
<b>Randolph M. Lindblad</b>	)	
	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Reasonable Use Exception	)	
_____	)	

**SUMMARY OF DECISION**

The requested reasonable use exception to demolish an existing single-family residence located within a marine conservancy shoreline area and construct a new single-family residence in the same footprint is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

Request

Randolph Lindblad (Applicant) requested a reasonable use exception to demolish an existing single-family residence located within a marine conservancy shoreline area and construct a new single-family residence in the same footprint. The subject property is located at 8131 Kerbaugh Street NE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on June 1, 2015.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

Leah Davis, Thurston County Resource Stewardship Department, Associate Planner  
Randolph Lindblad, Applicant

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

- Exhibit 1 Land Use and Environmental Review Section Report with the following Attachments:
- Attachment A Notice of Public Hearing
  - Attachment B Master Application, received May 12, 2014
  - Attachment C Reasonable Use Exception Application, received May 12, 2014
  - Attachment D Aerial photo/zoning map (2012)
  - Attachment E Aerial photo with 2-foot contours (2012)
  - Attachment F Site Plan, received February 9, 2015
  - Attachment G Notice of Application, dated November 9, 2014
  - Attachment H Comment Memorandum from Brad Sangston, Thurston County Public Health and Social Services Department June 27, 2014
  - Attachment I Comment Memorandum from Kevin Chambers, Thurston County Public Works Department, June 6, 2014
  - Attachment J Habitat Mitigation Plan, dated January 15, 2015
- Exhibit 2 Color copy of photo of posted hearing notice taken by Planning Staff
- Exhibit 3 Color copies of three photographs of the subject property taken by Planning Staff

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

**FINDINGS**

1. The Applicant requested a reasonable use exception to demolish an existing single-family residence located in a marine conservancy shoreline area and construct a new single-family residence within the same footprint. The subject property is located at 8131 Kerbaugh Street NE, Olympia, Washington.<sup>1</sup> *Exhibit 1, page 1.*

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<sup>1</sup> The legal description of the property is as follows: Section 08 Township 19 Range 1W Quarter PT GOV LT 6 SS-1493 LT 2 Document 015/232 TGW PTN TIDELANDS SUITABLE FOR CULTIVATION OF OYSTERS #1078886 SD TIDELANDS EXT WLY TO SCHNEIDER VOL 42/401; also known as Tax Parcel No. 11908140105. *Exhibit 1, page 1.*

2. The subject property is 1.63 acres in area and is developed with a single-family residence, a detached garage, a garden shed, a septic system, and a well. The structures are clustered in the central portion of the parcel. The septic drainfield, which also serves the parcel to the north, is immediately to the east of the structures. The single-family residence has a footprint of 1,600 square feet which at its nearest is located 214 feet from the ordinary high water mark (OHWM) of Henderson Inlet of Puget Sound. *Exhibit 1, page 2; Exhibit 1, Attachment D; Exhibit 3.*
3. The subject property is zoned Rural Residential Resource one residence per five acres (RRR 1/5). The primary permitted uses in the RRR 1/5 zone are agricultural and residential uses. Agriculture is not a feasible use on the subject property due to its relatively small area. *Exhibit 1, pages 2 and 3; Thurston County Code (TCC) 20.09A.020.*
4. The Thurston County Shoreline Master Program designates the shoreline adjacent to the subject property as Conservancy shoreline environment. The Thurston County critical areas ordinance (CAO) requires a minimum 250-foot marine riparian habitat buffer from Conservancy shorelines plus an additional 50-foot marine riparian management zone. *Exhibit 1, page 2; TCC 24.25.050.*
5. Both the subject property and the existing single-family residence are legally nonconforming pursuant to Thurston County ordinances. *Exhibit 1, page 2.* The CAO allows the discretionary replacement of nonconforming structures within critical areas, provided there is not "minimally sufficient buildable area" outside of the critical area. *TCC 24.50.050.* A reasonable use exception is requested in this case because there is sufficient building area outside of the critical area to construct a single-family residence of the dimensions proposed. *Exhibit 1, page 3.*
6. The Applicant proposes to construct a 1,600-square-foot residence in the same footprint as the existing residence. *Exhibit 1, Attachment F.*
7. Requiring the residence to be reconstructed outside of the marine riparian habitat buffer would create a practical difficulty in that the residence would be separated from the garage. The garage was legally established in its present location. *Exhibit 1, page 3.*
8. The existing residence's footprint is relatively flat and has utility connections readily available without additional trenching for extension. The portion of the subject property outside of the marine riparian habitat area is to the east of the existing residence; it is forested and contains an approximate 25-percent slope. The Applicant describes the slope as too steep to drive a riding mower up and down. While the forested slope does not constitute a regulated critical area, removing sufficient trees to construct a residence outside its footprint would require grading and clearing that would result in a greater environmental impact - particularly with respect to construction-related runoff - than replacing the residence in the existing location. *Exhibit 1, pages 2 and 3; Exhibit 3; Lindblad Testimony.*

9. Allowing the residence to be rebuilt in the existing location would avoid potential impacts to two priority species of bats identified in the vicinity: Little Brown Myotis and Yuma Myotis. These species would be negatively affected by tree removal. *Exhibit 1, page 5; Exhibit 1, Attachment J.*
10. There are oyster beds and Surf Smelt breeding areas in the vicinity of the subject property. In the submitted habitat mitigation plan, the Applicant proposes erosion control measures and other mitigation designed to prevent adverse impacts to water quality as a result of construction activities. If the mitigation measures are implemented there would be no impact on habitat for these species of concern. *Exhibit 1, page 5; Exhibit 1, Attachment J.*
11. Proposed mitigation includes removal of nonnative species of plants and replanting areas disturbed by construction. *Exhibit 1, page 4; Exhibit 1, Attachment J.*
12. The Development Review Division section of the Thurston County Public Works Department reviewed the project for access, traffic, and storm water control requirements, and recommended approval subject to conditions. *Exhibit 1, page 6; Exhibit 1, Attachment I.*
13. The Thurston County Environmental Health Department reviewed the project for compliance with the County's health codes and recommended approval without conditions. *Exhibit 1, pages 5 and 6; Exhibit 1, Attachment H.*
14. Reasonable use exceptions are considered non-project actions and are exempt from the requirements of the State Environmental Policy Act (SEPA). *WAC 197-11-800.*
15. Notice of the public hearing was mailed to all property owners within 500 feet of the site on May 18, 2015, posted on-site on May 21, 2015, and published in The Olympian on May 22, 2015. *Exhibit 1, page 2; Exhibit 1, Attachment 2; Exhibit 2.* There was no public comment on the application. *Davis Testimony.*

## **CONCLUSIONS**

### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exception pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.06 and 24.45 of the Thurston County Code.

### Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if all of the following specific findings can be made:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design.

This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and

- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

#### Conclusions Based on Findings

1. Considering the uses allowed by the zoning ordinance, the size of the parcel, the location of existing residential development, and the parcel's environmental features, there is no other reasonable use of the property. *Findings 1, 2, 3, 5, 6, 7, 8, and 9.*
2. No reasonable use with less impact on the marine riparian habitat area is possible. The Applicant proposes to limit construction to the existing building footprint, which is modest in scale. Constructing the residence to the east of the existing building footprint would result in greater potential constructed-related water quality impacts and impacts to species of concern. *Findings 6, 8, 9, and 10.*
3. With conditions of approval, the demolition of the existing residence and construction of a new residence would not result in damage to other property or threaten public health, safety, or welfare. Conditions of approval address stormwater control and outline a procedure for responding to soil contamination. *Findings 12, 13, and 14.*
4. The proposed use is limited to the minimum encroachment into the marine riparian habitat buffer necessary to prevent denial of all reasonable use of the property. Requiring construction outside of the existing building footprint would not be reasonable in this case based on the facts in the record. *Findings 2, 6, 7, 8, 9, and 10.*

5. The proposal would result in minimal alteration of the marine riparian habitat buffer as all development would occur in the existing building footprint. *Finding 6.*
6. As conditioned, the proposal would ensure no net loss of marine riparian habitat area functions and values. The Applicant would be required to implement the submitted habitat mitigation plan. *Findings 8, 9, 10, and 11.*
7. Approval would not result in unmitigated adverse impacts to species of concern. *Findings 9 and 10.*
8. The location and scale of existing development on surrounding properties is not the basis for approving the requested reasonable use exception. The basis for approving the requested reasonable use exception is the location of existing development on the subject property and the environmental consequences of disturbing additional areas. *Findings 2, 5, 6, 7, 8, 9, and 10.*

### **DECISION**

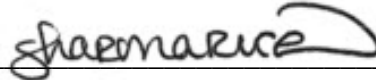
Based on the preceding findings and conclusions, the requested reasonable use exception is **APPROVED** subject to the following conditions:

- A. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, and Thurston County Resource Stewardship Department shall be satisfied.
- B. The location of the proposed residence shall coincide with the footprint of the existing building to the extent possible.
- C. The objectives outlined in the habitat mitigation plan (Exhibit 1, Attachment J, pages 5-7) shall be implemented. For inspection of flagging and fencing prior to construction, contact Leah Davis Thurston County Resource Stewardship at (360) 786-5582.
- D. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
- E. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified [Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300].
- F. The Applicant shall complete all mitigation proposed in the Habitat Mitigation Plan, prepared by Mo-chi Zoe Lindblad, dated January 15, 2015. All plantings, if any, shall be completed prior to final occupancy inspection of the residence.

- G. All development on the site shall be in substantial compliance with the approved reasonable use exception application as conditioned. Any alteration to the proposal shall require approval of a new or amended reasonable use exception. The Land Use and Environmental Review Section shall be the body determine whether any proposed amendment is substantial enough to require hearing examiner approval.

**DECIDED** June 15, 2015.

By:



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Sharon A. Rice  
Thurston County Hearing Examiner





**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$651.00** for a Request for Reconsideration or **\$866.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$652.00 for Reconsideration or \$870.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_

Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.