



Notice of Hearing Examiner Decision

06/07/2024

To: Interested Parties and Parties of Record

RE: Project Name: Easling Critical Area Variance (CVAR)
 Applicant: Joel & Nichole Easling
 1917 N CALLOW AVE
 BREMERTON, WA 98312-2909
 Application: Critical Area Variance
 Permit Number: 23-02578

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit # 23-02578 Easling Critical Area Variance (CVAR)**, subject to the conditions outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC: Applicant/Owner of Record: Joel & Nichole Easling, joeleasling@gmail.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy

Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
Skokomish Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
Interested Parties: Robert & Kimberly Haskitt, khaskitt@gmail.com

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Joel and Nichole Easling Critical Area Variance File No. 23-02578	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Joel and Nichole Easling request approval of a critical areas variance to encroach approximately 4,950 square feet into the 110-foot buffers of a Category II and Category III wetland buffer. The variance is approved subject to conditions.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Exhibit 29 and should not be considered part of the administrative record.

EXHIBITS

Exhibits 1-28 listed in the Index to the Record prepared by County staff were admitted during the hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. Joel and Nichole Easling, 1917 N. Callow Ave. Bremerton, WA 98312 .
2. Hearing. The Hearing Examiner conducted a virtual hearing on the application at 9:30 am on May 23, 2024.

Substantive:

3. Site/Proposal Description. Joel and Nichole Easling request approval of a critical areas variance to encroach approximately 4,950 square feet¹ into the 110 foot buffers of a Category II and Category III wetland buffer with the proposed buffer only four feet three inches at its narrowest point. The encroachment is composed of a 2,760-square foot home and detached garage along with clearing for a driveway, parking, utilities, onsite septic, lawn area and stormwater infrastructure.

The subject site is rectangular in shape and approximately 4.92 -acres in size. The site is undeveloped except for an access driveway along the upper half of the west perimeter that benefits adjacent parcels further west. The project site is fully encumbered with a stream, three wetlands and their associated buffers. The proposed encroachment will extend into the buffers of two of the wetlands located along the western side of the project site.

As shown in Ex. 15, p.2, the three wetlands located on the project site are designated as a small Category II wetland identified as Wetland A in the southeast corner of the project site, a Category III wetland identified as Wetland B located along the southwestern side of the project site and a Category II wetland identified as Wetland C located along the northwestern side of the project site. A stream located along the southeastern portion of the project site is classified as a Type F stream with a 150-foot buffer. The proposed encroachment will be in the buffers to Wetlands B and C. Exhibit 14 suggests that the encroachment will be immediately adjacent to the boundary of Wetland B and within just a few feet of Wetland C.

The record doesn't contain a site plan detailing the amount of the proposal's encroachment into the critical areas of the project site. The most informative information on the extent of encroachment is Ex. 15, p. 2, which shows the location of a "55' reduced buffer" for two of the wetlands. This 55' buffer is apparently the greatest reduction the Applicants would be allowed under the administrative buffer reduction process². The staff report and the Applicant's critical area report, Ex. 5, assigns a 110-foot buffer to all three wetlands on the project site. Taking the 110-foot buffer as the correct buffer for the wetlands, Ex. 15, p. 2 shows that the entire project site is encumbered by a combination of the 110-foot wetland buffers and the 150-foot buffer to a stream. Ex. 14 shows in combination with Ex. 15, p. 2 that the proposed 4,950-foot encroachment will be located within the 110-foot buffers of what is identified as Wetlands B and C in Ex. 15, p. 2. The proposed encroachment might also

¹ The amount of encroachment is derived from the "notes" section of the Ex. 14 site plan.

² The staff report notes that a site plan showing the greatest administrative buffer reductions available has been provided, but doesn't identify that the site plan has been made an exhibit or provide an exhibit number.

1 encroach into a small part of the 110-foot buffer to Wetland C as depicted in Ex.15, p.
2.

2 4. Characteristics of the Area. The surrounding area is wooded with rural
3 residential property and sporadic single-family residences.

4 5. Adverse Impacts. No significant adverse impacts are anticipated from the
5 proposed variance.

6 The finding of no significant impacts is primarily based upon the conclusion of the
7 Applicants' habitat management plan, which finds that with recommended mitigation
8 the proposal will result in no net loss of ecological function as follows:

9 *A mitigation plan has been prepared to support the proposed*
10 *variance. 2,781 square feet of Wetland B and 18,550 square feet of*
11 *buffer area associated with Wetlands B and C will be enhanced by*
12 *removing non-native invasive species and inter-planting the areas*
13 *with native conifers and shrubs to improve wetland functions and*
14 *improve habitat and screening between Wetland C, Blackjack Creek,*
15 *and the proposed development. In addition, 5,697 square feet of*
16 *voluntary wetland restoration and 7,646 square feet of voluntary*
17 *buffer restoration are proposed for portions of Wetland B and the*
18 *associated buffer previously impacted by clearing. Wetland and buffer*
19 *restoration activities will include removing non-native invasive*
20 *species and planting native trees and shrubs to restore wetland and*
21 *buffer functions associated with Wetland B. Overall, these actions will*
22 *ensure no net loss of wetland or wetland buffer functions onsite.*

17 The recommendations of the habitat management plan are made conditions of approval.
18 The habitat management plan was written by a biologist and the report thoroughly
19 assesses project impacts.

20 6. Minimum Necessary. The requested variance is the minimum necessary to afford
21 relief. The proposal must be accessed from the west. To be placed on the west side
22 of the development project, the proposed location is the only location that doesn't
23 involve encroaching into either Wetland B or C. If the proposal is located any further
24 east it would encroach into the stream buffer the Type F stream. 1. The proposal
25 can't be located any further west because it abuts a driveway easement. As shown in
Ex. 15, p.2, there is nowhere else the proposal could be located without encroaching
into a wetland or into the stream buffer. Staff also testified that the proposed size of
the home is consistent with that of other homes in the area. For all these reasons, the
proposal is found to be the minimum necessary to afford relief.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The hearing examiner is assigned the role of conducting a hearing and issuing a final decision on critical area variances to wetland buffers that don't qualify for administrative reduction.

KCC 19.200.220B3 provides if a buffer cannot meet the criterion for an administrative buffer reduction, the variance provisions of KCC 19.100.135 shall apply. The staff report notes that the proposal doesn't qualify for an administrative variance because the wetland buffers of Wetlands B and C are reduced to four feet three inches at the narrowest point. KCC 19.100.135B provides that the review procedures of Title 21 KCC shall apply to KCC 19.100.125 variances. KCC 21.04.100 classifies critical area variances as Type III process. As outlined in KCC 21.04.110, the Type III process involves an open record hearing held by the hearing examiner and a final decision issued by the hearing examiner.

Substantive:

2. Zoning Designation. The property is currently zoned Rural Residential.

3. Review Criteria. KCC 19.100.135A governs the criteria for hearing examiner critical area variances. Pertinent criteria are quoted below and applied via corresponding conclusions of law.

KCC 19.100.135A1: *A variance in the application of the regulations or standards of this title to a particular piece of property may be granted by Kitsap County, when it can be shown that the application meets all of the following criteria:*

1. *Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.*

4. Criterion met. The criterion is met. The property is subject to special circumstances because it is completely encumbered by wetland and stream buffers as outlined in Finding of Fact No. 3. That circumstance deprives the owners of property rights and privileges enjoyed by others in the vicinity because without the variance the Applicants would not be prohibited from building a home or any other critical area nonexempt structure on their property. The construction of a single-family home is a

1 right that would be generally available to any other property of similar size that would
2 not be encumbered by critical area limitations.

3 **KCC 19.100.135A2:** *The special circumstances referred to in subsection (A)(1) of
4 this section are not the result of the actions of the current or previous owner.*

5 5. Criterion met. The criterion is met. The circumstances are a natural condition of
6 the property resulting from application of the County's critical area regulations to the
7 wetlands and stream of the project site.

8 **KCC 19.100.135A3:** *The granting of the variance will not result in substantial
9 detrimental impacts to the critical area, public welfare or injurious to the property or
10 improvements in the vicinity and area in which the property is situated or contrary to
11 the goals, policies and purpose of this title.*

12 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
13 5. Approval of the variance is consistent with the policies and purposes of Title 19 as
14 identified in KCC 19.100.105 because there will be no net loss of ecological function
15 under the mitigation plan proposed by the Applicants.

16 **KCC 19.100.135A4:** *The granting of the variance is the minimum necessary to
17 accommodate the permitted use.*

18 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
19 6.

20 **KCC 19.100.135A5:** *No other practicable or reasonable alternative exists. (See
21 Definitions, Chapter 19.150.)*

22 8. Criterion met. The criterion is met. KCC 19.150.510 defines Reasonable
23 Alternative as "an activity that could feasibly attain or approximate a proposal's
24 objectives, but at a lower environmental cost or decreased level of environmental
25 degradation". As determined in Finding of Fact No. 6, alternative locations would
require greater encroachments into the critical areas of the project site.

KCC 19.100.135A6: *A mitigation plan (where required) has been submitted and is
approved for the proposed use of the critical area.*

9. Criterion met. The criterion is met by the applicant's mitigation plan and habitat
management plan, Ex. 4 and 5.

DECISION

Based upon the conclusions of law above, the variance application is approved subject
to the following conditions:

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a. Planning/Zoning

- 1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
- 2. This Variance approval shall automatically become void if no building permit application is accepted as complete by the Department of Community Development within four (4) years of the Notice of Decision date or the resolution of any appeals.
- 3. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.
- 4. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit #22-03914 and #22-00285. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

b. Development Engineering

- 5. GENERAL: Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer’s engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.
- 6. STORMWATER: Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the SDAP (or Building Permit if no SDAP required) application is deemed fully complete. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Code in effect at the time of SDAP application, or

1 Building Permit if an SDAP is not required.

- 2 7. If the project proposal is modified from that shown on the site plan approved
3 for this permit application, Development Engineering will require additional
review and potentially new conditions.

4 **c. Environmental**

- 5 8. Construction techniques shall implement best management practices to ensure
6 protection of the stream and Wetlands, associated buffers, and local water
7 quality. Such best management practices shall include protective silt fencing
8 to define work areas, protective orange construction fencing along defined
work areas, work during periods of limited rainfall or potential for adverse
erosion, and seeding of exposed soils as needed to prevent adverse erosion.

- 9 9. Due to the mapped erosion hazard area (EHA) on this parcel, a non-clearing native
10 vegetation buffer shall be maintained from the top of the slope to 25 feet beyond
11 the top of the slope and will be depicted on the approved site plan, unless
12 otherwise allowed through a Geological Assessment. In addition, a building or
impervious surface setback line of 15 feet is required from the edge of the EHA
buffer.

- 13 10. The applicant shall record a Notice to Title for the proposed preservation area(s)
14 of the site. The Notice to Title shall be submitted with the associated building
15 permit and is required prior to approval of the building permit.

- 16 11. Prior to occupancy, the common boundary between the wetland buffer and the
17 adjacent land shall be permanently identified with critical area buffer signs.
18 Critical Area Ordinance (CAO) signs shall be placed along the designated
19 boundary spaced approximately 50-feet apart, visual from sign to sign. Signs
must be attached to existing trees with diameter breast height greater than 4
inches. Alternative methods include 4x4 posts, metal posts or split rail fencing.

- 20 12. Permit application approval is subject to chapter 19.300.315 of Kitsap County
21 Code, which states that buffers or setbacks shall remain undisturbed natural
22 vegetation areas except where the buffer can be enhanced to improve its
23 functional attributes. Refuse shall not be placed in buffers. Clearing and tree
24 removal within the established wetland buffer shall be the minimum necessary
to support the proposed improvements. Clearing limits must be clearly shown on
the site plan with the associated building permit and clearing outside of the
approved limits will require prior County approval.

- 25 13. A 150-foot native vegetation buffer shall be retained along the perimeter of the
stream as depicted on the approved site plan. In addition, a building or
impervious surface setback line of 15-feet is required from the edge of the stream

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buffer.

14. The project shall adhere to the mitigation measures and recommendations within the approved Wetland and Fish and Wildlife Habitat Assessment and Conceptual Mitigation Plan, dated September 21, 2020, and revised May 17, 2023, prepared by Soundview Consultants LLC (SVC).

15. In addition to the SVC Mitigation/Monitor Plan, the mitigation plan shall include some of the larger cleared trees, as well as smaller pieces, as possible coarse wood in the enhanced sites to provide wildlife habitat.

16. Monitoring and maintenance of the planted area shall be conducted for five years, and extended, if necessary, after DCD staff approves planting. Monitoring includes live and dead vegetation counts and records of all maintenance activities. Maintenance activities can be defined as, but are not limited to, removal practices on invasive or nuisance vegetation and watering schedules. Monitoring information shall be summarized in a letter with photographs depicting conditions of the vegetation and overall site. Monitoring reports are due to Kitsap County Department of Community Development Services and Engineering Division annually. If more than 20 percent of the plantings do not survive within any of the monitoring years, the problem areas shall be replanted, and provided with better maintenance practices to ensure higher plant survival. The construction of the permitted project is subject to inspections by the Kitsap County Department of Community Development. Extensions of the monitoring period may be required if original conditions are not met. All maintenance and construction must be done in full compliance with Kitsap County Code (KCC), including the Kitsap County Critical Area Ordinance (Title 19 KCC) and Shoreline Master Program (Title 22 KCC). Any corrections, changes or alterations required by a Kitsap County Development Engineer Inspector shall be made prior to additional inspections. Any assignment of savings, financial surety or other like security for maintenance of the buffer mitigation plan shall only be released if monitoring requirements are satisfied in the final year of the monitoring term.

17. This proposal is subject to the conditions of the Geotechnical Engineering Letter associated with this permit and on file at the Department of Community Development. All American Geotechnical report, dated April 5, 2022)

d. Traffic and Roads

18. No comments at this time.

e. Fire Safety

19. None at this time.

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f. Solid Waste

20. No comments at this time.

g. Kitsap Public Health District

21. No comments at this time.

Dated this 7th day of June, 2024.

Phil Olbrechts
Phil Olbrechts,
Kitsap County Hearing Examiner

Appeal Right and Valuation Notices

Pursuant to KCC 21.4.100 and KCC 21.04.110, these variance decisions are final land use decisions of Kitsap County and may be appealed to superior court within 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.