



King County

**Department of Permitting
and Environmental Review**

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FINAL CODE INTERPRETATION
CINT18-0003 (Miller)

Summary & Background

On September 6, 2018, Dwight and Rebecca Miller filed a code interpretation request with the Department of Permitting and Environmental Review (DPER). The request concerns whether a Native Growth Retention Area (NGRA) required for obtaining a building permit for a single-family home can be designated on a sensitive area tract with shared ownership interests.

The owners have submitted a building permit (DWEL18-0216) for development of a single-family residence on parcel 1624079124. The parcel was created via a short plat in 2003, which created two lots: "Lot 1" is the parcel with this active building permit and "Lot 2" is parcel 1624079081. Lot 2 is also owned by the Millers. The short plat recording also established three sensitive area tracts: Tract A, Tract B, and Tract C.

A full dispersion strategy is proposed as part of the building permit in order for the proposed impervious surfaces to not be subject to the flow control facility requirements of the Surface Water Design Manual (SWDM). Specifically, the Millers are required to provide an NGRA on the site to meet the full dispersion requirements of SWDM Section C.2.1.1. The Millers are proposing to use a portion of the sensitive area Tract A (created by the short plat) to satisfy the NGRA requirement.

The SWDM defines a "site" as:

"Site means a single parcel, or either: two or more contiguous parcels that are under common ownership or documented legal control or a portion of a single parcel under documented legal control separate from the remaining parcel, used as a single parcel for a proposed project for purposes of applying for authority from King County to carry out a proposed project. For projects located primarily within dedicated rights-of-way, the length of the project site and the right-of-way boundaries define the site."

K.C.C. 19A.04.330 defines "tract" as:

"Tract: land reserved for specified uses including, but not limited to, reserve tracts, recreation, open space, sensitive areas, surface water retention, utility facilities and access. Tracts are not considered lots or building sites for purposes of residential dwelling construction."

The interpretation request seeks clarification on whether the definition of the term “site” in the SWDM can include the definition of the term “tract” in K.C.C. 19A.04.330, as the proponents are not proposing to use the tract as part of the “building site.”

The code interpretation submittal included the following:

- an attachment that includes explanation of the code question; and
- a copy of the recorded short plat dedication.

Discussion & Analysis

The general question of whether the term “tract” can be considered as part of the term “site” for the purpose of an NGRA is extraneous for the Millers’ proposal. Generally, there are instances where a tract and a parcel can be considered as one “site” for the purposes of a development proposal. The issue here is whether this specific tract and this specific parcel can be considered as one “site” for the purpose of the SWDM.

As stated in the restrictive covenants of the short plat recording, the purpose of the three sensitive area Tracts was to serve as environmental protection and surface water management for both Lot 1 and Lot 2. The recording also states that, among other requirements, the three tracts must be held in undivided interest by each owner of the two lots and that interest must be passed along with ownership of the lot.

Currently, Lot 1 and Lot 2 are both owned by the Millers. The Millers propose that, given that they own both lots, they should be able to use a portion Tract A to fulfill the drainage requirements for development on Lot 1. The Millers’ position is that this has no practical impact on the ownership interests of Tract A, as the Millers own both lots and thus have “full” ownership interest in Tract A. However, the ownership interests of Tract A apply to the lot itself and not to the owners. Lot 1 and Lot 2 both have ownership interest in Tract A. If the ownership of Lot 2 changes, the interest in Tract A is passed to the next owner of Lot 2. For example, if the Smiths own Lot 2 and if the Millers use Tract A for their NGRA, the Smiths’ interests in Tract A would be impeded.

Decision

Given that Lot 1 does not have undivided interests in Tract A, Tract A (nor any of the tracts created by this short plat) cannot be considered as part of the “site” for Lot 1. As such, any portion of the NGRA for Lot 1 cannot be located on Tract A.

Finality of Code Interpretations

Under K.C.C. 2.100.050.A, the director’s decision on a code interpretation is final. A code interpretation issued by the director governs all staff review and decisions unless

withdrawn or modified by the director or modified or reversed on appeal by the King County Hearing Examiner, King County Council or an adjudicatory body (K.C.C. 2.100.040.H).



Jim Chan
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