



Department of Public Works and Environmental Services

Technical Bulletin

Subject: Stormwater Management Ordinance Common Plan of Development or Sale **Date: June 25, 2014** **No.: 14-11**

Summary: The County Stormwater Management Ordinance §124-1-5 includes a definition for “*Common plan of development or sale*”. If a proposed land disturbing activity is considered part of a larger common plan of development or sale, it affects its eligibility for an exemption from the County Stormwater Management Ordinance requirements and the requirement to obtain state permit coverage. This guidance is intended to help clarify the code definition and explain how it applies to stormwater management requirements within the County.

Effective Date: Immediately.

Background: On January 28, 2014, the Fairfax County Board of Supervisors adopted the new Stormwater Management Ordinance of Fairfax County (ordinance) and related amendments to the Public Facilities Manual (PFM). The new ordinance and PFM amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.). The ordinance becomes effective July 1, 2014.

The ordinance definitions in §124-1-5 include “*Common plan of development or sale*”. Prior to submitting a land development application, an applicant should determine whether or not a project is considered part of a larger common plan of development or sale. Proposed land disturbing activities that are part of a larger “common plan” may not be eligible for an exemption under § 124-1-7 of the County’s stormwater management ordinance and may require coverage under the state General VPDES Permit for Discharges of Stormwater from Construction Activities even though the land disturbance is less than one acre.

Guidelines: A detailed guidance document, *Guidance on Common Plan of Development or Sale*, is attached.

Please note that the information contained in this technical bulletin is based on staff’s current understanding of the regulatory intent of the common plan of development or sale provisions of the state regulations and permit guidance provided by the U.S. Environmental Protection Agency. Subsequent regulatory changes and/or additional regulatory guidance from the Virginia Department of Environmental Quality could affect the content of the guidance document. The County will update these policies and procedures if necessary.



If you have any questions, please contact the Site Code Research and Development Branch, at **703-324-1780, TTY 711.**

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Attachment: *Guidance on Common Plan of Development or Sale*

Guidance on Common Plan of Development or Sale

Introduction:

On January 28, 2014, the Fairfax County Board of Supervisors adopted the new Stormwater Management Ordinance of Fairfax County (ordinance) and related amendments to the Public Facilities Manual (PFM). The new ordinance and PFM amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.). The ordinance is effective July 1, 2014.

The definitions in ordinance § 124-1-5 includes “*Common plan of development or sale*”. It is important to know whether or not a proposed land disturbing activity is considered part of a common plan of development or sale as it may affect its eligibility for an exemption under §124-1-7 and whether coverage under the state General VPDES Permit for Discharges of Stormwater from Construction Activities (state general permit) is required. Land disturbing activities that are part of a “common plan” may require state general permit coverage even though they plan to disturb less than one acre. This guidance is intended to help clarify the code definition and explain how it applies to stormwater management requirements within the County.

What is a Common Plan of Development or Sale?

The Virginia Administrative Code ([9VAC25-870-10](#)) and the Fairfax County ordinance define a common plan of development or sale as “*a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.*”

A common plan of development or sale may consist of many small construction projects that together comprise a larger development (e.g. projects requiring a site plan or subdivision plan). For example, an original common plan of development or sale may include the layout of the streets, residential lots, common areas, a school site and commercial development areas that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction is completed.

Land disturbances that may be considered part of a common plan of development or sale include:

- A land disturbing activity within a subdivision where active construction is occurring;
- A land disturbing activity next to a lot(s) purchased from the same developer or owner, and the combined lots disturb one or more acres;
- A construction project with multiple phases or blocks/parcels, even if the separate phases or blocks/parcels will be constructed under separate contract or by separate owners;
- A land disturbing activity that is part of a development plan that is phased over multiple years, but is still under a consistent plan for long-term development;

What is the significance of a common plan of development or sale?

A land disturbing activity related to residential or nonresidential construction that is part of a common plan of development or sale, is not exempt from the requirements of the County stormwater management ordinance.

State general permit coverage is not required for projects that disturb less than one acre except when they are part of a common plan of development or sale that in total, will disturb one or more acres. It is important to know whether or not a proposed land disturbing activity is part of a common plan of development or sale so that state general permit coverage is obtained when required.

When does a common plan of development or sale begin?

A common plan of development or sale begins when there is documentation (i.e. plats, construction drawings, marketing plans, contracts, etc.) that includes land disturbing activities that will in aggregate disturb one or more acres, regardless of the number of proposed construction phases or time it will take to complete the development.

Individual lots within existing residential, commercial, or industrial site plans and subdivision plans that were platted prior to July 1, 2004 are considered separate land-disturbing activities and not common plans of development or sale.

When is a project no longer considered part of a common plan of development or sale?

A common plan of development ends when the original purpose has been completed or if there has been a clearly identifiable period of time without any construction activity and there is less than one acre of the original common plan remaining to be built. A land disturbing activity within the remaining area may be treated as separately built and no longer part of a common plan.

After the initial common plan land disturbing activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a dwelling is built and occupied, any future construction on that lot (i.e. additions, accessory structures, redevelopment) would stand alone for purposes of calculating the disturbed area.

What if the extent of the common plan is contingent on future activities?

An applicant may not know up front exactly how many acres will ultimately be disturbed, or whether some activities will even occur with certainty. In this case an applicant should make the best estimate possible and may wish to overestimate the area of disturbance to determine whether or not the ordinance or state general permit coverage applies.

If a project has a long range master plan of development where some portions of the master plan are conceptual rather than a specific plan of future development and the future construction

activities would, if they occur at all, happen over an extended time period, an applicant may consider the "conceptual" phases of development to be separate common plans of development or sale provided the periods of construction for the physically interconnected phases will not overlap.

What if the project consists of separate, non-contiguous construction activities that are part of a larger common plan?

According to US EPA permit guidance¹, if discrete construction projects are located within a larger common plan of development or sale but are located at least 1/4 mile apart, they may be considered separate plans provided any interconnecting road, travelway, or utility project that is part of the same common plan of development or sale is not concurrently being disturbed.

If you have any questions, please contact the Site Code Research and Development Branch, at **703-324-1780, TTY 711.**

¹ US EPA: Construction General Permit Frequently Asked Questions.
<http://cfpub.epa.gov/npdes/stormwater/cgpfaqs.cfm>