

# COMMONWEALTH OF VIRGINIA

## Department of Environmental Quality

---

**Subject:** Guidance Memo No. 25-2007 – **Clarification on Common Plan of Development or Sale**

**To:** Regional Directors, Central Office - Office of Stormwater Management

**From:** Jaime B. Robb, Director, Water Operations

**Date:** November 18, 2025

**Copies:** Trisha Beasley, April Rhodes

---

### Summary:

A “common plan of development or sale” (CPOD) is defined in the Virginia Erosion and Stormwater Management (VESM) Regulation as a “contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.” The purpose of this guidance memorandum is to 1) provide clarification where the Department of Environmental Quality is the Virginia Stormwater Management Program (VSMP) or Virginia Erosion and Stormwater Management Program (VESMP) Authority on the legal authority, application, and interpretation of “common plan of development or sale” 2) to assist in the determination of when a CGP is required and when an agreement in lieu of a plan may be used; and 3) provide scenarios that demonstrate this information where DEQ is the VSMP or VESMP Authority.

### Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>).
- The Department’s website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

### Contact Information:

Please contact DEQ’s Office of Stormwater Management at [SWMguidance@deq.virginia.gov](mailto:SWMguidance@deq.virginia.gov) or April Rhodes at [April.rhodes@deq.virginia.gov](mailto:April.rhodes@deq.virginia.gov) or 571-866-6091 with any questions regarding the application of this guidance.

### Certification:

As required by Subsection B of [§ 2.2-4002.1](#) of the Administrative Process Act, the agency certifies that this guidance document conforms to the definition of a guidance document in [§ 2.2-4101](#) of the Code of Virginia.

**Disclaimer:**

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

**GUIDANCE MEMO NO. 25-2007 – CLARIFICATION ON COMMON PLAN OF DEVELOPMENT OR SALE**

**I. APPLICABILITY**

Guidance Memo No. 25-2007 is only applicable when the Virginia Department of Environmental Quality (DEQ) is the Virginia Stormwater Management Program (VSMP) or Virginia Erosion and Stormwater Management Program (VESMP) authority where the land-disturbing activity is occurring. Localities and other entities that serve as VESMP or Virginia Erosion and Sediment Control Program (VESCP) authorities may, but are not required to, adopt comparable policies or requirements in their ordinances based on this guidance.

**II. BACKGROUND AND PURPOSE**

Any land disturbing activity in the Commonwealth of Virginia that 1) disturbs one acre or more; or 2) disturbs less than one acre but is part of a larger common plan of development or sale that disturbs one acre or more; and 3) is not subject to an exemption, is required to have coverage under a Virginia Pollutant Discharge Elimination System (VPDES) individual permit or the General VPDES Permit for Discharges of Stormwater from Construction Activities (CGP). A VPDES permit specifically for construction activities authorizes the permit holder to discharge stormwater associated with construction activities to surface waters within the boundaries of the Commonwealth under the Virginia Erosion and Stormwater Management Act and a corresponding Virginia Erosion and Stormwater Management Program (or Virginia Stormwater Management Program where DEQ is the program authority).

Determining whether a land disturbing activity is, or is not, part of a “common plan of development or sale” (CPOD) is not always apparent because of the type of development that is occurring, the timing of development, the proximity of other development or land-disturbing activities, and other factors. The determination of CPOD influences whether a land disturbance less than one acre requires coverage under a CGP and when an agreement in lieu of a plan can be used for the project. The purpose of this memorandum is to 1) provide clarification on the legal authority, application, and interpretation of “common plan of development or sale;” 2) assist in the determination of when a CGP is required and when an agreement in lieu of a plan may be used; and 3) provide scenarios that demonstrate this information where DEQ is the Virginia Stormwater Management Program (VSMP) or Virginia Erosion and Stormwater Management Program (VESMP) Authority.

**III. LEGAL AUTHORITY**

**A. EPA Construction General Permit**

The definition of CPOD originates from the U.S. Environmental Protection Agency (EPA) CGP, which EPA issues under its National Pollutant Discharge Elimination System (NPDES) permit program. Requirements associated with CPOD first appeared in the EPA’s Construction General Permit in 2004.

In EPA’s current CGP, effective February 17, 2022, CPOD is defined in Appendix A as a “contiguous area where multiple separate and distinct construction activities may be taking

place at different times on different schedules under one common plan. The ‘common plan’ of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.”

#### B. Code of Virginia

In the Commonwealth of Virginia, the phrase, “common plan of development or sale,” (CPOD) is used in the Virginia Erosion and Stormwater Management Act, §§ 62.1-44.15:24 et seq. of the Code of Virginia, in the context of land-disturbing activities that require coverage under a VPDES CGP. The phrase is not defined in state law.

In considering permit requirements for certain land-disturbing activities that are or are not considered part of a CPOD, an “agreement in lieu of a plan” for stormwater management may be used in certain circumstances. An agreement in lieu of a plan is a contract between the VESMP authority, or DEQ as the VSMP authority, and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the Virginia Erosion and Stormwater Management Act for the construction of a (i) single-family detached residential structure. Such a contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by DEQ as a VSMP authority in lieu of a stormwater management plan. See § 62.1-44.15:24 of the Code of Virginia; 9VAC25-875-20.

#### C. Virginia Erosion and Stormwater Management (VESM) Regulation

In the Commonwealth of Virginia, the EPA has delegated authority to DEQ to implement the NPDES program, referred to as the VPDES program, and to administer individual and general permits, including the CGP (9VAC25-880). DEQ’s VPDES program is required to be *at least as stringent* as EPA’s NPDES program (40 CFR § 123.25).

Within the Virginia Administrative Code, under the VESM Regulation, “common plan of development or sale” (CPOD) is defined as “a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.” 9VAC25-875-20.

### IV. APPLICATION

A. CPOD applies to construction activities, and coverage under the CGP and a stormwater management plan are required under these circumstances:

In cases where a new development (i.e., a construction project that will result in land-disturbing activity) meets one or more of the criteria below and collectively disturbs one or more acres, the development and associated land-disturbing activity are part of or associated with a CPOD:

1. The new development includes the subdivision<sup>1</sup> of a parcel of land and includes common or shared infrastructure, such as a layout of streets, residential or commercial lots, common areas, or installation of shared roads or utilities (water, sewer, electric, etc.) that will be built or sold to others (e.g., a site plan or subdivision plan).

a) Clarification on “road” vs. “travel way:” For CPOD determinations, the term “road” is secondary to the broader concept of shared infrastructure. A shared driveway, travel way, or similar shared access between multiple lots qualifies as common (shared) infrastructure for CPOD purposes.

2. For multi-phased developments, portions of a phased development, including future unplanned phases, that depend physically upon earlier phases of the project (i.e., they share a road, stormwater best management practices, utilities, etc.) would be considered part of the overall CPOD.

3. The proposed land disturbing activities, including “small construction activities” (9VAC25-875-20), that are associated with development on multiple contiguous parcels and a sale to a common owner, are part of a “common plan” as indicated by advertisements, public notices, or pending or current zoning requests that document the intention for CPOD.

a) Examples of advertisements, public notices, or current zoning may include documentation submitted to the locality (e.g., plats, construction drawings, marketing plans, contracts) for the development that indicates new land disturbing activities will, in aggregate, disturb one or more acres, regardless of the number of proposed construction phases or time to complete.

B. CPOD does not apply to the following construction activities, and coverage under the CGP may not be required when: The construction activity is part of a project that meets one of the criteria listed in Part IV. A, but physically separated by at least ¼ mile<sup>2</sup> from any other existing or planned development within the same area, and the area between the projects is not being disturbed.

2. For multi-phased developments, portions of a phased development may be considered independently, where each phase has independent infrastructure (i.e., no shared infrastructure) and can be constructed without interdependence.

---

<sup>1</sup> Subdividing a larger parcel, in and of itself, does not mean that there is a CPOD for purposes of determining the requirement for a stormwater management plan and CGP. The presence or lack of other factors is persuasive.

<sup>2</sup> See the question on p.7, “What if the common plan of development or sale consists of non-contiguous separate projects?” in the “Frequent Questions of EPA’s Construction General Permit” for the 2022 CGP. Available at <https://www.epa.gov/system/files/documents/2022-01/cgp-frequent-questions.pdf> (last accessed October 28, 2025).

C. An agreement in lieu of a plan for a stormwater management plan for the construction of a single-family detached residential structure is applicable<sup>3</sup>:

1. For the construction of a single-family detached residential structure within a CPOD that has CGP coverage for the entire development, and the developer for the house differs from the CGP permit holder.
2. For the construction of a single-family detached residential structure outside of a CPOD where construction is greater than one acre, but less than five acres.
3. For numbers 1 and 2 of this subdivision, the signed agreement in lieu of a plan for a stormwater management plan, the CGP coverage letter, and the stormwater pollution prevention plan (SWPPP) should be posted at each construction entrance.

## V. SCENARIOS

The following scenarios are for use as examples when evaluating if a situation meets the law, regulations, and definition of a CPOD:

### A. Single-Family Detached Residential Structures

#### Scenario 1

A single home builder owns 3 lots immediately adjacent to each other. All 3 lots share a single access drive. The builder is constructing one home on each lot, one at a time. The total development will disturb more than one acre.

DEQ Answer: Because the overall development will disturb more than one acre and all 3 lots share the same access drive, this is considered a common plan of development. A stormwater management plan and CGP are required prior to initiating the land disturbing activity.

#### Scenario 2

The current owner has 6 contiguous half-acre residential parcels. There will not be any shared infrastructure, and each of the parcels will have separate driveways to an existing county road. Each parcel will be sold to a separate owner prior to new development, and that owner will make decisions about construction on each parcel.

DEQ Answer: When each parcel is sold to a new owner and that owner is ready to begin construction on their parcel, each parcel is considered a separate land-disturbing activity. In this example, the expected land disturbance will not be greater than or equal to 1 acre for each half-acre parcel, so each parcel should be treated as part of a less than one-acre development, and no CGP or stormwater agreement in lieu of a plan would be required.

---

<sup>3</sup> Where a locality is the Virginia Erosion and Sediment Control Program (VESCP) authority and the construction activity is determined eligible for coverage under a single-family detached residential structure agreement in lieu of a plan, the locality may proceed in issuing a local land disturbance permit or allow for or an agreement in lieu of a plan for an erosion and sediment control plan.

### **Scenario 3**

An owner purchased two disconnected and undeveloped infill lots within previously constructed and subdivided parcels on a 50-acre residential development, and each lot has independent access to an existing public road. The owner submits a request to construct 1 single-family home on each parcel, totaling 2 acres of land disturbance for each parcel.

DEQ Answer: Where only a small portion of the original CPOD remains undeveloped and there are remaining infill lots with no other ongoing construction activities (i.e., all areas are either undisturbed or are stabilized), the new development is based on the acreage remaining from the original CPOD. Because each individual lot disturbs more than one acre, the owner may use the agreement in lieu of a plan for the stormwater management plan requirement, associated SWPPP template, and CGP for the single-family home on each individual parcel of land.

### **Scenario 4**

A developer has purchased the last five remaining lots in an area that evolved into a subdivision over several years. Each lot is 0.5 acre, with two lots being adjacent and three in close proximity but scattered in other areas. The area was never planned as a subdivision, but as more land was sold and homes were constructed, the county determined that the area now met the county ordinance definition of a subdivision. The area is served by an existing road that has had streets added to over time, and no new infrastructure work is planned by the new developer.

DEQ Answer: Although each lot has been purchased by the same developer, the entire set of lots need not be considered a common plan of development and should be accounted for individually. Because the lots are independently less than 1 acre, an agreement in lieu of a stormwater management plan and CGP are not required. The owner should contact the VESCP Authority for use of the single-family detached residential structure agreement in lieu of a plan or for erosion and sediment control plan approval.

### **Scenario 5**

A preliminary subdivision plat shows the ultimate development of 5 lots with homes, driveways, and septic systems located off of an existing road. The limits of disturbance documented within the plan set only include grading of the existing ditch, installation of culverts for each of the 5 driveways, and the installation of storm sewer. All 5 lots are owned by the same developer. Water quantity and quality analysis has been provided for the drainage work and the 5 lots, but the plan set states that “lot grading shown on this sheet is for informational purposes only and is not to be performed with this plan.”

DEQ Answer: The ditch grading, culvert installation, and storm sewer work are considered the start of a common plan of development, which ultimately includes the construction of each of the 5 lots. A CGP and stormwater management plan are required ahead of the start of the utility-related land disturbing activity. The owner may request to phase the CPOD.

## B. Commercial Development/Community Development

### **Scenario 6**

A private golf course has existed since 2000. There is no master plan, but the club owns more surrounding property and now wishes to add multiple buildings to the surrounding property. Each building will have less than one acre of disturbance, but will cumulatively disturb more than one acre total in the near future.

DEQ Answer: If the surrounding property is all included within the boundary of the golf course (as delineated by common ownership or boundary markers such as walls, vegetation, or fencing), then the multiple projects would be considered a CPOD. In coordinating with the project permit requirements, DEQ will require a master plan so that all future developments can be incorporated and possibly permitted as future phases. The consideration for a CPOD would be regardless of the distance apart.

### **Scenario 7**

A private school campus was established in 1878. The school proposes to add multiple buildings within the campus boundaries at the same time. Land disturbance for each individual site will be less than 1 acre, but will cumulatively exceed 1 acre.

DEQ Answer: Since the projects will cumulatively disturb more than one acre, the individual projects planned throughout the campus would be considered part of a common plan of development. As with Scenario 6, DEQ will require a master plan so that all future phases can be included with any permitting.

### **Scenario 8**

A medical complex built in 2010 currently consists of one building and a parking lot. The owner proposes to remove a portion of the parking lot and construct one additional building, disturbing less than 1 acre, and no new impervious area will be added. In the future, the owner hopes to purchase the neighboring property and expand the parking lot.

DEQ Answer: Since the old project from 2010 has been completed and the permit closed, the new proposed building would not be considered part of the common plan of development. This would be considered redevelopment and may not need a CGP since the new disturbance is less than one acre. If in the future, the owner proceeds with expanding the existing parking lot, then the new impervious area of the parking lot expansion project will be considered part of a CPOD for additional proposed areas of development. Consideration should be given regarding the timing and scope of the parking lot expansion project and the total area of disturbance.

### **Scenario 9**

A small town has been awarded a downtown revitalization grant. The plan calls for the addition of second levels to existing structures, updating the building façades, adding parking areas, upgrading utilities, replacing sidewalks, and adding green

space. In total, land disturbance may exceed one acre. The timeframe to fully implement the grant and complete everything is three to five years.

DEQ Answer: The entire project would be considered a CPOD, regardless of the expected time to complete all the projects. Replacement areas need to be accounted for, but portions of the project may be excluded for water quantity and water quality compliance if the activity meets the criteria for stormwater maintenance exemption in 9VAC25-875-90. If total land disturbance, that is not exempt, is over 1 acre, CGP coverage would be required, along with stormwater plan submission and review/approval.

### **Scenario 10**

A telecommunications company has a rural access initiative and is installing 30 miles of underground fiber optic cable along the VDOT right of way within two counties. The utility company is using directional drilling to install conduit for the cable. Land disturbance will be limited to 0.10-acre per entry/exit bores with roughly 6 land disturbing activities (LDA) per mile. Each LDA is less than a ¼ mile apart, with a total of 0.6 acres of disturbance per mile. There are 5 miles proposed in one County (3 acres of disturbance) and 25 miles proposed in a neighboring County (15 acres of disturbance). The company does not have approved Standards and Specifications.

DEQ Answer: Although each individual land disturbance bore is less than 1 acre, the total land disturbance for the broadband rural initiative project is 18 acres. The telecommunications company would need to get CGP coverage, and CPOD applies. Since both counties are VESMP authorities and the telecommunications company does not have coverage under DEQ Standards and Specifications, the company would need to submit for coverage to both counties. The counties may enter into a shared agreement for plan review approval and CGP issuance. Each application should reference the full CPOD coverage of 18 acres. One comprehensive SWPPP may be developed for the project.

Alternatively, the telecommunications company may complete and submit a Standards and Specifications Agreement to DEQ for approval. Once approved, for this scenario, the company will develop stormwater management plans for the entirety of the project and apply to DEQ for CGP coverage. DEQ, as the VESMP authority, will inspect the project for compliance.