

North Dakota Department of Health

Larger Common Plan of Development

Permitting

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Definition

NDR10-0000 defines a “larger common plan” as:

“A contiguous area where multiple, separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

Examples

- Residential Subdivisions
- Commercial Developments
- Industrial Parks

In the Past

- Projects disturbing five or more acres had to submit an application for each project and were considered “LARGE CONSTRUCTION ACTIVITY.”
- Projects disturbing less than five acres were considered “SMALL CONSTRUCTION ACTIVITY” and could be covered under a statewide coverage number.

Reason for the Change

It came down to the definition of large and small construction activity.

Large Construction Activity

- Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.

Small Construction Activity

- Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

Therefore, as of January 1, 2008...

- A Notice of Intent (or application) is required from each individual builder within separate and distinct common plans.

In other words if you build in two developments, you will have two coverage numbers, two Stormwater Pollution Prevention (SWPP) Plans, and two sets of inspection records.

- An individual builder is considered the owner/operator of the site as defined in the general permit.

But...

- An NOI is only required when coverage is **transferred** from the developer to the individual builder.
- If coverage is not transferred, the stormwater permit requirements pertaining to the site are the developers responsibility.
- Note: If an option to buy exists on the property, the developer may not transfer stormwater coverage.

Transfer Process

1. The developer sells off property to a builder*.
 - If the builder does not obtain a permit and the developer does not have documentation requiring the builder to apply for permit coverage or comply with environmental regulations as part of the property sale, the developer is responsible for stormwater discharges from the sold lots.

2. The developer amends the SWPP plan to exclude those areas which have been sold to a builder.

Transfer Process

3. The builder then applies for coverage under the general permit for the purchased property, or if coverage already exists, amends the existing SWPP plan and site map for that common plan to include the property.

After the Transfer

- A NOI is required once coverage is transferred and before construction activity begins.
- Once coverage has been granted to the builder, activity which disturbs additional acreage within the common plan will not require the submittal of another NOI.
- Instead, all activity conducted by the builder within the common plan is covered under the initial NOI.

Stormwater Pollution Prevention Plans (SWPP Plans)

- The builder shall keep and maintain a list of their active construction sites within the common plan as part of the SWPP plan.
- The SWPP plan shall also indicate the locations of any site specific BMPs.
- In other words, you can have a SWPP plan for the entire development, but you have to indicate the erosion and sediment controls and other best management practices at each site.

Annual Location Report

This is the tricky part.

- If you are building in a development that started out as **LARGE CONSTRUCTION ACTIVITY**, this eliminates the requirement to submit an annual location report to the ND Department of Health.
- But...if you are building in a development that started out as **SMALL CONSTRUCTION ACTIVITY**, you are still required to submit an annual location report.

Termination

- In order to terminate coverage in the development, one of the following must occur:
 1. Achieving final stabilization on all properties for which the builder is responsible.
 2. Transferring permit coverage to another builder who has purchased property; similar to the initial transfer between the developer and the builder.
 3. For residential construction only, temporary erosion protection and down gradient perimeter control for the individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the builder has distributed a “homeowner fact sheet” to the homeowner informing them of the need for, and benefits of, final stabilization.

Termination

- There may be instances where the covered property within the development has achieved final stabilization, but no additional activity is anticipated.
- In these cases, a builder (at their own discretion) may
 1. Choose to maintain coverage
 2. Choose to terminate coverage
- If coverage has been terminated and a parcel of property is sold to a new builder, the new builder must obtain coverage before construction activity begins.

In Conclusion

- It is a slightly different way of doing things.
- It lets the Department of Health know where you are before construction begins rather than afterwards.
- It is a better way of establishing who is responsible for the site.

Questions?