

CHAPTER 3

REGULATED LAND-DISTURBING ACTIVITIES AND APPLICABLE REQUIREMENTS

3.1 INTRODUCTION

As discussed in Chapter 1, development in Henrico County is subject to numerous environmental programs required by various state laws and regulations. Application of these requirements occurs during the plan review process for proposed subdivisions, plans of development (PODs), construction of single-family dwellings, and other activities that will result in land-disturbance.

Virginia state laws and regulations contain varying definitions of land-disturbing activities that include different exemptions. Therefore, the first step in developing a plan for environmental compliance is an evaluation of a proposed development project to determine the applicable requirements.

3.2 REGULATED LAND-DISTURBING ACTIVITIES

Sec. 10-28 of the Henrico County Code defines the following types of land-disturbing activities:

1. ***Virginia Erosion and Sediment Control Program (VESCP)*** land-disturbing activity;
2. ***Virginia Stormwater Management Program (VSMP)*** land-disturbing activity; and
3. ***Chesapeake Bay Preservation Act (CBPA)*** land-disturbing activity.

These types of land-disturbing activities are regulated by the County's environmental programs. The differences between these activities are explained by the exemptions and criteria found in the definition for each. (See Chapter 2 for the definition language).

The definition of *VESCP land-disturbing activity* in the County's program is based on the definition of *land-disturbing activity* included in the Erosion and Sediment Control Law (§ 62.1-44.15:51) and includes the 12 exemptions provided in the law.

The definitions of *VSMP land-disturbing activity* and *CBPA land-disturbing activity* in the County's program are based on the definitions of *land-disturbing activity* and

Chesapeake Bay Preservation Act land-disturbing activity found in the Stormwater Management Act (§ 62.1-44.15:24) and all specified exemptions are included.

As mentioned previously, the requirements applicable to a proposed development project depend on the determination of the land-disturbing activity status of the project. To assist with this determination and promote a consistent evaluation of projects, a ***Land-Disturbance Determination*** worksheet has been developed and can be found at the end of this chapter. Applicants should complete the worksheet to determine what type or types of land-disturbing activities describe the proposed project. The worksheet includes a series of questions that when answered, determine the type of land-disturbing activity or activities that define the development project. Please note that a project may be a *VSMP land-disturbing activity* or a *CBPA land-disturbing activity*, but cannot be both.

Copies of the completed worksheets should be submitted to the County with the initial plan/project submittal since the project's requirements are based on this evaluation. Plan reviewers for Henrico County will use the worksheets to determine the applicable requirements described in the following section.

3.3 APPLICABLE REQUIREMENTS

An Environmental Compliance Plan (ECP) in accordance with the requirements of Chapter 5 must be developed for all regulated land-disturbing activities. As explained in Chapter 5, an ECP has many components and some components are applicable to all regulated land-disturbing activities. However, there are several components that are only applicable to certain types of land-disturbing activities. For instance, the general information, Chesapeake Bay Preservation Area requirements, and the Environmental Site Assessment requirements must be provided for all regulated *land-disturbing activities*. However, an Erosion and Sediment Control (ESC) plan is only required for *VESCP land-disturbing activities* and a Stormwater Management (SWM) plan is needed for either a *VSMP land-disturbing activity* or a *CBPA land-disturbing activity*. Additionally, a Stormwater Pollution Prevention Plan (SWPPP) and accompanying Pollution Prevention Plan and Total Maximum Daily Load (TMDL) information is only required for *VSMP land-disturbing activities*. The ECP components that are applicable to the types of land-disturbing activities are summarized in Table 3.1.

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TABLE 3.1 – ECP COMPONENTS AND PERMIT REQUIREMENTS APPLICABLE TO VESCP, VSMP, AND CBPA LAND-DISTURBING ACTIVITIES

ECP Component	Only a VESCP land-disturbing activity	Only a VSMP land-disturbing activity	Only a CBPA land-disturbing activity	Both a VESCP and a VSMP land-disturbing activity	Both a VESCP and a CBPA land-disturbing activity	Environmental Compliance Manual Reference
General Information*	✓	✓	✓	✓	✓	Chapter 5
CBPA Requirements	✓	✓	✓	✓	✓	Chapter 6
ESA Requirements**	✓	✓	✓	✓	✓	Chapter 7
ESC Plan	✓			✓	✓	Chapter 8
SWM Plan		✓	✓	✓	✓	Chapter 9
Pollution Prevention Plan		✓		✓		Chapter 10
TMDL Information		✓		✓		Chapter 11
GCP		✓		✓		Chapter 12
SWPPP		✓		✓		Chapter 13
MS4 Program Requirements	✓	✓	✓	✓	✓	Chapter 15

* Some of the general information items are not applicable to the construction of separately built, single-family residential structures (see section 10-32(f) of the Henrico County Code)

** The ESA requirements are not applicable to the construction of a single-family residential structure (see section 10-32(f) of the Henrico County Code)

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These applicable requirements are also depicted in Table 3.2 for single-family residential construction and Table 3.3 for other construction projects and are grouped by various characteristics of the development project.

TABLE 3.2 - IMPLEMENTATION MATRIX FOR CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE

Development Scenarios				Applicable Requirements								
Disturbed Area	In a CBPA?	Part of a common plan of development or sale?	Regulated Land-disturbance Type(s)	ECP General Information	CBPA Requirements	ESA Requirements	ESC Plan	SWM Plan	GCP	SWPPP	Pollution Prevention Plan	TMDL Measures
≥ 2,500 ft ² and < 1 ac	NO	NO	VESCP	✓		✓	✓					
	NO	YES	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	YES	NO	VESCP	✓	✓	✓	✓					
	YES	YES	CBPA VESCP	✓	✓	✓	✓	✓				
≥ 1 ac.	NO	NO	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	NO	YES	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	YES	NO	VSMP VESCP	✓	✓	✓	✓	✓	✓	✓	✓	✓
	YES	YES	VSMP VESCP	✓	✓	✓	✓	✓	✓	✓	✓	✓

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TABLE 3.3 - IMPLEMENTATION MATRIX FOR CONSTRUCTION OTHER THAN A SINGLE-FAMILY RESIDENCE

Development Scenarios				Applicable Requirements								
Land Disturbance	In a CBPA?	Part of a common plan of development or sale?	Regulated Land-disturbance Type(s)	ECP General Information	CBPA Requirements	ESA Requirements	ESC Plan	SWM Plan	GCP	SWPPP	Pollution Prevention Plan	TMDL Measures
≥ 2,500 ft ² and < 1 ac	NO	NO	VESCP	✓		✓	✓					
	NO	YES	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	YES	NO	CBPA VESCP	✓	✓	✓	✓	✓				
	YES	YES	CBPA VESCP	✓	✓	✓	✓	✓				
≥ 1 ac.	NO	NO	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	NO	YES	VSMP VESCP	✓		✓	✓	✓	✓	✓	✓	✓
	YES	NO	VSMP VESCP	✓	✓	✓	✓	✓	✓	✓	✓	✓
	YES	YES	VSMP VESCP	✓	✓	✓	✓	✓	✓	✓	✓	✓

LAND-DISTURBANCE TYPE DETERMINATION WORKSHEET

PROJECT NAME	
PROJECT DESCRIPTION	

Is the project a <i>Virginia Erosion and Sediment Control Program (VESCP) land-disturbing activity</i> as described in Sec. 10-28 of the Henrico County Code?		
1	Does the project involve a man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into the state waters or onto lands in the commonwealth including, but not limited to, clearing, grading, excavating, transporting, and filling of land?	YES / NO
2	Is the project: (check applicable box)	
a.	A minor land-disturbing activity such as a home garden or individual home landscaping, repair, or maintenance work?	<input type="checkbox"/>
b.	An individual service connection?	<input type="checkbox"/>
c.	Installation, maintenance, or repair of underground public utility lines in an existing hard-surfaced road, street, or sidewalk?	<input type="checkbox"/>
d.	Installation, maintenance, or repair of septic tanks, lines, or drainfields unless included as part of an overall plan relating to construction of the building served by the system?	<input type="checkbox"/>
e.	Permitted surface or deep mining operations or oils and gas operations conducted pursuant to Title 45.1?	<input type="checkbox"/>
f.	Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Code of Virginia §10.1-1100 et seq.) or is converted to pasture use as described of Code of Virginia §10.1-1163(B)?	<input type="checkbox"/>
g.	Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company?	<input type="checkbox"/>
h.	Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation?	<input type="checkbox"/>
i.	Disturbed land area of less than 2,500 square feet in size?	<input type="checkbox"/>

LAND-DISTURBANCE TYPE DETERMINATION WORKSHEET

j.	Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles?	<input type="checkbox"/>
k.	Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto?	<input type="checkbox"/>
l.	Emergency work to protect life, limb or property, and emergency repairs? (If the land-disturbing activity would have required an approved ESC plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.)	<input type="checkbox"/>

- The answer to #1 is NO. The project is not a *VESCP land-disturbing activity*.
- A box in #2 is checked. The project is not a *VESCP land-disturbing activity*.
- The answer to #1 is YES and no boxes in #2 are checked. The project is a *VESCP land-disturbing activity*.

<p>Is the project a <i>Virginia Stormwater Management Program (VSMP) land-disturbing activity</i> or a <i>Chesapeake Bay Preservation Act land-disturbing activity</i> as described in Sec. 10-28 of the Henrico County Code?</p>		
4	Does the project involve a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation?	YES / NO
5	Is the project: (check applicable box)	
a.	Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1?	<input type="checkbox"/>
b.	Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described § 10.1-1163(B) of the Code of Virginia?	<input type="checkbox"/>

LAND-DISTURBANCE TYPE DETERMINATION WORKSHEET

c.	Single-family residences separately built, including additions or modifications to existing single-family detached residential structures that: 1) disturb less than one acre; and 2) are not part of a larger common plan of development or sale?	<input type="checkbox"/>
d.	Activities located outside a CBPA that disturb less than one acre of land and are not part of a common plan of development?	<input type="checkbox"/>
e.	Activities located in a CBPA that disturb less than 2500 square feet of land?	<input type="checkbox"/>
f.	Activities for which all discharges go to a sanitary sewer or a combined sewer system?	<input type="checkbox"/>
g.	Activities under a state of federal reclamation program to return an abandoned property to an agricultural or open land use?	<input type="checkbox"/>
h.	Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection?	<input type="checkbox"/>
i.	Activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity?	<input type="checkbox"/>
6	Is the project located in a Chesapeake Bay Preservation Area as defined in section 10-28 of the Henrico County Code?	YES / NO
7	Does the project result in land disturbance equal to or greater than 2,500 square feet and less than one acre?	YES / NO

- The answer to #4 is NO. The project is neither a **VSMP land-disturbing activity** nor a **CBPA land-disturbing activity**.
- A box in #5 is checked. The project is neither a **VSMP land-disturbing activity** nor a **CBPA land-disturbing activity**.
- The answer to #4 is YES, no boxes in #5 are checked, and the answer to either #6 or #7 is NO. The project is a **VSMP land-disturbing activity**.
- The answer to #4 is YES, no boxes in #5 are checked, and the answer to #6 and #7 is YES. The project is a **CBPA land-disturbing activity**