Virginia Department of Conservation & Recreation

GUIDANCE DOCUMENT ON THE IMPLEMENTATION OF THE VIRGINIA STORMWATER MANAGEMENT REGULATIONS GRANDFATHERING PROVISION

DRAFT

(Approved XXXX)

Summary:
This Virginia Stormwater Management Program document provides guidance on implementation of the grandfathering provision of the Virginia Stormwater Management Regulations found at 4VAC50-60-48.

Electronic Copy:
An electronic copy of this guidance document is available in PDF format on the Regulatory Town Hall website at http://townhall.virginia.gov/ under the "Guidance documents" tab (see Virginia Soil and Water Conservation Board).

Contact Information:
Please contact the Department of Conservation and Recreation's Division of Stormwater Management at [EMAIL] or by calling [NUMBER] with any questions regarding the application of this guidance.

Disclaimer:
This document is provided as guidance and, as such, sets forth the process for implementation of the grandfathering provisions found at 4VAC50-60-48. The guidance does not carry the force of law and is not intended, and cannot be relied on, to create any rights, substantive or procedural, on the part of any person or entity. DCR reserves the right to modify the guidance at any time without public notice. In addition, DCR may deviate from the guidance as it deems necessary to carry out the intent of the laws and budget language DCR is charged implementing.

Implementation of the Virginia Stormwater Management Regulation Grandfathering Provision:

I. Background:

This guidance document defines the policies and procedures for implementation of the Virginia Stormwater Management Regulation grandfathering provision found at 4 VAC50-60-48.

II. Definitions:

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the CWA, the Act, and this chapter

or with a Chesapeake Bay Preservation Act land-disturbing activity regulated pursuant to the Act and this chapter.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Locality" means a county, city, or town.

"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the local program or this chapter.

III. Authority:

Pursuant to §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia

IV. Discussion and Interpretation:

On September 11, 2011, modifications to the Virginia Stormwater Management Program regulations (4VAC50-60-10 et seq.) became effective. These modifications included the establishment of new stormwater design criteria for the control of post construction stormwater runoff. The regulations included a grandfathering provision so as not to delay or negatively impact land-disturbing activities previously designed and in the process of review and approval. Parts of land-disturbing activities considered grandfathered are to comply with the post construction technical criteria found in 4 VAC 50-60, Part II. C. The grandfathering provision applies to both privately funded land-disturbing activities and publicly funded land-disturbing activities.

In order for privately funded land-disturbing activities to be considered a grandfathered, the following conditions must be met:

1. The land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, must be approved by a locality prior to July 1, 2012;

2. The document approved by the locality must include a layout; and,

3. The document approved by the locality must include sufficient information for the locality to find that the resulting land-disturbing activity will be compliant with the requirements of the post development design criteria found in Part II C.

In considering whether a land-disturbing activity can be considered grandfathered, a locality should require that the approved document includes a conceptual drawing that identifies the location of the proposed stormwater facilities and includes the pre and post development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria, as well as, the calculations necessary to determine compliance with the water quantity design criteria. Land-disturbing activities that do not include these necessary

items should not be considered grandfathered. The Department of Conservation and Recreation cannot make the determination whether privately funded land-disturbing activities are grandfathered activities.

In order for publicly funded (local, state or federal) land-disturbing activities to be considered a grandfathered, they must meet the following conditions:

1. There has been an obligation of locality, state or federal funding prior to July 1, 2012. Funding can be whole or in part but must be appropriated towards the project. Authorization or approval to begin design of a land disturbing project without appropriation of funds should not meet the necessary requirements in order to be considered grandfathered.

   Or

2. The Department of Conservation and Recreation has approved a stormwater management plan prior to July 1, 2012. The stormwater management plan approved by the Department must have ensured compliance with Part II. C. of the regulations.

Land-disturbing activities that qualify under the grandfathering provision must be completed by June 30, 2019. Portions of the grandfathered project that are not under construction at that time become subject to the technical criteria found in Part II.B. The only exception to the June 30, 2019 date is for publicly funded projects financed by governmental bonding or public debt financing issued prior to July 1, 2012. In these cases, there is no completion date requirement.

The grandfathering provision applies specifically to land-disturbing activities and does not apply to regional or watershed stormwater management plans or stormwater master plans. Regional and watershed stormwater management plans and stormwater master plans will need to be reviewed and modified in order to ensure compliance with the new stormwater design criteria.

This guidance does not apply to land-disturbing activities that obtain VSMP permit coverage prior to July 1, 2014. Land-disturbing activities that obtain VSMP permit coverage prior to July 1, 2014 shall comply with the stormwater management requirements found in the VSMP General Permit for Stormwater Discharges from Construction Activities, which is equivalent to Part II.C.

V. Adoption, Amendments, and Repeal:

The Department has consulted with the Virginia Soil and Water Conservation Board regarding the contents of this document at their [DATE] meeting. This guidance document shall remain in effect until rescinded, amended or superseded.

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David A. Johnson Date

Director, Virginia Department of Conservation and Recreation