

STORMWATER PROGRAM ADVISORY

SWPA 12-03

Date: August 10, 2012

SUBJECT: VSMP REGULATIONS - GRANDFATHERING

AUTHOR: Roy T. Mills
State Stormwater Program Administrator

The Virginia Stormwater Management Program (VSMP) Regulations (4VAC 50-60-10 et. seq.) are applicable to all VDOT land disturbing projects/activities where the land disturbance value is one acre or greater (2,500 square feet or greater in a designated Chesapeake Bay Preservation Area), excluding routine maintenance activities.

Applicable VDOT land disturbing activities include all construction and non-routine maintenance activities/projects which are performed by VDOT forces or over which VDOT has contractual control, including Design/Bid/Build, PPTA, Design/Build and Capital Outlay projects/activities.

For those land disturbance activities regulated under of the VSMP Regulations, Part II of the regulations adopted by the SWCB on May 11, 2011 with an implementation date of September 13, 2011(4VAC 50-60-62 et. seq.) contains both the “new” technical criteria (Part II B) and the “old” technical criteria (Part II C) for water quality and stream channel erosion and flood protection requirements.

Part I Section 4VAC 50-60-48 of the VSMP Regulations provides provisions for locality, state and federal projects to be grandfathered under the “old” technical criteria provided certain conditions are met. Projects are defined as activities (construction or maintenance) with defined limits and designated PE, RW and/or Construction accounts. Location and other such studies and lump fund accounts are not considered projects and are not eligible for consideration under the grandfathering provisions.

For a VDOT project/activity to be grandfathered it must fall into one of the following two categories:

1. Project specific bonds must have been issued prior to July 1, 2012.
 - Projects/activities meeting this requirement may be grandfathered indefinitely and can use the “old” technical criteria (VSMP Regulations- Part IIC - 4VAC 50-60-93.1 et. seq.) to satisfy compliance requirements.
2. Funding (PE, RW or Construction) must have been allocated to the project/activity prior to July 1, 2012 (e.g., allocation in SYIP in FY13 or prior) **and** construction activity on the project must physically begin prior to July 1, 2019 (beginning the installation of erosion and sediment perimeter controls will be considered beginning the construction activity).

- Projects/activities meeting these requirements may be grandfathered and can use the “old” technical criteria (VSMP Regulations- Part IIC - 4VAC 50-60-93.1 et. seq.) to satisfy compliance requirements.
- Typically, for Design/Bid/Build (D/B/B) projects, the beginning of construction activity (as defined herein) typically occurs within five to six months after advertisement. Therefore, those projects with an advertisement date of January 1, 2019 or after should **not** be considered a candidate for grandfathering.
- Likewise, for Design/Build (D/B) projects, beginning of construction activity (as defined herein) typically occurs within 18 months following issuance on a Request for Proposal (RFP). Therefore, those projects with an RFP issuance date of January 1, 2018 or after should **not** be considered a candidate for grandfathering.

The construction schedule for projects/activities being considered for grandfathering should be carefully evaluated to make certain that beginning of construction (as defined herein) can/will occur prior to July 1, 2019, as there will be no exceptions granted by DCR for this requirement.

If a project/activity is grandfathered and the post development stormwater management plan for the project/ activity is based on the “old” technical criteria (VSMP Regulations- Part IIC - 4VAC 50-60-93.1 et. seq.) because it is anticipated that the beginning of construction (as defined herein) will be prior to July 1, 2019 but for some reason the schedule “slips” and construction does not begin by that date, the post development stormwater management plan for the project/activity must be revised to incorporate the “new” technical criteria (VSMP Regulations - Part IIB - 4VAC 50-60-62 et. seq.). Doing so may require the project/activity to have to revisit the public participation and/or the environmental review process.

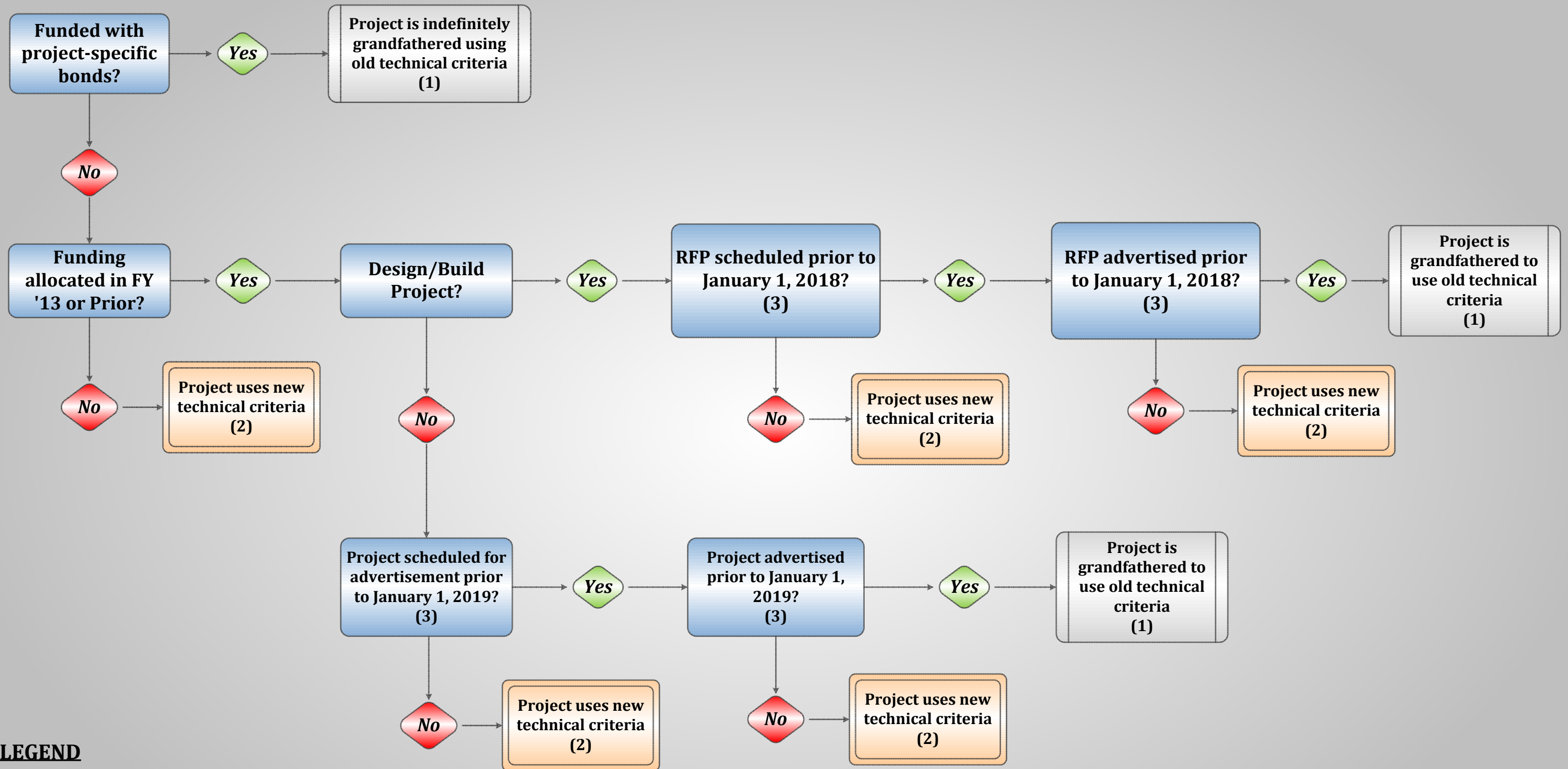
Effective the date of this SWPA, all projects/activities are to be evaluated by their Project Manager or other such management authority to determine each project/activity’s status with regards to the grandfathering issue. A flow chart is included at the end of this SWPA to assist in that determination. A list of all projects/activities designated to be grandfathered shall be developed by each applicable District/Central Office unit and provided to the State L&D Engineer with copies to the appropriate Assistant State L&D Engineer, the State PMO Director, and the State Stormwater Program Administrator. Thereafter, each July 1, all projects/activities designated as grandfathered shall be reviewed to verify the validity of such status based on the most current date of the anticipated beginning of construction (as defined herein) and/or advertisement or RFP issuance date. The “Grandfathered Project List” shall be updated/verified as appropriate and copies distributed to those noted previously.

The “Grandfathered Project List” list shall include the following:




- District
- County or City
- Project Number
- UPC Number
- Type of Project (D/B/B, D/B, Capital Outlay, etc.)
- Brief Description of Project
- Construction Advertisement (D/B/B) or RFP issuance (D/B) date

For projects/activities that are being designated for grandfathering under the “old” technical criteria, a note shall be placed on the title sheet (or other such sheet where no title sheet is provided in the plan set) and in Section IV of the SWPPP General Information Sheets stating:

- “This project is grandfathered under the provisions of Section 4VAC50-60-48 of the VSMP Regulations adopted September 13, 2011 and utilizes the technical criteria of Part IIC (4VAC50-60-93.1 et. seq.) for determining its post development stormwater management design.”



LEGEND

-  (1) VSMP Regulations - Part II C - 4 VAC 50-60-93.1 et. seq.
-  (2) VSMP Regulations - Part II B - 4 VAC 50-60-62 et. seq.
-  (3) Construction must physically begin prior to July 1, 2019