



# County of San Diego

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DATE: June 20, 2016

TO: Development and Redevelopment Project Applicants and Permit Holders

**RE: GRANDFATHERING STATUS OF PROJECTS UNDER THE 2013  
REGIONAL STORMWATER PERMIT**

In May 2013 the San Diego Regional Water Quality Control Board (RWQCB) reissued a Municipal Separate Storm Sewer System (MS4) Permit to the County of San Diego and other local jurisdictions in the region. This 2013 MS4 Permit lowers the thresholds necessary to trigger classification as a **Priority Development Project (PDP)** and sets forth stricter stormwater pollutant control and hydromodification management requirements for these projects. For projects in the unincorporated County, the effective date of these updated requirements was **February 26, 2016**. However, the 2013 MS4 Permit also allows that some projects may be "grandfathered" under the provisions of the earlier 2007 MS4 Permit. In February 2016, applicants were notified of these new requirements, which are also described in detail in Attachment L of the County BMP Design Manual. The BMP Design Manual and all attachments are available at:

[http://www.sandiegocounty.gov/content/sdc/dpw/watersheds/DevelopmentandConstruction/BMP\\_Design\\_Manual.html](http://www.sandiegocounty.gov/content/sdc/dpw/watersheds/DevelopmentandConstruction/BMP_Design_Manual.html).

This letter briefly summarizes these requirements and serves as a notice to applicants regarding upcoming deadlines that must be met for a project to maintain its grandfathering status. It applies only to projects for which the following two conditions were satisfied prior to February 26, 2016:

- **Condition (A)i: Initial Design Approvals.** A design approval was obtained that fully satisfies all applicable requirements of the 2007 MS4 Permit for all areas and phases of the project.
- **Condition (A)ii: Issuance of Construction Permits or Approvals.** A permit or approval was obtained that authorizes the commencement of construction.

Projects which did not satisfy *both* of these conditions before February 26, 2016 must comply with the updated requirements of the 2013 MS4 Permit. For those projects that did meet both conditions, applicants should also be aware of the additional conditions described below.

**Condition (B): Commencement of Construction (between February 16, 2015 and August 14, 2016)**

Not more than 365 days before or 180 days after the BMP Design Manual Effective Date, applicants must commence construction activities under a permit issued per **Condition (A)ii** above. This is a one-time condition that, once satisfied, is not subject to further review. Its

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purpose is limit grandfathering under the 2007 MS4 Permit to projects that have conducted work no more than a year prior to, or within six months after, the effective date of the 2013 MS4 Permit. This means that construction activities on the project site must have commenced **between February 16, 2015 and August 14, 2016** under an open construction permit or approval (including modifications and renewals) issued by the County. Applicants are responsible for providing documentation of the commencement of these activities. Examples of information that may be acceptable to the County, either as primary or supporting documentation, include:

- Inspection records,
- Supervised grading reports
- Condition satisfaction,
- Payroll records,
- Contractor or vendor invoices or payments,
- Aerial photographs, and
- Any other form of documentation deemed acceptable by the County.

The adequacy of submitted documentation will be determined on a case-by-case basis. In general, acceptable forms of documentation include only those that are independently verifiable by County staff. Statements by applicants or contractors (even if written or sworn) are not considered sufficient.

Satisfaction of the conditions above provides a means for a PDP to initially be grandfathered under the provisions of the 2007 MS4 Permit. However, **Conditions (C) and (D)** below describe additional requirements that must be met for a project to maintain its grandfathered status. Failure to meet either of these conditions may result in the revocation of a grandfathering right, in which case a project may be required to partially or wholly meet updated 2013 MS4 Permit requirements.

**Condition C: Issuance of Implementing Approvals (prior to February 26, 2021)**

To maintain the grandfathered status of a PDP, applicants must also have been issued, by February 16, 2021, all subsequent project permits or approvals needed to implement the design initially approved under **Condition (A)**i above. Note that this requirement applies to the issuance of permits or other approvals, rather than completion of work under them.

**Condition D: Maintaining Substantial Conformity (applies for the life of the project)**

The storm water drainage system for the PDP in its entirety, including all applicable structural pollutant treatment control and hydromodification management BMPs, must remain in substantial conformity with the design initially approved under **Condition (A)**i above. The intent of this provision is to allow reasonable modifications in the design of a project plan while preserving compliance with the performance standards initially applied to the PDP.

County staff is available to assist applicants in evaluating the options available to them in meeting each of the requirements described. Applicants are responsible to submit proposals and other required documentation in a timely manner (i.e., allowing sufficient time for County review and comment, resubmittal, and approval prior to applicable deadlines), and to demonstrate and maintain documentation of ongoing compliance with the conditions of any approval initially recognized by the County.

Applicants may also note that projects not meeting the grandfathering criteria described in this letter may alternatively qualify to utilize other, more limited options for establishing prior lawful

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approvals. Please contact your PDS Project Manager for more information and assistance in complying with these updated requirements.

If you have any questions, you may reach your assigned Inspector, whose name will be on all Inspection Reports.

Sincerely,



Jeannette Temple  
Public Works Manager  
Private Development Construction Inspection

cc:

County of San Diego, Department of Planning and Development Services