

## **Review, Approval, and Extension of Projects Submitted Prior to the Effective Date of Revised *Delaware Sediment and Stormwater Regulations***

March 2013

### **Review and Approval**

Projects that have begun developing a Sediment and Stormwater Management Plan prior to the effective date of revisions to the *Delaware Sediment and Stormwater Regulations (Regulations)* may be grandfathered under the previous regulations. Section 3.5.6 of the proposed revised *Delaware Sediment and Stormwater Regulations* reads:

“Administratively complete sediment and stormwater management plans, as determined by Department policy, that have been submitted for review and ultimate approval prior to the effective date of these regulations shall be subject to the regulations in effect at the time that any such plan was first submitted to the Department or Delegated Agency. Unless administratively extended by the Department, a plan undergoing the review process on the effective date of these regulations but is not approved within eighteen months of the effective date of these regulations shall be subject to these regulations.”

This policy document has been developed to define, in part, how the Department and each Delegated Agency will determine, at the time of the effective date of the revised regulations, whether an administratively complete sediment and stormwater plan has been submitted for review and is therefore grandfathered under the requirements of the previous *Delaware Sediment and Stormwater Regulations*. This document will also describe the time-dependent allowances for approvals of grandfathered projects.

### **Grandfathering Determination**

The guidance provided below defines how the Department and each Delegated Agency will determine whether a project may be grandfathered. The Department and/or Delegated Agency reserves the right to reject any submittal that is deemed not to be a good faith effort to meet the requirements of a complete submittal.

#### **DNREC Sediment and Stormwater Program**

Projects for which the complete conceptual stormwater package, including application, checklist, stormwater computations, and conceptual stormwater management plans have been submitted for review to DNREC Sediment and Stormwater Program prior to the effective date of revised *Regulations* will be grandfathered.

**DeIDOT**

Projects delegated to DeIDOT that will receive Sediment and Stormwater approval from the DeIDOT Stormwater Engineer which have submitted Preliminary Plans prior to the effective date of revised *Regulations* will be grandfathered.

**City of Newark**

Projects which have provided to City of Newark a complete submission of both the preliminary plans and a preliminary stormwater report with enough supporting documentation and calculations to substantiate the proposed stormwater management strategies/practices proposed for the site prior to the effective date of revised *Regulations* will be grandfathered.

**City of Wilmington**

The City of Wilmington will consider plans received by the City of Wilmington Department of Licenses and Inspections prior to the effective date of the revised *Regulations* to be grandfathered.

**Kent Conservation District**

Projects for which complete Sediment and Stormwater Plans, including a signed application, plans, calculations and fee, have been submitted to Kent Conservation District prior to the effective date of revised *Regulations* will be grandfathered.

**Middletown**

The Town of Middletown considers a project that has submitted a preliminary plan, including a stormwater management report and plan, for review by the Town/KCI prior to the effective date of revised *Regulations* to be grandfathered.

**New Castle Conservation District**

Projects for which complete Sediment and Stormwater Plans, including a signed application, design calculations and fee, have been submitted to New Castle Conservation District prior to the effective date of revised *Regulations* will be grandfathered.

**New Castle County Dept. of Land Use**

New Castle County Dept. of Land Use will use the assignment of an application number to determine when a project is grandfathered under previous regulations. If the application is assigned a number after the effective date of the new Sediment and Stormwater Regulations, the application will be subject to the new *Regulations*. If the application was assigned a number prior to the effective date of the new stormwater regulations, the application will be subject to the *Sediment and Stormwater Regulations* effective at the time that the application number was assigned.

**Sussex Conservation District**

The Sussex Conservation District will consider projects that have submitted the Preliminary Sediment and Stormwater Management Plan prior to the effective date of revised *Regulations* to be grandfathered.

## Design Review

Following the effective date of the revised *Regulations*, any project, even those that have been submitted prior to the effective date of the revised *Regulations*, may choose to submit a plan complying with the revised *Regulations* for approval. However, those projects that are grandfathered and choose to continue to develop the Sediment and Stormwater Management Plan based upon the requirements of the previous regulations, must achieve approval of that project within eighteen months of the effective date of the revised *Regulations*.

Development types, including single or multi-phase commercial, residential, institutional, and industrial projects will follow the below criteria (see additional multi-phase guidance under Approval Extensions):

### **Projects under design review, or “grandfathered”, when revised *Regulations* become effective**

If the project has been accepted by the appropriate review agency for their review, based upon the criteria above, before the *Regulations* come into effect, the project has eighteen months from the date that the revised *Regulations* are effective to secure final Sediment and Stormwater Management Plan approval. If final approval is not secured within eighteen months, the project will be subject to the new *Regulations*. An extension may be granted only if a hardship can be proven, such as a permit or other agency review delay that is beyond the control of the developer and designer, as determined by the review agency. *See Figure 1.*

### **Projects not under design review when revised *Regulations* become effective**

If the project does not meet the criteria set forth in the Grandfathering Determination section above prior to the revised *Regulations* becoming effective, the project is subject to compliance with the full requirements of the revised *Regulations*.

Development within the Inland Bays, regardless of project type, shall adhere to the following guidelines:

### **Projects under design review, or “grandfathered”, when revised *Regulations* become effective**

If a project located within the Inland Bays watershed meets the grandfathering provision, it may continue design based upon the previous regulations, including the Inland Bays Pollution Control Strategy (PCS) stormwater requirements. The project has eighteen months from the effective date of the revised *Regulations* to secure final Sediment and Stormwater Management Plan approval under the previous regulations and PCS stormwater requirements. Following the effective date of revised *Sediment and Stormwater Regulations*, any project, even those that have been grandfathered, may choose to submit a plan complying with the revised *Regulations* for approval. A plan designed to comply with the revised *Regulations* must comply with runoff reduction requirements to control nutrients in lieu of the PCS stormwater requirements. *See Figure 1.*

**Projects not under design review when revised *Regulations* become effective**

New projects within the Inland Bays watershed that have not been grandfathered must follow the proposed revised *Regulations* in regards to stormwater management, including compliance with runoff reduction requirements to control nutrients.

## **Approval Extensions**

Projects that are approved to comply with previous regulations, either prior to or following the effective date of revised *Sediment and Stormwater Regulations* may have their plan approvals extended under the regulations in effect at the time of original approval. The applicability of plans approved prior to the effective date of the revised *Regulations* is covered in Section 1.3.2 of the proposed revised *Regulations*. In all situations, local sunset provisions shall take precedent. The extension of the Sediment and Stormwater Management Plans shall not supersede the local sunset requirements for construction.

Standard development types, including single phase commercial, residential, institutional, and industrial projects should adhere to the following criteria:

**Projects approved to comply with previous *Regulations* that have not commenced construction**

Plans approved to comply with previous *Regulations* either prior to or following the effective date of revised *Regulations* must commence construction within six years of the effective date of the *Regulations*, otherwise the plan will expire. Commencement of construction includes the installation of utilities, roadways, or stormwater management facilities. General earth moving is not considered commencement of construction unless done in conjunction with one of the above mentioned activities. *See Figure 2.*

**Projects approved to comply with previous *Regulations* that have commenced construction**

Plans approved to comply with previous *Regulations* can continue to be extended per the original approval requirements, so long as the project has been under active construction within the latest approval or extension period. If the project is not under active construction within the latest approval or extension period as determined by the review agency, then the plans may be subject to the revised *Regulations*. Active construction follows the same definition as commencement of construction, but may additionally include building or lot home construction. *See Figure 2.*

**Projects approved to comply with previous *Regulations* that have not commenced construction where approved plans have expired**

Plans approved to comply with previous *Regulations* where construction has not commenced and the plan approval has expired without the Owner seeking a plan approval extension may re-submit the previously approved plan for re-approval under previous *Regulations*. The Owner must submit the plan designed to comply with previous *Regulations* to the appropriate review agency, in accordance with that agency's plan review policy, for review and approval before the effective date of the revised

*Regulations*. Approval of the plan to comply with previous Regulations must be gained within eighteen months of the effective date of the revised *Regulations*. Construction must commence within six years of the effective date of the *Regulations*, otherwise the plan will expire. See Figures 3 and 4.

**Projects approved to comply with previous Regulations that have commenced construction where the approved plan has expired**

Plans approved to comply with previous *Regulations* where construction has commenced, but the plan approval has expired without the Owner seeking a plan approval extension may re-submit the previously approved plan for re-approval under previous *Regulations*. The Owner must submit the plan designed to comply with previous *Regulations* to the appropriate review agency, in accordance with that agency's plan review policy, for review and approval before the effective date of the revised *Regulations*. Approval of the plan to comply with previous Regulations must be gained within eighteen months of the effective date of the revised *Regulations*. See Figure 4.

Multi-phased subdivision or commercial development projects shall adhere to the following guidelines:

**Future phases having previously approved Sediment and Stormwater Management Plans**

Phases of plans can be extended per the original approval requirements, so long as any approved phase of the project has commenced construction and has been under active construction within the latest approval or extension period. If construction has not commenced within any phase of the development, or construction is not active within the latest approval or extension period, the plan for all remaining phases will expire at the end of the current approval or extension period and become subject to the revised *Regulations*.

**Future phases not having previously approved Sediment and Stormwater Management Plans**

Future phases of a development that have not received Sediment and Stormwater Management Plan approval will be subject to the full requirements of the revised *Regulations*. An approved phasing schematic, not accompanied with a detailed Sediment and Stormwater Management Plan for the future phase, does not satisfy the Under Design Review or plan approval requirements. Any future phases that have a detailed Sediment and Stormwater Management Plan which meet the Under Design Review criteria are subject to the eighteen month time period to secure approval as mentioned above.

## **Revisions to Approved Plans**

Following the effective date of the revised *Regulations*, minor revisions to plans approved to comply with previous *Regulations* may be approved by the reviewing agency in accordance with established plan revision procedures. Minor revisions must comply with requirements in effect at the time of the original plan approval.

Following the effective date of the revised *Regulations*, significant revisions to the approved plan, as determined by the Department or Delegated Agency, may be required to comply with revised *Regulations*. A significant revision would include a change to the Record Plan for the project. When a Record Plan change is proposed, the Department or Delegated Agency will further consider changes in the site density and impervious cover in determining whether the revised Sediment and Stormwater Plan must comply with revised *Regulations*.

# Projects Under Design Review When Revised *Regulations* Become Effective

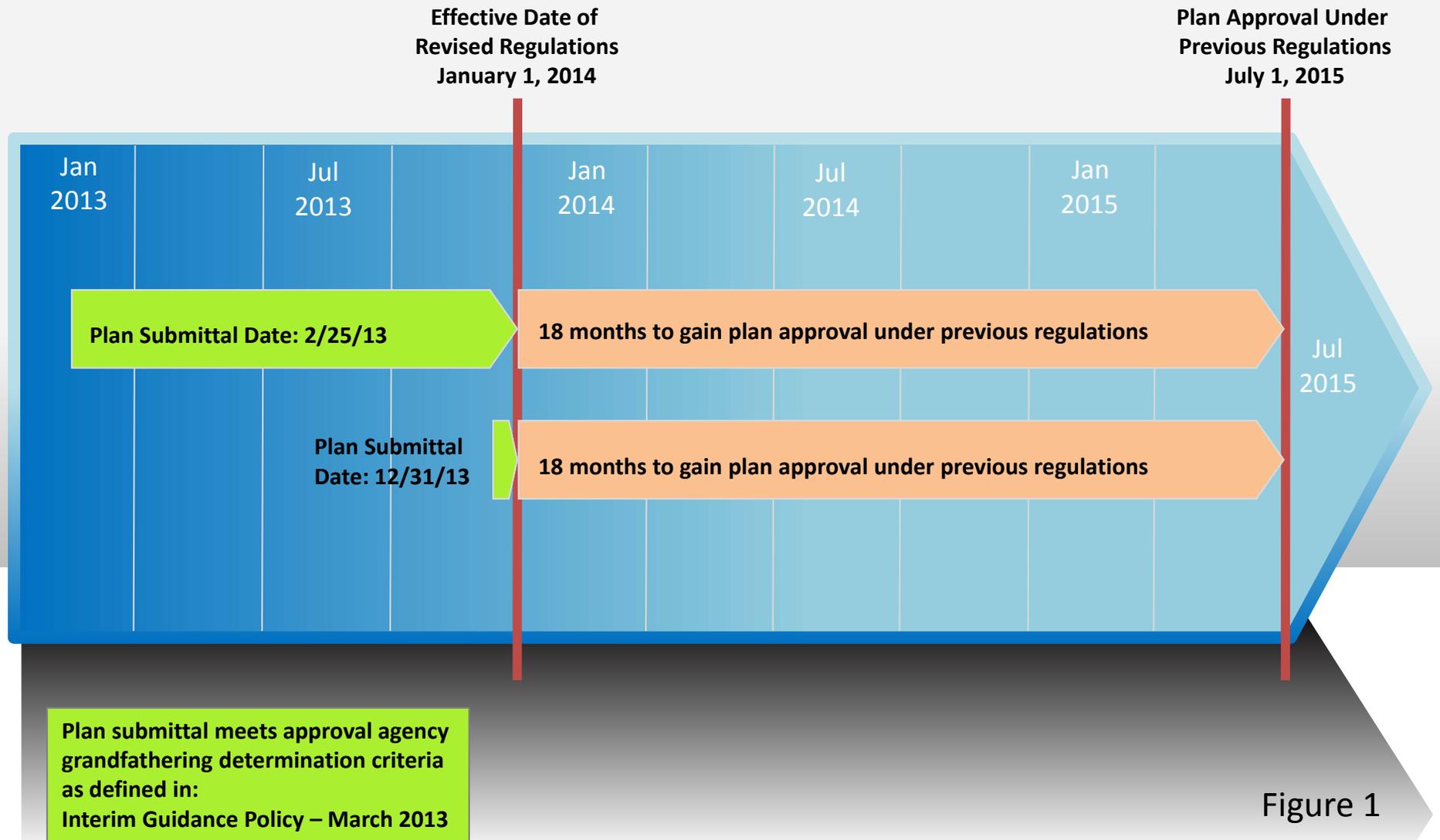


Figure 1

# Plans Approved to Comply with Previous Regulations

*(Regulations in Place Prior to Revisions)*

Effective Date of Revised Regulations  
January 1, 2014

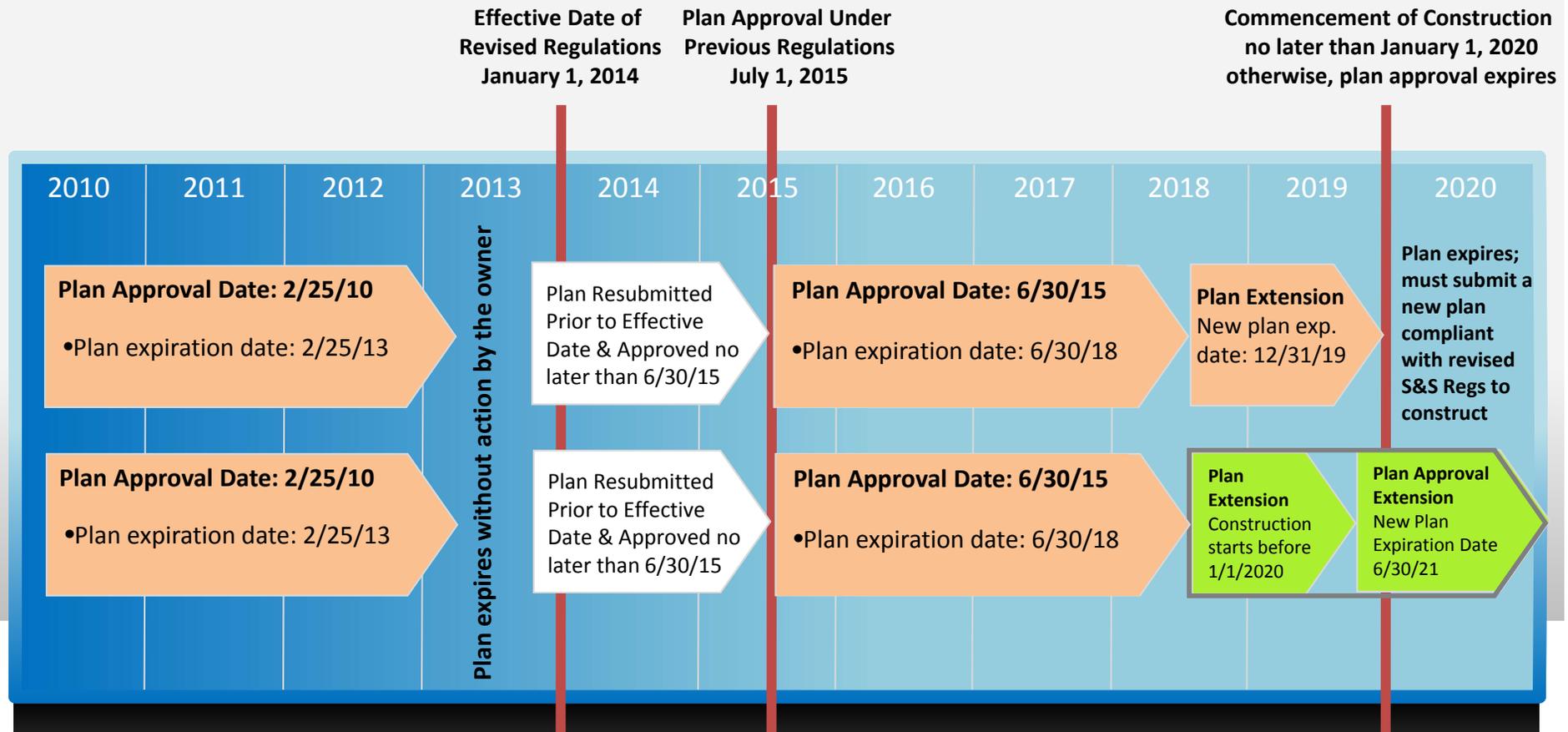
Commencement of Construction  
no later than January 1, 2020  
otherwise, plan approval expires



- Construction ongoing
- No commencement of construction

Figure 2

# Plans Approved to Comply with Previous Regulations Where the Approved Plan has Expired



- Construction ongoing
- No commencement of construction

Figure 3

# Plans Approved to Comply with Previous Regulations Where the Approved Plan has Expired

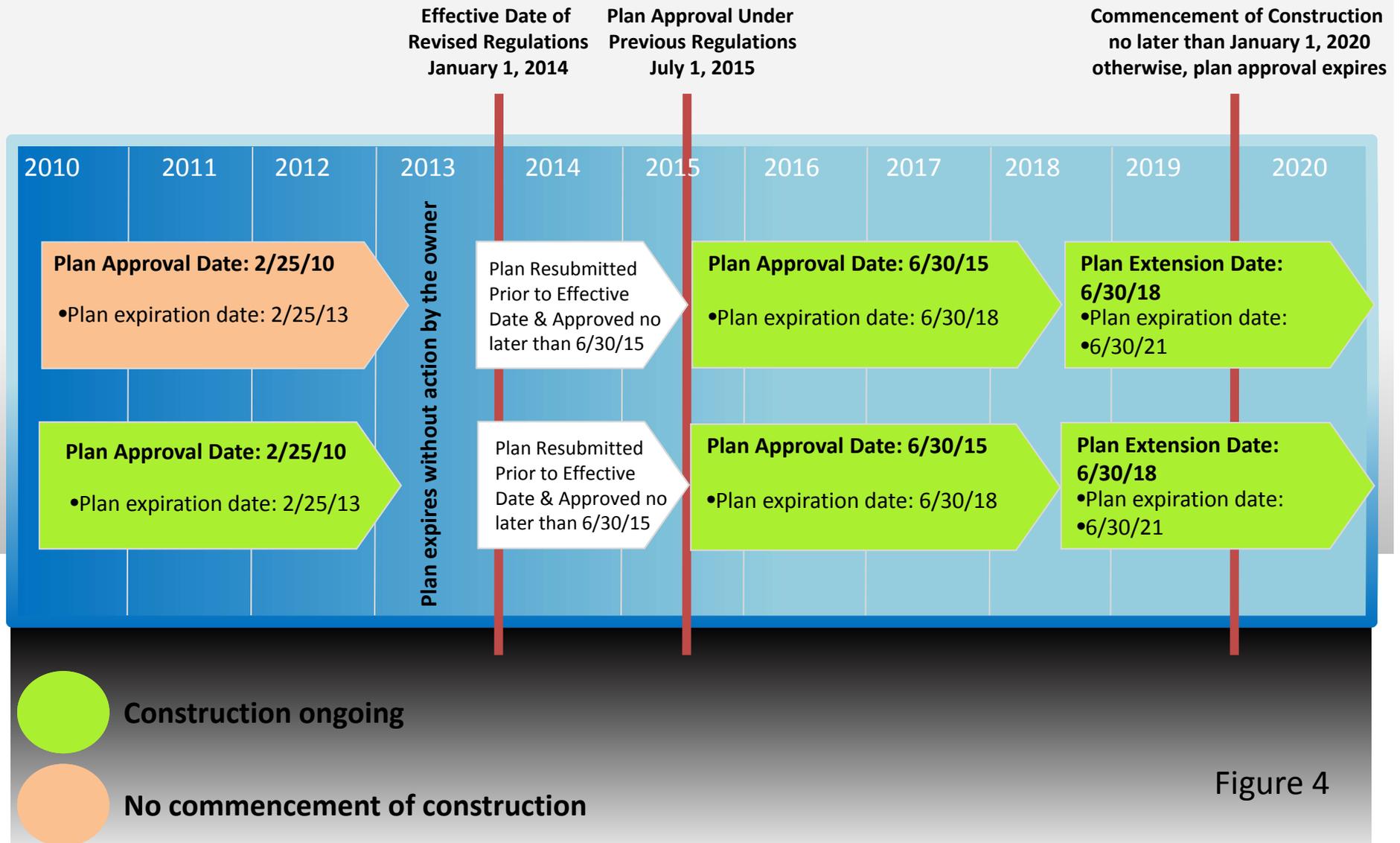


Figure 4