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Certification Deviation Procedures

Introduction

These procedures are put into place to preclude the need for certification amendments for minor changes in the Project routing or location. Often minor changes or modifications in project activities are required by the permittee following start of construction. These deviations may potentially increase or decrease impacts to waters of the state. In such cases, a Certification Deviation, as defined in Section XIV of the Certification, may be requested by the Applicant as set forth below:

Process Steps

Who may apply: The Applicant or the Applicant's designated representative or agent (hereinafter, "Applicant") for this Certification.

How to apply: By letter or email to the 401 staff designated as the contact for this Certification.

Certification Deviation Request: The Applicant will request verification from the State Water Board staff that the project change qualifies as a Certification Deviation, as opposed to requiring an amendment to the Certification. The request should:

1. Describe the Project change or modification:
 - a. Proposed activity description and purpose;
 - b. Why the proposed activity is considered minor in terms of impacts to waters of the state;
 - c. How the Project activity is currently addressed in the Certification; and,
 - d. Why a Certification Deviation is necessary for the Project.
2. Describe location (latitude/longitude coordinates), the date(s) it will occur, as well as associated impact information (i.e., temporary or permanent, federal or non-federal jurisdiction, water body name/type, estimated impact area, etc.) and minimization measures to be implemented.
3. Provide a map that includes the activity boundaries with photos of the site.
4. Provide verification of any mitigation needed according to the Certification conditions.
5. Provide verification from the CEQA Lead Agency that the proposed changes or modifications do not trigger the need for a subsequent Negative Declaration or EIR, or a supplemental EIR. (Cal. Code Regs., tit. 14, §§ 15162 & 15163.)

Action by State Water Board on Request: State Water Board staff will make a determination on the Certification Deviation request within 5 working days from receipt of a complete request and notify the Applicant via email of the staff determination. Determination of whether or not a Certification Deviation request is complete is at the discretion of State Water Board staff.

Post-Construction Certification Deviation Reporting:

1. Within 30 calendar days of completing the approved Certification Deviation activity, the Applicant will provide a post-construction activity report that includes the following information:
 - a. Activity description and purpose;
 - b. Activity location, start date, and completion date;
 - c. Erosion control and pollution prevention measures applied;
 - d. Impacts to water body types if applicable;
 - e. Mitigation plan if applicable; and,
 - f. Map of activity location and boundaries; post-construction photos.

Action by Water Board on Post-Construction Activity Report: State Water Board staff will review the post-construction Certification Deviation Report within 10 working days from receipt of a complete report. State Water Board staff will determine, in consultation with the Applicant and other regulatory agencies, if applicable, whether additional mitigation will be required. If additional mitigation is required, State Water Board staff will inform the Applicant within the 10-day review period. Determination of whether or not a post-construction activity report is complete is at the discretion of State Water Board staff.

Annual Summary Deviation Report:

1. By January 31 of each year until the Project terminates construction activities, the Applicant or its agent will provide an Annual Summary Deviation Report that will include the following information in an excel spreadsheet (or similar format) for all Certification Deviation activities conducted for the previous calendar year (i.e., January 1 through December 31):
 - a. Site name(s);
 - b. Date(s) of Certification Deviation approval;
 - c. Location(s) of authorized activities;
 - d. Impact area(s) by water body type prior to activity (for fill/discharge or excavation/dredge: acres, linear feet, and cubic yards) as originally authorized in the Certification;
 - e. Actual impact area(s) by water body type (for fill/discharge or excavation/dredge: acres, linear feet, and cubic yards) due to Certification Deviation activity(ies);
 - f. The net change in impact area by water body type(s) (for fill/discharge or excavation/dredge: acres, linear feet, and cubic yards). An explanation will be required for any negative values; and,
 - g. Mitigation to be provided (approved mitigation ratio and amount).

Action by State Water Board on Annual Certification Deviation Report: Following termination of Project construction, the State Water Board will amend the Certification to reflect all approved Certification Deviations and the amended Certification will serve as a record of actual Project activities.