

STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
CALIFORNIA CODE OF REGULATIONS, TITLE 23. WATERS
DIVISION 1. CENTRAL VALLEY FLOOD PROTECTION BOARD
Chapter 1. Organization, Powers, and Standards

PROPOSED TEXT

§ 5. Delegations.

(a) For the purposes of this division, all permitting duties of the board, including but not limited to the review and approval of encroachment permit applications and administrative permit revocations pursuant to sections 28 and 28.1, are hereby delegated to the Executive Officer, with the exception of the following:

(1) Permits or other approvals that significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control. Encroachments that do not significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control are defined in subsection (b).

(2) Permits or other approvals for which the board has not received written comments from the U.S. Army Corps of Engineers pursuant to 33 C.F.R. section 208.10 or for which approval is required by the South Pacific Division or Headquarters of the U.S. Army Corps of Engineers, where the U.S. Army Corps of Engineers has jurisdiction.

(3) Permits or other approvals which may create, in the judgment of the Executive Officer or Chief Engineer, more than a de minimus hydraulic impact to an adopted plan of flood control, including, for example, an increase in water surface elevation, a reduction of adequate freeboard, inability to convey design discharge, alteration of flow velocities or directions, increased scour, or expansion of the geographical floodplain or floodway inundation.

(4) Permits or other approvals which may have, in the judgment of the Executive Officer or Chief Engineer, adverse geotechnical impacts to an adopted plan of flood control, including but not limited to increases in under seepage or through seepage, slope-stability issues, increased phreatic pressures, and static or dynamic loading that exceed recommended thresholds.

(5) Permits or other approvals for which a formal written protest has been filed pursuant to Section 12.

(6) Permits or other approvals which require a variance, as defined in Section 11.

(7) Permits or other approvals in which the maintaining agency has not endorsed the application pursuant to Section 7.

(8) Permits or other approvals which, in the judgment of the Executive Officer, may be controversial matters, based on substantial public concern, or for which the Executive Officer has received substantial negative public comment.

(9) Permits or other approvals which, in the judgment of the Executive Officer, may involve significant policy considerations.

(10) Permits or other approvals requiring the preparation of an environmental impact report by the board.

(11) Permits or other approvals involving residential developments, as defined in Section 113.

(12) Permits or other approvals involving surface mining except extensions of time for existing operations.

(b) Subject to subsection (a) the following types of encroachment permits, when in compliance with this division and the board's obligations to the U.S. Army Corps of Engineers, do not significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control and are delegated to the Executive Officer for review and approval:

(1) Pipelines, conduits, and overhead utilities;

(2) Irrigation and drainage ditches;

(3) Septic systems;

(4) Retaining walls;

(5) Fences and gates;

(6) Private, non-commercial boating facilities;

(7) Water wells;

(8) Patrol roads and access ramps;

(9) Orchards, landscaping, and vegetation;

(10) Bicycle, pedestrian and equestrian trails;

(11) Stairs and steps;

(12) Replacement of an existing permitted encroachment without an increase in scope or size;

(13) Above ground encroachments installed more than ten (10) feet landward of the landside levee toe.

(c) For all encroachment permit applications delegated to the Executive Officer pursuant to subsections (a) and (b) above, a short summary of the project and the proposed action on the permit shall be posted on the board's website for thirty (30) calendar days prior to the decision. During this posting period the public may provide the Executive Officer with comments on the proposed action. The Executive Officer shall not be required to respond to such comments or change the proposed action based upon such comments.

(d) The Executive Officer shall make periodic reports to the board regarding encroachment permit applications acted upon pursuant to the delegated authority in subsection (a).

(e) The Executive Officer shall have authority to approve notices of exemption, initial studies and negative declarations, notices of preparation, requests for shortened review, and notices of determination prepared pursuant to CEQA. The Executive Officer may conduct public hearings on any matter identified in this subsection. The Executive Officer may distribute draft environmental impact reports.

(f) The Executive Officer may authorize or direct work and approve permits or other matters in response to emergencies or situations that present an imminent threat to public safety in accordance with Section 17.

~~(g) The board delegates to the Executive Officer the authority to take action to remove or modify encroachments on levees, channels, and other flood control works pursuant to Water Code section 8709.4(c) and the authority to issue Cease and Desist Orders pursuant to Water Code section 8709.5(a) in the manner described in article 4 of this division.~~

(g) The board may, by resolution or written agreement, delegate other duties and responsibilities to the Executive Officer, the Director of the department, or others, with the authority to redelegate.

§ 28. Permit Revocation.

(a) A previously issued permit or approval may be revoked or modified for any of the following reasons:

(1) The permit or approval was obtained by misrepresentation or fraud;

(2) The permit or approval was approved or issued in error;

(3) One or more of the conditions of the permit or approval have not been satisfied or have been violated;

(4) One or more of the conditions of the permit or approval anticipate revocation if certain terms are met, and those terms have been met;

(5) The activity permitted by the permit or approval violates an applicable statute, law, or regulation, including but not limited to federal law or regulations;

(6) The activity permitted by the permit or approval is detrimental to the public health, safety, or welfare or interferes with the successful execution, functioning or operation of any flood control system feature;

(7) The activity permitted by the permit or approval constitutes a public nuisance as defined by statute or law; or

(8) The permit is for an encroachment that the board has ordered to be removed or modified because it makes one of the findings in Water Code Section 8702.

(b) For all revocation hearings except those described in Section 28(d) the ~~The~~ board shall follow the hearing procedures in Section 25, above, for permit revocation hearings, except that:

(1) The “enforcement order” shall be referred to as the “revocation order.”

(2) The “application” shall be referred to as the “revocation action.”

(3) In addition to the notice requirements of Section 25, the notice shall describe any permit condition(s) that are the subject of the revocation hearing and set forth any required findings, including those required for ordering the removal or modification of a previously permitted encroachment.

(4) The removal of previously permitted encroachments shall not be subject to administrative or civil penalties.

(c) The board may hold a single hearing to consider permit revocation, removal or modification of a permitted encroachment, and approval of an enforcement order.

(d) A permit may be revoked administratively by order of the Executive Officer as authorized by Section 5 following the procedures described in Section 28.1 in the following circumstances:

i. the encroachment no longer exists, and the permittee or property owner wishes to surrender the permit;

ii. the encroachment no longer exists and the regulations currently in effect would not authorize the previously permitted encroachment;

iii. one year or more has elapsed since the board issued the permit and the encroachment has not been constructed or does not exist;

iv. the permit was issued, and the board staff later determined that the associated encroachment was an element of an adopted plan of flood control;

v. the permittee or landowner wishes to remove the permitted encroachment and surrender the associated permit. Removal of such an encroachment will be done under the supervision and direction of the board and subject to any conditions imposed by the board; or

vi. the encroachment no longer exists due to a Flood Improvement Project completed or constructed by the state or federal government.

28.1 Administrative Permit Revocation Procedures

(a) The board shall use the following procedures to revoke a previously issued permit for any of the reasons set forth in section 28(d):

1. The Notice of Administrative Revocation must be made to the permittee and the current property owner, if different.

2. The Notice of Administrative Revocation shall contain the permit number, the date the permit was issued, reasons for the Administrative Revocation and the address or coordinates shown on the permit.

3. The Notice of Administrative Revocation shall state that the permit will be revoked by order of the Executive Officer. It shall also state that if the permittee or property owner objects to the revocation, the permittee or property owner must file a written objection with the board within thirty days of the issuance of the Notice of Administrative Revocation and request a hearing before the board.

4. The Notice of Administrative Revocation shall be sent by regular mail to the property owner and to the permittee, if different. The Notice of Administrative Revocation shall also be posted on the board's website with other actions delegated to the Executive Officer as described in Section 5(c).

5. If no objection has been received within thirty days of the Notice of Administrative Revocation, the revocation will be final and a Final Order of Administrative Revocation shall be mailed by ordinary mail to the permittee and property owner.

(b)If the permittee or property owner objects to the proposed Administrative Revocation in writing within thirty days of receiving the Notice of Administrative Revocation, the board shall follow the procedures outlined in Section 25.

Note: Authority Cited: Section 8571, Water Code. Reference: 8534, 8598, 8700, 8702, Water Code.