



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Arnold Schwarzenegger
Governor

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John Lee
1325 Riverside Avenue
Fillmore, CA 93015

WATER QUALITY CERTIFICATION FOR PROPOSED HOPPER CREEK FLOOD PROTECTION PROJECT (Corps' Project No. 2007-44-AJS), HOPPER CREEK, CITY OF FILLMORE, VENTURA COUNTY (File No. 08-013)

Dear Mr. Lee:

Board staff has reviewed your request on behalf of John Lee (Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on August 25, 2008.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Dana Cole, Section 401 Program, at (213) 576-5733.

[Original Signed By]

October 1, 2008

Tracy J. Egoscue
Executive Officer

Date

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

DISTRIBUTION LIST

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Wildscape Restoration
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Ventura, CA 93003

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State Water Resources Control Board
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California Department of Fish and Game
Streambed Alteration Team
4949 View Ridge Avenue
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Antal Szijj
U.S. Army Corps of Engineers
Regulatory Branch, Ventura Field Office
2151 Alessandro Drive, Suite 255
Ventura, CA 93001

Eric Raffini (via electronic copy)
U.S. Environmental Protection Agency, Region 9
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2493 Portola Road, Suite B
Ventura, CA 93003

Jessie Altstatt
Santa Barbara Channel Keeper
714 Bond Street
Santa Barbara, CA 93103

ATTACHMENT A

**Project Information
File No. 08-013**

1. Applicant: John Lee
Company
1325 Riverside Avenue
Fillmore, CA 93015

Phone: (805) 524-5753
2. Applicant's Agent: Noreen Cabanting
Wildscape Restoration
2977 Sexton Canyon Rd.
Ventura, CA 93003

Phone: (805) 644-6852 Fax: (805) 642-2127
3. Project Name: Hopper Creek Flood Protection Project

4. Project Location: Fillmore, Ventura County

<u>Longitude</u>	<u>Latitude</u>
118.8269472 W	34.4024167 N
118.8266167 W	34.4021667 N
118.8265056 W	34.4013917 N
118.8268611 W	34.4016444 N
118.8267056 W	34.4024722 N
118.8265389 W	34.4017778 N
118.8268583 W	34.4012528 N
118.8268694 W	34.4020361 N

5. Type of Project: Sediment removal

6. Project Purpose: The heavy precipitation that occurred in the spring of 2005 filled Hopper Creek to capacity and caused flooding and significant damage to the Applicant's property and adjacent properties. The proposed project will remove gravel, sand, and other associated alluvial sediment materials from Hopper Creek to prevent damage to, and loss of, adjacent private property during high flow events by restoring flow capacity to this portion of the channel.

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Currently, the channel has adequate capacity for runoff generated from a minor precipitation event. However, in the event of a moderate or severe precipitation event there is potential for the recurrence of flooding and associated damage as in spring of 2005.

7. Project Description:

Hopper Creek is an intermittent stream that flows from north to south, and drains into the Santa Clara River. Areas adjacent to the channel are used primarily for agricultural production. The stream bed is composed of wash and related alluvial sediment materials. Due to the rapid accumulation of sediment in the channel bed, channel vegetation consists primarily of sparse, isolated stands of mule fat (*Baccharis salicifolia*).

The upper Hopper Creek watershed has burned over the last few years (the Piru Fire of 2003, the Day Fire of 2006, and the Ranch Fire of 2007). Vegetation recovery has been limited, which presents the risk of significant sediment and debris flows during heavy precipitation events.

Clearance under the Southern Pacific Railroad Bridge (Bridge) in the project area is approximately 4 to 5 feet, which constricts the flow within the channel. The proposed project (Project) will excavate sediment upstream and downstream of the bridge, and approximately 7000 cubic yards of material will be excavated.

The Project involves excavating to a depth of approximately 14 feet below the Bridge to match the channel depth underneath the nearby Highway 126 Bridge that was excavated by Caltrans in January 2008.

The excavation area for this Project is approximately 70 feet wide, approximately 400 feet long, and will begin upstream 350 feet from the Southern Pacific Railroad Bridge. The Applicant proposes to excavate the channel to a depth of 16 feet below the Bridge, sloping upwards (in a more shallow direction) upstream, so that the grade would be equivalent with the existing grade at its upstream boundary.

Heavy equipment, including an excavator, a wheel loader, and two bulldozers will be used. Access into the 70 foot wide channel will be made by an existing access ramp; disturbance to bank areas for

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channel access would be minimal. Removal work will not occur in areas of flowing or standing water, or during precipitation events.

8. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. 31 (Permit No. 2007-44-AJS)
9. Other Required Regulatory Approvals: California Department of Fish and Game
Streambed Alteration Agreement
10. California Environmental Quality Act Compliance: The proposed project is Categorical Exempt from CEQA pursuant to the CEQA Guidelines, Section (e.g., 15304 Minor Alterations to Land).
11. Receiving Water: Hopper Creek (Hydrologic Unit No. 403.41)
12. Designated Beneficial Uses: MUN*, IND, AGR, GWR, FRSH, REC-1, REC-2, WARM, COLD, WILD, RARE, WET

*Conditional beneficial use
13. Impacted Waters of the United States: Non-wetland waters (unvegetated streambed): 0.9 temporary acres (400 linear feet)
14. Dredge Volume: None
15. Related Projects Implemented/to be Implemented by the Applicant: The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years.
16. Avoidance/ The Applicant has proposed to implement several Best

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Minimization
Activities:

Management Practices, including, but not limited to, the following:

- Work will be performed outside of bird breeding and nesting season (March 1 through September 1).
- All refueling activities and equipment storage will be outside the banks of the stream channel.
- Sediment removal work will cease if a listed species is observed during work activities.
- No work will occur during bird breeding season (March 1-September 1)
- Sediment removal work will not occur in areas of flowing or standing water.
- Sediment removal work will not occur during precipitation events.
- Sediment removal work will occur during 3-day or greater clear weather forecasts.
- Equipment will access the project area using existing access routes only.

17. Proposed
Compensatory
Mitigation:

None

18. Required
Compensatory
Mitigation:

The Applicant shall provide 0.9 acres of mitigation for temporary impacts to vegetated streambed in addition to restoration/vegetation of the banks of the cleared channel. See *Attachment B, Conditions of Certifications, Additional Conditions* for modifications and additions to the above proposed compensatory mitigation.

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Conditions of Certification File No. 08-013

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' (ACOE) Section 404 Permit and the California Department of Fish and Game's (CDFG) Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant shall adhere to the most stringent conditions indicated with either this certification, the CDFG's Streambed Alteration Agreement, or the ACOE Section 404 Permit.
3. The Applicant shall comply with all water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*.
4. The Avoidance/Minimization activities proposed by the Applicant as described in Attachment A, No. **16**, are incorporated as additional conditions herein.

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5. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times and shall be familiar with all conditions set forth.
6. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
7. All excavation, construction, or maintenance activities shall follow best management practices to minimize impacts to water quality and beneficial uses. Dust control activities shall be conducted in such a manner that will not produce downstream runoff.
8. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
9. All waste and/or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and is in full compliance therewith. Please contact Rodney Nelson, Land Disposal Unit, at (213) 620-6119 for further information.
10. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
11. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.

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12. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
13. The Applicant shall not conduct any construction activities within waters of the State during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the State.
14. The Applicant shall not conduct any maintenance activities within waters of the State during a rainfall event, or at any period when site conditions would lead to excessive erosion. If any maintenance activities are to be held within five (5) days of a predicted rainfall event, the Applicant shall stage materials necessary to prevent water degradation on site, and shall ensure that all stabilization procedures are completed prior to the rainfall event.
15. If rain is predicted after operations have begun, grading activities must cease immediately and the site must be stabilized to prevent impacts to water quality, and minimize erosion and runoff from the site.
16. Sediment removal at each phase shall not go beyond the extent as defined in the application packet.
17. The grading, stabilization and re-vegetation will be phased to limit the exposed or working face such that the graded area can be stabilized within 24 hours after the first prediction of rain during the 5-day forecast or within 24 hours after final grading of the phased area.
18. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during all construction activities where clearing involves areas to be partially cleared (i.e. some vegetation is to remain in the same reach or in an adjacent reach). The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.
19. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the

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Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

20. All project, construction, or maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
21. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** (plan) to this Regional Board. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for the following shall be implemented:
 - pH
 - temperature
 - dissolved oxygen
 - turbidity
 - total suspended solids(TSS)
 - Downstream TSS shall be maintained at ambient levels
 - Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%.

Analyses must be performed using approved US Environmental Protection Agency methods, where applicable. These constituents shall be monitored for on a daily basis during the first week of diversion and/or dewatering activities, and then on a weekly basis, thereafter, until the in-stream work is complete.

Results of the analyses shall be submitted to this Regional Board by the 15th day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

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22. The Applicant shall restore the proposed **0.9 acres** of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Stabilization and restoration shall include grading of disturbed banks to pre-project contours and revegetation with native species. Restored areas shall be monitored and maintained with native species as necessary for five years. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.
23. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed temporal loss of **0.9 acres** waters of the United States by creating or restoring riparian habitat at a minimum **1:1** area replacement ratio (**0.9 acres**). As an alternative, the Applicant may provide adequate funding to a third party organization for the creation or restoration of a total of 0.9 acres of riparian habitat within waters of the United States/Federal jurisdictional wetlands.
24. If the Applicant proposes funding to a third-party organization for the creation or restoration of a total of **0.9 acres** of vegetated streambed riparian habitat within waters of the United States/Federal jurisdictional wetlands, then funding shall apply to mitigation acreage only, exclusive of administrative costs. The mitigation site shall be located within the Santa Clara River Watershed unless otherwise approved by this Regional Board. The Applicant shall submit a **Proposed Mitigation Report** which shall include:
 - (a) Documentation from the third party indicating that funds have been used for mitigation acreage only, which do not include administrative costs.
 - (b) The boundary of the mitigation site shall be clearly identified on a map of suitable resolution and quality and shall also be defined by latitude and longitude.
 - (c) The type(s) of mitigation shall be described (e.g., removal of exotics and/or replanting with native species, etc.)
 - (d) Success criteria shall be established.

This information shall be submitted to this Regional Board for approval prior to any disturbance within waters of the United States and shall include copies of all agreements made between the Applicant and a third party organization regarding compensatory mitigation efforts.

25. All open space and mitigation areas shall be placed within a conservation easement to ensure preservation in perpetuity. Documentation of proper easement placement shall be submitted to the Regional Board within one year.
26. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** (Annual Reports) by **January 1st** of each year for a minimum period of **five (5) years** following this issuance of 401 Certification or until mitigation success has been achieved

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and documented. The Annual Reports shall describe in detail all of the project/construction activities performed during the previous year and all restoration and mitigation efforts; including percent survival by plant species and percent cover. The Annual Reports shall describe the status of other agreements (e.g., mitigation banking) or any delays in the mitigation process. At a minimum the Annual Reports shall include the following documentation and answered appropriately whether or not mitigation has been performed:

- (e) Color photo documentation of the pre- and post-project and mitigation site conditions;
 - (f) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas;
 - (g) The overall status of project including a detailed schedule of work;
 - (h) Copies of all permits revised as required in Additional Condition 1;
 - (i) Water quality monitoring results for each reach (as required) compiled in an easy to interpret format;
 - (j) A certified Statement of “no net loss” of wetlands associated with this project;
 - (k) Discussion of any monitoring activities and exotic plant control efforts; and
 - (l) A certified Statement from the permittee or his/her representative that all conditions of this Certification have been met.
27. Prior to any subsequent maintenance activities within the subject drainages, including clearing, maintenance by-hand, and/or the application of pesticides, the Applicant shall submit to this Regional Board a NOTIFICATION of any such activity. Notification shall include: (a) the proposed schedule; (b) a description of the drainage’s existing condition; (c) the area of proposed temporary impact within waters of the State; (c) a description of any existing aquatic resources (e.g., wetland/riparian vegetation); and (d) any proposed compensatory mitigation. Notifications must be submitted a minimum of **three (3) weeks** prior to commencing work activities.
28. All applications, reports, or information submitted to the Regional Board shall be signed:
- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.

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- (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
29. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

“I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

_____ (Signature)
_____ (Title)”

- 30. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **08-013**. Submittals shall be sent to the attention of the 401 Certification Unit.
- 31. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
- 32. The project shall comply with the local regulations associated with the Regional Board’s Municipal Stormwater Permit issued to Ventura County and co-permittees under NPDES No. CAS004002 and Waste Discharge Requirements Order No. 00-108. This includes the Stormwater Quality Urban Impact Mitigation Plan (SQUIMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for storm water discharges associated with construction activity, Order No. 99-08-DWQ. All stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.
- 33. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the

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Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.

34. The Applicant or their agents shall report any noncompliance. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
35. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
 - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
36. This Certification shall expire **five (5) years** from date of this Certification. The Applicant shall submit a complete application prior to termination of this Certification if renewal is requested.