



David A. Ericksen  
Attorney  
Direct Line: (415) 677-5637  
dae@severson.com

One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

***Project Certification and Closeout in a Virtual COVID World and After***

***David A. Ericksen<sup>i</sup>  
Severson & Werson<sup>ii</sup>  
April 22, 2020***

As we experience and emerge from “the great shutdown” of 2020, things have and will change in all aspects of life – including the design and construction process. Nowhere in the design and construction interface and transformation has the impact been greater than with respect to on-site design engagement during construction. Designers, contractors, and owners have all had to adapt and create new approaches and protocols to manage communication, satisfy obligations, and keep projects moving. While it was already present in many respects (i.e. site cameras and drones), “virtual” site visits, observation, and monitoring have hit all time new levels of use and reliance. So long as all parties are in agreement and have confirmed the corresponding roles and responsibilities, there is nothing wrong with that approach, and it likely carries added benefits of efficiency and frequency.

Despite those necessities and virtues, not all parts of the design and construction process are yet in step with that virtual reality. Nowhere is that dichotomy more apparent now than in the project closeout and “certification” process. Traditionally that process would call for the responsible design professional to “certify” to public officials and/or clients that they have reviewed the project under construction and as completed and professionally certify that the project has been built in compliance with the project plans and specifications and even applicable codes and regulations. Similar issues can and do arise with contractor pay applications, punch lists, and other “in process” construction reviews. Historically, those certifications have been based on in-person site observations and meetings. However, recent events have often precluded that or more “virtual” experiences may have been used in lieu of the “in-person” experience. Where any part of the construction observation or validation has taken place in a virtual context, that should be prominently and clearly stated and clarified in any resulting certification or report. Such a representation may provide:

*Consultant has observed and evaluated the site and construction progress by the following:*

*Physical Site Visits and Meetings (Applicable Dates or Frequency: \_\_\_\_\_ )*

*Remote Video Sources (  Drone ) (  Site Camera ) (Monitored as follows: \_\_\_\_\_ )*

***Project Certification and Closeout in a Virtual COVID World and After***

Page 2

\_\_\_ *Electronic Site Photographs as provided by:* (Dates of photos may be listed.)

\_\_\_ *Virtual Site Tours as facilitated by:* (Applicable Dates or Frequency: )

\_\_\_ *Other:*

*Where such information has been provided by others, Consultant has relied on such information as provided, including, but not limited to, its accuracy and completeness.*

*Consultant's representations, directions, approvals, or certifications as set forth herein are limited to its actual knowledge.*

The last sentence above should be included in any report, certification, or approval!

---

<sup>i</sup> *David A. Ericksen is a principal shareholder in and past President of the law firm of Severson & Werson in San Francisco, California, and leads the firm's Construction and Environmental Practices. For over twenty years, Mr. Ericksen has specialized in the representation of architects, engineers, construction managers, design-builders, and other construction professionals. Mr. Ericksen's expertise covers all aspects of such professional practice as lead litigation and trial counsel, as well as being an active resource for risk management, strategic planning, and transactional matters. He is a trusted and valued resource to design and construction professionals and their insurance carriers across the United States and beyond. He has been repeatedly recognized as an industry leader, including being named a Construction "SuperLawyer" for the last fifteen years. He is a graduate of University of California, Berkeley, School of Law, a former law clerk to the Washington State Supreme Court, and a member of and resource to numerous construction and environmentally-related professional organizations. Mr. Ericksen is a frequent speaker before construction professional organizations such as the AIA, SEA, ACEC, CSI and others, as well as providing in-house training seminars for firms.*

<sup>ii</sup> *Severson & Werson has provided legal services throughout California and the country for more than fifty years. The firm provides counseling and litigation support to all members of the construction process, including design professionals, construction managers, environmental professionals, owners, contractors, and insurance carriers.*