SKAGIT COUNTY DIKE,
DRAINAGE & IRRIGATION
DISTRICT NO. 12
1317 S. ANACORTES STREET
BURLINGTON, WA 98233

April 16, 2012

US Army Corps of Engineers
Attn: Tammy Conforti
441 G Street, NW
Washington D.C. 20034-1000

VIA EMAIL: tammy.conforti@usace.army.mil

Re: **Federal Register/Vol. 77, No. 33; Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls; Additional Filings; Docket No.: COE-2010-0007**

Dear Ms. Conforti:

We are the Commissioners of Skagit County Dike District No. 12 in Skagit County, State of Washington. Please accept the following as our supplemental comments submitted on behalf of these Districts regarding the notice in the Federal Register of February 17, 2012, as identified by Docket No. COE-2010-0007.

These comments relate to the proposed process and policy, and issues underlying the unique considerations in the Pacific Northwest, in both policy and experience in flood control, and problems and consequences which dictate the need and nature of changes to current variance policies. These comments and analysis are submitted and directed to the goal of reaching a uniform, predictable, and coordinated USACE nationwide policy. By way of summarizing the following analysis, our Districts are in full support and agreement with the proposed USACE policies published in the Federal Register.

I. HISTORICAL CHANGES IN FLOOD RISK MANAGEMENT AND ENVIRONMENTAL REGULATIONS, AND THE DEMANDS AND AFFECTS ON EXISTING USACE REGULATIONS

Historically, many of the engineering and policy rules of USACE have existed since the 1930s. These include ER 500-1-1, EP 500-1-1, ETL 1110-2-571, and related Engineering Regulations have predated ESA, and numerous other state and federal environmental regulations. These preceding USACE regulations have been in effect for decades, and have provided consistent and adequate flood protection, and effectively balancing issues of public safety, and environmental considerations. On-the-ground experiences over the past decades have proven the viability of these regulations for flood protection and public safety.

In prior USACE guidelines, it has been noted that: "Public safety is the number one priority of the USACE levee safety program." See USACE Corps Points, 5 May 2009. However, in the past decades, legislation and regulations have evolved at all levels of government, with the result that various groups, both governmental, NGO, and public special interest groups, have sought to impose demands and influence, which, at times, has had the effect of shifting the balance from strict engineering and safety considerations, enforcement of USACE regulations,

and to emphasize environmental requirements, over those of engineering compliance and public safety. The result in some cases has been to arrive at an imbalance in public safety versus environmental considerations where vegetation and habitat considerations would tend to erode USACE authority to enforce its regulations for vegetation management and variances which have existed for decades.

Due to the enactment of various legislation, including the Clean Water Act of 1977, the Environmental Protection Agency, the Endangered Species Act (ESA), and the creation and expansion of numerous federal, state and local regulatory bodies, along with a flood of environmental regulations, the performance of critical elements of flood control repairs, projects, and maintenance have been significantly affected. Substantial environmental regulations, uncertainty and conflict as to interpretation of regulations between various entities, and competing agency jurisdictions and controls, at all levels of regulation have substantially changed the landscape, and have also conflicted with long-standing policies and guidelines of USACE.

Issues regarding flood control, levee safety, and PL84-9 funding, along with maintenance, repair and projects with levees and dikes, involve areas where habitat and environmental considerations have become paramount, and must be addressed. These issues have had significant effects on maintenance, repairs, projects and flood control, including levee safety. Endangered species have now been identified in aquatic habitats, and mitigation of habitat losses and jeopardy to endangered species, have added complexities to projects involving flood repairs and control, and by necessity, the ability of USACE to strictly enforce its regulations, including vegetation management.

This has now culminated in programmatic and systemic difficulties, which vary from region to region, and District to District, and involving repairs and flood management, as well as expenditures of PL84-99 funding. Habitat concerns and mitigation now include ESA Section 7 consultation with agencies, and requires the involvement of NOAA, NMFS, Fish and Wildlife agencies, EPA, tribal entities and others.

Where once flood control repairs and maintenance were a simple issue of engineering standards, repairs, and public safety, flood management now involves a legion of entities demanding habitat improvements, aquatic resources management, flood plain management, species enhancement, vegetation and riparian improvements, FEMA issues, tribal and cultural considerations, treaty obligations, conservancy districts, state water resources districts, and state and federal organizations including Fish and Wildlife, NOAA, and NMFS. These competing demands make the task of USACE enforcement of regulations, once easy, now a daunting and arduous, and sometimes irreconcilable process. The vegetation management and variance issues are common threads which run through many of these competing interests and conflicts.

What is needed is a consistent, uniform policy of national regulations with the flexibility of being adapted to specific and unique characteristics of the various Districts, and a specific process for addressing vegetation managment and seeking a variance. A realistic, scientific,

and streamlined balance must be reached between these competing legitimate and necessary considerations, which would benefit both environmental considerations, and public safety. The proposed USACE Vegetation Variance Policy is a valuable step in this direction, and the proposed process appears to be an excellent resolution to these problems.

The USACE ability to strictly enforce its regulations and emergency management services can conflict with the growing control and influence of regional and community flood control entities. This can be seen in California, as well as in Washington State, and in other states, where large community, state or NGO entities have created various flood agencies which can combine with local Diking Districts, and become a part of municipalities with large budgets, administration, and members which put a greater emphasis on habitat, species and vegetation enhancement. Many diverse public and special interests are part of, and influence these agencies, including community preservation groups, natural and water resource entities, and community and pro-vegetation and habitat organizations. This can result in reduced inclusion and consultation, and marginalization of local Dike, Levee, or Flood Control entities who actually engage on the ground in flood-fighting and flood control activities. This creates an imbalance in representation. This is most apparent in local, regional, or national roundtables or conferences, where those local flood control districts or entities are overwhelmed by a legion of agencies, governmental entities, and conservation and special interest groups whose goals and missions do not advocate strict regulatory guidelines for emphasizing flood control and public safety.

In cases where governmental or other entities impose, additional requirements for habitat mitigation, vegetation installation, and costly environmental and habitat studies, maintenance or repair budgets and costs explode, which can consume budgets which had been allocated for flood reduction and public safety. Some jurisdictions have reported that due to the excessive costs of permitting, vegetation improvements, costly habitat projects and studies, and years of delay, the result has been an inability to provide repairs or projects, because the money allocated has been spent. At national flood control conferences, complaints are commonly heard of exploding environmental costs and delays in the timely completion of work of the local sponsors concerned with flood hazard management and completion of projects before the next flood season.

In many jurisdictions, flood control repairs and projects, which once were accomplished in a short period of time, maximizing public safety at an acceptable cost, are now being delayed sometimes for years, and other times abandoned, while the participants wend their way through the circuitous process of agency consultations, biological studies, and addressing issues of special interest groups, and permitting requirements to complete repairs or work. Most of these problems arise from habitat and species concerns, which relate directly to vegetation management. In some cases, the concerns of habitat and preservation of endangered species, is very time consuming, causing excessive delay and depletion of funding and resources available for the project, at the expense of emphasis on flood control and the protection of public safety.

In our USACE District, another situation has impacted flood and vegetation management. During recent emergency PL84-99 repairs, a variance was imposed by our District and repairs

required substantial concerns regarding vegetation management. The USACE District had not formally passed a variance regulation, but in 1995, issued an "Information Paper," which significantly deviated from the national USACE regulations, and allowed non-conforming vegetation on levees. Even though the local sponsor had not requested a variance, this variance was unilaterally imposed by the USACE District.

As a result of the above issues, our Diking Districts experienced onerous, time-consuming and costly delays based on demands for habitat protection, and extensive vegetation installation under the variance when undertaking "emergency" repairs in the PL84-99 Program. These repairs were for flood damages occurring in 2006-2007, which were initially undertaken and completed quickly by the Corps at a cost of $1.2 million. Ultimately, after intervention by Federal Resources Agencies, tribal interests, and a Resources Division within our own USACE District, the parties proceeded through four more years of consultation with non-flood management stakeholders, and ended only recently with project completion. The ultimate project costs went from $1.2 million to $9.2 million, with the initial work being replaced and redone, because it was unsatisfactory to environmental agencies and entities. For the loss of 384 trees of small caliper, and some brush, it was required to plant 14,084 trees along several miles of the levees. The Army Corps was required to pay 80% of the cost, with the local sponsor 20% of the cost. Similar situations apparently have occurred elsewhere in the nation, and if this momentum continues, there may be a risk that the Corps will be unable to strictly enforce its regulations, with the prospect of reduced flood management and protection of public safety in the context of the PL84-99 repair process.

II. GENERAL COMMENTS TO THE PROPOSED VEGETATION VARIANCE PROCESS

The vegetation variance issues as noted above, has now become an integral component of the flood management problem and the Corps ability to maintain its regulations. In several states, there are irreconcilable conflicts between environmental and levee safety considerations where it involves vegetation on flood control works. The conflict has become one of saving the environment and fish, wildlife, and endangered species, versus protection for public safety, and repair of infrastructure, such as dikes, levees, and flood projects for the protection of many cities and towns. At times this has become an irreconcilable conflict of values and philosophies between those advocating flood risk management, under USACE regulations, and those advocating non-flood risk management in favor of improvement of habitat and species enhancement.

These regulatory conflicts are taking place in many states, with differing geography and hydrology of river and water systems. Issues such as structural integrity of the levees and public safety must be addressed, while accounting for habitat and environmental considerations. For this reason there must be a rigorous and intensive examination of the effectiveness and advisability of retaining or adding new vegetation, and any variance should be strictly construed to allow vegetation only when it does not impact structural integrity, functionality, or accessibility in any respect, as has been the mission of USACE under its regulations for many decades.

The pressures and influence of environmental agencies and special interest groups for habitat and vegetation enhancement on flood control structures have been enormous. Some Districts have amassed numbers of state or federal representatives and senators and elected officials to support habitat and environmental policies. Some Flood Control Districts, have been prevented from managing vegetation for many years, and vegetation now has engulfed and covered levees. Now, in argument against new stricter guidelines for obtaining a variance, groups complain that excessive costs for removal of non-complying vegetation is a reason that they should have a variance imposed to keep the vegetation in place. At paragraph 9f in the new policy guidelines in the Federal Register is a provision which reads as follows, and should be retained:

> f. The vegetation variance process is not a mechanism to validate conditions that have developed as a result of inadequate levee operations and maintenance.

Diking and flood control districts throughout the United States must comply with annual inspections in order to qualify for PL84-99 repairs, but who may have unacceptable ratings for proper vegetation management. Lack of enforcement of USACE regulations or vegetation variance processes which are not strict, and which could tend to continue ignoring a problem, can lead only to ultimate levee failures, inability to inspect or repair, and catastrophic disasters for which USACE will be sued.

USACE is in the position where it must either strictly enforce its regulations, or to refuse enforcement and be in violation of law, or to draw a clear line between enforcement and non-enforcement, by having a strict and rigorous process to properly allow a variance to the current regulations. A variance is an authorized exception to the general regulations, which must be sought by the entity seeking the exception. A variance is not a decision by the entity itself to arbitrarily disregard its own regulations, without a clear engineering and scientific basis, particularly in the face of the regulations which have been in force for decades.

As a related matter, the lack of ability to have accessibility to levees and flood control structures, and to inspect and maintain, has additional implications for levee safety. At a recent levee safety conference, observations were made by USACE officials that if accessibility to the levees for inspection and maintenance is impaired, this will increase the cost of annual inspections to USACE in some areas by a factor of 3 or 4 times due to the need for alternate methods and hindered access to conduct the required physical inspections. This is in addition to the inability to maintain or repair which will greatly increase the risk and cost of levee failure.

Also, a recent ERDC study of woody vegetation, part of which took place in our District, the findings of the effects of woody vegetation were deemed inconclusive, without further study. Until now, most studies have been commissioned by private entities, or environmental or habitat organizations, and have generally been supportive of more vegetation on levees, without adequate analysis of public safety, accessibility, and integrity of the levee system. The one conclusion ERDC found, however, is that regardless of placement, or location, introduction of

vegetation and woody plantings increases uncertainty and potential risk to levees. The more vegetation, the more uncertainty was introduced in terms of levee safety, and integrity of the levee structures.

In addition it was noted that root systems, since they cannot be followed or inspected as the systems may grow into the levee prism, where clearly a cause for concern and further uncertainty. Conversely, the less levee vegetation the less uncertainty in safety and integrity of the levee structure would be created. Clearly, when dealing with matters of public safety, levee integrity, and flood management, the less uncertainty the better, and uncertainty is clearly an undesirable element when it comes to flood management and public safety. Finally, levees and flood control devices represent critical infrastructure, and the inability to conduct adequate inspections, maintain visibility and accessibility, and creation of flood risk pose national Homeland Security issues for the many communities in the nation.

In the event of disaster and a lawsuit, the Army Corps will face much greater liability by failing to enforce its regulations, or disregarding or relaxing regulations to appease and compromise with groups seeking non-flood considerations to enhance habitat and the environment, than if it instead has an orderly process to seek a valid variance to its regulations when one is sought by a local sponsor. If a thorough analysis and study, based on clear science and justification for a variance is submitted, then USACE can address the merits of the application and in a proper regulatory analysis, can either deny, or approve the variance as appropriate.

III. ELIGIBILITY TO REQUEST VARIANCE, CONCURRENCE, APPLICATION, AND PROCESS

In reference to the eligibility of the requestor, and the process for applying a variance, the proposal in the Federal Register is a proper and appropriate standard, and should be maintained and approved. Under paragraph 6.a., for:

> a. For consideration of a vegetation variance that preserves, protects, and/or enhances natural resources, the requestor must demonstrate that a variance is the only reasonable means to achieve the following criteria:
>
> (1) Comply with applicable law concerning the environment, cultural or historic preservation; or
> (2) Protect the rights of tribal nations, pursuant to treaty, statute, or executive order; or
> (3) Address a unique environmental consideration such as to maintain sensitive species populations and to preclude the need for future federal listings under the Endangered Species Act (ESA), endorsed by the National Marine Fisheries Service (NMFS) or US Fish and Wildlife Service (USFWS).

This is an appropriate standard as a threshold for requestors of a vegetation variance. There must be a standard to allow application, otherwise, groups, including governmental agencies or NGOs, can make demands of USACE, through political means or otherwise, for a variance

which may be sought for other reasons, or be too excessive in scope, or that can be achieved through other methods. To allow a variance that is the only reasonable means to comply with applicable law, protect tribal rights and treaties, or address unique environmental considerations such as ESA allows for legitimate reasons for a variance, and will ensure life safety as a top priority, while applying consistent and orderly processes in obtaining a variance.

This will allow an orderly process to address issues such as ESA or other issues which truly preserve, protect and enhance natural resources and protection of environmentally sensitive areas and species populations. It also mandates a framework of complying with applicable laws, treaty rights, and federal regulations such as ESA and the Clean Water Act. This would eliminate requests based on arbitrary, non-scientific, or general and political policies, which may not be directed to supporting applicable laws, tribal rights, and environmental protection laws, but may be for other reasons, which conflict with regulations for public safety.

Under paragraph 6.b. there are exemptions for levee systems, for existing levees for which there is an existing vegetation variance between the local USACE District and the levee sponsor, and levee systems for which a variance is requested for a planting berm. This is a good proposal in general, but should be modified slightly regarding the nature of the variance agreement between the local USACE District and levee sponsor. This is due to the fact that in some areas, the District has unilaterally imposed a variance policy on the levee sponsor for which the sponsor has not agreed, and in fact objects to.

In our District, there is no agreed variance, but instead a 1995 "Information Paper" unilaterally imposed a vegetation variance state-wide, which has created hardships for local sponsors. The variance is extremely broad and conflicts with many of the national standards. The variance has been interpreted by agencies and habitat groups in such a broad way that PL84-99 repairs have resulted in extensive vegetation, habitat improvement, some experimental habitat methodologies, and has vastly expanded expenses. In our case costs ballooned from $1.2 million to $9.2 million, with initial "emergency" repairs being re-done and taking over five years of consultation and completion. Lack of clarity of a variance based only on policy considerations, interpretation, and consultation can result in inordinate delays with staggering costs, not only to the local sponsor, but to USACE which pays 80%.

It would be suggested that this provision be refined to retain only those existing vegetation variances between USACE and the local sponsor, which have substantially met the criteria of a formal application and written agreement, which has addressed the critical issues of habitat, tribal issues, environmental considerations, and issues of structural integrity, accessibility, and public safety.

Prior to the present proposals, generally only the levee sponsor could request a variance. A District request of a variance would be inconsistent with USACE laws and regulations, because the entity which imposes the regulations would be seeking itself to have a variance of those regulations. The appropriate method would be to either change the regulations through rule-making authority, or to have approved changes and guidance which would modify the rule.

However, a complete change of the national regulations which it is required to follow, by issuing a blanket waiver or variance to itself would not be appropriate.

In some Districts, this would allow relaxed enforcement, or disregard of strict adherence to regulations in response to demands by non-flood control groups for other purposes. This process could result in the disregard of nationwide regulations, through a variance which becomes so broad or distorted, that national regulations are no longer enforced and have no effect. At some point, this relaxed process, and effective elimination of regulations will open the door for USACE liability in the event of disaster.

The Federal Register proposals have effectively and appropriately addressed this issue, by the addition of a "concurrence" provision. This provision is excellent, and will allow harmony between the District and the local sponsor, both of whom, of course, incur liability and costs for the result of the projects. Under paragraph 6.c., the USACE District itself may submit a vegetation variance for five different levee systems or environmental considerations, but only with the "concurrence" from the levee sponsor. This will assure that there is no disagreement, or resulting dispute between the District and the local sponsor and will allow a consistent process, balancing not only life safety issues, but well-informed decisions on environmental considerations. This would eliminate the problem, where unilateral imposition of a variance can result in costly and lengthy delays, and many disputes, over the objection of the local sponsor.

This will provide an orderly and agreeable process for seeking a variance. It will eliminate costly and time-consuming disputes, with a local sponsor, concerned with public safety, structural integrity, and functionality of the levees, and a USACE District seeking to relax its own regulations to comply with demands of environmental and habitat interests, and enhancements to vegetation on the levees. The "concurrence" provision strikes a balance, requires agreement, negotiation and compromise, and is an orderly and consistent process which is necessary for not only retaining nationwide regulations, but eliminating disputes within the District between USACE and the local sponsor.

In addition, under paragraph 6.c.(5), in areas with ESA considerations, the USACE District may submit cross-sections for PL84-99 repairs that also have "concurrence" from the levee sponsor, and are shared with USFWS and/or NMFS to adequately address species impacts. Again, this is a good provision which provides a consistent and orderly process to address vegetation issues, which is now lacking consistency nationwide, as well as in individual Districts.

At paragraph 6.d., there is the overriding consideration that all vegetation variance requests must also demonstrate that the regulatory goals of USACE are retained, including: (1) structural integrity and functionality of the levee system; and (2) accessibility for operations, maintenance, repair, inspection, monitoring, and floodfighting of the levee system. This paragraph will ensure the balance between the District, the local sponsor, and resource agencies, in terms of environmental considerations, and structural and accessibility regulations.

It is also important to note that in cases where the local sponsor is requesting a vegetation variance, and where the local sponsor is in the best position to determine the applicability of a vegetation variance, the application can be made and considered under the process provided in the Federal Register proposals, along with consultation of the various involved entities, which would provide an orderly process for obtaining a variance that also complies with both environmental regulations and USACE technical standards.

Under paragraph 7. there is a coordinated and consistent process to address the variance application and the regional variations in levee management and resource needs. The process would require early coordination between USACE and the levee sponsor to focus efforts and minimize costs. The USACE District will ensure timely coordination with appropriate federal and state agencies and tribal nations. There is a 30 day notification process, which will provide a deadline to begin the process. A Vegetation Variance Lead for the Risk Management Center will be designated to help coordinate submittal requirements in a timely manner. This will identify problems early on and to determine the scope of the request. An Agency Technical Review (ATR) will initiate review, along with the Levee Safety Officer, and review the request for completeness and compliance. USACE will fund the ATR. These are all good and workable proposals and should be retained in the final regulations.

Under paragraph 7.d. the ATR timeline will not exceed 90 days after receipt of the final request, and then the ATR will document and certify the submittal. The ATR team will include input from geotechnical, geological, hydraulics, environmental/biological sciences, and other disciplines. Under paragraph 7.e., after completion of the ATR the USACE District Commander will either endorse or not endorse the request and provide rationale. If endorsed, the request will ascend the chain of command through the LSO, and the MSC Commander, and ultimately to USACE MSC Commander, for approval. The USACE LSO will be the final approving office for the request.

Under paragraph 7.g. the USACE District shall serve as the main point of contact for coordination with the levee sponsor throughout the variance request process, including providing final documentation. This would keep the levee sponsor advised at all stages regarding the status of the variance requests. Upon final approval, the USACE District and the requestor shall sign a written Vegetation Variance Agreement based on Enclosure No. 2. Each levee sponsor must sign the agreement along with a certificate of authority. The approved levee variance will become a component of the levee inspection checklist for PL84-99 rating and eligibility.

This process is an excellent roadmap for submitting a variance at the District level. It ensures an orderly and timely process for submitting a variance, along with concurrence and agreement between entities if applicable, and then allows oversight and review by the District, and ascending the chain of command ultimately to USACE for final approval. It provides a consistent, cooperative, timely process, subject to oversight and peer review, with ultimate approval at the HQ USACE level. We would recommend adoption of this Federal Register proposal, as it provides the national consistency and coordinated timely completion for

application and approval of variances, and assures that there is proper technical and environmental review for ultimate approval.

In addition, groups opposed to the variance complain about costs and the fact that they are "onerous" for applying for a variance. However under this provision, USACE HQ will fund the ATR, and also provide interdisciplinary review of proposals. It will provide an orderly and coordinated approach to the variance, rather than the haphazard lengthy delays and costs overruns currently experienced. Currently, endless meetings and consultations are generally conducted between parties, political groups, and agencies, and with each meeting new demands or changes are requested which are different from prior agreements. The current system lacks organization, structure, and time deadlines to reach decisions. These USACE proposals clearly address and provide an excellent and orderly decision-making process in obtaining a valid variance.

Under paragraph 9 there are special considerations, with which the commenting Districts agree. Under 9.d. to ensure the ability of floodfighting activities, and to observe areas of distress, typically the upper third of the waterside slope, the crown, the landside slope, and within 15 feet of the landside toe of the levee should remain vegetation free as defined in ETL 1110-2-571. Any vegetation variance request for these areas will be evaluated under the above noted paragraphs and policies. The Districts support these provisions, as they clearly provide for floodfighting activities, levee safety, structural integrity and accessibility, and provide a consistent method to obtain a variance in these particular areas, consistent with paragraph 6 of the policies.

The policy provisions also provide for implementation of a System-Wide Improvement Framework (SWIF) as an alternate avenue for the vegetation variance. The levee sponsor will have one year from the date of this memorandum to submit a letter of intent to USACE District to submit a vegetation variance request, or to develop a SWIF. If to submit for a vegetation variance, the levee sponsor will have one additional year to submit the vegetation variance request. This would be sufficient time to provide the information needed for the variance request. Until review is complete, the levee system will be inspected based on the existing variance, if any, and as determined under PL84-99 eligibility.

Paragraph 10 deals with timeframes for existing vegetation variances or other vegetation deviations. These provisions are appropriate and reasonable methods to deal with existing vegetation variances and vegetation management standards to be applied prospectively. These provisions provide a good framework for the transition from current situations and existing vegetation variances, to bridge the changes relating to the adoption of these new proposals. This would provide consistency and harmony between USACE HQ, and the various Districts, and would provide a consistent and organized approach to these issues.

In reference to the Enclosure 1 – Submittal Checklist, the commenting Districts would agree with the thirteen-point checklist of information needed for a vegetation variance. Not only does this provide a detailed, clear and consistent roadmap for variance submittals, it would also

provide scientific information, site-specific information, and considerations of engineering, costs, and environmental issues, which need to form the basis of a variance.

In summary, if a sponsor cannot submit information supporting engineering, and technical issues, science for environmental habitat considerations, plans and location of vegetation, along with compliance with environmental regulations, then a variance should not be permitted. General and unsubstantiated statements about environmental or habitat benefits, without scientific support and non-specific statements about impact or degradation of species should not form the basis for approval of a variance, without specific scientific and technical justification. Also, Enclosure 2, regarding the Vegetation Variance Agreement is an appropriate and well-drafted agreement for the respective parties to sign, and should be retained in the final approved variance regulations. Finally, Enclosure 3 – Vegetation Variance Request Submittal Requirements is a detailed, organized, and specific set of guidelines for the variance submittal. This should be retained in the final vegetation variance guidelines.

IV. CONCLUSION

What is needed from USACE is a clear, defined, and scientifically based process, which allows for the continuance of PL84-99 work, repairs, in partnership with local sponsors, but where some variables in the geography, hydrology, vegetation or specific habitat conditions in an area can be address, in a formalized, specific manner. A variance is therefore appropriate in certain cases, but **must be shown to preserve and retain public safety, structural integrity, and functionality of the levees, in addition to accessibility for inspection and flood fighting purposes.**

In summary, where a variance is deemed appropriate and feasible, application **should only be allowed after a thorough, strict review process, which fully considers alternatives, engineering, flood and infrastructure conditions, compliance with regulations, integrity of the levee, and levee safety. The proposed checklist will effectively serve this purpose and ensure that variances are not arbitrarily granted, when the underlying reasons or basis are not documented or scientifically justified based on USACE regulations.**

Further, with regard to a USACE District application for a variance, **it should be processed or approved only with the project sponsor's concurrence in the application.** This will ensure that disputes do not arise between USACE and the local sponsor regarding terms of the variance, placement or location of vegetation, and considerations of integrity of the levee, accessibility for inspection and repair, and public safety. Only in this fashion can it be guaranteed that there is a balance between appropriate habitat, and levee integrity and access and enforcement of USACE regulations for the goal of ensuring life safety as a top priority and applying consistent processes to accomplish those goals.

It is of paramount importance that our levees function properly, protect public safety, and where a risk is undertaken by modifying levee construction and vegetation management, it should only be taken after thoroughly understanding and consideration of all circumstances. A shortened, or abbreviated process for granting a variance determination is not in the best

interest of public safety, USACE, local Diking and Flood Control Districts, and protection of the public from the risks and damages of devastating flooding.

Please call if you have any questions or wish to discuss the above.

Very truly yours,

SKAGIT COUNTY DIKE, DRAINAGE AND IRRIGATION IMPROVEMENT DISTRICT NO. 12,
a Washington special purpose district

By: _____
JOHN BURT, COMMISSIONER

By: _____
EDDIE TJEERDSMA, COMMISSIONER

By: _____
LORNA ELLESTAD, COMMISSIONER