

# WATER RESOURCE INVENTORY AREA 9 (WRIA 9) WATERSHED ECOSYSTEM FORUM



Algona  
Auburn  
Black Diamond  
Burien  
Covington  
Des Moines  
Enumclaw  
Federal Way  
Kent  
King County  
Maple Valley  
Normandy Park  
Renton  
SeaTac  
Seattle  
Tukwila

King Conservation District  
Vashon/Maury Island  
Community Council  
Covington Water District  
Port of Seattle  
Tacoma Public Utilities  
Washington Department  
of Ecology  
Washington Department  
of Fish and Wildlife  
Washington Department  
of Natural Resources  
U.S. Army Corps of Engineers  
  
Washington  
Environmental Council  
Green/Duwamish  
Watershed Alliance  
Trout Unlimited/Mid-Sound  
Fisheries Enhancement Group  
Save Habitat and Diversity of  
Wetlands (SHADOW)  
  
The Boeing Company  
Master Builders Association  
King County Agricultural  
Commission

April 17, 2012

U.S. Army Corps of Engineers  
Attn: CECW-CE, Tammy Conforti  
441 G Street NW  
Washington, DC 20314-1000



RE: Proposed Revised Policy Guidance Letter – Process for  
Requesting a Variance from Vegetation Standards for Levees and  
Floodwalls (Docket Number COE-2010-0007)

Dear Ms. Conforti:

The following comments are offered on behalf of the WRIA 9 Watershed Ecosystem Forum, a broad-based partnership of governments, businesses, and non-profit groups working on watershed health and salmon habitat recovery in the Green/Duwamish and Central Puget Sound Watershed in western Washington State. Our watershed is in turn part of a larger, unprecedented effort called the Puget Sound Partnership, which is coordinating restoration of the Puget Sound, one the nation's most important water bodies.

We commented on the previous U.S. Army Corps of Engineers (Corps) Policy Guidance Letter (PGL) vegetation variance proposal under the "Process for Requesting Variance from Vegetation Standards for Levees and Floodwalls" on March 8, 2010. The intent of this letter is to comment on the revised PGL vegetation variance process dated February 17, 2012, as well as other components of PL 84-99 Levee Vegetation Management.

We appreciate the Corps' leadership in developing the regional variance currently in use in the Seattle District, developing "the Seattle Matrix," holding workshops about PL 84-99, and the Corps' attempts to provide flexibility through the System Wide-Improvement Framework (SWIF) and variance process. We request that the Corps use regional science, as well as local experience and levee performance history to completely revise the PL 84-99 program and levee vegetation management requirements under Engineer Technical Letter (ETL) 1110-2-751 to protect public safety while meeting requirements of the Endangered Species Act (ESA), the Clean Water Act (CWA), and Tribal/Treaty rights at a reasonable cost to taxpayers.

We believe from our review of the revised PGL, PL 84-99, and the new SWIF process, as well as Corps comments at the workshop on Levee/Vegetation Issues in Tacoma, WA on April 4, 2012 that the Corps has an underlying assumption that levees and vegetation are not compatible. Local science and experience reflects that vegetation on levees improves their performance. The Corps own Engineer Research and Development Center (ERDC) data indicates that trees can increase the factor of safety on levees.

*Financial support provided by signers of Watershed Planning Interlocal Agreement for WRIA 9 including:  
Algona, Auburn, Black Diamond, Burien, Covington, Des Moines, Enumclaw, Federal Way, Kent, King County, Maple Valley,  
Normandy Park, Renton, SeaTac, Seattle, Tacoma, Tukwila*

While local participation the PL 84-99 program is voluntary, the financial risks to local sponsors not participating in the program can be costly. This creates an incentive for local sponsors to meet Corps requirements and maintain eligibility. The program puts local levee sponsors in the untenable position of spending limited resources to plan for and manage vegetation, while ignoring higher priority safety issues and violating other federal laws and Tribal/Treaty rights. Furthermore, continuing to implement the existing national standard for levee vegetation management under ETL 1110-2-571 will decrease salmon habitat faster than it is being restored, and at great cost. Vegetation is widespread on levees in our region, and several listed species of fish are dependent on the shade, cover, leaf fall, insects, water-cooling and other life-cycle habitat features such vegetation provides. To address these differences, we request the Corps:

- Reinitiate consultation with National Oceanic and Atmospheric Administration and United States Fish and Wildlife Service (the Services) on ETL 1110-2-571, the PL 84-99 program and the vegetation variance process. The National Oceanic and Atmospheric Administration's (NOAA) 2003 review of the Corps' Programmatic Biological Assessments of the Flood Control Projects Maintenance Inspection Program states that removal of vegetation from levees is an action that is "likely to adversely affect" listed species.
- Revise ETL 1110-2-571 to meet the requirements of the Water Resources Development Act, Section 202(g) and "address regional variations in levee management and resource needs." Alternatively, provide a regional variance process, rather than a levee-by-levee process or a "one size fits all" national standard.
- Use alternative inspection techniques that don't require removing vegetation, such as inspecting from the water or during winter when visibility is greater.
- Incorporate local conditions into vegetation research efforts. There are various opportunities to partner with local sponsors to collect regionally relevant data. For example, at levee setback projects, the Corps could examine old levees before they are demolished to determine levee performance with and without vegetation.
- Make use of existing tools, specifically:
  - a. Pursue nonstructural alternatives such as levee setbacks. Replacing and repairing levees in place will likely prevent salmon recovery. Setting back levees would improve salmon habitat and provide flood reduction benefits. We believe previous cost benefit evaluations of the nonstructural alternative did not account for all the salmon recovery benefits, or the costs associated with levee maintenance or mitigation for impacting critical habitat by removing vegetation along levees.
  - b. Update the "Seattle Matrix" with the recent analyses that show temperatures exceeding state thresholds even under the largest vegetation alternative. Expand the matrix to include greater context (e.g., is the levee on an outside or inside bend, tree type and rooting characteristics, regulated river or not, etc.). The Corps should work with local partners to include these changes and finalize this potentially powerful regional tool.

We applaud the Corps for developing the SWIF program as an alternative process to meet eligibility to PL 84-99. We agree with allowing local sponsors to address the worst safety issues first. However, the program as currently described is costly, burdensome, and does not lead to predictable outcomes. Also, the criteria by which requests will be approved are not defined and final approvals are not issued regionally. It appears that going through the SWIF process may just delay the removal of vegetation for several years while the local sponsor fixes the worst problems first. At a minimum, we request that the Corps finalize a SWIF in each region and provide it to sponsors as an example. We also request the Corps consult locally with the Services and the Tribes on ESA and fish management issues related to the SWIF. This will create results that are consistent with regional goals and other federal laws, without putting the burden on local sponsors.

We do not agree with the Corps Finding of No Significant Impact of the PGL vegetation variance, and we request that the Corps withdraw their current PGL proposal because it does not reflect broadly-accepted scientific research or local levee performance history, and will have far-reaching negative consequences for listed species.

Our watershed restoration efforts are predicated, at a minimum, on the continuance of the "regional variance" extended to federal partners in the Seattle District. The existing Seattle District variance allows the retention of vegetation up to 4 inches in diameter on levees constructed or maintained with federal funding and larger vegetation within 15 feet of the front and back toe of the levee. Most of the lower 20 miles of the Green River includes levees on both banks. Although inadequate to meet the habitat needs of salmonids listed under the ESA and fulfill Clean Water Act requirements, the WRIA 9 Salmon Habitat Plan relied on this minimum of vegetation being present. The Corps' draft vegetation variance process does not appear to maintain this minimum of vegetation, and therefore will have definitive negative impacts to ESA-listed salmonids and water quality parameters.

A temperature Total Maximum Daily Load (TMDL) study was recently completed for the Green River. This TMDL showed that the lower river could not meet state standards for temperature, and that ESA listed species are likely to experience lethal temperatures in the lower Green River if the Corps requires that levees be kept clear of vegetation. The report explicitly states that until Corps vegetation standards are changed, the Green River will not be able to meet water quality standards.

There are multiple problems with the PGL vegetation variance as proposed. The result of the vegetation variance will be the diversion of limited resources with little change to public safety or improvement in salmon habitat. The Corps should develop regional approaches to be more consistent with federal laws, tribes, and local needs. At a minimum, the Corps should address the following:

- The process places a significant burden on local sponsors. It calls for detailed technical analyses, including hydraulics, geotechnical, structural, and others. In addition, local sponsors would be required to undertake ESA consultation on behalf of a Corps program. The complexity and cost will dissuade sponsors from using the vegetation variance as an option.
- The Corps should create a model in each region to use as an example, and use the model to consult with the Services on ESA issues and Tribes on fish management issues.
- Decisions on approval of the vegetation variance should be made locally, and not in Washington, D.C.

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- The criteria for approving or rejecting a vegetation variance need to be clearly stated.
- An appeals process needs to be defined for vegetation variances that the Corps does not accept.
- The proposal does not provide enough time for sponsors and the Corps to undertake the process.
- Timelines, especially for items the Corps is responsible for, need to be defined in detail.
- Under Enclosure 3 of the PGL, the submittal requirements state changes in channel roughness cannot create an increase in water surface elevation. We believe this will be an impossible standard to meet.

In summary we urge the Corps to:

1. Change the Corps process which ties eligibility in the PL 84-99 program to a vegetation standard that is not cost-effective, does not provide tangible improvements in public safety, does not support salmon recovery and promotes environmental degradation.
2. Acknowledge in policy that vegetation can have a stabilizing effect on levees as noted by the Corps' research.
3. Allow regional approval and guidelines for levee vegetation based on regional levee failure statistics, local expertise, and science.
4. Fund and incorporate regional scientific studies into vegetation and levee risk factors.
5. Refine, improve and finalize the Seattle District matrix tool.
6. Overall, this policy should contribute to salmon recovery and habitat improvement as well as protecting public safety.
7. Consult with NOAA and United States Fish and Wildlife Service as well as Treaty Tribes on all aspects of the program.

The Corps' current and proposed policy puts those with levee responsibilities in an untenable position – either be part of the program and violate federal CWA, ESA and Tribal/Treaty rights, or opt out and accept potentially large financial risks. Either way it is a “lose-lose” situation for local levee sponsors. We believe that the Corps can change the lose-lose dynamic and be part of the solution by creating a science-based federal policy that reflects regional conditions and provides flexibility from uniform national standards, while supporting other stated federal habitat and clean water goals.

We appreciate the opportunity to provide our comments regarding the Corps' vegetation variance proposal.

Sincerely,

WRIA 9 Watershed Ecosystem Forum:



Bill Peloza  
Councilmember, City of Auburn  
Co-Chair



Marlla Moon  
Councilmember, City of Covington  
Co-Chair

cc: Col. Bruce Estok, U.S. Army Corps of Engineers, Seattle District