

Lynnette Batt
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U.S. Army Corps of Engineers
Attn: CECW-CE, Douglas J. Wade
441 G Street, NW
Washington, DC 20314-1000.

RE: DOCKET # COE-2010-0007. Concern over the Current Proposal by the United States Army Corps of Engineers Regarding Changes in the Vegetation Variance Process for Levees and Floodwalls Posted in the Federal Register February 9, 2010 (Volume 75, Number 26, Page 6364-6368)

Dear Mr. Wade:

Please accept the following as my comments regarding Document ID COE-2010-0007-0004.

Under the current proposal the regional variance, as well as all other previous agreements regarding vegetation preservation would be abolished and a new, extraordinarily onerous process for preserving vegetation would be established. While the regional standard provided guidance for Corps staff during joint inspection of many miles of levees at a time, the new procedures, if approved, will essentially require that local jurisdictions identify and justify the need for each tree for which a variance is being sought. Variance request will have to pass through multiple levels of Corps administration any of which will be authorized to deny the variance request without any option for appeal. With the new procedures, local jurisdictions will be forced to either:

- 1) Meet the Corps' national standard and maintain their levees in a largely denuded state, thereby destroying what little remains of our riparian buffers and further impacting natural resources, including species listed under the federal Endangered Species Act;
- 2) Forgo federal assistance and allow most trees to remain in order to preserve natural resources, removing only those that are truly a threat to levee integrity;
- 3) Neglect critical flood protection functions so that staff can spend time pursuing variances on a levee-by- levee and tree-by-tree basis with little hope of success;
- 4) Raise taxes so that additional staff can be hired to pursue vegetation variances, while other staff perform critical flood risk reduction tasks.

None of the above outcomes are desirable or necessary. The current regional standard for the Pacific Northwest provides a modicum of protection of natural resources, is manageable for local jurisdictions,

and allows Corps staff to exercise a degree of professional judgment during levee inspections.

In order to minimize the impact of Corps levee standards on natural resources and the ability of local jurisdictions to continue to perform critical public safety functions related to levee inspection and maintenance, either of the following options should be implemented in lieu of the Corps current proposal.

- 1) Maintain the status quo and continue to honor existing regional variance or
- 2) Shift the burden of proof from the local jurisdictions to the Corps and have the Corps demonstrate on a case by case basis why specific trees need to be removed and provide local jurisdictions with the same level of documentation and justification for tree removal as the Corps is currently attempting to require local jurisdictions to provide to allow trees to remain.

If neither of these options can be accepted by the Corps, then the Corps should be required to participate in a formal consultation with the National Marine Fisheries Service and the National Oceanographic and Atmospheric Administration to determine the likely impact of the replacement of the existing regional variance process on species listed as threatened or endangered under the Endangered Species Act. While neither the Corps nor the local jurisdictions appear to be legally required to participate in a formal consultation with the Services since the Corps will not be the agency actually removing the trees, and the local entities will not need federal permits or received federal funding for the tree removal, the very direct cause and effect relationship of the federal action which requires the trees be removed in order for the local jurisdictions to receive federal funding, dictates that the Corps consult with the Services in order to meet the intent of the Endangered Species Act.

Until such time that this issue is resolved the Corps should freeze the status of all eligible or active levees enrolled in the Rehabilitation and Inspection Program promulgated under Public Law 84-99.

Thank you for taking my comments into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynnette Batt". The signature is written in a cursive, flowing style.

Lynnette Batt