

# BAY AREA FLOOD PROTECTION AGENCIES ASSOCIATION

April 20, 2010

United States Army Corps of Engineers  
Attention: Douglas J. Wade  
441 G Street, NW  
Washington, DC 203140-1000

**RE:** Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls – Docket Number COE-2010-0007

Dear Mr. Wade,

Thank you for providing the opportunity for the Bay Area Flood Protection Agencies Association (BAFPAA) to submit comments on the proposed process for obtaining vegetation variances for levees and floodwalls. The BAFPAA was formed to represent nine San Francisco Bay Area counties and communities in regional, state and federal issues in the area of flood protection. These comments are also shared by the Bay Area Watershed Network (BAWN). The BAWN is a consortium of agencies, local governments, and non-profit groups interested in regional watershed collaboration, information sharing and project planning for integrated regional water management planning.

The BAFPAA members maintain hundreds of miles of levees and floodwalls that provide flood protection for urban and rural areas in the San Francisco Bay Area. Many of these levees were designed in partnership with the U.S. Army Corps of Engineers (USACE) and included vegetation as an integral component required for project approval. In other cases, vegetation on levees and floodwalls has been required by other state and federal agencies for water quality benefits and to protect species listed under the Endangered Species Act (ESA). The proposed vegetation variance guidelines appear to conflict with environmental mandates local flood control sponsors must meet to implement their flood protection responsibilities. This letter presents a summary of these concerns.

## **BACKGROUND**

The USACE prepared a Final Draft White Paper in April 2007 Titled, "*Treatment of Vegetation within Local Flood-Damage-Reduction Systems.*" Based on their review of levee systems, the USACE found that many levees did not comply with new USACE policies. Specifically, USACE has proposed zones on levees and floodwall systems that cannot contain any vegetation other than grass for evaluating maintenance needs and for flood-fighting purposes. Systems that do not comply with this policy risk losing "Active

BAFPAA  
Letter to USACE  
April 20, 2010  
pg. 2

Status" in the USACE Rehabilitation Inspection Program and the loss of certification within the National Flood Insurance Program.

The USACE's proposed process for requesting a variance from vegetation standards was published in the Federal Register on February 9, 2010. Comments on this proposed process are due on April 25, 2010.

### **COMMENTS ON PROPOSED VEGETATION VARIANCE PROCESS**

The following sections presents excerpts, in italics, from the USACE's Federal Register posting referenced above and the BAFPAA's comments on the excerpts.

#### **Supplementary Information**

*Consistent with our regulations for implementing NEPA for our Civil Works programs, we have included a draft Finding of No Significant Impact (FONSI) for review in addition to the draft Environmental Assessment (EA). The draft FONSI is subject to change based on the comments received through this public notice and should not be viewed as predetermining the outcome of this process. Based on the comments received, we may determine that a FONSI is not appropriate and that a full Environmental Impact Statement is required for this action.*

The proposed vegetation variance invalidates all existing variances currently in effect. Attempts to comply with the USACE's new vegetation policies will result in significant impacts to existing levee and floodwall systems, therefore, the USACE's actions should be addressed in a full Environmental Impact Statement. BAFPAA believes that the USACE should also consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on the proposed vegetation variance process.

Additionally, as is further discussed below, the proposed vegetation variance requires that local flood control districts be responsible for all environmental compliance resulting from this process. Because the requirements included in the proposed vegetation variance are in direct conflict with other state and federal requirements, local flood control districts will not be able to obtain all of the environmental compliance documents necessary to comply with the vegetation variance standards.

#### **Section 1. Purpose**

*All vegetation variances, both new and existing, are required to seek approval through the process described in this policy guidance letter. Subjecting all new and existing variances to this approval process aligns with the Levee Safety Program goals that make public safety a top priority and assures application of consistent and well-documented approaches. This policy guidance letter supersedes the applicable regional variance policy and process contained in Engineer Regulation (ER) 500-1-1 and Engineer*

BAFPAA  
Letter to USACE  
April 20, 2010  
pg. 7

- The USACE should develop a list of situations where a variance will be granted and provide sample applications to help the nonfederal sponsors prepare complete applications.
- The USACE should include a list of supporting documents that will be required to obtain a variance.
- An exemption from the new guidelines is recommended for levees (a) that have no risk to the public, (b) with existing USACE variances, or (c) that include USACE Maintenance Manuals that require local sponsors to maintain vegetation for water quality purposes or other environmental purposes.
- The proposed vegetation free zone should not apply to in-ground channels or to portions of stream banks/levee systems that are below the elevations of areas adjacent to the levee system.
- Incorporate the current Administration's approach to water resources development, which has stated a (draft) National Objective to "protect and restore natural ecosystems and the environment while encouraging sustainable economic development;" and to "avoid adverse impacts to natural ecosystems wherever possible and fully mitigate any unavoidable impacts."
- The September 30, 2010 expiration date should be delayed at least 2 years or until all of the above issues are addressed, whichever is later.

BAFPAA members are committed to working with USACE in a collaborative process to develop vegetation standards for levee and floodwall systems that will increase the safety of existing systems in a manner that complies with state and federal environmental and endangered species action requirements.

Sincerely,



Michael D. Thompson  
BAFPAA Chair  
(707) 524-1166