



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

2809 Fish Hatchery Road Suite 204 Madison, Wisconsin 53713
608-274-0123 Fax: 608-274-0696 www.floods.org Email: asfpm@floods.org

Executive Director

Larry A. Larson, P.E., CFM

Deputy Director

George Riedel, CFM

U.S. Army Corps of Engineers
Attention: Douglas J. Wade, CECW-CE
441 G Street, NW
Washington, DC 20134-1000

April 26, 2010

Submitted via email to Douglas.J.Wade@usace.army.mil
Re: Docket Number COE-2010-0007

Dear Mr. Wade,

On behalf of the Association of State Floodplain Managers (ASFPM), its 29 State Chapters, and more than 14,000 members, we want to thank the U.S. Army Corps of Engineers (USACE) for the opportunity to offer the comments on proposed revisions to the process for requesting a variance from the USACE vegetation standards for levees and floodwalls. **ASFPM urges that the proposed revisions to the variance process be withdrawn pending the outcome of additional study and clarification of how the process will impact existing variances in place.**

Environmental impacts of vegetation management policies and practices need to be considered in the development of vegetation management standards and variances standards and processes, however ASFPM is concerned that public safety must be the highest priority in the management of levee systems and vegetation. Many of the conflicts between levee safety and vegetation/resource issues arise because many existing levees were built right on the bank of the river, creating stress during flooding on the stability of the levee, causing erosion and impacts on level of protection as the watershed becomes developed. The optimum end point for these situations is to set back the levees to allow less pressure on the levee and allow room for the river, where the natural resources of that ecosystem are allowed to exist and function for the benefits they provide.

Furthermore, we understand that technical research is underway to determine the effects of various types of vegetation in providing beneficial habitat and in improving levee stability. We encourage USACE to consider the results of this research, and provide a process for these results to inform regulatory standards and processes.

Dedicated to reducing flood losses in the nation.

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Gregory Main, CFM
State Floodplain Manager
Indiana DNR
317-234-1107
gmain@dnr.in.gov

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Sally McConkey, P.E., CFM
Water Resources Engineer
Illinois State Water Survey
217-333-5482
sally@illinois.edu

Secretary

Judy Watanabe, CFM
Mitigation Section Manager
Utah Div. of Homeland Sec.
801-538-3750
judywatanabe@utah.gov

Treasurer

William Nechamen, CFM
State Floodplain Manager
New York State DEC
518-402-8146
wsnecham@gw.dec.state.ny.us



On February 9, 2010, the USACE issued in the Federal Register a new Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls for public comment. Section 202(g) of WRDA 1996 called for revision to the policy guidelines on vegetation management for levees to address natural resource needs. The USACE standards for vegetation management are contained in [ETL 1110-2-571](#), Guidelines for Landscape Planting and Vegetation management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures. Procedures for variances are contained in [ER 500-1-1](#), Emergency Employment of Army and Other Resources, Civil Emergency Management Programs – Procedures, Chapter 5. The proposed Policy Guidance Letter revises the variance process to align it with the following USACE agency-wide approaches:

- Conducting broader flood risk management planning
- Applying policy and procedures consistently
- Addressing levees on a systems basis
- Utilizing Agency Technical Review (ATR) to ensure quality and credibility

The current regulation states:

Policy - Federal and Non-Federal Levees.

The public sponsor of an Active flood control levee may seek a variance from Corps policy (i.e., Appendix A of EP 500-1-1, and ER 1130-2-530) so as to allow additional vegetation to grow on levees, when allowing such vegetation would preserve, protect, and/or enhance natural resources, and/or protect the rights of Native Americans. Such variances will only be granted if:

- (1) the safety, structural integrity, and functionality of the levee are retained; and,
- (2) accessibility for inspection and flood fighting purposes is retained; and,
- (3) the level of protection does not fall below the level necessary for levee certification under the National Flood Insurance Program if the levee is currently so certified; and,
- (4) the level of protection does not fall below the minimum permissible for PL 84-99 acceptability (i.e., 5-year level of protection for agricultural levees and 10-year level of protection for urban levees).

The revised variance process is applicable to “flood damage reduction projects within an USACE program or project authority,” and follow a detailed process that begins as follows.

6. Process. The process for the request and approval of a vegetation variance consists of the following steps.

a. The project sponsor ... shall submit a Vegetation Variance Request, as described in paragraph 7, to the Commander of the appropriate USACE district. The request shall fully explain the nature of the variance being requested and demonstrate compliance with the following two basic criteria.

- (1) The variance must be shown to be necessary, and the only feasible means, to
 - preserve, protect, and enhance natural resources, and/or
 - protect the rights of Native Americans, pursuant to treaty, statute, or Executive Order.



- (2) With regard to levee systems, the variance must assure that
- safety, structural integrity, and functionality are retained, and
 - accessibility for maintenance, inspection, monitoring, and flood fighting are retained.

Issue #1: Levee Vegetation Policy should be Guided by Scientific Research in a Broader Flood Risk Management Policy Context. Levee vegetation policy needs to be developed as part of a broader discussion of floodplain land use and integrated approaches to both flood risk and habitat management. Any policy changes need to be based on scientific findings regarding the engineering, environmental, and related social implications of the presence or removal of levee vegetation. The February 2009 USACE-sponsored symposium, “An Examination of Levee Vegetation Policy,” identified the need for further study to determine the role of vegetation on levee safety, performance, and reliability, along with environmental benefits. Stakeholders find themselves operating between two contradictory Federal directives – national environmental policy and vegetation management to retain eligibility for PL 84-99 – that result in them having to remove vegetation that may provide important habitat. In some cases, stakeholders forego PL 84-99 funds in order to allow vegetation to remain.

COMMENT: The overall USACE vegetation management standards need further study, and proposed revisions to the variance process should be withdrawn pending the outcome of additional study. In the alternative, USACE should provide a process for the consideration of research results in its levee vegetation management policy, and variance policy and process. Additionally, the USACE should clarify how any proposed rule change will impact existing variances levee owners currently have.

Issue #2: Removal of Requirements to Retain Levels of Protection

Under the current regulations, a variance cannot result in the level of protection (LOP) falling below the PL 84-99 eligibility thresholds, and a variance for an NFIP-accredited levee can be approved only if the LOP is retained for NFIP purposes. The proposed variance regulation removes these requirements, while articulating a requirement that the variance must be demonstrated to be necessary and the only feasible means to protect natural resources. It may be that the LOP requirements are being removed because it is difficult to analyze how vegetation impacts structural integrity, and to conclusively determine how vegetation impacts level of protection.

COMMENT: Wherever possible, the LOP should be retained for structures, regardless of NFIP or PL 84-99 status, since retention of LOP is a safety issue.

Issue #3: Draft Finding of No Significant Impact

An environmental assessment is being prepared as part of the revised variance process. The draft EA and FONSI were issued based on the rationale that changing the process for applying for a variance does not itself affect the environment. When variances are requested, the environmental effects of that specific variance request will be evaluated based on the specific conditions, including geography, flora, fauna, and geology, relevant to that request. However, the proposed revisions would rescind all existing variances and require them to obtain a new variance through the revised process to retain eligibility for PL 84-99 funding, which is a significant issue needing consideration.

COMMENT: To ensure compliance with NEPA, ESA, and the criteria to preserve, protect, and enhance natural resources, all variance requests need to include an environmental assessment.



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

U.S. Army Corps of Engineers

Page 4

April 26, 2010

ASFPM has enjoyed a successful partnership with the USACE for many years. We appreciate the opportunity to make these comments. Please contact me with any questions. I can be reached at 608-274-0123, or via email at larry@floods.org.

Sincerely,

Larry Larson, P.E., CFM
ASFPM Executive Director