



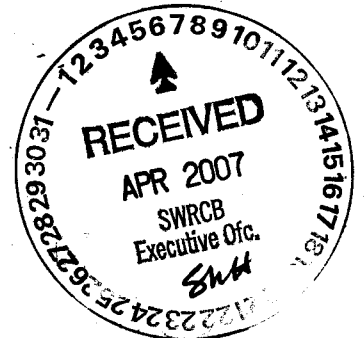
DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1399

April 6, 2007

Wetland/Riparian Policy
Deadline: 4/19/07, 12 noon

Program Support Directorate

Ms. Song Her
Clerk of the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Comment Letter – Wetland and Riparian Area Protection Policy

Dear Ms. Her:

We have received your Notice of Public California Environmental Quality Act Scoping Meeting, Proposed Wetland and Riparian Area Protection Policy, dated March 15, 2007. After reviewing your notice and scoping document, we are providing the following input for your scoping consideration.

Firstly, I want to commend the State of California for taking action to protect important aquatic resources no longer subject to Clean Water Act (CWA) jurisdiction since the United States Supreme Court ruled in 2001 that certain isolated, intra-state, non-navigable waters are best regulated by the states. I believe it is important for the regulated public we serve that both the Federal and State Government have consistent and predictable regulatory processes, including common definitions for wetlands and riparian areas that are science-based. To that end, the U.S. Army Corps of Engineers has recently published a regional supplement to our 1987 wetland delineation manual that covers much of California. We are also developing guidance for improving our field practices for determining CWA jurisdiction in non-wetland waters of the United States. These and other Federal and State partnerships will help provide that necessary predictability for the regulated public.

Secondly, as the Federal agency with responsibilities in flood damage reduction, the Corps of Engineers has important responsibilities for ensuring that flood damage reduction projects within our purview are maintained. The nexus of these flood damage reduction projects and the development of your wetland and riparian protection policy should be given due consideration. The protection policy should consider that maintenance activities to ensure public safety will require vegetation management in channels, on floodplains, and on levees that might impact wetlands and riparian areas. We are currently collaborating with resource agencies to survey potentially affected areas, evaluate impacts and hopefully develop solutions that minimize impacts to the environment while ensuring public safety goals are met (Additional background information has been enclosed).

April 6, 2007

The following comments are furnished for your consideration in your CEQA scoping considerations:

1. The CEQA scoping for a wetland and riparian protection policy should consider the potential effects of the State protection policy on the risk of increasing flood damage associated with vegetation in proximity to existing flood damage reduction structures.

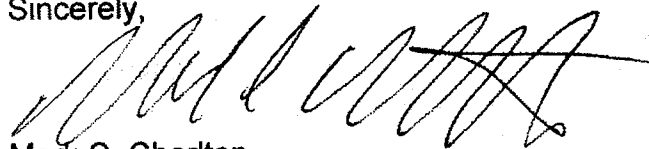
2. The Corps recommends that any policy include provisions for the removal of wetland or riparian vegetation when necessary to maintain flood damage risks for authorized projects at design levels officially adopted by federal and/or local authorities.

3. The absence of a provision for the maintenance of flood damage reduction structures in the protection policy could lead to unintended conflicts between continued maintenance requirements and delays in work resulting in flood damage risks that exceed the design standards for existing structures. The CEQA scoping should consider whether protection policies pose such risk representing a significant adverse environmental effect and whether any mitigation measures for such an adverse environmental effect can be mitigated.

Thank you for the opportunity to provide input to your scoping notice. We hope that this information can be used to further your goals. Subsequent to finalizing your policy, we recommend that a workshop be held to give the opportunity for representatives of our Districts and the State Water Resources Control and Regional Boards to meet and coordinate regulatory processes as they relate to your policy. If you have any specific questions regarding our concerns, please feel free to contact Mr. Les Tong at (415) 503-6585 or Mr. Boni Bigornia at (415) 503-6591 of my staff. We look forward to future coordination as you develop your policy.

FOR THE COMMANDER:

Sincerely,



Mark C. Charlton
Acting Director
Program Support Directorate

Enclosure

Background

The U. S. Army Corps of Engineers recognize that riparian areas often are high value habitats that serve a variety of purposes. Riparian areas are commonly considered to be vegetated areas along the edges of watercourses or waterbodies such as streams, rivers, and lakes. As such, these areas are also closely associated with flood damage reduction projects.

In the aftermath of levee failures in Hurricanes Katrina and Rita, the U. S. Army Corps of Engineers is evaluating how vegetation on flood damage reduction structures (or levees etc.) may increase the risk of levees failing during storm events.

On March 6, 2007, we held an interagency, multi-disciplinary meeting with representatives from our Corps of Engineers districts, EPA, FWS, NMFS, California Department of Water Resources (CA DWR), and the California Department of Fish and Game (CA DFG) in Sacramento to discuss agencies' concerns, goals, existing Corps guidance on levee vegetation management, and our common primary need for life safety. Lessons learned from existing collaborative efforts were shared and further actions were identified. The intent of this meeting was to begin a dialogue with our regional resource agencies towards development a regional levee vegetation management strategy, and informing their higher headquarters of these issues. Additional meetings with other stakeholders will be scheduled.

On March 12, 2007, an interdisciplinary team (hydraulic engineer, geotechnical engineer, biologist, emergency management, operations) from our Sacramento District applied existing Corps inspection criteria (2006 Levee Owners Manual checklist and EM 1110-2-301, Engineering and Design - Guidelines for Landscape Planting and Vegetation Management at Floodwalls, Levees, and Embankment Dams) to a 1.5-mile reach of levee on the American River in Sacramento. The local sponsor's inspection team (from CA DWR) also came out to apply their existing inspection standards to the same sample area. The intent of this 'pilot' survey was to examine the impacts of vegetation removal, existing encroachments/easements, and to highlight life safety issues to the State/sponsor and the Corps team. Based on Corps standards, over 100 trees and several heritage oaks (over 30-inches diameter) and about 1 mile of encroachments (including swimming pools) would need to be removed. With many threatened endangered species (and other species of concern), with cultural/social impacts, and with levee reconstruction, there is expected to be substantial impacts and costs within the boundaries of our Sacramento District alone.

On March 14, 2007, we held a briefing with the Flood Control and Water Resources Policy Committee of the CEAC (County Engineers Association of California) on the Corps challenges to ensure life safety in an environment of heavy existing vegetation, numerous urban encroachments, and a large number of threatened and endangered species (over 300 in California). The county engineers were very concerned with levee certification for flood insurance purposes, but even more so for public safety.

References to U.S. Army Corps of Engineers Guidance

EM 1110-2-301, Engineering and Design - Guidelines for Landscape Planting and Vegetation Management at Floodwalls, Levees, and Embankment Dams, 1 January 2000

EM 1110-2-1205, Environmental Engineering for Local Flood Control Channels, 15 November 1989

ER 1130-2-530, Flood Control Operations and Maintenance Policies, 30 October 1996,

ER 500-1-1, Emergency Employment of Army and Other Resources - Civil Emergency Management Program, 30 September 2001

EP 500-1-1, Emergency Employment of Army and Other Resources - Civil Emergency Management Program – Procedures, 30 September 2001