



King County

Water and Land Resources Division

Department of Natural Resources and Parks

King Street Center

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April 23, 2010

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

Re: Docket Number COE-2010-0007

Dear Mr. Wade:

King County, Washington recently submitted comments to you on March 5, 2010 in response to the Federal Register notice titled "Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls." We appreciate your consideration of our earlier comments, and given the comment deadline extension, we are writing to offer additional comments highlighting some of the challenges the proposal creates for our jurisdiction.

I would also like to reiterate that we greatly appreciate the partnership to date with the USACE to repair damaged levees and provide a long-term fix to the compromised Howard Hanson Dam.

The USACE vegetation management requirements for federal levee repair funding place local governments such as King County in an unsustainable position. Each time we bring a levee into compliance by removing functioning habitat, we are required to plant four trees for each tree we remove. We must also install large wood within the river to mitigate for the lost natural recruitment of the wood that would have occurred over time had we let stand the trees we were required to remove. The inevitable result is that we will run out of places to mitigate our impacts along our rivers.

It has been the experience of King County that native vegetation on levees can provide structural reinforcement—and thus helping to ensure the protection of public safety—due to the binding effect of root systems, as well as reduce erosion of the levee system by lowering flow velocities and boundary shear at the levee face. While we agree that some types of vegetation (i.e. non-native species or species with shallow root systems) are not appropriate for levees, our experience is that native vegetation can enhance levee stability and allow for routine inspections and the identification of damages or other structural issues associated with levees.

We offer the following as examples of the impacts of the existing policy and the implications of the proposed policy:

- In 2008 and 2009 King County removed 512 trees to bring levees into compliance with the Seattle District's regional variance.
- Removal and mitigation costs for this effort are estimated to cost over \$5.2 million, which exceeds the total King County construction cost share by approximately \$1.75 million for projects that King County partnered with the USACE in 2008 and 2009 under the PL 84-99 program.
- King County's mitigation costs include \$2.5 million to provide a suitable mitigation site along the highly developed lower Green River. Without this acquisition, we would be forced to mitigate along leveed sections of the river and would then have to remove levees from the PL 84-99 program so that the mitigation requirements could be met.
- The USACE spent \$500,000 to plant 10,000 trees along the Green River in 2008 and 2009. Under both the regional variance and the national standard, these trees will have to be removed before they are large enough to provide the intended structural and ecological benefit.
- Tree plantings completed by the USACE as mitigation to comply with the National Marine Fisheries Service's Biological Opinion for the levee repair projects will have to be removed by King County, which would presumably cause the USACE to be out of compliance with permit requirements under the Endangered Species Act.
- Based on our experience with tree removal and mitigation under the PL 84-99 program and recent levee inspections with the Seattle District, we estimate that compliance with the national standard would result in the removal of 13,000 to 25,000 trees along King County's major rivers, including removal of 8,700-19,000 to comply with the existing regional variance.
- The cost to remove trees and stumps and provide mitigation to satisfy state and local regulations is estimated at \$95 million to \$176 million. Of this amount, \$61 million to \$133 million will be necessary to comply with the existing regional variance. This cost, to remain eligible, far exceeds available funding, leaving little incentive to partner with the Corps on critical public safety projects.

We again urge the USACE to consult with the agencies charged with implementing the Endangered Species Act regarding this proposed federal action, as well as the existing requirements of the PL 84-99 program. The conflict between federal ESA requirements and federal levee funding requirements is placing an unnecessary burden on local governments, and it undermines the ability of local governments to effectively partner with either the USACE or federal resource agencies on federal flood risk reduction and federal species recovery objectives.

To summarize, King County urges the USACE to take the following steps:

1. Withdraw the current variance proposal and base any future levee vegetation policy changes on the best available science, drawing upon regionally-developed technical

studies and scientific research conducted in partnership with local jurisdictions and other affected federal and state agencies;

2. Consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service under Section 7 of the ESA regarding the impact of the Corps' levee vegetation requirements on listed species; and
3. Should the variance policy proceed as proposed, allow the Corps' Seattle District regional variance to remain in place, and extend the deadline for existing variances by a minimum of two years due to the extensive, costly, and time-consuming documentation required to adhere to the new process of obtaining a variance.

If you would like to discuss this matter further, please do not hesitate to contact me at 206-296-6587.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Isaacson", with a long horizontal flourish extending to the right.

Mark Isaacson
Division Director

cc: The Honorable Dow Constantine, King County Executive
The Honorable Julia Patterson, Chair, King County Flood Control District
Bob Burns, Interim Director, King County Department of Natural Resources and Parks
(DNRP)
Mark Isaacson, Division Director, Water and Land Resources Division, DNRP
Kjris Lund, Executive Director, King County Flood Control District