



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-EC

OCT 19 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 3013 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Vegetation Management Policy

1. References.

- a. Engineer Regulation (ER) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program, 30 September 2001.
- b. Engineer Regulation (ER) 1105-2-101, Risk Assessments for Flood Risk Management Studies, 17 July 2017.
- c. Engineer Pamphlet (EP) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program, Procedures, 30 September 2001.
- d. Engineer Technical Letter (ETL) 1110-2-583, Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures, 20 April 2014.
- e. Engineer Circular (EC) 1165-2-216, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408, 30 September 2017.
- f. Memorandum, HQ USACE (CECW-HS), subject: Policy for Development and Implementation of System-wide Improvement Frameworks (SWIFs), 29 November 2011.
- g. Memorandum, HQ USACE (CECW-HS), subject: Interim Policy for Determining Eligibility Status of Flood Risk Management Projects for the Rehabilitation Program Pursuant to Public Law (P.L.) 84-99, 21 March 2014.
- h. DRAFT Policy Guidance Letter, Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls, February 2012

2. Section 3013 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) requires the Secretary to carry out a comprehensive review of U.S. Army Corps of Engineers (USACE) guidelines related to vegetation management on levees, specifically including references 1.d. and 1.h., to determine whether current

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USACE vegetation management policy is appropriate for all regions of the United States. Section 3013 further directs the Secretary to consider a number of specific factors as part of that review, including varied interests and responsibilities in managing flood risk; benefits of woody vegetation; preservation, protection, and enhancement of natural resources; protecting the rights of Indian Tribes pursuant to treaties and statutes; levee performance; available science and historical record; avoidance of actions requiring significant costs and environmental impacts; and other factors identified in public comments as the Secretary determines appropriate. The review requires consultation with other applicable federal agencies, state, tribal, regional and local government, nongovernmental organizations, and the public. The review also must solicit and consider the views of independent experts on engineering, environmental, and institutional considerations. The views of the independent experts must be made available to the public and be included in supporting materials in connection with revised guidelines. The Secretary must revise the guidelines within 18 months after enactment of WRRDA 2014 based on the results of the review, providing for not fewer than 30 days for the public to review and comment on draft guidelines, and submit to Congress and make publically available a report that contains a summary of the activities undertaken and findings under Section 3013.¹ The revised guidelines must also be incorporated into the manual proposed under Section 5(c) of the Act of August 18, 1941 (33 USC 701n(c)), otherwise named the Levee Owner's Manual. Furthermore, Section 3013 provides for interim actions until the date on which revisions to the guidelines are adopted in accordance with the provision, which includes a prohibition on the removal of existing vegetation as a condition or requirement for any approval or funding of a project or any other action, unless the specific vegetation is demonstrated to present an unacceptable safety risk. Section 3013 is enclosed.

3. Review and Revision of Guidelines.

a. Consistent with Section 3013(a)-(f), CECW-EC will lead the review of existing vegetation management guidelines, identify policy gaps, and develop recommended actions to address those gaps. CECW-EC will consider the factors in Section 3013(c) when conducting the review and ensure coordination with other related USACE efforts and policy development. In addition, CECW-EC will consult with other federal, state, regional, local, and tribal governments, nongovernmental organizations, and the public during the review of existing guidance. USACE will also seek and consider the viewpoints of independent experts. CECW-EC will document in a summary report the process, comments and suggestions received, and any recommendations that result from the review.

¹ Congress has been periodically updated regarding the status of this WRRDA 2014 implementation guidance.

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b. Upon completion of the summary report, CECW-EC will draft updated guidelines informed by the results of the review.

c. CECW-EC will provide the public 30 days to review and comment on the draft summary report and draft guidelines. The views of the independent experts obtained prior to the release of the draft documents will be made available to the public during the comment period.

d. All comments and recommendations received during the public comment period will be considered prior to finalizing the summary report and guidelines. USACE will submit to Congress the Final Summary Report and Guidelines and make those documents available on the USACE webpage (www.usace.army.mil).

e. CECW-EC will also incorporate the updated guidelines in to the Levee Owner's Manual provided under 33 U.S.C. 701n(c).

4. Until the review and update of the vegetation guidelines is complete, USACE will take the following interim actions to comply with Section 3013(g)(1), which requires that "...the Secretary shall not require the removal of existing vegetation as a condition or requirement for any approval or funding of a project, or any other action, unless the specific vegetation has been demonstrated to present an unacceptable safety risk." An unacceptable safety risk may include consideration of conditions that could structurally compromise the performance of the levee system or its foundation; impair or prohibit needed access for inspection or emergency activities; and/or pose other risks identified by risk assessments or analyses.

a. USACE Levee Inspections and Risk Assessments. Districts will continue to conduct levee inspections and risk assessments in accordance with USACE Levee Safety Program requirements, including the assessment of vegetation. Inspection and risk assessments results will be provided to levee sponsors for their use to inform their operation and maintenance activities and other risk management efforts such as risk communication. Inspection and risk assessment results are provided without the imposition of any requirement to remove or address existing vegetation.

b. Vegetation Management as Part of Operation and Maintenance.

(1) For levee systems or segments in which USACE has the responsibility to manage vegetation, the responsible USACE district office will implement vegetation management as appropriate and required for that specific levee system or segment. Any vegetation removal on these levee systems or segments is undertaken by USACE and is not a condition or requirement for approval or funding, thus 3013(g)(1) does not

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impose a requirement to demonstrate that the vegetation presents an unacceptable safety risk.

(2) Non-federal sponsors of many federally authorized levee systems or segments are responsible for maintaining the system or segment, including performing vegetation management. Section 3013(g)(1) does not prevent non-federal sponsors from making decisions regarding how to manage vegetation for the levee systems or segments for which they are responsible. Until the guidelines are revised, USACE will not seek to require non-federal sponsors to make specific vegetation management decisions without documenting that vegetation presents an unacceptable safety risk. If there are situations with federally authorized levee systems in which USACE has documented that existing vegetation poses an unacceptable safety risk, USACE may elect to pursue enforcement in accordance with Project Partnership Agreements. For these cases, districts will coordinate vertically with HQUSACE through the appropriate Regional Integration Team (RIT) to determine the preferred course of action.

c. Rehabilitation Program Pursuant to Public Law 84-99.

(1) A subset of USACE levee inspection results will continue to be used to inform eligibility determinations for the Rehabilitation Program in accordance with reference 1.g. USACE districts will continue to rate vegetation on levee systems as part of the inspection process; however, the inspection rating associated with vegetation is not used to determine eligibility for the Rehabilitation Program. As such, the Rehabilitation Program does not require the removal of existing vegetation, and the Rehabilitation Program will continue to be implemented under existing guidance.

(2) If USACE inspectors encounter conditions where existing vegetation puts the inspectors at personal risk to conduct a levee inspection, the inspectors will document the levee condition, including photographs and rationale as to why that vegetation creates a risk that makes it unsafe to inspect the levee system or segment. Upon documenting this determination, the levee system will not be eligible for assistance under the Rehabilitation Program pursuant to reference 1.g.

(3) Non-federal sponsors may pursue a SWIF (references 1.f and 1.g.) in order to become eligible for the Rehabilitation Program.

d. Districts will continue to follow emergency and post-flood repairs procedures in references 1.a and 1.c. It is recognized that during these activities, it may be necessary for USACE to incidentally remove vegetation during emergency activities or post-flood repairs. The removal of vegetation in these cases will only be done when considered a

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necessity for implementing these emergency response activities. Not implementing these activities as needed is considered an unacceptable safety risk.

e. For studies, design, or construction projects involving existing levee systems, USACE districts will not assume that existing vegetation that does not meet guidelines in reference 1.d. must be removed. The evaluation of alternatives involving levee systems will consider risks to life safety, economics, and the environment. Risk assessments, as required in current policies including reference 1.b., are used to evaluate levee systems during the planning, design, and construction phases to determine when a levee system poses unacceptable risk with each phase increasing in level of detail with a reduction of uncertainty. In general, designs must be in accordance with minimum standards, and risk assessments can inform deviation from such standards. No deviations are allowed if there is an increase to incremental life safety risk. Districts must document the analysis and rationale for retaining existing vegetation, when vegetation needs to be removed, and/or design features that accommodate vegetation. For studies, design, or construction projects involving levee systems with existing vegetation, project delivery teams must coordinate with appropriate district levee safety staff and vertically with HQUSACE through the appropriate RIT, as needed.

f. Reference 1.e. for procedures for requests by other entities for the permanent or temporary alteration or use of any USACE Civil Works project. As part of the review process for Section 408, where retaining vegetation is incorporated as a component of an alteration, USACE districts will require the requesting entity to provide additional information related to the vegetation in order to make an assessment as to whether or not retaining that vegetation poses an unacceptable safety risk.

5. Questions regarding this implementation guidance may be directed to Steve Fink, at (202) 761-4826 or steven.j.fink@usace.army.mil.



JAMES C. DALTON, P.E.
Director of Civil Works

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SEC. 3013. VEGETATION MANAGEMENT POLICY.

(a) DEFINITION OF GUIDELINES.—In this section, the term “guidelines” means the Corps of Engineers policy guidelines for management of vegetation on levees, including—

- (1) Engineering Technical Letter 1110–2–571 entitled “Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures” and adopted April 10, 2009; and
- (2) the draft policy guidance letter entitled “Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls” (77 Fed. Reg. 9637 (Feb. 17, 2012)).

(b) REVIEW.—The Secretary shall carry out a comprehensive review of the guidelines in order to determine whether current Federal policy relating to levee vegetation is appropriate for all regions of the United States.

(c) FACTORS.—

(1) IN GENERAL.—In carrying out the review, the Secretary shall consider—

(A) the varied interests and responsibilities in managing flood risks, including the need—

(i) to provide the greatest benefits for public safety with limited resources; and

(ii) to ensure that levee safety investments minimize environmental impacts and provide corresponding public safety benefits;

(B) the levee safety benefits that can be provided by woody vegetation;

(C) the preservation, protection, and enhancement of natural resources, including—

(i) the benefit of vegetation on levees in providing habitat for species of concern, including endangered, threatened, and candidate species; and

(ii) the impact of removing levee vegetation on compliance with other regulatory requirements;

(D) protecting the rights of Indian tribes pursuant to treaties and statutes;

(E) determining how vegetation impacts the performance of a levee or levee system during a storm or flood event;

(F) the available science and the historical record regarding the link between vegetation on levees and flood risk;

(G) the avoidance of actions requiring significant economic costs and environmental impacts; and

(H) other factors relating to the factors described in subparagraphs (A) through (F) identified in public comments that the Secretary determines to be appropriate.

(2) VARIANCE CONSIDERATIONS.—

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(A) IN GENERAL.—In carrying out the review, the Secretary shall specifically consider factors that promote and allow for consideration of variances from guidelines on a Statewide, tribal, regional, or watershed basis, including variances based on—

- (i) regional or watershed soil conditions;
- (ii) hydrologic factors;
- (iii) vegetation patterns and characteristics;
- (iv) environmental resources, including endangered, threatened, or candidate species and related regulatory requirements;
- (v) levee performance history, including historical information on original construction and subsequent operation and maintenance activities;
- (vi) any effects on water supply;
- (vii) any scientific evidence on the link between levee vegetation and levee safety;
- (viii) institutional considerations, including implementation challenges and conflicts with or violations of Federal or State environmental laws;
- (ix) the availability of limited funds for levee construction and rehabilitation;
- (x) the economic and environmental costs of removing woody vegetation on levees; and
- (xi) other relevant factors identified in public comments that the Secretary determines to be appropriate.

(B) SCOPE.—The scope of a variance approved by the Secretary may include a complete exemption to guidelines, if appropriate.

(d) COOPERATION AND CONSULTATION; RECOMMENDATIONS.—

(1) IN GENERAL.—The Secretary shall carry out the review under this section in consultation with other applicable Federal agencies, representatives of State, regional, local, and tribal governments, appropriate nongovernmental organizations, and the public.

(2) RECOMMENDATIONS.—

(A) REGIONAL INTEGRATION TEAMS.—Corps of Engineers Regional Integration Teams, representing districts, divisions, and headquarters, in consultation with State and Federal resource agencies, and with participation by local agencies, shall submit to the Secretary any recommendations for vegetation management policies for levees that conform with Federal and State laws and other applicable requirements, including recommendations relating to the review of guidelines under subsection (b) and the consideration of variances under subsection (c)(2).

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(B) STATE, TRIBAL, REGIONAL, AND LOCAL ENTITIES.— The Secretary shall consider and accept recommendations from any State, tribal, regional, or local entity for vegetation management policies for levees that conform with Federal and State laws and other applicable requirements, including recommendations relating to the review of guidelines under subsection (b) and the consideration of variances under subsection (c)(2).

(e) INDEPENDENT CONSULTATION.—

(1) IN GENERAL.—As part of the review, the Secretary shall solicit and consider the views of independent experts on the engineering, environmental, and institutional considerations underlying the guidelines, including the factors described in subsection (c) and any information obtained by the Secretary under subsection (d).

(2) AVAILABILITY OF VIEWS.—The views of the independent experts obtained under paragraph (1) shall be—

(A) made available to the public; and

(B) included in supporting materials issued in connection with the revised guidelines required under subsection (f).

(f) REVISION OF GUIDELINES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(A) revise the guidelines based on the results of the review, including—

(i) recommendations received as part of the consultation described in subsection (d)(1); and

(ii) the views received under subsection (e);

(B) provide the public not less than 30 days to review and comment on draft guidelines before issuing final guidelines; and

(C) submit to Congress and make publicly available a report that contains a summary of the activities of the Secretary and a description of the findings of the Secretary under this section.

(2) CONTENT; INCORPORATION INTO MANUAL.—The revised guidelines shall

(A) provide a practical, flexible process for approving Statewide, tribal, regional, or watershed variances from the guidelines that—

(i) reflect due consideration of the factors described in subsection (c); and

(ii) incorporate State, tribal, and regional vegetation management guidelines for specific areas that—

(I) are consistent with the guidelines; and

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(II) have been adopted through a formal public process; and

(B) be incorporated into the manual proposed under section 5(c) of the Act of August 18, 1941 (33 U.S.C. 701n(c)).

(3) FAILURE TO MEET DEADLINES.—If the Secretary fails to submit a report by the required deadline under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed explanation of—

(A) why the deadline was missed;

(B) solutions needed to meet the deadline; and

(C) a projected date for submission of the report.

(g) INTERIM ACTIONS.—

(1) IN GENERAL.—Until the date on which revisions to the guidelines are adopted in accordance with subsection (f), the Secretary shall not require the removal of existing vegetation as a condition or requirement for any approval or funding of a project, or any other action, unless the specific vegetation has been demonstrated to present an unacceptable safety risk.

(2) REVISIONS.—Beginning on the date on which the revisions to the guidelines are adopted in accordance with subsection (f), the Secretary shall reconsider, on request of an affected entity, any previous action of the Corps of Engineers in which the outcome was affected by the former guidelines.