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August 15, 2024

United States Army Corps of Engineers Levee Safety Center
U.S. Army Corps of Engineers Vicksburg District

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Delivered via email: hq-leveesafety@usace.army.mil

RE: Best Practices for Vegetation Management on Levees – Draft for Public Review and Comment (Spring 2024)

To Whom It May Concern:

Thank you for the opportunity to review and comment on *Best Practices for Vegetation Management on Levees – Draft for Public Review and Comment (Spring 2024)*. The Delta Stewardship Council (Council) recognizes the objective of the publication to provide more detailed information about the most current thinking related to practices for how to assess, design, and manage the incorporation of vegetation on levees without compromising the reliability of levee systems.

The Council is an independent California state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; Delta Reform Act) The Delta Reform Act charges the Council with furthering California’s coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that inherent within the

coequal goals, among other things, is the need to reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, § 85020.)

The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300.) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 5001 et seq.

RECENT HISTORY OF LEVEE VEGETATION MANAGEMENT POLICY

In April 2009, the United States Army Corps of Engineers (USACE) issued Engineering Technical Letter (ETL) 1110-2-571¹, establishing a uniform nationwide vegetation policy. This policy required vegetation-free and root-free zones for levees throughout the entire country. The vegetation-free zone applied to all vegetation except for grass. The vegetation-free zone included all areas on the levee profile, plus an additional 15 feet on both the landside and waterside of the levee toe. The ETL applied to all levee systems under direct USACE control. Further, any levees maintained by state or Local Maintaining Agencies (LMAs) would be required to conform to the vegetation policy set forth in ETL 1110-2-571 to maintain eligibility under Public Law (PL) 84-99. PL 84-99 provides federal funding for emergency management activities and authorizes USACE to undertake emergency disaster preparedness, emergency operations during and after flood events, the rehabilitation of flood control works threatened or destroyed by floods, emergency water provisions, and other federal emergency assistance during and after flood events.

In February 2010, USACE issued a draft Policy Guidance Letter (PGL) describing a variance process from USACE vegetation management guidelines. The PGL established basic requirements to obtain a variance, or exemption, from the

¹ ETL 1110-2-583 was issued April 30, 2014, and superseded ETL 1110-2-571. At the time of the adoption of the pertinent part of the Delta Plan, ETL 1110-2-571 was in effect, and, thus, references in this letter are to ETL 1110-2-571.

vegetation removal requirements of ETL 1110-2-571. If a nonfederal levee sponsor wished to maintain PL 84-99 eligibility and avoid removing all woody vegetation on levees under its control, it would need to comply with the PGL requirements.

In April 2010, the California Department of Water Resources (DWR) and California Department of Fish and Wildlife (CDFW) submitted extensive comments on the ETL and PGL, stating that the new USACE policies would reduce public safety in California, result in extensive and unnecessary environmental damage, and eliminate USACE responsibility to assist the state and LMAs in ensuring the integrity of California's levee system.

In 2013, when the Council adopted the Delta Plan, it identified a need for extensive habitat restoration throughout the Delta. Much of the remaining Delta habitat is found in narrow strips along the waterside of levees, and the Delta Plan seeks to protect and widen these green margins. The Delta Plan promotes the growth of woody vegetation along the waterline and recommends that USACE exempt Delta levees from the vegetation policy of ETL 1110-2-571. (Delta Plan Policy ER P4 (Cal. Code Regs., tit. 23, § 5008) and Delta Plan Recommendation ER R4.) To date, USACE has not implemented the Council's recommendation.

COMMENTS ON THE PUBLICATION

Strict conformance with current USACE vegetation removal requirements has the following negative consequences for the natural environment:

- Eliminates the last remaining critical habitat for endangered fish species, and in so doing, restricts the Council from advancing the coequal goal to protect, restore, and enhance the Delta ecosystem.
- Has safety consequences for communities exposed to flooding.
- Unnecessarily diverts limited funds from other, more pressing levee safety projects.
- Contributes to slope instability, making levees less safe overall and increasing risk to life, property, and state interests in the Delta.
- Increases the cost of levee projects due to offsite habitat mitigation requirements, often requiring land acquisition.

For these reasons, the Council strongly recommends that USACE adopt the proposed *Best Practices for Vegetation Management on Levees*, which would allow for a dense mix of trees, shrubs, and herbaceous vegetation on the waterside slope. However, the Council is concerned that adopting the policy alone is not enough to restore lost habitat.

The proposed guidelines for levees with a minimum geometry require a risk assessment, supported by engineering analysis, to determine acceptable species to be planted along the waterside of a given levee. Lacking clear procedures for this assessment, lower-income communities and LMAs may not have the resources to incorporate appropriate vegetation into levee projects. The Council strongly advises that USACE develop procedures or guidelines that outline the process for the risk assessment, including appropriate training and project support at the USACE District level. Clear procedures will allow rural levee maintaining agencies to predict and manage the resources needed to design and construct levees that meet multi-purpose objectives.

CLOSING COMMENTS

As USACE proceeds with the development of the *Best Practices for Vegetation Management on Levees*, the Council invites USACE to engage Council staff to discuss policy implementation in a way that promotes equity and habitat recovery.

Council staff are available to discuss issues outlined in this letter as the USACE proceeds in the next stages of its Guidelines and approval processes. Please contact Erin Mullin, Lead Engineer, at (916) 902-6482 or (erin.mullin@deltacouncil.ca.gov)] with any questions.

Sincerely,



Jeff Henderson
Deputy Executive Officer