

Effects of the Army Corps'
Levee Vegetation Policy
in California



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Background

Congress directed the U.S. Army Corps of Engineers to work with local entities to construct specifically authorized flood protection systems:

- › Flood Control Acts of 1917 -1970
- › Water Resources Development Acts of 1974 - 2007

In 1955, with the Flood Control and Coastal Emergency Act (PL 84-99), Congress also directed the Corps to work with local entities and assist them in:

- › Preparing for storm disasters
- › Flood fighting during such disasters
- › Repairing/rehabilitating flood control or shore protection facilities after disasters.

Terms of Corps' Cooperative Project Agreements

- › Corps responsibilities:
 - Facility design
 - Facility construction
 - Prepare Operation and Maintenance Manual
- › Corps hands over facility to Local Sponsor for operation and maintenance in accordance with Corps' maintenance regulations.

Terms of Corps' Cooperative Project Agreements

- › Local Sponsor is responsible for:
 - Rights of way acquisition (lands or easements)
 - Relocations (bridges, roads, RR, utilities)
 - Disposal of contaminated materials
- › Local Sponsor's cost share: 25% to 50% (more recently).

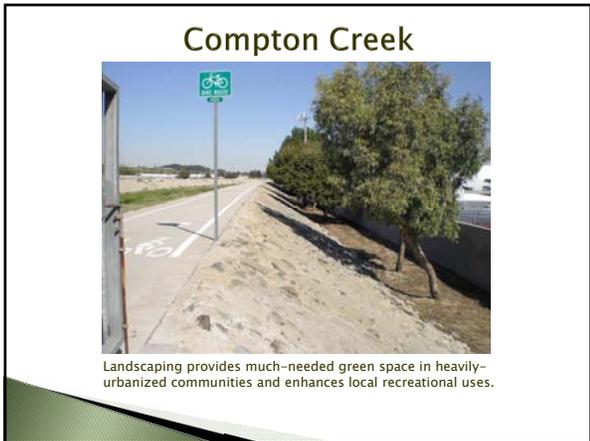
Many Corps cooperative projects included in their design and construction vegetation/landscaping

LACDA Project
(1995-02)





Properties adjacent to Corps-built levees have installed landscape vegetation



Compton Creek



San Gabriel Coastal Spreading Grounds



San Gabriel Coastal Spreading Grounds



Rio Hondo Coastal Spreading Grounds



Rio Hondo Coastal Spreading Grounds



Local Sponsors have had to navigate numerous Federal and State regulations in maintaining Corps built levees.

Evolution of Levee Regulations

- ▶ **33 CFR 208.10 (est. 1944):**
 - Requires continual maintenance of Corps-built levees
- ▶ **Corps O&M Manual for Sacramento and San Joaquin Rivers (1955):**
 - Revised to allow brush and small trees on riverside slope of levees.

Evolution of Levee Regulations

- ▶ **State Porter-Cologne Act (1969)** requires permits for discharges in “waters of the State.”
- ▶ **Clean Water Act (1972) establishes Section 404,** requires Corps permits for dredge & fill activities in “waters of the U.S.”
- ▶ **Endangered Species Act (1973) establishes Section 7,** requiring Corps to consult USFWS for work in “waters of the U.S.”

Evolution of Levee Regulations

- ▶ **State Fish & Game Code Section 1600 (mid-1970s)**
 - Streambed Alteration Agreements for channel/watercourse work.
 - Compensatory mitigation for impacts to habitat, (e.g., vegetation removal).
- ▶ **Corps regulations ([33CFR 325]-1986)**
 - Levee work exempt, but not invert work.
 - Compensatory mitigation for habitat impacts.
 - CWA Section 401 WQC from the State. State requires compensatory mitigation for impacts to “beneficial uses” (incl. habitat).

Evolution of Levee Regulations

- ▶ Corps' de minimus rule (1993)
- ▶ WRDA 1996 Section 202(9)
- ▶ In 2000-01, USFWS and NOAA Fisheries proposed to adopt "Jeopardy Opinions" if the Corps failed to provide for additional vegetation on levees.

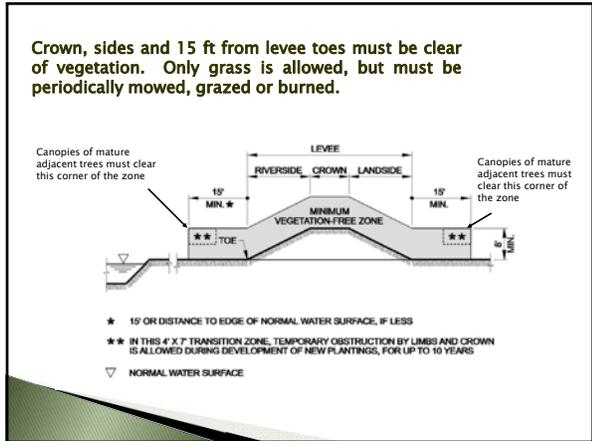
Evolution of Levee Regulations

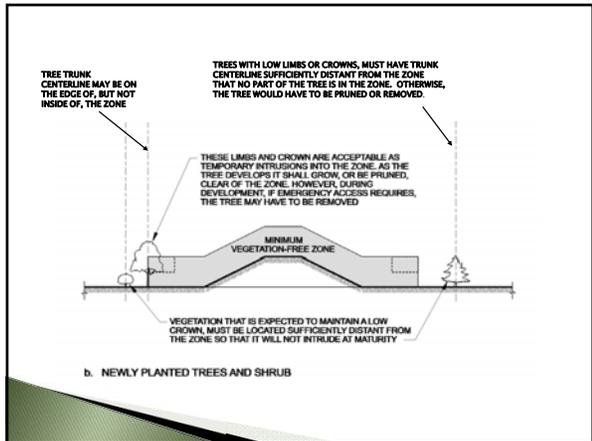
- ▶ Corps' 2001 Engineering Regulation 500-1-1 allows for compatible vegetation on levees
- ▶ Hurricanes Katrina and Rita (2005). The 2006 Interagency Performance Task Force Final Report

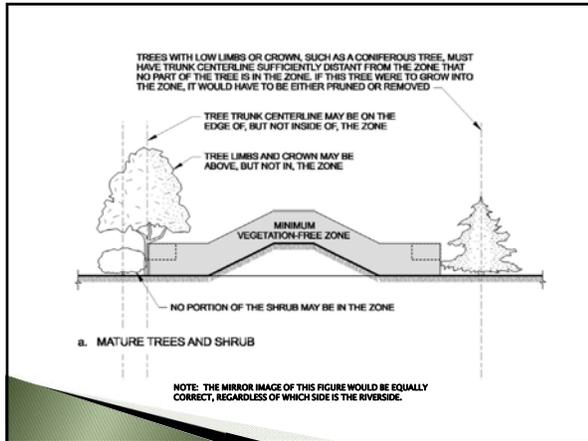
Evolution of Levee Regulations

- ▶ Corps' 2007 White Paper
- ▶ Corps' April 2009 "Guidelines for Landscape Planting and Vegetation management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures," (ETL 1110-2-571) and draft Policy Guidance Letter (PGL)

Corps' Levee Vegetation Policy (April 2009 ETL)

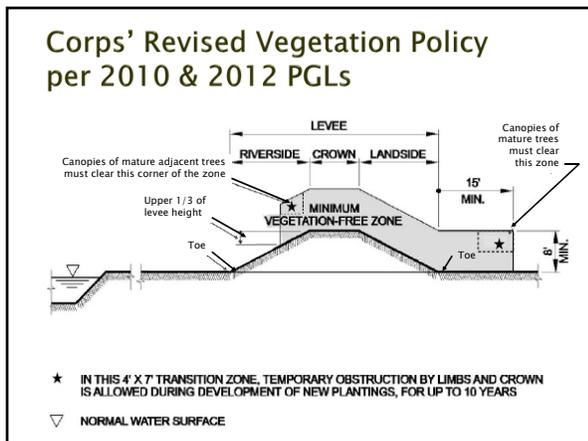






Evolution of Levee Regulations

- ▶ Corps issued February 2010 draft PGL to update vegetation variance process and variance criteria.
- ▶ Corps proposed System-wide Improvement Framework Policy (SWIF) in November 2011.
- ▶ Corps issued February 2012 updated draft PGL on the vegetation variance process and criteria.



Corps' Updated Levee Vegetation Policy (February 2010 Draft PGL)

- ▶ Long, detailed costly-Variance Application process
- ▶ Onus on Local Sponsor to prove necessity of levee vegetation and variance
- ▶ No automatic variance for well-maintained Corps-built levees that incorporated vegetation in their project design
- ▶ No regional variances allowed

Elements of Corps' February 2012 PGL

- ▶ Multi-layer Corps review process
 - Risk Management Center (Agency Technical Review) 90 day review period
 - District Commander, Major Subordinate Command and Corps HQ – no specified review timelines
 - Unclear about consequences to PL 84-99 eligibility

Elements of Corps' February 2012 PGL

- ▶ Local Sponsor has only 2 years from Final PGL date to submit Variance Application or develop SWIF
 - 1 year to file Letter of Intent (Variance or SWIF).
 - 1 year to prepare Variance Application or develop SWIF.
 - Local Sponsors may have difficulty in completing their analyses within the 2-year time frame.

Elements of Corps' February 2012 PGL

- ▶ If variance application or SWIF depends on vegetation science or technical studies:
 - Separate transmittal process.
 - Must be peer-reviewed prior to submittal.

Consequences of Non-Variance Compliance

- ▶ Potential Conflicts with other Federal laws and regulations
 - Endangered Species Act
- ▶ Potential Conflicts with State laws
 - DFG Code Section 1600
 - California Endangered Species Act
 - Porter-Cologne Act
- ▶ Waste of money spent on as-designed plantings
- ▶ Federal (USFWS) & State penalties
- ▶ Compensatory mitigation for vegetation removed

Consequences of Non-Compliance, No Variance with Corps' Vegetation Policy

- ▶ Levee ineligible for PL 84-99 assistance
- ▶ Potential other implications involving the levee

Stakeholder Concerns

(DWR, DFG, NAFSMA, CEAC)

- ▶ **Unnecessary**
 - Levee vegetation is a theoretical risk; documentation on actual failures show in reality it is not a significant concern
- ▶ **Environmentally Harmful**
- ▶ **Contradictory**

Stakeholder Concerns

- ▶ **Costly**
 - Levee owners will be required to provide compensatory mitigation for vegetation removed.
 - Wastes money spent on original design vegetation.
 - Corps–required documentation for variances is beyond the funding capabilities of many Local Sponsors.
- ▶ **Time Consuming**
 - Corps' processes for SWIF and Variances may take many years to complete.
 - Most reviews and decisions have been elevated to Corps HQ instead of local District Commanders, further prolonging timeframes.

Possible Positions to Advocate

- ▶ Suspend Corps levee Vegetation Policy (2009 ETL et. seq.) until Corps documents levee failures due to woody vegetation has been a significant reoccurring issue.
- ▶ Exempt vegetation that was incorporated into Corps' constructed projects.
- ▶ Impose shorter timelines on Corps to complete SWIF and Variance processes.
- ▶ Delegate Variance/SWIF approval to Corps Districts
- ▶ **Last resort options**
 - Exempt Local Sponsors from Federal and State compensatory mitigation requirements when required by Corps to remove vegetation for eligibility in PL 84–99 program.
 - Require Corps to provide Federal & State compensatory mitigation for removal for vegetation on Corps–constructed levees.

Questions?

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