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

REPLY TO
ATTENTION OF

CECW-HS

NOV 29 2011

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICTS

SUBJECT: Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs)

1. References.

a. Engineer Regulation (ER) 500-1-1, Emergency Employment of Army and Other Resources - Civil Emergency Management Program, 30 Sep 2001.

b. Memorandum, HQ USACE (CECW-HS), 16 Nov 2007, subject: Levee Safety Program Implementation.

c. Memorandum, HQ USACE (CECW-HS), 9 Jan 2009, subject: Temporary extension of P.L. 84-99 Rehabilitation Eligibility for Non-Federal Sponsors Implementing System-wide Improvements.

d. Memorandum, HQ USACE (CECW-CE), not yet released, subject: Policy Guidance Letter (PGL) - Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls.

2. Definitions.

a. A "levee system" consists of one or more segments of earthen embankment or floodwall, and all appurtenant structures (such as closures, berms, pumping stations, culverts, and interior drainage), which are interconnected and necessary to reasonably reduce the potential of floodwater entering a defined area.

b. An "unacceptable inspection item" is an inspected item on the U.S. Army Corps of Engineers (USACE) levee inspection checklist. An unacceptable item or a combination of unacceptable items may lead to an overall levee-system rating of unacceptable.

c. A SWIF is a plan developed by the levee sponsor(s) and accepted by the USACE to implement system-wide improvements to a levee system (or multiple levee systems within a watershed) to address system-wide issues, including correction of unacceptable inspection items, in a prioritized way to optimize flood risk reduction.

d. An Interim Risk Reduction Measures (IRRM) plan contains actions to reduce life safety risks posed by a levee system while long-term solutions are being pursued. Example actions may include Emergency Action Plans, special modifications to evacuation plans that account for additional risk and potentially reduced response times, heightened public communication campaigns to inform citizens of the increased flood risk, and/or increased levee monitoring during flood events.

3. Background.

a. The USACE Public Law (P.L.) 84-99 program, pursuant to 33 U.S.C. 701n, is a voluntary program that includes the repair and restoration of participating flood risk reduction projects, such as levee systems. All levee systems that participate in P.L. 84-99 are inspected by USACE and rated against nationally consistent standards that USACE determined to be essential for the reliable performance of the levee system. Levee systems that have received an "Acceptable" or "Minimally Acceptable" overall system rating on the last periodic or routine/continuing eligibility inspection are "Active" in P.L. 84-99 and, consequently, are eligible to receive rehabilitation assistance from USACE to repair or restore levee systems to pre-disaster condition if they are damaged by a flood event. Levee systems that receive an "Unacceptable" overall system rating or that choose to no longer participate in the program are placed in "Inactive" status and are not eligible for rehabilitation assistance under P.L. 84-99.

b. In some cases, the items on a levee system found to be "Unacceptable" or "Minimally Acceptable" might be complex to correct. Developing and implementing solutions to address such deficiencies might require a multi-year effort and coordination between multiple entities. This may be especially true when resources protected under the Endangered Species Act or Tribal treaty rights could be impacted by any changes to the levee system. USACE is making the SWIF process available to levee sponsors facing such challenges as a way to facilitate the development of solutions to satisfy the multiple requirements that apply to their levee systems while allowing levee sponsors participating in the SWIF process to remain eligible for P.L. 84-99 rehabilitation assistance funding while addressing deficiencies.

c. Levee sponsors are responsible for operation, maintenance, repair, replacement, and rehabilitation of the levee system. The SWIF does not alter those responsibilities. The SWIF establishes a process using an interagency approach within which levee sponsors engage with federal, state, local and Tribal agencies and organizations in longer-term system-wide improvement efforts to optimize flood risk reduction by identifying solutions that efficiently use resources, prioritize improvements and corrective actions based on risk, and establish frameworks for coordinating overlapping or complementary programs and requirements.

d. Environmental compliance and consideration of other requirements, such as those imposed by treaties with Tribes, should be integrated into the SWIF process. USACE is responsible for assuring compliance with all applicable environmental requirements before it makes any decisions that would affect the environment or other resources; however, the levee sponsor involved in the SWIF process may be required to provide background information/documentation, mitigation, or other measures necessary to fulfill environmental compliance responsibilities as a condition of their participation in the P.L. 84-99 rehabilitation assistance program.

e. The SWIF can be used to address deficiencies or issues that cannot be accomplished through routine corrective actions, including:

(1) A levee system that has engineering deficiencies (e.g., change in hydraulic conditions that reduces level of authorized protection) in addition to "Unacceptable" inspection items;

(2) Improvements that involve multiple levee systems;

(3) Complex natural resource considerations that require additional time and coordination to ensure that the imperatives of both levee safety and environmental requirements are adequately served;

(4) Additional time and coordination to protect the rights of Tribes pursuant to treaty and statute; and,

f. This memorandum revises and supersedes the policy in Reference 1.c. above and will be incorporated into the revised Engineer Regulation (ER) 500-1-1, in Reference 1.a.

4. Purpose. The purpose of this policy is threefold and includes:

a. To facilitate interagency collaboration to address complex levee system deficiencies and encourage the establishment of interagency teams to jointly identify and implement regionally appropriate, science based solutions and tools to help reduce risk associated with levees or levee systems while ensuring compliance with other Federal laws, such as the Endangered Species Act, as appropriate;

b. To provide requirements and outline the process for the submittal and acceptance of a SWIF that will assist levee sponsors in attaining compliance with USACE standards; and,

c. To provide a mechanism for levee sponsors to maintain or regain eligibility for federal rehabilitation assistance under P.L. 84-99 while they are developing and implementing a system-wide improvement framework.

5. Applicability. This policy applies to all Headquarters USACE (HQ USACE) elements, Major Subordinate Commands (MSCs), USACE districts, and field operating activities that are responsible for Civil Works projects.

6. Eligibility for Rehabilitation Assistance Under P.L. 84-99.

a. Initial Eligibility for Rehabilitation of Flood Risk Reduction Projects. Pursuant to 33 U.S.C. 701n (P.L. 84-99) and ER 500-1-1, USACE administers a program for rehabilitation of flood risk reduction projects, such as levee systems, and for federally-authorized hurricane or shore protection projects. Federally-authorized, locally-operated and maintained levee systems are automatically placed in an "Active" status and are eligible for rehabilitation assistance upon construction completion. Non-federal levee systems constructed, operated and maintained by a local public entity may be placed in an "Active" status following an initial eligibility inspection by USACE that determines the levee system meets the minimum eligibility requirements and technical criteria.

b. Maintaining Eligibility.

(1) Eligible levee systems inspected by USACE are rated against nationally consistent standards that USACE determined are essential for the reliable performance of the levee system. Levee systems that receive an "Acceptable" or "Minimally Acceptable" overall inspection rating maintain an "Active" status and are eligible to receive rehabilitation assistance from USACE to repair flood damages. Levee systems that receive an "Unacceptable" overall inspection rating are immediately placed in "Inactive" status and are not eligible for rehabilitation assistance until the "Unacceptable" inspection items have been corrected and the system receives a rating of "Acceptable" or "Minimally Acceptable" through a re-inspection by the responsible USACE district office. Levee systems engaged in the SWIF process or a variance request will continue to be inspected against the standard applied at the time the request was submitted, either the national standard or a variance or other deviation from that standard.

(2) The concepts for developing a SWIF may be useful in situations where a levee sponsor wants to prevent a future "Unacceptable" rating. For these situations, the approval process outlined in paragraph 8 is not required; however, this process cannot be used to extend "Minimally Acceptable" ratings for levees with "Unacceptable" inspection items beyond the current two-year maximum period as specified in the USACE levee inspection checklist.

c. Transitioning "Acceptable" or "Minimally Acceptable" Levees. Levees sponsors with levees that are "Active" in the rehabilitation assistance program under an existing vegetation variance or deviation from the standard that want to use the SWIF process to transition to a new vegetation inspection standard through the vegetation variance request process, or that would like to systematically improve the condition of participating levees, may maintain their P.L. 84-99 rehabilitation assistance eligibility as long as they continue to meet the milestones set forth in their applicable SWIF.

d. Reinstating Eligibility While Developing and Implementing a SWIF. Levee sponsors that receive an overall levee system inspection rating of "Unacceptable" or have been "Inactive" in the rehabilitation program may regain eligibility for P.L. 84-99 rehabilitation assistance through the SWIF process. Upon approval by USACE of the letter of intent, requirements described below, the levee sponsor will receive an initial of up to two-year reinstatement of eligibility for P.L. 84-99 rehabilitation assistance. Continued eligibility will be determined annually based on milestones described in the subsequent SWIF. Levee sponsors who have never been eligible for rehabilitation assistance under P.L. 84-99 cannot gain P.L. 84-99 rehabilitation assistance eligibility through the SWIF process.

7. Requirements for Development and Submittal of a SWIF. The development of a SWIF is a two-step process consisting of (1) a Letter of Intent from the sponsor briefly describing levee system deficiencies and justification for how a system-wide approach will optimize flood risk reduction, and (2) development of a SWIF for addressing deficiencies and reducing flood risk. Once a Letter of Intent has been approved by USACE, a levee sponsor has up to two years to develop a SWIF plan. Eligibility after this two-year period will be dependent on the levee sponsor's progress in achieving the milestones defined in the SWIF. The SWIF plan is intended to be a specific document that guides sponsor activities, including anticipated milestones, but may also be adaptable and should be revised if conditions or needs change during implementation. The requirements for the Letter of Intent and SWIF are described as follows:

a. Requirements for Submitting a Letter of Intent for a SWIF. A Letter of Intent must be signed by all associated levee sponsors for each levee system involved in developing the SWIF and must include the following:

(1) Identification of levee system or systems to be covered by the SWIF, including system name and system identification number as listed in the National Levee Database;

(2) Brief description of deficiencies or issues that will be included in the SWIF and discussion of how a system-wide approach will improve and optimize overall flood risk reduction. This includes identifying any conditions not within the control of the levee sponsor(s) that prevents them from correcting "Unacceptable" inspection items in a timely manner;

(3) Demonstration that significant non-federal resources have been, or will be, committed for developing and/or implementing the SWIF (e.g., state legislative action, bond financing);

(4) Anticipated interim risk reduction measures that will be implemented throughout the SWIF process, including overall risk communication approach that addresses the risk to life increased by system-wide deficiencies;

(5) Brief description of existing or planned interagency collaborative efforts that will contribute positively to SWIF development, implementation and oversight; and

(6) List of anticipated state and federal permits and consultation requirements, needed to implement the SWIF.

b. Requirements for Submittal of a SWIF. SWIFs are developed and implemented by levee sponsor(s), reviewed and accepted by USACE, and monitored by a USACE district to address system-wide issues in a prioritized way to optimize system-wide risk reduction. As a minimum for acceptance by USACE, the levee sponsor's SWIF must include the following:

(1) Identification of levee system or systems covered by the system-wide improvement framework, including system name and identification number as listed in the National Levee Database;

(2) Description of proposed levee improvement and justification on how the SWIF optimizes flood risk reduction;

(3) A plan and schedule for interagency collaboration, including environmental and/or Tribal consultation if applicable, in the implementation of the SWIF;

(4) Documentation of specific agreements, such as project specific agreements, between levee sponsors and USACE or other agencies/organizations related to implementation of levee modifications, under Section 408 or other overlapping USACE policies and studies, applicable to the levee systems identified in the system-wide improvement framework;

(5) Documentation of any regional considerations, approaches, and tools to be used during implementation of the system-wide improvement framework;

(6) Description of interim maintenance standards that will be implemented during the SWIF to mitigate conditions of uncorrected "Unacceptable" inspection items;

(7) IRRM plan, including a risk communication plan that addresses the risk to life increased by system-wide deficiencies;

(8) Schedules and milestones that will be used to monitor progress and to determine continued eligibility for P.L. 84-99 rehabilitation assistance while the SWIF is being implemented; and

(9) For those levee systems shown as accredited on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map that are part of the SWIF, demonstration that FEMA has been informed that these levee systems with "Unacceptable" inspection items are being addressed in a system-wide improvement framework. Please note that an extension of eligibility for rehabilitation assistance through the SWIF process by USACE does not constitute an extension of accreditation for FEMA purposes. FEMA determines how a SWIF may or may not impact accreditation.

8. Approval Process. The approval authority for reinstating eligibility for rehabilitation assistance under P.L. 84-99 via a Letter of Intent, and for acceptance of a SWIF is the Director of Contingency Operations and Homeland Security (DCO/HS) under USACE. District Commanders shall evaluate the levee sponsors' request for an extension, based on the criteria outlined in this memorandum. If the District recommends approval of an eligibility reinstatement, the District Commander shall forward this recommendation to the Division Commander for concurrence. The Division Commander will review the request and, if in concurrence, will endorse the recommendation and submit the request to the DCO/HS through the Regional Integration Team. The District and MSC Commanders shall coordinate these requests with their Levee Safety Officers for technical input. Eligibility reinstatement will not be implemented until the request is approved by DCO/HS. District Commanders are also responsible for monitoring levee sponsor milestones in implementing SWIFs, conducting reviews for eligibility extensions following initial reinstatement, submitting an accepted SWIF to the local FEMA regional office, and providing approval recommendations through the approval process described herein.

9. Progress Reporting and Continued P.L. 84-99 Eligibility. Once a Letter of Intent has been approved through the process in paragraph 8, a levee sponsor(s) has up to two years of reinstated rehabilitation assistance eligibility under P.L. 84-99 to develop a system-wide improvement framework. The District Commander shall review the levee sponsor's progress for development of the SWIF after the first year and, if deemed not satisfactory, the District Commander may recommend to the DCO/HS that the levee sponsor no longer be eligible for P.L. 84-99 rehabilitation assistance. Eligibility after the two-year period for SWIF development will then be dependent on the levee sponsor's progress in achieving the milestones defined in the SWIF. Continued P.L. 84-99 rehabilitation assistance eligibility during the implementation of the SWIF

must be approved by the DCO/HS on a two-year basis following the process in paragraph 8. During implementation of the SWIF, continued P.L. 84-99 rehabilitation assistance eligibility requests should include a copy of the SWIF; description of accomplishments and milestones met; and description of any changes since the last SWIF was submitted. At a minimum, levee sponsors shall submit a memorandum to the District Commander annually that demonstrates system-wide improvement accomplishments.

10. Overlap with Vegetation Variance Policy. The SWIF process may complement the vegetation variance request process, currently set forth in ER 500-1-1 and anticipated to be updated shortly in paragraph 1.d., as a means for a levee sponsor to address levee deficiencies. If required, a vegetation variance request can be part of the SWIF process. The SWIF offers an interagency approach to identify regional solutions and tools that may be useful in development of a vegetation variance request. The end result of the SWIF process will be levees that meet the USACE inspection standards, which may also include an approved vegetation variance. See enclosure for timelines for both the SWIF process and situations with existing vegetation variances or deviations from the standard.

11. Levee Inspections. During implementation of the SWIF, levee systems with P.L. 84-99 rehabilitation assistance eligibility will continue to be inspected, rated, and the results communicated in accordance with USACE inspection processes, paragraph 1.b. and other applicable guidance. Any "Unacceptable" inspection items identified during inspections will be recorded as such and be corrected in accordance with existing policy or noted to be corrected under a system-wide improvement framework. At any time that the condition of a deferred "Unacceptable" inspection item worsens to a point of creating an emergency condition, immediate corrective actions must be taken by the levee sponsor in order to retain eligibility for P.L. 84-99 rehabilitation assistance.

12. Post-Flood Repair Responsibilities Associated with "Unacceptable" Inspection Items. Upon approval of the Letter of Intent by the USACE, levee sponsors who meet milestones will remain eligible for post-flood repair throughout the SWIF development and implementation process; however, levee sponsors will continue to be responsible for the portion of that repair cost associated with "Unacceptable" inspection items in accordance with ER 500-1-1, paragraph 5-2, g.

13. Funding for USACE Participation in the SWIF Process. USACE review of requests submitted by levee sponsors for SWIF implementation and participation of USACE representatives in collaborative frameworks for developing SWIFs may be funded with Inspection of Completed Works funds for federally-authorized levee systems and Flood Control and Coastal Emergency funds for non-federal levee systems. USACE participation in

collaborative frameworks to address SWIF issues implemented through Silver Jackets (SJ) intergovernmental teams may use SJ funding.

14. Point of Contact. The point of contact for this action is Ms. Germaine Hofbauer, (202) 761-4970.

FOR THE COMMANDER

Encl

KAREN DURHAM-AGUILERA, P.E., SES
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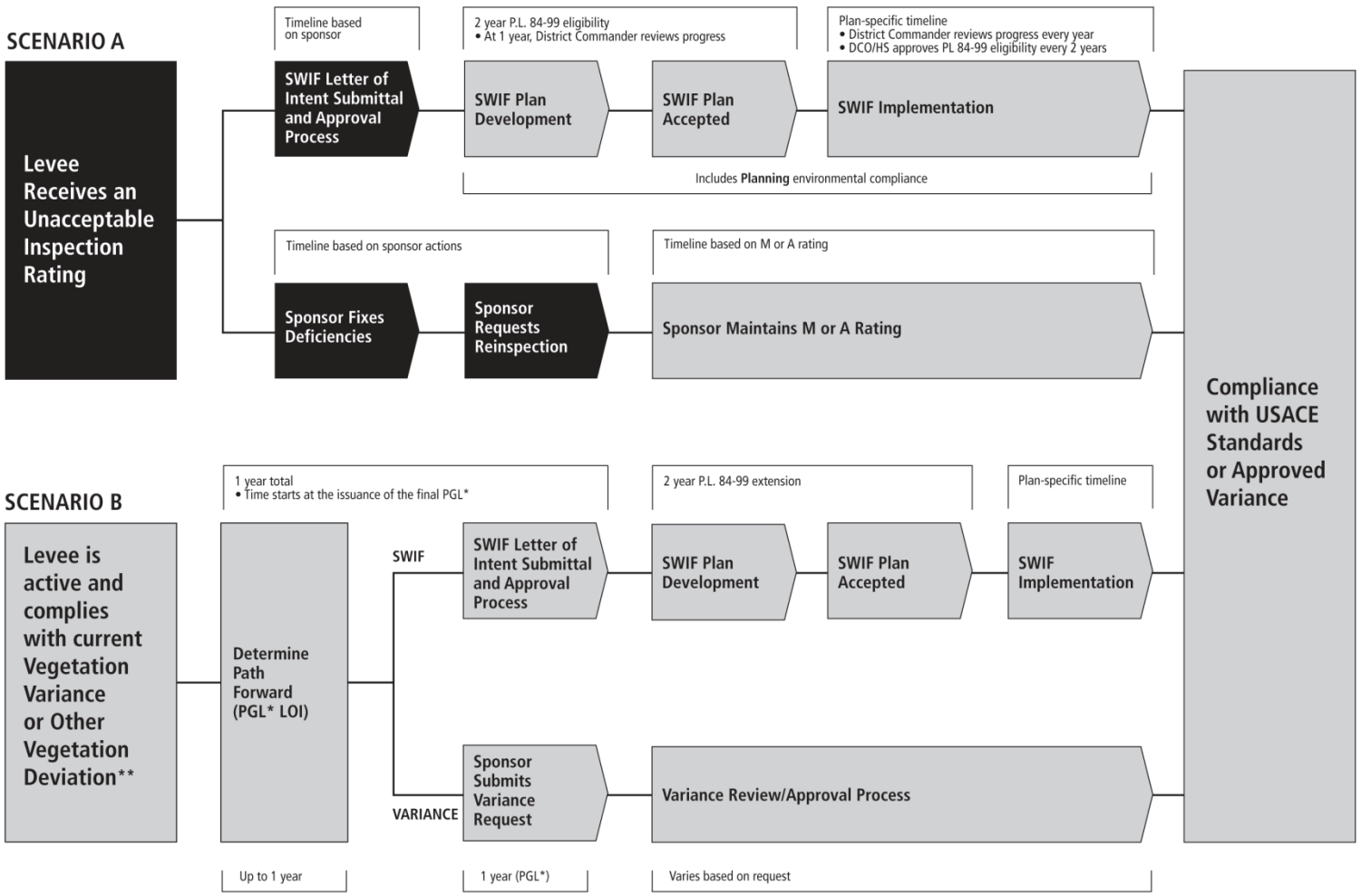
Scenarios and Timelines for Attaining Compliance with USACE Standards



P.L. 84-99 Inactive

P.L. 84-99 Active

*PGL – reference paragraph 1.d. Timelines and policy for vegetation variances will be subject to the release of the final PGL.
** For vegetation variance or vegetation deviation that has not gone through the revised PGL referenced in 1.d.

Note: Levees never in P.L. 84-99, not eligible for SWIF.