

August 2, 2022

[Via Regulations.gov](https://www.regulations.gov)

Stacey Jensen

Office of the Assistant Secretary of the Army (Civil Works)

108 Army Pentagon

Washington, DC 20310-0108

Re: Docket ID No. COE-2022-0006, Modernization of Army Civil Works Policy Priorities

Dear Ms. Jensen:

On behalf of our millions of members and supporters across the country, the undersigned **83 conservation, justice, community, and faith organizations** appreciate the opportunity to comment on the U.S. Army Corps of Engineers' (Corps) efforts to modernize the Army Civil Works Policy Priorities.¹

Our organizations appreciate the Administration's commitment to "institutionalize a new way of Corps planning and decision making."² We strongly agree that a new approach is needed to ensure that water resources projects planned by the Corps will increase community resilience, redress pervasive environmental injustices, respect the rights and sovereignty of Tribes, improve the health of the environment, allow wildlife to thrive, and comply with vitally important environmental laws and Water Resources Act mandates.

To help achieve these goals—and meaningfully infuse this Administration's ecosystem resilience, community protection, and equity considerations into water resources planning—our organizations urge the Corps to adopt the recommendations outlined below. We also encourage the Corps to obtain additional input into the agency's Environmental Justice and Tribal policies and procedures by pairing the information obtained through this national comment period with additional direct outreach to communities and Tribes.

I. Recommendations for the Corps' PR&G Agency-Specific Guidelines

The PR&G direct a fundamentally different approach to planning federal water resources projects—an approach that recognizes and seeks to actualize the critical value of the natural environment and the many services that environment provides to people and wildlife. The PR&G, which have adopted the National Water Resources Planning Policy as the Federal Objective for federal water resources projects, require that Corps projects "reflect national priorities" and "protect the environment" while "seeking to maximize sustainable economic development." Regardless of the project, unwise use of floodplains are to be avoided and natural hydrologic processes are to be protected and restored. The PR&G also directs the Corps to count the value of ecosystem services lost as a project cost and to count the value of ecosystem services gained as a project benefit.

To implement these vital directives, we urge the Corps to incorporate the following six changes into its planning guidelines. These changes should then be clearly memorialized in the Corps' planning guidance notebook, which is the first stop for Corps planners.

¹ A number of our organizations will also be submitting additional comments on Docket ID No. COE-2022-0006.

² Modernize Civil Works Federal Register Notice [Overview Virtual Meeting June 22, 2022](#), Slide 54.

1. **Adopt New Planning Steps:** The Corps' agency-specific guidelines should adopt new planning steps that come into play at the very beginning of the planning process, well before the comparison of alternatives or the assessment of an alternative's costs and benefits. Corps planners should be directed to:
 - a. First explore solutions that use natural and nature-based features or nonstructural measures to solve a water resources problem. If those solutions exist they should be prioritized. Such measures include those defined at 33 USC 2289a. For flood and storm damage reduction projects, planners should explore the use of such measures both within and outside of the project area, including for example protecting and restoring upstream floodplains and wetlands. For navigation projects, non-structural measures would include such things as crew training, use of switch boats, appointment scheduling systems, improved maintenance of existing structures, and use of multimodal transport in lieu of new construction.
 - b. If natural features, nature-based features, or nonstructural measures (or a combination of such features and measures) would address only a part of the problem, structural solutions could then be incorporated to address the remaining problems.
 - c. Corps planners should turn to a wholly structural solution only if natural and nature-based features or nonstructural measures (or a combination of such features and measures with structural components) will not work in a given situation.
 - d. Clarify that only alternatives that are developed through this process can move into the final array of alternatives that will be analyzed in more detail.

2. **Establish New Requirements for Benefit-Cost Analysis:** The Corps' agency-specific guidelines should make clear that only alternatives developed through the process outlined in point 1 above can move into the final array of alternatives that will be analyzed in more detail. Critically, for projects requiring a benefit-cost analysis as part of this detailed analysis, the agency-specific guidelines should clarify that the benefit-cost analysis must:
 - a. Equitably account for project costs and benefits. This includes such things as fully assessing and accounting for the costs of such things as transferring flood risks onto vulnerable communities, and the costs of exposing or resuspending toxic pollutants (including resuspending toxic sediments and increasing water or air pollution). The benefits of flood and storm damage reduction projects should not be based only on home or property values in the project area, and the benefit-cost analysis should account for the greater financial and social impacts that a flood event may have on low-income households as compared to higher-income households.
 - b. Account for the value of ecosystem services lost as a project cost, and account for the value of ecosystem services gained as a project benefit, as highlighted in the PR&G. This should include, at a minimum, an assessment of the following ecosystem services: flood risk reduction, wildlife habitat, water quality, sediment regulation, soil stabilization, carbon sequestration, and recreation. The value of ecosystem services lost to a project should not be considered to be offset by potential mitigation measures, since such measures have not demonstrated the capacity to offset the full array of ecosystem services lost. The Corps should also identify the values of any ecosystem services lost or gained on federal or state owned conservation lands and lands protected by permanent conservation easements in a

- separate sub-category to help identify the impacts to lands that have been protected to help preserve the ecosystem services they provide.
- c. Account for the full life-cycle costs and benefits, including the costs and benefits associated with long-term operations and maintenance, major rehabilitation, and decommissioning and removal (which may enhance ecosystem services). This should include the value of ecosystem services projected to be lost or gained over time.
 - d. Base cost estimates on realistic projections of the project's construction start date and likely funding stream, historical cost increases by project type and geographic location, and other relevant factors.
3. **Define the Term "Unwise Use of Floodplains" and Provide Examples:** The Corps' agency-specific guidelines should comprehensively define the term "unwise use of floodplains" in a way that supports the avoidance of impacts to the well-recognized and vitally important values provided by floodplains to people and wildlife. The definition should be consistent with the implementing guidelines for E.O. 11988 (Floodplain Management) and E.O. 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), in defining the floodplain area and natural and beneficial floodplain functions and values. In developing this definition, we recommend consulting with the Federal Emergency Management Agency, which is currently updating their own floodplain management regulations. To assist Corps planners, the agency-specific guidelines should also provide examples of activities that constitute unwise use of floodplains that should include:
- a. Structural projects in floodplain areas when nonstructural measures, nature or nature-based measures, or ecosystem restoration either within the floodplain or within the watershed (either upstream or downstream) could effectively resolve or minimize the problem at hand.
 - b. New or enlarged levees, floodwalls, and other similar structures to facilitate or encourage the development of currently undeveloped floodplain land.
 - c. Projects that divert floodwaters onto other communities (with careful consideration being given to both upstream and downstream impacts).
 - d. Projects in or affecting floodplain areas that adversely impact important fish or wildlife breeding, spawning, rearing, nesting, foraging, or migratory habitat.
 - e. Projects that eliminate an opportunity to restore the natural and beneficial floodplain functions, or that undermine or work against other federal or federally-funded efforts to protect and restore floodplain wetlands, streams, and rivers.
 - f. Projects in floodplain areas that would result in those projects being unacceptably vulnerable to flood damage.
4. **Describe Types of Activities that Qualify as Natural or Nature-Based Features:** The Corps' agency-specific guidelines should provide examples of the types of activities that are consistent with the definition established at 33 USC 2289a, and thus can qualify as natural or nature-based features. These examples should include at least the following:
- a. Acquisition of land or easements, including flooding easements;
 - b. Removal of structures such as dams, levees, and culverts to restore natural hydrology, form, function, or ecological processes;
 - c. Modification of structures such as dams and levees, including through sediment diversions or levee setbacks, to restore natural hydrology, form, function, or ecological processes;

- d. Reoperation of dams and reservoirs to restore or better mimic natural hydrology and flow patterns;
 - e. Restoration efforts designed to reestablish natural hydrology, form, function, or processes of rivers, streams, floodplains, wetlands, or shorelines;
 - f. Creation or restoration of living shorelines; and/or
 - g. Reintroduction of native vegetation, including floodplain forests, and/or removal of nonnative vegetation.
5. **Establish Clear Criteria for Project Decisions:** The Corps' agency-specific guidelines should clearly identify the types of projects that Corps planners may not recommend absent an overriding consideration of national need as determined in writing by the Assistant Secretary of the Army (Civil Works). This should include, but not be limited to, a prohibition against selecting an alternative if:
- a. The alternative would increase or transfer flood risk onto another upstream or downstream community in excess of local or state floodplain regulations.
 - b. The alternative would disproportionately affect people of color, or low-income or vulnerable populations.
 - c. Another less environmentally damaging alternative that would address the identified water resources problem is available and practicable. Clean Water Act section 404 requires that the Corps select the least environmentally damaging practicable alternative.
 - d. The alternative would result in environmental impacts that cannot be mitigated pursuant to 33 USC 2283(d).
6. **Empower Impacted Communities:** The Corps' agency-specific guidelines should empower impacted communities, regardless of whether or not they are the non-federal sponsor, including by directing planners to:
- a. Authentically engage with potentially affected communities early in the project planning process (before the required National Environmental Policy Act scoping process) to explore potential project approaches and designs that reflect community values and norms and help redress environmental injustices. Apply this requirement to new project studies, studies and planning affecting already authorized but unconstructed projects, and studies and planning affecting ongoing project operations and/or maintenance.
 - b. Use the most accurate and localized data available to facilitate understanding of the impacts or benefits of project alternatives on specific communities.
 - c. Include in every environmental impact statement, an assessment of the potential negative environmental, public safety (including the risks of diverting floodwater), or public health impacts (including evaluation of measures of health inequality) on any communities of color, economically disadvantaged communities, or Indian Tribes that may be affected by proposed alternatives.

These changes, in combination with effective and meaningful engagement with communities and Tribes, will help ensure that Corps projects and programs achieve the PR&G Federal Objective and National Water Resources Planning Policy. These changes will also help ensure that Corps projects comply with the full suite of federal laws and policies applicable to Corps planning, including: the Water Resources Development Act directives to fully consider natural, nature-based, and non-structural measures; the Clean Water Act section 404 requirement to develop and adopt the least environmentally damaging

practicable alternative; and the National Environmental Policy Act requirement to carefully evaluate reasonable alternatives to help “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations” and ensure that all Americans have “safe, healthful, productive, and esthetically and culturally pleasing surroundings.”³

II. Recommendations for Effective Engagement with Communities and Tribes

It is essential that the Corps adopt policies and procedures that will ensure effective and meaningful engagement with communities of color, economically disadvantaged communities, and Indian Tribes. This will require the Corps to:

1. Direct Corps planners to invest the time, cultural respect, and regard needed to build authentic relationships with communities of color and economically disadvantaged communities and Tribes to facilitate effective consultation, learning, and engagement; and provide Corps staff with the resources, training, and time needed to do so.
2. Engage with communities and Tribes up front, not after plans are already developed, to ensure that projects—including long-term operations and maintenance—redress instead of exacerbate environmental injustices. Direct Corps planners to change, modify, or adapt project recommendations to address community and Tribal needs and concerns.
3. Use all Corps programs and projects—including by improving project operations—to advance resilient solutions that will help communities and Tribes thrive and address multiple problems. Prioritize the use of self-sustaining natural and nature-based features and nonstructural measures that provide co-benefits to help communities thrive, and incorporate the clean-up of toxic sediments and toxic pollution as part of all Corps projects whenever feasible.
4. Direct Corps planners to account for community and Tribal resource constraints, competing priorities for community members, and the time needed to review and evaluate complex planning data, when developing public hearing schedules and public comment timelines. Corps planning schedules should accommodate requests for additional time to provide comments to the maximum extent allowed by law.
5. Consult and coordinate with the National Environmental Justice Advisory Council (NEJAC) to the Environmental Protection Agency, the White House Environmental Justice Advisory Council (WHEJAC), and the Federal Interagency Working Group on Environmental Justice (EJ IWG) on methods and approaches for effectively implementing outreach efforts. Utilize applicable public engagement-related recommendations included in the [Environmental Justice for All Act](#) (H.R. 5986), [Promising Practices for EJ Methodologies in NEPA Reviews](#) (March 2016) developed by the Federal Interagency Working Group on Environmental Justice & NEPA Committee, and the [Model Guidelines for Public Participation](#) (January 2013) developed by the National Environmental Justice Advisory Council.
6. Create a new position of Senior Advisor for Environmental Justice with the Office of the Chief of Engineers and establish a standing Federal Advisory Committee on Environmental Justice to

³ 42 U.S.C. §4331(b).

provide recommendations for improving community engagement and increasing the equitable delivery of services, projects, and project benefits through all Corps programs and projects.

7. Engage in robust and extensive consultation with Tribes to develop and implement procedures for ensuring that the Corps' Tribal consultation process respects and fully accounts for the principles of "Tribal sovereignty and self-governance, the Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultations with Tribal Nations", as recognized in [Executive Order 13175](#) ("Consultation and Coordination With Indian Tribal Governments"), and other issues identified by the Tribes. Prohibit a determination of Tribal consent to a proposed action unless the Tribe provides such consent in writing.
8. Establish a Tribal Liaison in each Corps District and a formal continuity program for Corps Tribal Liaisons and other Corps staff who interact regularly with Tribes to ensure that knowledge about general and specific Tribal issues, policies, and contacts are not lost due to Corps staffing changes. Evaluate Tribal interest in a standing Tribal Advisory Committee to provide long-term input into the Corps' Tribal consultation process, and establish this Committee if requested.
9. Strengthen the Corps' technical assistance and resiliency planning assistance programs for Tribes, economically disadvantaged communities, communities of color, and communities facing repetitive flooding. Use existing environmental justice mapping tools and consult with federal agencies and Tribes to help identify communities most in need of such assistance, and set affordable community costs for assistance.
10. Quickly implement the Pilot Programs for Economically Disadvantaged and Rural Communities established by Section 118 of the Water Resources Development Act of 2020. These programs facilitate the study and delivery of flood and storm damage reduction projects to such communities, including through full federal funding for up to 10 studies that evaluate significant use of natural or nature based features.

III. Conclusion

Full and effective implementation of the PR&G combined with robust engagement with communities and Tribes will help ensure that Corps planning can address the nation's most pressing water resources needs while protecting and restoring the environment and redressing long-standing environmental injustices. We urge the Corps to adopt the recommendations outlined in this letter to help make that happen.

Sincerely,

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