



August 26, 2009

Mr. Terry Breyman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

RE: Comments on Draft Executive Order on Floodplain Management

Dear Mr. Breyman:

On behalf of the California State Association of Counties (CSAC) and the County Engineers Association of California (CEAC) we appreciate the opportunity to submit comments on the Draft Executive Order on Floodplain Management. CSAC is an association that represents county government before the California Legislature, administrative agencies and the federal government. CEAC is comprised of county engineers, public works directors, county road commissioners, and professional personnel throughout California's 58 counties. Our associations received a copy of the draft Executive Order on Floodplain Management, dated June 15, 2009, and have some questions and comments on how this policy would be implemented.

1. URBAN INVESTMENT

Many California counties have urbanized areas that are in historic floodplain areas. We are concerned that the Executive Order may preclude federal investment in these urbanized areas. For a specific example, the community of North Richmond in the western part of Contra Costa County was recently mapped into the 100-year floodplain by FEMA. In the 1980's the Army Corps of Engineers constructed flood protection improvements on Wildcat Creek. FEMA is now requiring all levees to be certified. The Corps flood protection improvements still provide flood protection for the community of North Richmond, but for various reasons the levees may not be able to be certified to meet FEMA standards. FEMA has placed the North Richmond community into the 100-year floodplain on their National Flood Insurance Rate Maps. Would this Order preclude federal grants or other funding in these types of urbanized areas for transportation, housing, flood protection or other investments?

2. SHALLOW vs. DEEP FLOODING

Floodplain Management is often viewed within the context of large scale deep flooding areas. The level of impacts and policy intent is different in a riverine floodplain with flood levels that would reach the roof of a 2 story home as opposed to an area with flood levels that would inundate the front yard, but not reach the front porch. In the California Delta a

similar discussion resulted in distinguishing between deep flooding areas and shallow flooding areas, with 3-foot flood depths being the threshold between shallow flooding and deep flooding. We also have drainages that discharge from mountain ravines into alluvial fans that result in broad shallow flooding. Is the Executive Order meant to cover all depths of flooding or was it written with a focus on deep flooding areas?

3. FLOOD PROTECTION FACILITIES

Flood protection facilities such as flood control channels, drop structures, weirs and other structures appear to be included in Section 301(e) as a facility. Many flood control facilities will be located within floodplains. The Corps currently has several programs that provide funding for improving, repairing and replacing flood protection infrastructure. We are concerned this Executive Order may restrict or preclude investment in this critical infrastructure within floodplain areas.

4. FEMA FLOODPLAIN MAPS

Section 402(a) indicates that FEMA floodplain maps or other information will be used to make a determination if an action is within a floodplain for purposes of the Executive Order. FEMA floodplain maps now do not consider levee-like structures to provide flood protection. Broad railway embankments and multiple lane freeway embankments that historically have provided flood protection, and will continue to do so, are no longer recognized by FEMA as providing flood protection. All properties behind such levee-like structures will be susceptible to placement on floodplain maps. Would this then preclude federal investment in these areas?

5. LEVEES

Section 404(c)(iii) directs that fill not be placed in the floodplain to achieve flood protection. Similarly, Section 404(c)(iv) refers to coastal high hazard areas. Levees and sea walls will be part of our strategy to address future sea level rise due to climate change. Would repairing levees, or raising and enhancing levees, or constructing/maintaining sea walls be considered placing fill in the floodplain? Construction and maintenance of levees should be expressly exempted from this section.

6. FLOOD PROTECTION STRUCTURES

Part 6 promotes nonstructural approaches to flood protection. Section 601(c)(iv) and 601(d) makes structural flood protection funding available for implementing nonstructural improvements. Flood protection agencies support funding nonstructural improvements, however, not at the expense of needed structural flood protection repairs and improvements. Often times in urbanized areas there is not the right of way width necessary to integrate nonstructural elements into a flood protection system. Older communities in particular were often built out up to the creek banks. Nonstructural approaches in these areas would require purchase of one or two rows of buildings along the creek at a huge fiscal and social expense.

7. FINDINGS

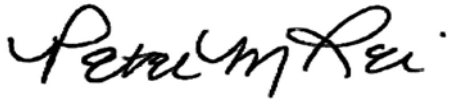
Flood protection agencies maintain their facilities to provide flood protection for our society. Public Works agencies also maintain bridges, roads and utilities in riverine areas. In order to perform maintenance activities in and around streams and rivers flood protection/public works agencies must obtain several regulatory permits. Section 802 requires another set of findings to be developed by federal agencies before maintenance work can be performed in floodplains. For example, FHWA would have to make these findings to fund an overlay of a road/bridge in a floodplain, or the Corps would have to make these findings to fund a dredge project in a Flood Control Channel. Clearly, there is no benefit in making findings for maintenance of infrastructure. Section 202, however, indicates financing improvement of facilities to be a covered action. Maintenance activities should be specifically exempt from the findings process in the Executive Order.

8. FLOODPLAIN DEVELOPMENT

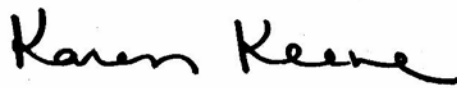
Section 901(e) indicates that agency policies and regulations should avoid creating incentives for floodplain development. Again we have existing urban areas in floodplains with shallow flooding of 1 or 2 feet. These areas provide valuable housing stock for many communities in our State. We are concerned the Executive Order may preclude the investment of federal funding to improve these already urbanized areas.

Thank you for the opportunity to comment on the Executive Order for Floodplain Management.

Sincerely,



Peter M. Rei, President
CEAC



Karen Keene, Deputy Director, Federal Affairs
CSAC

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cc: Michael Blake, Associate Director, Office of Intergovernmental Affairs, The White House
Anthony Giancola, National Association of County Engineers (NACE)
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