Federal Emergency Management Agency

U.S. Army Corps of Engineers

MEMORANDUM FOR: All Major Subordinate Commands
FEMA Regional Directors, Regions I – X

SUBJECT: Update to March 29, 2000, Memorandum of Agreement to attach pre-existing United States Army Corps of Engineers projects and locations.

The purpose of this memorandum is to correct an omission in the subject Memorandum of Agreement (MOA), and to reiterate the importance of establishing and maintaining coordination between the Federal Emergency Management Agency (FEMA) Regional offices and United States Army Corps of Engineers (USACE) District offices as described in the MOA.

The subject MOA, dated March 29, 2000, was executed between FEMA and the Assistant Secretary of the Army (Civil Works) to establish better coordination procedures between FEMA and the USACE where FEMA Hazard Mitigation Grant Program (HMGP) activities and USACE levee project planning activities could potentially intersect. At the time, it was recognized that there existed a limited number of USACE projects or studies which had advanced to a point such that implementation of the procedures prescribed in the MOA would be an unfair burden. A specific list of "limited exception" projects was agreed to at the time of the MOA signing, but was not included in the MOA.

The attached list represents the complete list of specific projects identified by the USACE at the time of the MOA signing. These projects are candidates for "limited exception" as described in Part IV of the MOA. For your convenience, we have also attached a copy of the March 29, 2000, Memorandum of Agreement between FEMA and the USACE.

Coordination between the FEMA Regional offices, USACE Districts, and HMGP grant applicants is essential to avoid conflicts with USACE levee projects and lands acquired using HMGP grants. Please ensure that your staffs are reminded of the importance of the procedures described in the MOA.

Federal Emergency Management Agency

Anthony S. Lowe
Director
Mitigation Division
Emergency Preparedness
and Response Directorate

Date: 3 November 2003

U.S. Department of the Army

Carl A. Strock
Major General, U.S. Army
Director of Civil Works

Date: 20 October 2003

Attachments (2)

MVD Projects Impacted by FEMA's HMGP

	District	ct	Category	Tracts	FC Features	Remarks
	MVP	East Grand Forks, MN	Post-Authorization	70	Levees	70 homes acquired with HMGP funds. City working with FEMA to try and resolve the problem.
2.	MVP	Wahpeton, ND	CAP	10	Levees	10 homes acquired with HMGP funds. Not possible to avoid HMGP lands and maintain economic justification. City working with FEMA to evaluate possible land trade options that may resolve the problem.
3.	MVP	Oakport Township, MN	CAP	8	Levees	8 homes acquired with HMGP funds. Maybe possible to realign project to avoid HMGP lands.
		Montevideo, MN	CAP	TBD	Levees	A determination on the number of tracts is underway. Maybe possible to realign project to avoid HMGP lands.
	MVS	Mermec River Basin (Valley Park), MO	Post-Authorization	28	Levees	Sponsor working with FEMA to correct deeds. Apparently, the HMGP deed restrictions were incorrectly included on some of the levee footprint lands.
6.	MVS	Festus/Crystal City, MO	Pre-authorization (but WRDA 96 authorized for CAP)	2	Levees	Realignment of the levees a possibility but would result in significant delays. Associated cost increases due to realignment have not been determined.
7.	MVS	East St. Louis Interior Flood Control, IL	Post-authorization (but GRR may indicate need for additional authority)	<1000	Channel work, diversion structures, berms, detention reservoirs, etc.	Project maybe jeopardized by HMGP deed restrictions.
	MVS	Lower River des Peres, MO	Pre-authorization (but WRDA 96 authorized for CAP)	15	Levees	Project design impacted by HMGP deed restrictions.
9.	MVS	Ste. Genevieve, MO	Post-authorization	TBD	Levees	Parts 2 and 3 of the project which are unscheduled items will need to be evaluated to determine impacts from HMGP deed restrictions.
10.	MVK	Camden, AR	CAP	3	Channel work	

Other Projects Impacted by FEMA's HMGP

A.	SWL	May Branch, Fort Smith, AR	Pre-authorization	4	Flood Control Channel	
B.	NAB	Green Ridge, Scranton, PA	Feasibility	19	Levees	
	NAB	Plot, Scranton, PA	Feasibility	1	Levees	
C.	NWK	Missouri River, Callaway Co, MO	Feasibility		Levee	10 acres

Federal Emergency Management Agency

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

MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF THE ARMY REGARDING THE HAZARD MITIGATION GRANT PROGRAM AND CORPS OF ENGINEERS FLOOD DAMAGE REDUCTION PROJECTS

I. BACKGROUND

The Department of the Army (DA) and the Federal Emergency Management Agency (FEMA) share a Federal interest in reducing the loss of life and property damage from flooding. It is the policy of both agencies to encourage the wise and non-hazardous use of the flood plains, including recognition of natural and beneficial flood plain values. The U. S. Army Corps of Engineers (USACE), in partnership with States, Native American Nations (tribes) and local governments, plans, designs, and constructs projects that reduce future flood damages and preserve and enhance natural and beneficial flood plain values. The FEMA Hazard Mitigation Grant Program (HMGP) provides grants to States and local governments for property acquisition and relocation assistance. The purpose of the HMGP is to reduce the loss of life and property damage due to natural disasters and to enable flood damage mitigation measures to be implemented during the immediate recovery from a disaster. The use of lands acquired using HMGP funds is restricted to open space, including those activities designed for ecosystem preservation, restoration, or enhancement.

II. POLICY

It is the policy of the DA and FEMA to facilitate the use of non-structural approaches to reducing flood damages where practicable. It is also the policy of the DA and FEMA that the construction of flood damage reduction levees[1] on HMGP lands is incompatible with open space uses and, therefore, will not be recommended for implementation.

[1] Flood damage reduction levees include berms, floodwalls and dikes.

The restriction on levee construction generally does not apply to structures designed specifically for ecosystem preservation, restoration, or enhancement. Structures for these purposes are deemed consistent with the open space uses requirement of the HMGP.

III. COORDINATION OF HMGP APPLICATIONS AND USACE PROJECTS

FEMA Regional Offices and USACE district offices will work together on an ongoing basis to ensure that local governments fully understand that accepting HMGP funds to acquire land will preclude later construction of flood damage reduction levees on that property.

FEMA will require applicants developing acquisition projects to coordinate with the USACE regarding planned or potential USACE projects in the area of the acquisition. When FEMA receives an application from a State, on behalf of a local government, requesting an acquisition project, FEMA will inform the appropriate USACE district office of the parcels proposed for purchase to ensure that a USACE levee is not already under consideration on the project site. When USACE begins to develop a flood damage reduction project, the appropriate USACE District Office will consult with the appropriate FEMA Regional Office to ensure that property in the proposed project area was not previously acquired under the HMGP.

The USACE district and FEMA regional offices will coordinate to ensure that the State, tribal or local government and non-Federal sponsor are fully aware of any potential land use conflicts that may result if both a USACE flood damage reduction levee and an HMGP open space acquisition project are considered or pursued. However, there may be situations where the State, tribal, or local government and non-Federal sponsor may be able to pursue both the open space acquisition project and flood damage reduction project, consistent with the overall policy objective of facilitating the use of non-structural approaches.

IV. COORDINATION OF LIMITED EXCEPTIONS

In a limited number of cases where local governments are currently pursuing the construction of USACE flood damage reduction levees on lands previously acquired under the HMGP, FEMA regional, and USACE district offices will conduct an expeditious joint review on a case-by-case basis to determine if any of the identified levees may proceed. If concurrence cannot be achieved, the issues must be raised through appropriate channels, to ultimately be resolved through consultation between the Assistant Secretary of the Army

for Civil Works and the Associate Director for Mitigation, FEMA. This joint determination will be based on the following requirements:

1 The Federal interest in allowing construction of the flood damage reduction levee on HMGP open space land must be demonstrated by documenting that no practicable alternative exists or by showing undue hardship to the community will result if non-HMGP lands are used, as follows:

   a. Based on applicable regulations and procedures, USACE has given proper consideration to other options for protecting the area behind the proposed flood damage reduction levee and found them to be impracticable; and

   b. USACE, in consultation with FEMA, has determined that there reasonably is no land, other than the proposed project's alignment, on which levee construction is technically feasible, economically justified, and environmentally acceptable.

2. The proposed flood damage reduction levee must comply with Federal, State and local floodplain management requirements, including FEMA and USACE regulations implementing Executive Order (EO) 11988 and Section 404 of the Clean Water Act.

If FEMA and USACE determine that any of the proposed flood damage reduction levees currently under joint review meet these criteria, FEMA will provide an appropriate legal instrument that will amend the open space restrictions to allow the construction of flood damage reduction levees on the affected land. This amendment will apply only to land directly under the footprint of the USACE flood damage reduction levee and other land needed for the operation and maintenance of the project

Once joint FEMA and USACE coordination and review has been completed on these limited requests for an exceptional amendment to deed-restrictions to allow for the construction of an USACE flood damage reduction levee on these properties, future departures from this policy can only be approved by the Assistant Secretary of the Army for Civil Works and the Associate Director for Mitigation, FEMA. Sufficient and early coordination, as identified in this Memorandum of Agreement (MOA), will ensure that potential conflicts are identified and resolved prior to the acquisition of property under the HMGP, or prior to the planning of an USACE flood damage reduction project.

V. CREDIT FOR LANDS

A non-Federal sponsor of a USACE project will not receive credit toward its required contribution for the value of lands, easements, and rights-of-way provided for the USACE project that were acquired through the HMGP. It also will not receive credit for incidental costs of acquiring lands provided for the USACE project that were paid with HMGP funds.

VI. AMENDMENTS AND TERMINATION

This MOA may be modified or amended by written agreement between FEMA and DA and may be terminated by either party after giving 60 days written notice.

Federal Emergency Management Agency

Michael J. Armstrong
Associate Director for Mitigation
FEMA

Date: March 29, 2000

U.S. Department of the Army

Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

Date: March 29, 2000