From:	Hayes, Bradley
To:	CELRC_Planning_ECON
Cc:	Padilla, Michael C CIV CELRC (USA)
Subject:	[Non-DoD Source] Final Integrated Chicago Area Waterways System EIS
Date:	Tuesday, July 14, 2020 9:35:17 AM
Attachments:	Chicago Area Waterway System Dredged Material Management Plan and Integrated Environmental Impact Statement_Final1 (8).pdf

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Hello,
Attached is a letter from IDNR updating the listing status of the banded killifish, which is known to occur in the CAWS. This eastern subspecies is no longer listed, and this was the subspecies found in the CAWS.
Let me know if you have any questions,

Brad Hayes

Resource Planner

Division of Real Estate Services and Consultation

Office of Realty & Capital Planning

Illinois Department of Natural Resources

One Natural Resources Way

Springfield, IL 62702

Bradley.Hayes@Illinois.gov <mailto:Bradley.Hayes@Illinois.gov>

Phone: (217) 782-0031

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Illinois Department of
Natural Resources
One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

JB Pritzker, Governor
Colleen Callahan, Director

July 14, 2020

U.S. Army Corps of Engineers, Chicago District
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604-1437

RE: Chicago Area Waterway System Dredged Material Management Plan and Integrated Environmental Impact Statement

To whom it may concern,

The Illinois Department of Natural Resources has reviewed the Final Chicago Area Waterway System (CAWS) Dredged Material Management Plan (DMMP) and Integrated Environmental Impact Statement (EIS).

In a letter dated January 23, 2019 (EcoCAT Review #1907026), the Department provided recommendations to protect the state threatened banded killifish (*Fubdulus diaphanous*). Effective May 28, 2020, two distinct subspecies of banded killifish were officially acknowledged to occur in Illinois. The eastern banded killifish (*Fundulus diaphanus diaphanou*s) subspecies was removed from the Illinois List of Endangered and Threatened Species as a non-native invader. The subspecies of banded killifish known to occur int the CAWS is the eastern banded killifish, and therefore, is no longer protected under the *Illinois Endangered Species Protection Act*.

However, the Department still recommends strict adherence to soil erosion and sediment control BMP's to minimize impacts to native aquatic life that is found within the CAWS and water bodies to which the CAWS discharges. Previous recommendation provided addressing active nesting sites for the state threatened osprey (*Pandion haliaetus)* are still valid; thus, any activities that may adversely impact osprey nesting sites should be evaluated and further coordinated with the Department.

Please note that this review does not preclude applicable permit decisions made by the State Historic Preservation Office or the IDNR, Office of Water Resources under the *Illinois Rivers, Lakes, and Streams Act*.

Thank you for the opportunity to comment and please contact me if you have any questions regarding this review.

Sincerely,

Bradley Hayes
Resource Planner
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
Bradley.Hayes@Illinois.gov
Phone: (217) 782-0031

From:	Pelloso, Elizabeth
To:	Hoxsie, Alex R CIV USARMY CELRC (USA)
Cc:	Grider, Nathan; william.boyd@illinois.gov; Dragovich, Amy; Gove, Darren; darin.lecrone@illinois.gov; Susan Sadlowski Garza (ward10@cityofchicago.org)
Subject:	[Non-DoD Source] EPA NEPA comments - CAWS DMMP FEIS
Date:	Friday, August 14, 2020 2:02:43 PM
Attachments:	image001.png USEPA comments - CAWS DMMP 2020 FEIS (8-14-2020).pdf

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Greetings Mr. Hoxsie,

Attached to this email are EPA's comments concerning the Final Environmental Impact Statement (FEIS) released for the Chicago Area Waterway System Dredged Material Management Plan in Chicago, Illinois.

EPA no longer sends hard copies of NEPA correspondence via US Mail so this is the only copy you'll receive.

Please do not hesitate to contact me if you have questions or comments regarding our correspondence. We appreciate the opportunity to be involved in the NEPA process. Please send me a copy of the Record of Decision once it is signed.

Regards,

Liz Pelloso

Liz Pelloso, PWS

Wetland/Environmental Scientist

NEPA Team - Tribal and Multimedia Programs Office

U.S. Environmental Protection Agency - Region 5

Office of the Regional Administrator

77 W. Jackson Blvd. (Mail Code RM-19J)
Chicago, IL 60604

Phone: 312-886-7425

Email: pelloso.elizabeth@epa.gov <mailto:pelloso.elizabeth@epa.gov>

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 14, 2020

REPLY TO THE ATTENTION OF:
Mail Code RM-19J

VIA ELECTRONIC MAIL ONLY

Alex Hoxsie
U.S. Army Corps of Engineers – Chicago District
231 S. LaSalle St., Suite 1500
Chicago, Illinois 60604

RE: EPA Comments: Final Environmental Impact Statement - Chicago Area Waterway System Dredged Material Management Plan; City of Chicago, Cook County, Illinois (CEQ: 20200143)

Dear Mr. Hoxsie:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement (FEIS) prepared by the U.S. Army Corps of Engineers (USACE) for the proposed Dredged Material Management Plan (DMMP) for the Chicago Area Waterway System (CAWS). The non-federal project sponsors are the City of Chicago, working through the Chicago Department of Transportation (City) and the Chicago Park District (CPD). This letter provides EPA's comments on the FEIS, pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

In 2014, USACE announced a plan for navigation channel maintenance dredging and disposal of dredged materials expected to be generated by the operation and maintenance of Federal navigation channels in the CAWS over a minimum 20-year period of analysis. Dredging needs are projected for Calumet Harbor, Calumet River, and the Calumet-Sag Channel. The remaining navigation projects do not have a projected dredging need within the next 20 to 25 years. None of the dredged material from the CAWS is currently suitable for open water placement or in-water beneficial use. The quality and composition of sediment from Calumet Harbor will allow for its beneficial use in upland, unconfined applications. However, due to contaminant levels, sediment from the Calumet River and the Calumet-Sag Channel requires continued confined disposal.

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Maintenance dredging within the CAWS has the potential to remove contaminated sediments, which require disposal in a confined disposal facility (CDF) to isolate contamination. Contaminated sediments are currently placed into the existing CDF located on Lake Michigan near 95th Street. The facility, built in 1984, is a triangular-shaped area approximately 43 acres in size located adjacent to Calumet Harbor, south of the entrance channel to the Calumet River. It will soon be filled to capacity and will not be able to accept material past 2022 as currently operated.

Over the past 10 years, USACE has made extensive efforts to identify and evaluate alternatives for CAWS dredged material management, and to identify potential sites for a new Dredged Material Disposal Facility (DMDF) that would meet multiple criteria. These criteria include technical requirements, federal policy, property availability, public and stakeholder interests, and non-federal sponsor and natural resource agency input.

USACE's Recommended Plan in the FEIS proposes construction of a 530,000 cubic yard-capacity DMDF on top of the existing Chicago Area CDF. Construction of a DMDF at this site would include berms constructed from clean dredged material from Calumet Harbor. The existing onsite settling pond would be used to collect effluent, which would be directed to existing filter cells prior to being discharged to the Calumet River, which flows via the CAWS away from Lake Michigan. This process is similar to that used by the existing facility since it opened in the 1980s. Effluent discharged from the CDF is regulated by a National Pollutant Discharge Elimination System (NPDES) permit issued by Illinois EPA (IEPA). The FEIS also discusses the Calumet Harbor material to be beneficially reused during DMDF construction and closure, as well as in other approved upland beneficial uses through an agreement with the non-federal sponsors. USACE and the non-federal sponsors are developing an agreement to beneficially reuse the excess material dredged from Calumet Harbor not required for DMDF berm construction. This agreement is vital to the success of the overall proposed project, as the Recommended Plan site is otherwise inadequately sized to facilitate storage of large quantities of beneficial use material.

EPA concurs with USACE that the potential risk of exposure through contact with, or ingestion of, these contaminated sediments is much lower if they are safely confined in an engineered facility than if they were to continue to exist unconfined in the environment. We commend USACE's detailed responses to our 2019 Draft EIS comment letter provided in the FEIS and its appendices. Many of EPA's previous comments and recommendations, including those pertaining to sediments, sediment testing, and air quality impacts, were addressed in the FEIS and appendices. We appreciate the detailed supplemental information provided on the evolving details of beneficial use of Calumet Harbor dredged material, the design specifications and climate resiliency of the proposed vertical CDF expansion, and on effluent management and discharge with regard to water quality standards and NPDES permit compliance. We concur with USACE's statement that your agency must consider planning horizons that may be longer than some stakeholders desire and that the Recommended Plan does not alter the acceptable future end use of the site (parkland or open space), but rather only the timeline and final layout.

EPA's comments on the FEIS are enclosed with this letter. We recommend that USACE address these comments and our recommendations before the project's Record of Decision (ROD) is finalized.

Please provide EPA with a copy of the signed Record of Decision once available. If you have any questions about this letter, please contact the lead NEPA Reviewer, Liz Pelloso, PWS, at 312-886-7425 or via email at pelloso.elizabeth@epa.gov. We would be happy to discuss our comments with you if you wish.

Sincerely,

KENNETH WESTLAKE

Digitally signed by KENNETH WESTLAKE
Date: 2020.08.14 13:34:20 -05'00'

Kenneth A. Westlake
Deputy Director, Tribal and Multimedia Programs Office
Office of the Regional Administrator

cc (via email):
Nathan Grider, IDNR (nathan.grider@illinois.gov)
Bill Boyd, IEPA (william.boyd@illinois.gov)
Amy Dragovich, IEPA (amy.dragovich@illinois.gov)
Darren Gove, IEPA (darren.gove@illinois.gov)
Darin LeCrone, IEPA (darin.lecrone@illinois.gov)
Alderwoman Susan Sadlowski Garza, 10th Ward (ward10@cityofchicago.org)

EPA's Detailed Comments
Final Environmental Impact Statement
Chicago Area Waterway System Dredged Material Management Plan

August 14, 2020

SEDIMENT SAMPLING, TESTING, AND QUALITY

Historically, concentrations of polychlorinated biphenyls (PCBs) in the water samples collected from the Calumet River have been below the detection limit, but the concentrations of PCBs measured in sediment samples from the Calumet River have varied from non-detectable to a maximum of 39 mg/kg in 1989, as shown in the Tier 1 Sediment Evaluation prepared by USACE in November 2010 (page 29). Under the Toxics Substances Control Act (TSCA), the PCB regulatory threshold is 50 mg/kg.

> **Recommendations:** EPA reiterates our previous recommendations that USACE undertake additional sampling for PCB levels in sediments to be placed in the expanded CDF/DMDF, both during and after the vertical expansion. The purpose of the sampling would be to demonstrate and ensure PCB levels continue to remain below the TSCA regulatory threshold. USACE should also explain how sediments would be managed if any future sediment samples for PCBs were to exceed the TSCA regulatory threshold of 50 mg/kg.

ENVIRONMENTAL JUSTICE

EPA understands that USACE decided to prepare an EIS (rather than an Environmental Assessment) in response to public comments, and to provide more opportunities for meaningful public engagement. We commend this as a response to environmental justice concerns.

USACE concludes in the FEIS (page 106): "*No significant adverse impacts to the human and natural environment are anticipated as a result of constructing a DMDF at any of the alternative sites, as documented throughout Chapter 4.0. Therefore, no minority or low-income populations would be exposed to disproportionately high adverse human health impacts or environmental effects*."

The standard of "significant adverse impact" used by USACE in the FEIS is inconsistent with the standard established in the Council on Environmental Quality's (CEQ's) Guidance on NEPA and Environmental Justice (Guidance).[1] Consistent with the Guidance, the Environmental Justice Interagency Working Group's Promising Practices for EJ Methodologies in NEPA Reviews[2] states: "*Agencies' approaches should not determine that a proposed action or alternative would not have a disproportionately high and adverse impact on minority populations and low-income*

[1] https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national-environmental-policy-act (Shortened URL: https://go.usa.gov/xfGst)

[2] https://www.epa.gov/environmentaljustice/ej-iwg-promising-practices-ej-methodologies-nepa-reviews (Shortened URL: https://go.usa.gov/xfGH3)

populations solely because the potential impacts of the proposed action or alternative on the general population would be less than significant (as defined by NEPA).”

All alternative sites and comparison communities have high percentages of low-income populations and/or minority populations. Impacts to these populations appreciably exceed impacts borne by the general public[3] and therefore may constitute a disproportionately high and adverse impact.

The Guidance states that finding a disproportionately high and adverse impact does not preclude an action from going forward and does not “*necessarily compel a conclusion that a proposed action is environmentally unsatisfactory*.” However, “*the identification of such an effect should heighten agency attention to alternatives (including alternative sites), mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.”*

> **Recommendations:** USACE should apply the Guidance standard to identify the potential for disproportionately high and adverse impacts associated with the Recommended Plan. EPA recognizes that mitigation options are limited, but encourages USACE to document the extent to which all practicable means to avoid or minimize environmental harm from implementing the Recommended Plan have been adopted. (See 40 CFR §1502.2(c)). EPA also recognizes that USACE will not be a party to decisions about the future use and the development of the DMDF site post-closure (other than to ensure that certain restrictions are enforced to protect the eventual site cap). However, recognizing the preferences and interests of the affected community, we encourage USACE and the project sponsors to explore potential community benefits to compensate for temporal loss of parkland and for any disproportionately high and adverse impacts associated with the project.
>
> EPA also encourages completion of the dust control management plan as that is a critical piece in assessing potential local air quality impacts. In the FEIS, USACE acknowledges that the management of dredged material is challenging because it may become susceptible to wind erosion. Construction equipment operations may also generate dust. While USACE does propose dust control measures – such as wetting the sediment, silt fences and vegetation – low-cost opacity or particulate matter monitoring may be a way to evaluate the effectiveness of these measures, at least for an initial period of time. It may also be an effective way to assess any localized impacts from blowing dust, as well as respond to community concerns about air quality impacts.

[3] See Page 26 of the Guidance.

From: Walter Marcisz
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] commentary support for new Chicago lakefront park at the current CDF facility
Date: Friday, August 14, 2020 3:14:34 PM

Attn USACE Staff:

My name is Walter Marcisz. I have been a Chicago-area birder since the age of ten (some 55 years or so), and I am writing in support of a new lakefront park between the mouth of the Calumet River and 95th Street on the south side of Chicago. This site is currently occupied by a disposal facility. I believe it is important to recognize the significance adding a 30-40 acre lakefront park would have for birds, as opposed to continuing to operate the Confined Disposal Facility at the site for the next 20+ years.

Natural connections are always important for wildlife and for maintaining healthy ecosystems in general, and lakefront parks directly adjacent to the site (Calumet Park to the south, Steelworkers Park to the north) already provide safe haven for numerous bird species. A quick look at the online eBird database shows 214 bird species recorded at Calumet Park and 222 species at Steelworkers Park, but the amount of avian diversity at lakefront sites would undoubtedly be enhanced by the addition of a natural connection at this location.

I am well aware that the U. S. Army corps of Engineers' philosophical position in recent decades has been to work with natural processes as much as possible, including ecosystem restoration. A 2019 study published in the journal Science ("Decline of the North American Avifauna") has demonstrated that North America has lost nearly 30% of its birds (or nearly 3 billion birds) since 1970. In my view, we all need to work hard at reversing this disturbing trend, and the establishment of a new lakefront park at the current Confined Disposal Facility would clearly represent a step in the right direction. As a final reference, I am attaching a link to a Bird Conservation Network document which outlines the profound value of the Chicago lakefront holds as prime bird habitat.

Sincerely,

Walter Marcisz

13416 S. Mackinaw Avenue

Chicago, Illinois 60633-1513

(Home) 773-646-3034

(Cell) 312-206-9889

wmarcisz@att.net

BCN Lake Michigan Flyway green paper
<Blockedhttps://www.bcnbirds.org/greenpapers_files/GPflyway.html#:~:text=Literally%20millions%20of%20birds%20migrate,they%20follow%20as%20they%20migrate.>

<Blockedhttps://www.bcnbirds.org/greenpapers_files/GPflyway.html#:~:text=Literally%20millions%20of%20birds%20migrate,they%20follow%20as%20they%20migrate.>

BCN Lake Michigan Flyway green paper

From: Michael Moyer
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Calumet River: confined disposal facility.
Date: Sunday, August 16, 2020 1:48:07 PM

Please convert this lakefront property into open public parkland as per Daniel Burnham's master plan.

I do not agree with continuing to use this site for dumping sediment.

Thank you,

Michael Moyer

From: Wayne Garritano
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Lakefront Park on the Southeast Side
Date: Monday, August 17, 2020 7:21:17 AM

Dear United States Army Corps Of Engineers, Please allow the last four miles of Lake Michigan lakefront on the far southeast side to be used for recreation and to connect the far southeast side with the rest of the city's bike trails and walking paths. It will finally connect a part of the city that has been sorely forgotten and has been taken advantage of environmentally. Do the right thing for this community and feel a whole lot better because you'll be doing a lot of good for people who have been forgotten. Thank you, stay safe and well!

Sent from my iPad

From:	Debbie Bailey
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] Final Chicago Area Waterway Dredged Material Plan
Date:	Monday, August 17, 2020 7:31:52 AM

Stop the shortsighted way you are currently using! The higher water levels of Lake Michigan is not finite.
The 3 pronged program makes much more sense for the long term health of the area, which will guarantee a better outcome for the entire region in the long term!
So disappointed that the Army Corp is not thinking of the best outcome for us all. Thought you were better than this!
--

Deborah L Bailey

From: Diane Leib
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Toxic Disposal on Southeast Side of Lake Michigan
Date: Monday, August 17, 2020 8:33:37 AM

It is very important to clean up this toxic area and not dump even more industrial waste so close to the lake. Why, in God's name, does anyone think that continuing to dump in this area so close to the greatest fresh water source in the world a good idea? Global warming threatens to raise the water level in the Great Lakes including Lake Michigan. We are already losing our shoreline and beaches due to the higher water levels. This dangerous chemical waste will just be pulled into our drinking water. It is not the job of the Army Corps of Engineers to kill the people who drink that water. You guys have all the smart people at your command. Think of a better plan instead of using the oldest idea on the planet of dumping toxic waste where you can't see it and close to water where it can wash away. This is not the Middle Ages.

Diane Leib
Chicago
Sent from my iPad

From:	ernie kaminski
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] Final Chicago Area Waterway System Dredged Material Plan, Integrated Environmental Impact Statement
Date:	Monday, August 17, 2020 9:04:53 AM

Folks, Entirely agree and support community groups and environmental organizations that the site should be turned into public access parkland in keeping with Daniel Burnham's plan for Chicago. This property was intended to be parkland, not a dump site. Reducing runoff into the Calumet River would reduce the amount of toxic sediment. The contaminated sediment should be shipped to landfills in a non-residential area. The economically disadvantaged citizens in the area have had to endure assaults from other toxic developments. This proposal would potentially result in contaminants leaching into Chicago's drinking water(unacceptable). Green space in the city of Chicago is at a premium. This site provides an opportunity to further add to Burnham's vison of a lakefront plan. Ernest Kaminski MD 728 Leesley Road, Riverside, Illinois 60546 312-206-8013

From: Alan Szafraniec
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Integrated Environmental Impact Statement
Date: Monday, August 17, 2020 10:47:38 AM

I support the statement made in the Chicago Sun-Times editorial on 8/17/20 urging the Army Corp of Engineers to accept the 3-pronged program recommended by community & environmental groups to safely dispose of sediment & dredging material from the Calumet River & Harbor in the manner the groups suggest. It's high time this area of our precious shoreline be adequately developed to serve all our communities. Thank you.

Alan Szafraniec
Uptown

Sent from my iPhone

From: Brad Suster
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Final Chicago Area Waterway System Dredged Material Plan
Date: Monday, August 17, 2020 11:37:13 AM

To Whom It May Concern,

Please consider the long term impact of continuing the use of the site for as a dumping ground. Please consider other alternatives so this can be turned into a park, as promised. I know shipping to another location would be more expensive but I prefer this for the long term health of the area and lake.

Thank you,

Brad Suster

2115 W. Evergreen Ave, Chicago, IL

From:	Donald Klappauf
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] No more hazardous waste by the Lake Michigan Shoreline
Date:	Monday, August 17, 2020 12:12:22 PM

I do not want to see anymore toxic waste sites on the Shoreline of Lake Michigan were we get all of our drinking water from. We should be doing everything in our power to protect the wonderful resources of the clean waters of our Great Lakes. Instead of the Corps continuing to dispose of hazardous materials from sediment dredged from the Calumet Harbor and the Calumet River as Lake levels continue to rise, they should be building parks. Having another park in view rather than a raised landfill would make it easier to move ahead on the stalled redevelopment of the nearby 40-acre U.S. Steel site. It is time to put a safe environment first.

Sincerely,

Donald Klappauf

From: Chili Bob
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] SE Chicago Landfill
Date: Monday, August 17, 2020 12:24:39 PM

As a local resident and frequent visitor to our Lake Shore, I impell you to stop dumping contaminated sediment on the shoreline.

It belongs somewhere far from our lakes.

Thank you,

Robert Siegerdt

From: Jean Quinn
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] The Final Chicago Area Waterway System Dredged Material Plan
Date: Monday, August 17, 2020 1:57:09 PM

I am opposed to the continued dumping of sediment dredged from the Calumet River and the Calumet Harbor near the mouth of the Calumet River.

Instead, I support converting the land to a waterfront park. I support the three prong approach to reduce the amount of sediment as suggested by the local community groups.

The first prong is to ensure that stored materials in the area are covered and industrial parking lots are cleaned to prevent harmful substances from blowing and/or washing into the river. The second prong is to reuse the cleaner sediment as landfill, if possible. Finally, the third prong is to ship contaminated sediment to a certified landfill.

I grew up in South Shore in the 1960's when the steel mills were in operation. Although the mills provided much needed jobs, they also polluted the air.

You now have an opportunity to protect Lake Michigan and the residents of the southeast side from more pollution. Please act accordingly and do not continue to store dredged sediment at the mouth of the Calumet River.

Thank you,

Jean Quinn

Sent from AT&T Yahoo Mail on Android <Blockedhttps://go.onelink.me/107872968?pid=InProduct&c=Global_Internal_YGrowth_AndroidEmailSig__AndroidUsers&af_wl=ym&af_sub1=Internal&af_sub2=Global_YGrowth&af_sub3=EmailSignature>

From: mikenmary
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Confined Disposal Facility at Calumet River and Lake Michigan
Date: Monday, August 17, 2020 2:35:03 PM

TO: US Army Corps of Engineers

We are objecting to plans to continue dumping dredging into the confined disposal facility in Chicago's 10th Ward. We suggest sending the dredging to a certified landfill by barge or truck.

Michael Boos and Mary Kuzniar

--
Michael Boos & Mary Kuzniar
mlbooscommunications.com
Michael@mlbooscommunications.com

From: Allison Marach
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Sediment Facilty
Date: Monday, August 17, 2020 3:07:12 PM

Hello,

I am writing to ask you to please not build a new sediment facility on the mouth of the Calumet river. This land should be a public park for everyone to enjoy as it was deemed in 1995. With climate change, rising water is one of the biggest threat to the Chicagoland area. It is not safe to have toxins so close to the lake, in which flooding can be dangerous for the safety of the city's drinking water. I urge you to please think about the public's wellbeing, and use this land as the park it was supposed to be.

Thank you,
Allison Marach

From: lori ryan
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Southeast Chicago Shoreline
Date: Monday, August 17, 2020 3:15:21 PM

Instead of adding to the pollution on the Southeast side of Chicago, you should listen to the public and stop this dumping of toxic waste at the lakeshore. This muck is will contaminate our waters; this is not a way to dispose of sediment from the Calumet River and Harbor.
as water levels continue to rise.
The Southeast side is already tainted with hazardous materials from waste left by the industries who operated here in the past.
PLEASE STOP RUINING OUR LAND AND WATERS!!!

From: Hernan Diaz
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Calumet River Area
Date: Monday, August 17, 2020 3:27:25 PM

Hi I'm writing this email as a Chicago resident. I want to demand for the Calumet River Area to stop being used as a confined disposal facility and for it to be turned into a public park. This is what makes the city as special as it is. We rely on these areas so much for all kinds of health. It's important for us as a community to demand what is right! We do not want these waters to be contaminated, we want to swim in them and enjoy and appreciate our space! Please follow through with the project that was supposed to start in 1995. Please show that you care about the people, and build something that can be so good for so many of us. I personally go to as many parks specially waterfronts as much as I can. Many of us do the same, specially now during covid, please think about the future, please show that you care!

Sincerely

-Hernán Díaz

From:	Justin Lampert
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] CAWS DMMP and EIS comments
Date:	Monday, August 17, 2020 3:27:30 PM
Attachments:	image002.png image003.png image004.png image005.png dredgematerialCommentsAug17.pdf

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Hello,

Attached are AWO's comments on the final Chicago Area Waterway System Dredged Material Management Plan and integrated Environmental Impact Statement.

Thank you,

Justin

_____

Justin Lampert

Manager – Midcontinent Office

The American Waterways Operators

666 High Street, Suite 200-B

Worthington, Ohio 43085

Blockedwww.americanwaterways.com <Blockedhttp://cp.mcafee.com/d/k-Kr6wUSyMUyY--_tUTsSzsQsIcCzB-XPVJ6VEVopd7bW8VYSzsQsIcCzB-XPxJ6VEV7f8EEK8C_8hGow2Jl-cHr0NI_yoQJjBPuG_6lJwoSvNcqmFOVJB5Zddcs_R-h79T78CzDHTbFFFIsOCNtZV_BHEShhlhKzOEuvkzaT0QSyrsdTVeXzbMUQszDT3tPo0blvzaSMcrfUCdbkVv3pzjW4-lS9o5uJL4qCjr9EVKCyr1oQAq81bo6y0NVEw1vQIjZ1I_Ph02qEqmd4Z3h0d_YVg8Cy0NapcQg22LDOQQg0CFy5fwwq8aKCy0g0kc4zrzxKA-5>

(614) 565-8319

Click here for AWO's COVID-19 webpage <Blockedhttp://www.americanwaterways.com/covid19>

<Blockedhttp://www.facebook.com/pages/American-Waterways-Operators/159481737397509> <Blockedhttps://twitter.com/AWOAdvocacy> <Blockedhttp://www.instagram.com/americanwaterways> <Blockedhttps://www.linkedin.com/company/american-waterways-operators/>

The American Waterways Operators

666 High Street
Suite 200-B
Worthington, Ohio 43085

PHONE: 614.565.8319
EMAIL: jlampert@americanwaterways.com

Justin L. Lampert
Manager – Midcontinent Office

August 17, 2020

Colonel Aaron Reisinger
Commander
U.S. Army Corps of Engineers, Chicago District
231 South LaSalle St. Suite 1500
Chicago, IL 60604

RE: Chicago Area Waterways System
Dredged Material Management Plan

Dear COL Reisinger,

On behalf of the American Waterways Operators (AWO), the national trade association for the tugboat, towboat and barge industry, thank you for the opportunity to comment on the U.S. Army Corps of Engineers' final Chicago Area Waterway System (CAWS) Dredged Material Management Plan (DMMP) and Environmental Impact Statement (EIS).

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves over 760 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of nearly 5,500 tugboats and towboats, and over 31,000 barges. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific and Gulf coasts. Tugboats also provide essential services including ship docking, tanker escort and bunkering in ports and harbors around the country.

The tugboat, towboat, and barge industry is an integral part of the U.S. intermodal transportation system. It is not only the safest and most cost-effective transportation mode, it is also the most fuel-efficient with the smallest carbon footprint of any mode. Actions that adversely impact the efficiency of waterborne commerce, or that result in the diversion of cargo to other modes of transportation, are detrimental to the industry, the U.S. economy, public safety, and the environment.

AWO strongly supports the Recommended Plan in the DMMP which calls for the vertical expansion of the existing Chicago Area Confined Disposal Facility (CDF) to accommodate dredged material from the CAWS. Proactive dredging is critical to ensure our inland waterways are maintained to their fully authorized width and depth. As the Corps accurately explains in the Recommended Plan, the continued maintenance of the CAWS via dredging provides for the safe, reliable, and efficient movement of waterborne commerce throughout

the nation. Expanding the CDF will ensure dredging and the disposal of dredged materials from the CAWS will continue in an environmentally safe and economically efficient manner.

Again, thank you for the opportunity to provide comments on the final CAWS DMMP and EIS. The Corps' dredging work is vital to our industry, the industries that rely on our transportation, and the entire U.S. economy. We would be pleased to answer any questions or provide further information as you see fit.

Sincerely,

Justin Lampert

Justin Lampert
Manager – Midcontinent Office

From: Judy Pollock
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Comment on CAWS Dredged Material Management Plan
Date: Monday, August 17, 2020 4:03:19 PM

Dear Ms. Villarreal,

Chicago Audubon Society opposes the plan to dispose of dredge in a vertical expansion of the existing Chicago-area confined disposal facility. This part of the city has suffered greatly from toxic industry and dumping, and the ACE needs to put a stop to the racist practice of continuing to use the Calumet area as a dumping ground.

The confluence of Lake Michigan and the Calumet River should be a beautiful feature of our local geography and not a dump.

We hope that you will do the right thing here.

Warm regards,

Judy Pollock

_____

Judy Pollock
President
Chicago Audubon Society
jpbobolink@gmail.com <mailto:jpbobolink@gmail.com>
(847) 962-7868

From:	Juanita Irizarry
To:	CELRC_Planning_ECON
Cc:	Pat Sharkey; Maria Saldana; Fred Bates; Lauren Moltz; Tom D; Anton Seals; Abigail Johnston
Subject:	[Non-DoD Source] FOTP CDF Comments
Date:	Monday, August 17, 2020 4:09:12 PM
Attachments:	FOTP - CDF - FOTP Comments on Final EIS -8-17-20 - FINAL.pdf
Importance:	High

Dear Mr. Padilla:

Friends of the Parks appreciates this opportunity to submit comments on the U.S. Army Corp of Engineers' July 17, 2020 Final Dredged Material Management Plan and Integrated Environmental Impact Statement ("DMMP/EIS") for the Chicago Area Waterway System in the Calumet region. Please see the attached.

Sincerely,

Juanita Irizarry

Juanita Irizarry

Executive Director

Friends of the Parks

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Mr. Michael C. Padilla, PMP
U.S. Army Corps of Engineers, Chicago District
231 S. LaSalle Street, Suite 1500
Chicago, IL 60604-1437

August 17, 2020

Re: Friends of the Parks Comments on the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region

Dear Mr. Padilla:

Friends of the Parks ("FOTP") appreciates this opportunity to submit comments on the U.S. Army Corp of Engineers' ("ACOE") July 17, 2020 Final Dredged Material Management Plan and Integrated Environmental Impact Statement ("DMMP/EIS") for the Chicago Area Waterway System in the Calumet region.

Introduction

As a city-wide parks advocacy organization, Friends of the Parks' mission is to inspire, equip, and mobilize a diverse Chicago to ensure an equitable park system for a healthy Chicago. A year ago, FOTP submitted lengthy comments detailing deficiencies in the ACOE's Draft DMMP/EIS. Those comments opposed ACOE's 2019 proposal to vertically expand the existing Confined Disposal Facility ("CDF") on public trust park land on the Southeast Side's Lake Michigan waterfront, a location that should have been returned to public use by 1994. Further, Friends of the Parks has for decades joined with the local community in opposing the creation of any new dredge disposal facilities at any 10th Ward location.

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, especially in the last 10 years, with the designation of the Pullman National Monument, Ford's billion dollar reinvestment creating more jobs, the North Point Development, the Method Soap manufacturing campus, Gotham

Greens, restaurants, the new Whole Foods Distribution Center, the Burnham Greenway, Big Marsh Bike Park and hemi-marsh restoration, the Chicago Park District's restoration of Indian Ridge Marsh and Hegewisch Marsh, and the creation of the Ford Environmental Center

The 45-acre parcel[1] of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of this transformation of the Southeast Side. In 2006, Friends of the Parks, as a part of its Last Four Miles Initiative identified the CDF location as the last significant link on the south side to complete Daniel Burnham's vision of a park system spanning the entire Chicago lakefront.[2] In 2016, the Chicago Metropolitan Planning Commission, in partnership with the Mayor's Office, Friends of the Chicago River, and others, led thousands of stakeholders in the citywide *Great Rivers* visioning process which, among other things, seeks to reinvigorate the CAWS by creating multiple iconic river destinations by 2030. Among its goals is the transformation of the currently fenced-off, forbidding, and polluting CDF dredge management facility into a "park destination that is simultaneously a riverfront and lakefront."[3]

In the midst of these positive, healthy, job-based developments, ACOE could be a part of this vision of reinvigoration by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District for the long-awaited final link in the south side Lake Michigan park system. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low".[4]

ACOE's use of this Lake Michigan lakebed location was granted for only 10-years and it has already overstayed its welcome by 28 years. It is time for ACOE to join in the 21st Century vision for the Southeast Side of Chicago. Another generation of Chicagoans and Southeast Side residents must not be

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[1] ACOE refers to the current CDF as being 45 acres throughout the narrative of the Final DMMP/EIS, but in Appendix G – Real Estate, Exhibit 7, ACOE states the CDF currently occupies 47.31 acres and that under this new proposal ACOE would take another 4.32 acres of public trust lakebed to build a new landing dock on the north side. As discussed below, this latest uncompensated ACOE confiscation of public trust land cannot proceed without a new legislative grant of the state-owned lakebed to the Chicago Park District for this purpose.

[2] https://fotp.org/issues/projects/last-four-miles/

[3] http://greatriverschicago.com/goals/destinations.html "In some instances these destinations will repurpose existing infrastructure and buildings as the backdrops and setting for new uses. As major riverfront properties—the old Chicago Post Office, Chicago Union Station, dormant grain silos at Damen Avenue on the Chicago River, DuSable Park, the northwestern corner of Lake Calumet, Fay's Point, capped landfills along the Calumet and the Chicago Area Confined Disposal Facility—move toward development or redevelopment, there should be a concerted effort to create vibrant, iconic attractions for Chicagoans and visitors alike. The greatest design and architectural minds in Chicago and beyond, as well as the creative spirit and local know-how of area residents, will be brought to bear on these sites through frequent design challenges and studio-based workshops that inform development proposals and implementation. The resulting innovation in design also will support community visions and empower neighborhood stewardship."[emphasis added] ;https://www.metroplanning.org/work/project/31#:~:text=Our%20Great%20Rivers%20is%20a%20collaborative%2C%20comprehensive%2030-year,goals%20by%20decade%2C%20making%202020%20a%20milestone%20year.

[4] See DMMP/EIS Executive Summary.

denied this lakefront park for another 25 years (and likely forever) due to ACOE's short-sighted view of dredge management options.

We call on ACOE to withdraw its proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a 21st Century plan for future management of sediment in the Chicago Areas Waterway System ("CAWS").

I. ACOE Failed to Analyze All Available Alternatives

It is time for ACOE to do a full review of all alternatives and a genuine cost-benefit analysis as required by the River and Harbors Act, 33 U.S.C. 403 et seq., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 *et seq*.. Unfortunately, ACOE's DMMP/EIS process has never looked beyond the 10th Ward of Chicago and never looked beyond its original plan to create another unregulated landfill for massive quantities of dredge as cheaply as possible for the federal government. A calculus based on leaving its non-federal sponsors with the environmental costs in perpetuity. This is a violation of NEPA and ACOE's own guidance and policies.

A. Statutory and Regulatory Requirements for ACOE's Review of Other Alternatives

NEPA's stated purposes are "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation." 42 U.S.C. § 4321.

NEPA Section 4332 requires that "all agencies of the Federal Government shall "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." [emphasis added] The Council on Environmental Quality NEPA regulations at 40 C.F.R. 1502.14 begin by stating that the alternatives analysis "is the heart of the environmental impact statement." While NEPA does not compel an agency to choose the course of action that it deems best for the environment, it requires agencies to take a "hard look" at environmental consequences, and to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) Agencies must "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." *Id*. Further the 7th Circuit U.S. Court of Appeals has repeatedly held that the Corps must consider the least environmentally damaging alternatives. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997); *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986).

ACOE's Section 404(b)(1) Guidelines for Specifications for Disposal Sites for Dredged or Fill Material at 40 CFR 230.5 require, in part, that ACOE "[e]xamine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S." and further provides that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem."

Under these Guidelines "[a]n alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered." *Id.* at 40 CFR 230.10(a)(2)

ACOE itself has interpreted NEPA as requiring that ACOE's Clean Water Act Section 404(b)(1) alternatives analyses must be an "apples to apples comparison."[5] According to ACOE's Regulatory Division, in a July 24, 2014 presentation titled *Alternatives Analysis: Satisfying NEPA, Public Interest Review & 404b1*, this means it must "treat all alternatives equivalently" and that "the degree of analysis devoted to each alternative is to be substantially similar to the proposed action" even if an alternative is "not necessarily desirable from applicant's perspective." *Id.* ACOE's regulatory Division underscores that it is "[c]ritical to appropriately determine the 'Least Environmentally Damaging Practicable Alternative' (LEDPA)" and "demonstrate [the] proposed action is LEDPA." *Id.*

B. <u>ACOE Has Failed to Fully Evaluate the Non-CDF Alternatives</u>

Here it is clear that ACOE has not fully evaluated all other practicable alternatives that would not result in discharges and releases to the Calumet River and Lake Michigan, has not fully evaluated the dynamic characteristics of Lake Michigan and the impacts of Climate Change on ACOE's proposed disposal site, and has not fully evaluated the impacts of its proposed disposal site on Lake Michigan water quality and the parks, beaches and surrounding ecosystem. NEPA and ACOE's Guidelines require that ACOE analyze reducing future dredge volumes and how and where future dredge can be used and/or disposed of. But, over the course of many years and as reflected in this Final DMMP/EIS, ACOE has made short shrift of several such available alternatives that could in combination result in lower costs and reduced environmental impacts.

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[5] ACOE "Alternatives Analysis: Satisfying NEPA, Public Interest Review and & 404b1", P. Chandler, Reg. Div. ACOE, July 24, 2014.
https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Hot%20Topics/2014%20Jul%20Alternatives.pdf

We discuss below a combination of alternatives that ACOE has failed to seriously analyze which would eliminate the need for the proposed vertical expansion or the building of any other new dredge disposal facility:

1) Reducing the volume of Calumet River and Cal Sag Channel dredge to be managed over time by better upland land management practices and also as an outcome of higher water levels;

2) Reducing the volume of overall dredge to be managed by beneficially using all of the cleaner Calumet Harbor dredge at off-site locations (rather than effectively dispose of it at the existing CDF location); and

3) Barging the remaining more contaminated dredge to a safe, permitted landfill.

1. Reducing the Overall Volume of Dredge Material to be Managed

a. Reducing the Volume of Sediment in the Calumet River and Cal Sag Channel

The DMMP/EIS is a plan for dredging over a period of twenty years. ACOE assumes that sedimentation will be required at the current rate during that entire period and that the same ratio of contaminated vs clean dredge will be generated, i.e. 50:50. But ACOE also claims the Calumet River sediment has become less contaminated over the past decade. This is attributed to regulatory programs that have required better stormwater management practices at the industrial sites that line the river. But, despite the success of these programs, the Corps still anticipates needing to dredge 25,000 cu. yards of sediment that is too contaminated to beneficially use from the river each year, beginning in 2024 and for the following 20 years. DMMP/EIS at pp. 144-145.

The fact that this volume of dredging is deemed necessary means either: 1) ACOE is over-estimating the volume of contaminated river dredge or 2) the industrial facilities that are the beneficiaries of these taxpayer funded river dredging operations are not doing enough to reduce the volume of sediment runoff to the river. Instead of those facilities cleaning house to prevent sedimentation of the river, the government is required to clean up after these private actors. This is clearly an expensive policy that subsidizes river-side industries and property owners at the expense of taxpayers. It also fails to address the root cause of the dredge management problem ACOE poses.

FOTP notes that Alderman Sadlowski-Garza raised this issue with ACOE back on February 5, 2019:

> "…the Army Corps should consider more robust measures to prevent sediment from entering into the Calumet River. There are currently many sections of severely degraded seawall as well as rocky and unimproved shoreline that convey sediment into the river. A plan to provide green infrastructure to prevent sediment from entering the river and repairing damaged and degraded seawall may help prevent the need for dredging and allow for a smaller site to be used for any containing sediment that cannot be remediated." Appendix A-3, p.139-140

ACOE acknowledges that 50,000 cu. yards of sediment is entering the Calumet channel annually, but argues that it has no authority to require the implementation of best practices to reduce run-off of sediments from the non-point and point sources, such as the barges and industrial facilities that line the Calumet River and Cal Sag Channel. But in fact, DOD policy encourages ACOE to work together with local governments to increase the resiliency of its operations. This is especially true where wholistic responses are required to respond to an environmental issue such as dredge management. In the DOD's Climate Change Adaptation Roadmap, DOD calls on its all of branches to work with its local counterparts to develop sustainable solutions:

> "Domestically, this means working across our federal and local agencies and institutions to develop a comprehensive, whole-of-government approach to a challenge that reaches across traditional portfolios and jurisdictions."[6]

ACOE could and should engage the City, County, State of Illinois and stakeholders in a regional planning process that can lead to the adoption of enforceable requirements to reduce industrial and agricultural runoff to the Calumet River and Cal Sag Channel.

Because ACOE has failed to consider achievable reductions in the volume of sediment required to be dredged over the timeframe of the proposal, ACOE has at the same time over-estimated the volume of material to be managed and the disposal capacity required over this time period. This skews its alternatives analysis as well as its cost-benefit analysis. Further, if smaller volumes of highly contaminated dredge are required to be permanently disposed of, the cost of properly landfilling these wastes will come down.

b. Reductions in Required Dredging Due to High Water Levels

[6] Forward to DOD's *2014 Climate Change Adaptation Roadmap*, https://reliefweb.int/report/world/department-defense-2014-climate-change-adaptation-roadmap

Further, ACOE is using the same dredge volumes it used in its 2015 Draft DMMP/EIS – 50,000 cu. yards per year from the Harbor and Calumet River and 30,000 cu. yards overall from the Cal Sag Channel. But the volumes that needs to be dredged to allow the required barge draft have likely changed since that time based on the dramatic increase in Chicago area lake and river water levels over the last seven years. (See our comments below in Section IV regarding the impact of climate change on Lake Michigan water levels.)

Even back in 2014 when Lake levels were at near record lows, USEPA recognized that ACOE's assumptions regarding the volume of dredge management required could be faulty. It recommended that the ACOE "focus on how a change in precipitation and water levels could affect dredging operations and consequently, CDF capacity over the proposed life of the project." USEPA continued, "For example, if precipitation and water levels exhibit a downward trend, more material would need to be removed, affecting projected CDF capacity. We believe the analysis would benefit from a qualitative discussion focused on recent water level trends, whether the amount of material which needs to be dredged to maintain authorized depths is changing, and if this is the case, whether this factor has been accounted for in the design of the CDF."[7]

USEPA's 2014 concern is even more valid now in the face of warmer and wetter weather and the record high water levels now existing across Lake Michigan. But the Corps has not responded to this recommendation and continues to use what are likely inflated dredge volumes as the basis for its scoping of alternatives.

The higher water levels also reduce the urgency for rushing the development of a new dredge disposal facility right now. This reduced urgency allows the Corps and the City time to step-back and properly evaluate all of the available options in a true planning process, rather than rush into a commitment to a costly and environmentally risky alternative that will take park land and blight the Lake Michigan shore in perpetuity -- all based on outdated assumptions, improper cost analysis, and a failure to consider all available alternatives.

2. <u>Beneficial Use of Harbor Dredge at Off-Site Locations</u>

[7] See USEPA Comments dated December 18, 2014on prior ACOE CAWAS DMMP at pp. 6-7.

ACOE is proposing to manage 1.3 million cu. yards of dredged material at the CDF, including highly contaminated dredge from the Cal-Sag Channel and Calumet River and cleaner dredge from Calumet Harbor. It anticipates that 500,000 cu. yards of that material will be clean enough to be classified as acceptable for "beneficial use."[8] But it plans to in effect dispose of 170,000 to 261,000 cu. yards of that material in the CDF in the earthen berms and "cap" which it proposes to contain the more contaminated dredge. This disposal of purportedly clean dredge is unnecessary and certainly shouldn't drive the decision to build a new disposal facility at this location or any other.

ACOE admits that there is a market for the cleaner dredge material in the area and analyzes a number of opportunities for beneficial use of Calumet Harbor dredge in Appendix L to the DMMP/EIS. So presumably all of that cleaner material could be used for other productive purposes, including as general fill and engineered soil. (*App. L, p. 4*) But ACOE classifies using that cleaner dredge as construction material for the vertical expansion at the CDF lakefront location as the *most likely* beneficial use. Why? ACOE explains that they have performed no formal risk or cost evaluation of this alternative, but such an evaluation is "implicitly" included in its "Very High" likelihood ranking of this use and it is a use that is "implementable in a shorter timeframe." ACOE considers this use as "integral to this DMMP, covered in the EIS." *Id.* In other words, ACOE predetermined that it was going to create a new dredge disposal facility and that it is faster and cheaper to just "dispose" of this cleaner dredge in a mountain of dredge on the lakefront than to actually try to beneficially reduce the volume of dredge to be managed in perpetuity at this environmental sensitive location. This is a justification of a predetermined outcome, not a genuine analysis of the best and most cost effective beneficial use options.

A fundamental question that ACOE has not addressed is whether this "cleaner dredge" is actually clean enough to use for the 92,000 cu. yards of "cover" it is proposing. In the face of the pounding storms coming in off the Lake, does this dredge "cover" pose a threat of stormwater run-off exceeding Illinois' stringent Lake Michigan Basin Standards and the TMDL for PCBs and Mercury? Indeed, although ACOE applied for a Beneficial Use Determination ("BUD") in January 2020, it withdrew that application on June 17, 2020 after Illinois EPA made it clear it would not issue a BUD. (Illinois EPA also denied a BUD for this same dredge in 2015.)[9]

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[8] Notably, the majority of Calumet Harbor is actually located within the State of Indiana, therefore most of this dredge will be coming from Indiana.

[9] Oddly, the July 17, 2020 Final DMMP/EIS predicted "based on previous discussions it is anticipated that IEPA will concur with this [beneficial] use and that a response will be issued by early May at the latest," despite the fact that ACOE had withdrawn its BUD application a month earlier. *(App. L, p. 2)*

It appears Illinois EPA has taken the position that this use of dredge does not fall within the parameters of a "beneficial use" and ACOE will have to demonstrate in its next Clean Water Act permit application (which must be granted by 2021) that the vertical expansion of the CDF, including the use of this dredge material as construction and capping material, will not result in a violation of applicable water quality standards. The outcome for that permit is uncertain. Data on the harbor dredge that ACOE provided to IEPA (and included in App. L to the DMMP/EIS) shows multiple exceedances of the Illinois risk-based standards for soils utilized for upland beneficial uses. Those exceedances are for the toxic contaminants: arsenic, mercury, iron, lead, manganese, benzo(a)anthracene, benzo(a)pyrene, benzo(b) fluoranthene, dibenzo(a) anthracene, indeno (1,2,3-cd) pyrene, and three PCB standards (Aroclors 1232, 1254, and total PCBS). This is a legitimate concern because this harbor dredge is proposed to be stored on-site and used eventually as the 2.5 ft. "cap" that will ultimately cover the entire CDF.

The near-term off-loading and storage of this "cleaner" dredge, its drying and dewatering at the CDF location, the construction activity associated with constructing the berms and ultimately constructing the proposed 2.5 foot "cap" with this dredge (not to mention placement of the highly contaminated dredge into the new structure) – all of these ACOE operational activities at the CDF location (proposed to take place beginning in 2022 and extending over 20+ years) will be exposed to the winds, rain, snow and storm surge raging off Lake Michigan. Sheets of stormwater and snow melt will be running off the side of this steep mountain of dredge into the Lake during these activities and throughout the year, carrying the contaminants in that dredge directly into Lake Michigan.

ACOE's proposal is to cover this "cleaner" dredge with just 6 inches of "top soil" before it leaves it to the Chicago Park District to manage this mountain of dredge in perpetuity. Maintaining that thin layer of top soil and vegetation on this steep slope can be predicted to be a nightmare for the CPD. ACOE appears to have given no thought to the feasibility of maintaining that cover or the final cleaner dredge cap in perpetuity to prevent runoff of contaminated dredge directly into Lake Michigan and the downstream Calumet Beach. Nor has ACOE included the costs for post-closure maintenance of a "cap" made of dredge such that it does not contribute in perpetuity to the contamination of Lake Michigan and Calumet Beach as well as degradation in violation of Lake Michigan Basin standards and the PCB and Mercury TMDL.

ACOE has concluded that the Harbor sediment is unsuitable for beach nourishment projects or open water disposal. *App. L.* Yet that is what the "use" of this material at the existing CDF Lake Michigan lakefront will result in. This is not environmentally or legally acceptable -- nor is it necessary.

Documents provided in Appendix L demonstrate that there are several other opportunities to beneficially use the harbor dredge as general fill, engineered soil, as a raw material in manufacturing processes, and at other safer upland locations. The volume of this Harbor material ACOE expects to generate annually (25,000 cu. yards) – even with its failure to consider the trend of high Lake Michigan water levels -- is actually relatively small. Given ACOE's own conclusion that there is a market for this material, finding genuine beneficial uses for the entire 25,000 cu. yards per year of the Harbor dredge is feasible and should have been considered in ACOE's alternatives analysis rather than diverting that material to the more environmentally risky Lake Michigan lakefront use that is proposed.

3. <u>Proper Disposal of Contaminated Dredge at a Permitted Landfill</u>

ACOE admits that dredged sediments that are not considered "clean" must be managed as a "waste" in both Illinois and Indiana. Appendix L at p.5. ACOE assumes that as much as 530,000 cu. yards of the sediments it will generate from the Calumet River and Cal-Sag Channel will not qualify as clean and thus will require "disposal." Under Illinois law, 'wastes" cannot be "disposed of" except in properly permitted "pollution control facilities" which comply with the Illinois Pollution Control Board's Standards for Solid Waste Landfills. 35 Ill. Admin. Code Part 811.[10] This is not unusual. Many states consider dredge that is too contaminated to qualify for beneficial use to be a "waste" and require landfilling of that dredge.[11] Yet, somehow, ACOE takes the position that it can dispose of highly contaminated dredge in Illinois in an unpermitted structure located adjacent to Lake Michigan and in a FEMA AE flood zone[12] that does not comply with Illinois landfill construction and operating requirements. This is a violation of Illinois law that is ripe for challenge.

Despite the fact that Illinois law requires that highly contaminated dredge be disposed of in a permitted landfill, the DMMP/EIS makes short shrift of the landfill alternative for the Calumet River and Cal-Sag Channel dredge, devoting only a short conclusory paragraph to that option. While ACOE concludes that landfilling of the anticipated 530,000 cu. yards of this highly contaminated dredge is

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[10] Illinois also prohibits locating a pollution control facility in proximity to a drinking water supply or within a 100-year floodplain. Pursuant to Section 22.19a of the Illinois Environmental Protection Act, "no sanitary landfill or waste disposal site that is a pollution control facility, or any part of a sanitary landfill or waste disposal site that is a pollution control facility, may be located within the boundary of the 100-year floodplain." 312 Ill. Rev. Stat. 22.19a The entire existing CDF location is shown in FEMA's most recent mapping (2008) as being located in an AE flood zone. An AE zone is a zone within the 100-year floodplain and is considered a Special Flood Hazard Area.

[11] A quick on-line search revealed that Minnesota, Oregon, Connecticut, New Hampshire, and Maine all require that contaminated dredge be managed in a permitted landfill. There are likely many more such states.

prohibitively expensive, it provides no cost analysis supporting that conclusion. Further suggestions that there are greater environmental risks associated with transporting that dredge to a landfill are unsubstantiated. Indeed, we have a nearby example of ACOE barging and trucking wet dredge 160 miles from East Peoria to the Chicago U.S. Steel site for beneficial use.[13] We also have the recent example of the transporting and landfilling of 360,000 cu. yards of contaminated dredge from the nearby ACOE Grand Calumet River dredging project to the Newton Landfill in Indiana, 60 miles away. Clearly landfilling of this dredge is an option – even a requirement - that should have been seriously analyzed from the beginning of ACOE's quest for future dredge disposal alternatives and was not.

While managing the more contaminated dredge in a permitted landfill entails the cost of transportation and a per ton "tipping" or disposal fee, *these costs may not be more than the cost of constructing the mountain of dredge on the lakefront that ACOE proposes* – particularly when the real estate, long-term maintenance, monitoring, and liability costs are included.

Regarding transportation costs, the assumption that the dredge would be transported by truck from the existing CDF location and through the commercial and residential neighborhoods of South Chicago or other Southeast Side communities is not only unnecessary, it would not be allowed because the CDF property is required to be returned to the Chicago Park District for use as a park upon closing of the existing CDF. The actual scenario would be that the Calumet River and Cal-Sag Channel dredge would be barged to a transfer station located along one of those rivers and as close as possible to a highway and permitted landfill.

Further, the landfilling option both reduces long-term costs and mitigates the environmental risks associated with the disposal of this material on Chicago's lakefront and water supply directly upstream from a public beach and surrounded by public parks. The "tipping fee" paid for disposal of waste in a permitted landfill includes the cost of safe long-term management at an inland facility located and constructed to minimize the release of contaminants to either surface or groundwater. It also covers the long-term liability for proper management of these wastes. A valid apples-to-apples comparison of the cost of proper landfilling versus the cost of disposal of contaminated dredge at ACOE's proposed vertical expansion (or any other location) must include these long-terms costs.

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[13] *Mud to Parks,* Illinois Department of Natural Resources (Illinois DNR), 2014, pp. 3-13 to 3-14. http://www.dnr.illinois.gov/conservation/m2p/Pages/default.aspx

The full analysis of the landfilling alternative and an apples-to-apples comparison of costs is required to be undertaken by ACOE before it proceeds with its selected vertical expansion option.

II. ACOE's Cost-Benefit Analysis Fails to Include Significant Costs Associated with the Vertical Expansion

As discussed above, NEPA, its implementing regulations, and ACOE's only Guidelines and policy statements require ACOE to "treat all alternatives equivalently" and "the degree of analysis devoted to each alternative is to be substantially similar to the proposed action" even if an alternative is "not necessarily desirable from applicant's perspective."

While federal agencies are not always required to quantify their analysis of alternatives, when they do so, they must do so in a complete and equivalent manner for each alternative. ACOE's cost-benefit analysis here, which purports to demonstrate that the vertical expansion is the least cost option, does not do that. ACOE's cost/benefit analysis is fatally flawed in three ways:

1) It significantly understates the costs and risks associated with expanding and extending the life of the existing lakefront CDF;

2) It externalizes significant costs and liabilities borne by the Non-Federal Sponsors and the public and also never considers the social costs; and

3) It fails to analyze the costs and benefits of the combined dredge reduction and landfill alternative discussed in Section A above.

It is axiomatic that a proper cost-benefit analysis methodology does not externalize costs or treat the same costs differently for different options.[14] Thus, for the vertical expansion alternative, ACOE should have included the costs of: a) acquiring the public park land the expanded CDF will occupy for another 25+ years and effectively render useless as a park, b) upfront and ongoing costs (to the Non-Federal Sponsors) necessary to ensure this mountain of toxic dredge and its associated dredge storage, drying and dewatering operations do not pollute Lake Michigan, and c) of the liability that the Non-Federal Sponsors will bear for properly managing toxic dredge on the shore of Lake Michigan in perpetuity.

[14] An external cost is present when (1) an activity by one agent causes a loss of welfare to another agent, and (2) the loss of welfare is uncompensated.

A. <u>ACOE Attributes No Real Estate Costs to the Vertical Expansion Alternative</u>

It is obvious that ACOE has not performed an apples-to-apples comparison of the various alternatives by the fact that it has attributed no real estate costs -- *zero (0)* -- to the vertical expansion option while it attributes real estate costs from $4.45 to $ 5.3 Million for the other CDF options it examines.[15] ACOE assumes that the Chicago Park District will provide this valuable park land to the ACOE for another 25 years at no cost.[16] As a non-federal sponsor, CDP would not even be credited with the value of the property toward the non-federal sponsor share of costs.[17]

Just because land is publicly owned certainly does not mean it is of no value. On the contrary. The 45 acres of Chicago lakefront property at issue here has *high value to ACOE* and to its project as it is unique and essential to the selected vertical expansion option. This 45 acres of lakefront property also has *very high value* as a large, unique waterfront park *to the public, the community residents and the local economy*.

The issue here is not *whether* to value the 45 acres of lakefront property required for ACOE's selected alternative, it is *how* to value it.[18]

There are several approaches to valuing public property. The most straight-forward is the "fair market value" approach which involves an appraisal just as would be performed for a private property transaction. To our knowledge, ACOE has made no effort to have the "fair market value" of the 45-acre CDF parcel appraised. Further, its uniqueness and its designated "special purpose" use as a lakefront park land make it difficult to appraise. But there are other ways to determine an approximate value for this property.

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[15] See unnumbered table captioned "First Costs of the Final Array of Alternatives" (FY 2019 Prices) on 14th page of the unnumbered Executive Summary to DDMP/EIS.

[16] "BASELINE COST ESTIMATE: The lands, the existing CDF and associated facilities, are currently provided as an item of cooperation for a federal project and would be provided again by the Chicago Park District, IIPD, and City of Chicago." Appendix G- Real Estate Plan, p. 7.

[17] "At this time the lands would not be considered eligible for LERRD credit, therefore no LERRD amount is estimated." Appendix G – Real Estate Plan, p.7.

[18] Numerous scholarly articles have discussed the valuation of public property. See for example: *Valuation and Pricing of Government Land and Property: A Tip of a Growing Iceberg, Olga Kaganova,* https://www.cre.org/wp-content/uploads/2017/03/Government_Land_and_Property.pdf; Peterson, George E., "*Municipal Asset Management: A Balance Sheet Approach*," in Managing Government Property Assets: International Experiences, editors Olga Kaganova and James McKellar, Urban Institute Press, Washington, D.C., 2006, pp. 145–170; Miller, A. R. 2001. *Valuing Open Space: Land Economics and Neighborhood Parks*, Massachusetts Institute of Technology Center for Real Estate; *Measuring the Economic Value of a City Park System*, Peter Harnik and Ben Welle, The Trust for Public Land, https://www.tpl.org/sites/default/files/cloud.tpl.org/pubs/ccpe-econvalueparks-rpt.pdf

For example, in 2012, the ACOE Detroit District considered the "assessed value" of property in the Calumet Harbor area.[19] It looked at the assessed value of properties presumed to be protected by the Calumet Harbor Breakwater, an area of Lake frontage running from just beyond the northern boundary of Steelworkers Park to the Indiana boundary of the Stateline Power Plant parcel in Indiana, an area that includes the proposed CDF extension and expansion location. Based presumably on 2012 era Cook County property tax assessments, ACOE calculated the cost of creating a 100, 250, or 500-foot setback or buffer zone along the Lake Michigan shoreline in that area.

ACOE calculated that the unimproved land assessed value ranged from $13.9 to $18 million and the assessed value with improvements ranged from $90.9 to $95 million.[20] But, because publicly-owned properties are not assessed property taxes in Cook County[21] these valuations would not have included the value of the Chicago Park District land within that area, including the CDF location, Steelworkers Park and Calumet Park, which compose approximately half of the Lake frontage within the area included in ACOE's valuation. Thus, we must assume that ACOE's total valuation would be doubled if the park land were included and valued at the same rate as the other properties in the area. Further, Cook County assessments for industrial and industrial redevelopment property beginning in 2009 were based on 10% of the "fair market value."[22] (East Chicago, Indiana rates in Lake County at that time were 6.6% of market value.[23]) Thus, using the ACOE 2012 numbers and adjusting them for these factors (assuming a 10% assessed value rate), the overall value for a 500 ft. swath of Lake Michigan frontage across this area would range from $360 Million for the undeveloped land to $1.9 Billion for the land with improvements.

To find the "fair market value" that could be attributed to the 45 acre CDF parcel based on the Detroit District's approach, we need to make some estimates based on the map provided in the Detroit District's "Harbor Structure Inventories" which depicts the various setbacks on the shoreline. It appears from that map that the CDF parcel comprises approximately 1/5 of the 500-ft setback swath covered by ACOE's valuation. It also appears that the frontage swath covers only half of the 45-acre land mass of the CDF parcel. Based on this map and the assessed value rates, the "market value" of the full 45-acre Iroquois Point real estate can be calculated to be $144 million if the property were classified as undeveloped industrial land and up to $760 million if the property were classified as improved. While these numbers may appear high, they are not inconsistent with the value of this land using other valuation approaches.

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19 https://www.lre.usace.army.mil/Portals/69/docs/Navigation/RiskCommunication/Calumet%20Harbor.pdf
20 Harbor Infrastructure Inventories, Calumet harbor, Illinois and Indiana, U.S. Army Corps of Engineers, Detroit District, 2012
21 https://www.civicfed.org/sites/default/files/100405_CookCountyAssessmentPrimer.pdf. See p. 25.
22 https://www.civicfed.org/sites/default/files/100405_CookCountyAssessmentPrimer.pdf. See p.
23 http://www.stats.indiana.edu/dms4/propertytaxes.asp

For example, "replacement cost" is sometimes considered when reliable market values for similar properties are not available. Compensation is then measured by the cost of the necessary substitution of land and improvements, without depreciation, having the same utility as that taken. But a replacement 45-acre Lake Michigan parcel suitable for a park serving this community does not exist. This lack of comparable or substitute property only underscores the fact that this parcel is not only valuable as lakefront property, it is extraordinarily valuable as a very rare large parcel of lakefront land suitable for a public park.

Daniel Stevens, a planner and real estate consultant, in his article *Got Land? Six Ways to Value the Economic Benefits of Parks & Open Space*[24], offers a different approach to capture the value of this type of public property in his outline of 6 ways to quantify the economic benefits of park land and open space. His approach quantifies the benefits of park and open land in terms of jobs[25], tourism[26], property values[27], natural goods and services[28], health benefits[29], and direct use benefits[30]. Using this public park economic benefits approach to quantifying the value of 45-acres of Lake Michigan lakefront park land, we would posit that the overall quantifiable economic benefits of utilizing this real estate as a park as intended by the General Assembly is in the hundreds of millions of dollars.

But none of these approaches actually captures the true value of this unique parcel. As ACOE itself notes, Friends of the Parks designated this 45 acres as one of ten priority endangered parks and open spaces in the Chicago area. It is the link to Calumet Park and one of the last significant gaps in the continuous lakefront park on the south side of Chicago. Since 2006, the recovery of this lakefront as a park has been a part of Friends of the Parks Last Four Miles Initiative which seeks to complete Daniel

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24 April 13, 2016, https://www.camoinassociates.com/got-land-six-ways-value-economic-benefits-parks-open-space

25 Mr. Stevens cites a study finding that the national economic impact of local and regional park agencies operation and capital spending on local and regional public parks was 999,000 jobs, $43.8 billion in salaries and wages, and $139 billion in economic activity.

26 Mr. Stevens cites a study that looked at two youth sports tournaments in Traverse City, Michigan which found that 319 teams participated with 5,551 athletes and 17,400 total attendees. Non-local families spent nearly $1,000 during their stay. The direct spending in the region from these families amounted to $3.4 million, not including the indirect economic impact as these dollars circulated throughout the economy.

27 He cites research finding that community parks can provide benefits up to 33% of the residential real estate value and that the positive impacts of a community park. This also results in increased municipal property tax revenues.

28 Mr. Stevens gives the example of the air quality benefits attributable to New York State's urban and community trees which remove 434 metric tons of Carbon Monoxide, 15,825 metric tons of ozone 3,269 metric tons of sulfur dioxide, and 1.6 million metric tons of carbon from the air. The total value of air pollution removal was estimated to be $302.5 million annually (in 2000 dollars).

29 Mr. Stevens points to a Trust for Public Land study that found Sacramento City residents who "engage actively enough in parks to improve their health" saved a total of $19.9 million annually.

30 Mr. Stevens relies on "U.S. Army Corps estimates values for different types of recreation with general activities ranging from $4 to $12 per day and specialized recreation ranging from $16 to $46 per day and ACOE's conclusion that when the full range of activities and visitation to park systems is considered, park systems have been shown to have direct use values in the hundreds of millions annually to the local residents they serve." http://planning.usace.army.mil/toolbox/library/EGMs/EGM16-03.pdf

Burnham's 1909 plan for the entire Chicago lakefront to be publicly accessible lands and parks.[31] As such, its value is actually priceless. Its high value clearly makes it cost-prohibitive under a proper cost-benefit analysis of ACOE's alternatives. Indeed, its high social value underscores the need to return this property to the public for development of the long-awaited park as quickly as possible.

ACOE's argument is that the land involved here did not exist before it created the existing CDF on the Lake Michigan lakebed. That argument ignores the fact that ACOE does not own this land; CPD does. It also ignores the fact that the bargain ACOE and the State, the City and CPD entered into when they agreed to allow the construction of the existing CDF on this 45 acres of lakebed was that the ACOE would occupy this land for only 10 years and that the newly created upland would be turned over to the CPD for the creation of a park. In fact, if anything, ACOE owes CPD and the people of Chicago fair compensation for its continued occupation of this valuable public trust property going back to 1992.

B. ACOE Fails to Include Elements of the Construction Costs

ACOE has long proposed the same two-tiered disposal structure would be built on any of the alternative sites it considered, but admits that it still doesn't know what the actual construction costs for this massive structure will be. For example, in Appendix D – Geotechnical Engineering, at p. 16, ACOE states:

> "This configuration would allow for greater storage capacity, smaller berm footprint, and less berm material required. However, the two-stage concept will require additional effort during placement of dredged fill and prior to construction of the second berm, and it is unlikely the second berm can be founded on dredged material without any ground improvements. At this time, it cannot be determined what methods would be most appropriate as it is unknown how quickly and thoroughly the dredged material will dry, the compressive strength the material can achieve, and how much settlement can be expected."

The fact that "it is unlikely the second berm can be founded on dredged material without any ground improvements" and ACOE does not know at this late date if that is actually feasible, dependent on "how quickly and thoroughly the dredged material will dry, the compressive strength the material can achieve, and how much settlement can be expected" is not only frightening, it makes it clear that all of the costs of this CDF design, a design that is necessary to vertical expansion, have not been included in the cost-benefit analysis by which ACOE determined the vertical expansion is the "least cost alternative".

C. ACOE Understates the Operational Costs at the Lakefront Location

[31] https://fotp.org/wp-content/uploads/2015/12/L4M-brochure-2009.pdf

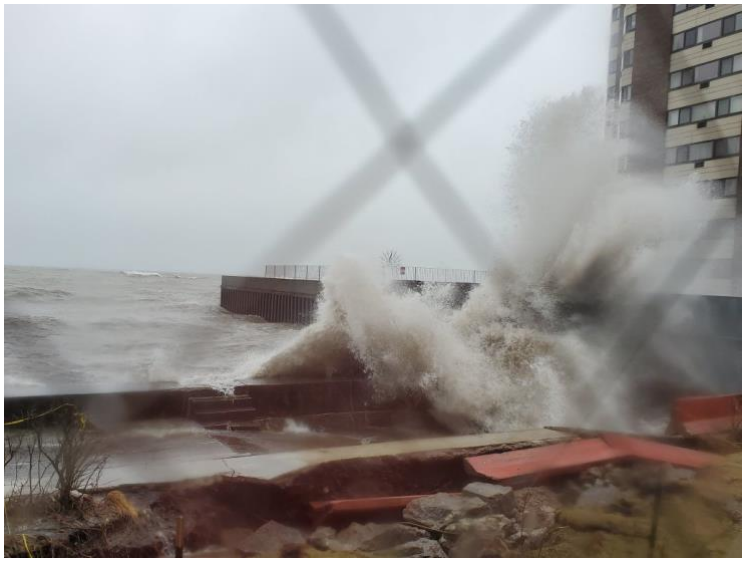
a. **Higher Costs for Dredge Management Operations on the Lakefront**

As discussed above, the DMMP/EIS fails to include the additional cost attributable to ACOE's selected option for preventing contamination of the waters of Lake Michigan during dredge unloading, storing, drying and dewatering, placement, capping and cover operations at ACOE's selected location.

ACOE suggests that this is not an issue because these operations will be set-back from the rubble face of the structure. But the schematic provided shows an enormous uncovered air-drying pad and very large recovered liquids and stormwater pond will be located on the top of the facility and exposed to both normal winds, rain and snow and sever weather events. It also shows an open ditch collecting contaminated stormwater running along the edge the entire facility that will be exposed and even overwhelmed by wave action during storm events.

Given 10-foot to 23-foot high waves, a record breaking rise in water levels, and the ferocious storm events that have been witnessed on the Chicago lakefront over recent years, ACOE's assurances on this have limited credibility with the public. Recent Lake wave and surge action has overwhelmed boulder revetments, destroyed seawalls, eroded the land and deformed concrete sidewalks and structures behind them. This includes ACOE installed shore protection structures and improvements at locations on the north and south sides of the City.

Below is a 2020 photograph of waves overtaking a seawall and eroding the land and toppling concrete structures behind it. This is in South Shore– approximately 2.5 miles from the CDF location.



Below is a photo of the Northerly Island concrete sidewalk and bike path, thought to have been protected by an ACOE-installed boulder revetment, but which collapsed due to wave action and erosion in the winter of 2016. Northerly Island is located approximately 10 miles from the proposed site of the expanded Calumet Harbor CDF.

Collapsed concrete biking and walking path, Photo via Gary Wilson

Below is a photograph of waves pounding the shore at La Rabida Children's Hospital at 6501 S. Promontory Drive in the winter of 2020. This is approximately 3.5 miles from the proposed CDF location.

In fact, the proposed CDF has been identified by ACOE itself as among the highest at-risk locations in Illinois for damage due to severe Lake action.[32] Yet, despite the fact that its proposed CDF operations at the 98th Street lakefront location are clearly at risk, ACOE has attributed *zero costs* to the fortifying the boulder revetment and covering, enclosing and otherwise protecting its proposed operations at this location from this type of wave and storm action.

2. <u>Higher Costs for Stormwater Management Due to the Proposed Vertical Construction of the CDF at the Lakeshore Location Must Be Included</u>

Reports provided to Friends of the Parks by ACOE in response to a 2019 Freedom of Information Act request document that stormwater releases from the existing CDF have contributed to elevated levels of contaminants in the surrounding Lake Michigan waters.[33] This was with a flat CDF structure. Given the increased height, steep slope and dramatic increase in surface area of the proposed vertical expansion, there can be no question but that the volume and velocity of stormwater run-off from this new structure will dramatically increase. The increase number and intensity of storm events noted above will add to this problem.

Clearly stormwater runoff will be a significant management problem for ACOE during operations and thereafter and in perpetuity for the Chicago Park District. Yet *zero costs* are attributed to increased stormwater volumes, velocity and management issues posed by the chosen CDF vertical expansion option and the higher environmental risks posed by stormwater mismanagement at this environmentally sensitive location. The CMMP/EIS does not address how ACOE will manage this increased run-off to avoid Lake

[32] *Id.* ACOE 2012 Harbor Infrastructures Inventory – Calumet Harbor
[33] See Friends of the Parks, Aug. 1, 2019 Comments.

contamination during operations or how CPD is expected to manage this problem post-closure. Among other things, the cost of covering ACOE's storage areas, drying pads and ponds against severe weather events and storm surge resulting in contaminated runoff during its tenancy must be addressed. The costs of capturing and containing and filtering this volume of runoff from the slope of the vertical CDF must also be included.

Finally, ACOE needs to explain how CPD can be expected to manage contaminated stormwater flowing off this vertical structure without continuing to operate the ditch system flowing with contaminated runoff and the stormwater pond and filtration system on park property. These increased long-term stormwater management costs attributable to this vertical expansion proposal must be included in any true apples-to-apples comparison of the costs of various alternatives.

3. Higher Costs For Proper Treatment and Disposal of Contaminated Leachate and Stormwater Runoff Must Be Included

For the other alternative CDF locations considered in the DMMP/EIS, ACOE assumes the cost of public sewer system disposal of contaminated stormwater and liquids from the dredge dewatering operations. Yet for the selected vertical expansion operation, ACOE assumes a public sewer system will not be used for the vertical expansion option and attributes *zero costs* to the discharge of these contaminated liquids into the Calumet River. Why? Because the public sewer does not run to the location of the selected site.

The decision to select a location where a public sewer treatment system is not available and deciding not to include the cost of running a sewer line to that location is inconsistent with ACOE policies implementing NEPA which requires a demonstration that the selected alternative is the "Least Environmentally Damaging Practical Alternative" ("LEDPA").

Discharging contaminated liquids to the Calumet River – even if the discharge meets NPDES standards - adds to the load of contaminants present in the river and flowing to Lake Michigan. Further, the filtering operation proposed by ACOE does not include equivalent treatment for contaminants as is provided by the sewage treatment plant. Thus, in the scoping process this location should have been eliminated as not the LEDPA.

Another way to look at this is: Why did ACOE determine it was necessary to route the discharge from the other alternative locations to the sewer system and presumably include the costs for doing so in the operational costs for those options? Each of those locations was located directly on the Calumet River and ACOE could have sought NPDES permits for the discharge to the river. By selecting sewer disposal

for those options and not the vertical expansion option, ACOE failed to perform a neutral comparison of the alternatives it had identified.

Alternatively, ACOE could have included the cost of running a sewer line to this location in the cost benefit analysis for vertical expansion alternative. An apples-to-apples comparison based on sewer use would reveal that the cost of liquids disposal via sewer for the vertical expansion alternative would be higher than for the other alternatives. But that is a cost attributable to the selection of that site. In addition to requiring selection of the LEDPA alternative, as discussed above, NEPA and ACOE policy require that ACOE treat all alternatives equivalently. By excluding these costs, ACOE also failed to include costs which are relevant to ACOE's dismissal of the dredge reduction and landfilling option as too expensive.

Finally, even if ACOE were not required to assume the same level of liquids treatment and disposal under each alternative, ACOE is required to include all the costs associated with the NPDES discharge option in the costs attributable to the vertical expansion alternative. This includes the operation and maintenance of the collection pond, filtering operation, permitting and compliance monitoring of that system during the expanded CDF's active life. Those costs are not identified in the DMMP/EIS. The DMMP/EIS attributes *zero costs* to liquids management at its selected vertical expansion location.

4. Long-Term Costs Must Be Included

In addition, *zero costs* are assigned to the vertical expansion option (or any of the other CDF options) for the long-term (i.e., perpetual) operating, maintenance, routine repair and remediation ("OMRR&R") monitoring, maintenance, repair and remediation for this waste disposal facility which the Non-Federal Sponsors will be required to finance in perpetuity. This includes zero costs for perpetual work to prevent and mitigate the inevitable erosion of the proposed 6 inches of clean soil "cover", any vegetation, and the 2.5 feet of "clean" dredge "cap" from exposing the highly contaminated dredge. It also includes zero costs for the rigorous program of stormwater management which the Non-Federal Sponsors will be required to finance to avoid, if possible, Lake contamination in the face of brutal Lake Michigan winds and waves surging over the foundation of this expanded structure.[34] It also includes *zero costs* for the the groundwater and surface water monitoring and the IEPA water permitting that the Non-Federal Sponsors will be required to pay for in perpetuity due to the location of this expanded facility.

[34] The DMMP/EIS states that the Chicago Park District will be responsible for post-closure OMRR&R for the TSP. This is new. Under the 1982 Access Agreement, the post-closure OMRR &R responsibility and costs were to be borne by the International Port District, not the Chicago Park District.)

In addition to the costs for Operation, Maintenance, Repair, Replacement, and Rehabilitation ("OMRR&R") being newly foisted on the Chicago Park District[35], CPD and Chicago taxpayers will also be left with the long-term liability for this site that the ACOE itself seeks to avoid. The risks and liability that already exist for the 1984 CDF structure are increased by ACOE's proposed decision to place another 1.3 million tons of dredge on top of the existing CDF. In any commercial context, these risks and liabilities have a cost and would be quantified and factored into the price of any lease of property. That should be the case here as well.

ACOE has externalized these Non-Federal Sponsor costs and liabilities and does not include them in any of its cost-benefit analysis supporting its selection of the vertical expansion as the "least cost" alternative. It is not an answer to say ACOE externalized the post-closure costs for all of the CDF options it considered. These costs must be made transparent and included for each option in order to legitimately compare them and also in order to compare any of the CDF alternatives to the Non-CDF alternatives, e.g. sedimentation reduction, beneficial reuse maximization, and use of a permitted landfill, as Friends of the Parks and others have been proposing for many years. NEPA, ACOE policy and good planning and decision making for the CAWS and the Region require this transparent and equivalent cost-benefit analysis.

5. Summary of Deficiencies in ACOE's Cost/Benefit Analysis

In sum, the Vertical Expansion option is only claimed to be less costly than others considered (and others not considered) because ACOE's cost/benefit analysis fails to include the full costs associated with this option. Specifically:

1) ACOE attributes no cost to taking lakefront, public trust park land for another 25 years and destroying the possibility of its use as a park in the future;

2) ACOE fails to include the increased costs for ensuring its operations do not pollute Lake Michigan during the operating life of the project, including the expensive monitoring required to demonstrate compliance with the stringent Lake Michigan Basin Standards;

3) ACOE failto include the increased long-term costs and liabilities borne by the Non-Federal Sponsors and taxpayers in perpetuity to maintain this vertical structure and ensure it does not pollute Lake Michigan or become structurally breached or even catastrophically collapse due to its location in a lakefront flood and surge zone;

[35] The DMMP/EIS states that the Chicago Park District will be responsible for post-closure OMRR&R for the TSP. This is new. Under the 1982 Access Agreement, the post-closure OMRR &R responsibility and costs were to be borne by the International Port District, not the Chicago Park District.)

4) ACOE fails to consider the lower costs associated with reducing the volume of dredged material to be disposed of by: a) reducing the overall volume of dredging required by working with the City, County and State to reduce sediment run-off to the Calumet River and Cal Sag; and b) maximizing the beneficial use of the cleaner dredge at other non-contact locations.

Additionally, as discussed above, ACOE provides no cost analysis for its rejection of the landfill option for safely, permanently disposing of the highly contaminated dredge remainder at a properly designed and permitted landfill, after maximizing dredge reduction options.

III. The Vertical Expansion Alternative Will Contribute to the Further Degradation of Waters of the United States

ACOE's Guidelines for dredge disposal siting provide that "no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States." *Id.* This alone should be the basis for excluding continued use of the CDF Lake Michigan Calumet Harbor location which is listed as an "impaired waterway" under the Clean Water Act Section 303(d) due to the high levels of PCB and Mercury found in fish in Calumet Harbor surrounding the CDF. But the DMMP/EIS never recognizes the fact that this 1984 structure is already polluting Lake Michigan[36] and never analyzes this risk or quantifies the potential costs of that pollution and the potential for further future pollution based on the expansion of this site.

In 1997, ACOE reduced its operating costs by obtaining approval from Illinois EPA to stop monitoring for PCBs, mercury, arsenic, cyanide, lead, cadmium and other toxic metal contaminants in the groundwater and surface water surrounding the existing CDF. Two years later, on August 26, 1999, the Illinois Pollution Control Board adopted extremely stringent standards for the Lake Michigan Basin, including Calumet Harbor. 35 Ill. Admin. Code 302.501 *et. seq*. Yet ACOE never resumed monitoring for those contaminants. Minimally, the costs of resuming that critical monitoring must be included in the costs of the CDF vertical expansion alternative based on the Lake Michigan Basin standards. But more importantly, the pre-1997 monitoring of the CDF effluent discharge, groundwater and Calumet Harbor monitoring have shown levels of PCBs and mercury that indicate the CDF is contributing to exceedances of the Lake Michigan Basin standards right now.

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[36] See Friends of the Park's August 1, 2019 comments detailing the evidence that the existing CDF has been polluting Lake Michigan. As discussed there, ACOE's claim that the existing CDF has operated safely is not borne out by the water quality data, including fish studies and data from onsite groundwater wells and near shore monitoring wells.

In light of USEPA's 2019 approval of the Calumet Harbor Total Maximum Daily Load ("TMDL") listing for PCB and Mercury, any future Clean Water Act permits for the Lake Michigan CDF site will have to contain a limit of *zero* for discharges of PCBs and Mercury from the CDF to Calumet Harbor.[37] The expensive monitoring costs (during the active life of the vertical expansion and thereafter in perpetuity) to verify that there are *zero* releases of these toxics from the CDF, as well as the question of whether the continued operation of the existing CDF and the proposed expansion of the CDF can ever actually achieve a zero PCB and Mercury discharge limit, must be scrutinized in this DMMP/EIS.

Because past monitoring shows that the existing CDF which will be the foundation of the vertical expansion has not complied with these critical, very stringent water quality standards, a vertical expansion and placement of another 1.3 million cu. yards of contaminated dredge at this site meets neither the Federal Standard articulated in the Rivers and Harbors Act (which requires compliance with all state and federal environmental laws) nor ACOE's requirement for the selection of the "Least Environmentally Damaging Practicable Alternative".

To avoid these prohibitions, ACOE continues to take the position that Lake Michigan is not a natural resource. It also disingenuously argues that the existing CDF has operated safely and in compliance with law, while never referencing the stringent Lake Michigan Basin Standards for PCB and Mercury or many exceedances of those limits shown in its own past water quality monitoring. By failing to undertake a monitoring regime designed to determine if toxic contaminants are being released to Lake Michigan, as required by Congress in 1988[38], ACOE has failed to provide evidence that would support its conclusion that the CDF has operated "safely" and has also failed to protect the Lake, its habitat, the water supply the City relies upon, and the Environmental Justice communities that use the neighboring beaches and harbors.

The environmental risks associated with this option, including both the risk of increasing releases of toxic contaminants to the Lake and of a partial or complete catastrophic collapse of the new mountain of toxic dredge into the Lake, must be accounted for in the DMMP/EIS. The cost of contaminating a premier natural resource -- Lake Michigan's drinking water, its beaches and wildlife habitat – is incalculable. That is why NEPA and ACOE guidance require that federal projects not be located where there is a risk of significant adverse impacts to a natural resource.

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[37] Several other IEPA permits for facilities located on the Lake Michigan shore include a prohibition on the release of any PCBs to the waters of Lake Michigan. See IEPA NPDES Permits for the Zion and Winnetka power plants. The Pollution Control Board's Lake Michigan Basin standards, which formed the basis of USEPA's approval of the Illinois TMDL for PCBs and Mercury in Calumet Harbor, impose limits on the discharge of PCBs mercury that are many degrees of magnitude below detection limits. Thus, the limit for discharge of these pollutants to the Lake Michigan Basin is deemed to be zero.

[38] See Section 123(k) of the River and Harbor Act of 1970 (33 U.S.C. 1293a), Public Law 100-676 November 17, 1988.

IV. ACOE Fails to Properly Analyze Climate Change Impacts for the Various Alternative

Section 4.5 of the DMMP/EIS titled "Climate and Climate Change" focuses entirely on the purported climate benefit of dredging versus the "no action" (or no dredging) alternative. Specifically, ACOE focuses on the purported reduction in GHG emissions attributable to barge transportation v.s. land transportation as a benefit of dredging the port. DMMP/EIS p. 36

But the issue to be evaluated in this DMMP/EIS is not simply whether or not to dredge, but whether future dredge volumes can be reduced by best management practices and how and where future dredge will be managed.

ACOE entirely fails to address the risk to the structural integrity of the lakefront CDF structure presented by rising waters of Lake Michigan and the increase in severe storm events that have been pounding Chicago's Lake Michigan shore in recent years. In "climate change" jargon, the *resiliency* of the proposed 25 ft high dredge containment structure in the face of climate change impacts is never analyzed. This is particularly troubling because this new vertical disposal unit is proposed to be built directly on Lake Michigan and on top of a 1984 structure sitting on the Lake Michigan lakebed which was never intended for this new use.

An explanation of how ACOE will ensure the resiliency of its proposed vertical expansion of the CDF is required by *Executive Order 13653 - Preparing the United States for the Impacts of Climate Change*. E.O. 13653 requires all federal agencies to "complete an inventory and assessment of proposed and completed changes to their land- and water-related policies, programs, and regulations necessary to make the Nation's watersheds, natural resources, and ecosystems, and the communities and economies that depend on them, more resilient in the face of a changing climate."

E.O 13653 further requires "program and policy adjustments that promote the dual goals of greater climate resilience and carbon sequestration, or other reductions to the sources of climate change." Section 5 of the Executive Order requires federal agencies, including the ACOE to develop Agency Adaptation Plans, which include:

> "[iv] a description of how the agency will consider the need to improve climate adaptation and resilience, including the costs and benefits of such improvement, with respect to agency suppliers, supply chain, real property investments, and capital equipment purchases such as updating agency policies for leasing, building upgrades, relocation

of existing facilities and equipment, and construction of new facilities; …"

Further, the Department of Defense ("DOD") *Climate Change Adaptation Roadmap*[39], adopted in 2014, makes it clear that the ACOE is required to consider the vulnerability of the CDF to the impact of rising Lake Michigan waters and increases in violent storm surge threatening the CDF's structural integrity.

The Roadmap states:

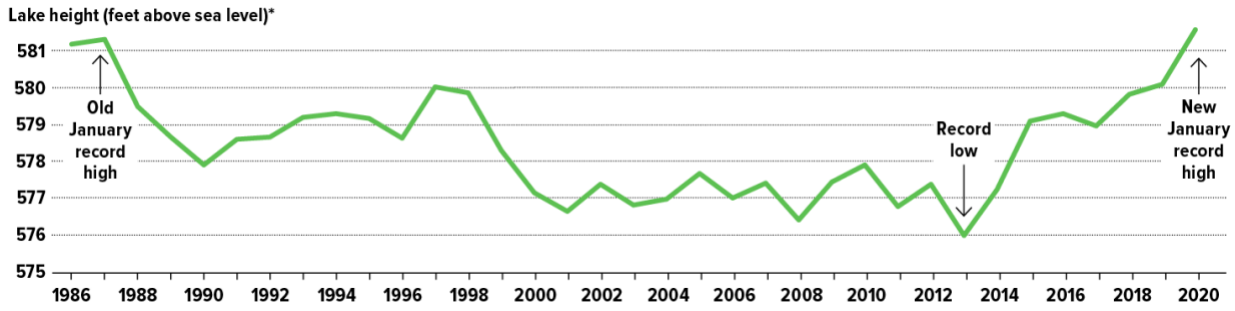
> "A changing climate will have real impacts on our military and the way it executes its missions…Our *coastal installations are vulnerable to rising sea levels and increased flooding*, while droughts, wildfires, and more extreme temperatures could threaten many of our training activities. Our supply chains could be impacted, and *we will need to ensure our critical equipment works under more extreme weather conditions*. Weather has always affected military operations, and as the climate changes, *the way we execute operations may be altered or constrained*." [emphasis added] *Id.* Introduction, p.1.

E.O. 13653 and the DOD Roadmap require that ACOE explain why climate change, as manifested in the rising lake waters and increasing severe storm events, does not present a risk to ACOE's selected alternative and to the surrounding Lake Michigan waters and ecosystem and NEPA requires that the costs required to harden the vertical CDF against these threats be included in the EIS cost/benefit analysis for this alternative. ACOE has failed to do either of these things.

In addition to not explaining in the text of the DMMP/EIS its proposals and the associated costs for hardening the vertical CDF in the fact of severe weather and Lake rise, ACOE also makes only a passing reference in Appendix H to "record lake levels may result in need for maintenance /repair of rubble mound to protect against higher stage wave action" as being "possible." With the exception of that one statement, Appendix H focuses entirely on the benefits of dredging shipping lanes to reduce greenhouse gases from trucking. This is not a serious climate change risk or resiliency analysis.

Indeed, ACOE's own records demonstrate that the waters of Lake Michigan are at record highs, have risen dramatically since 2013.

[39] https://reliefweb.int/report/world/department-defense-2014-climate-change-adaptation-roadmap



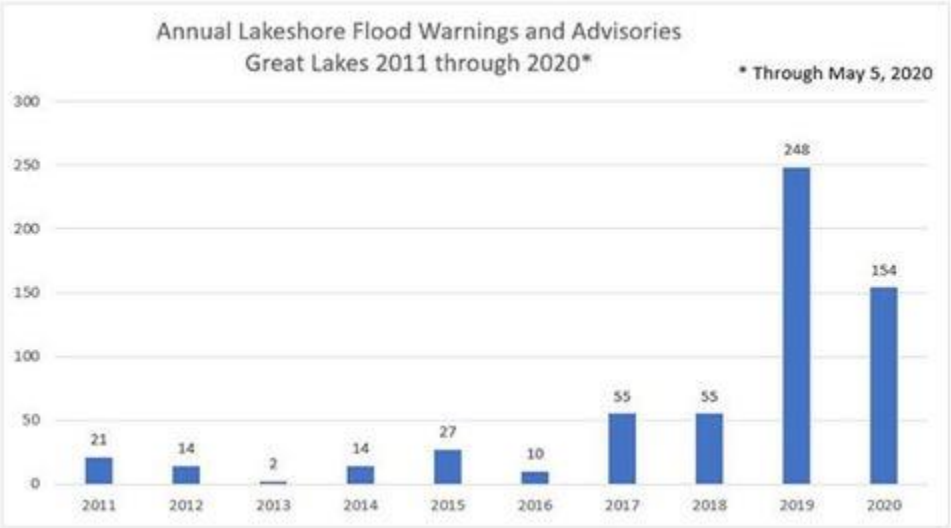
*January average SOURCE: U.S. Army Corps of Engineers

There is also abundant evidence that these rising waters coupled with an upsurge in severe weather events are wreaking destruction on the Chicago shoreline, including overwhelming and destroying seawalls and boulder revetments installed by the Corps.

- In October 2019 it was reported that the City would seek a $45 billion capital spending bill to conduct short-term infrastructure repairs and that Federal assistance would be needed to enact longer-term solutions like constructing eight additional miles of revetments.

- In February 2020, the Governor of Illinois issued a state disaster proclamation and the Mayor of Chicago declared a National Emergency. Together they sought federal relief to address $37 million in damage to the Cook County shoreline.

While federal funding has not been forthcoming, severe weather has continued to batter the Lake Michigan shore.



Scenes like the one below of crashing waves and of beaches and park land eroding, Lake Shore Drive being inundated and closed down, jogging and bike paths being destroyed, and buildings being inundated appear on Chicagoans' televisions regularly.

Yet the DMMS/EIS downplays the risk of severe storm surge events adversely impacting the proposed CDF expansion based on the existence of the 1934 Calumet Harbor Breakwater. ACOE relies on a 1995 study that discussed wave climates and littoral drift to conclude that "waves generated by large storms are attenuated and/or blocked by the outer breakwaters of the Calumet Harbor. This provides a relatively calm aquatic area with the harbor." [40]

But it is well-known that the breakwater is in need of continual expensive repairs due to its age and severe water and storm conditions. A 1984 study found that the breakwater was in a state of structural failure.[41] In 1991, a University of Iowa Master's Dissertation focused on the condition of the Calumet Harbor Breakwater and concluded it "is in imminent danger of failing" and that higher Lake levels would increase the stress on the structure.[42] Based on an August 19, 2010 site visit, ACOE itself concluded that the impact of a breach and/or overtopping of the breakwater could impact the "Chicago Confined Disposal Facility" and that "[o]ther shore structures subject to inundation include the Illinois International Port District – Iroquois Landing." At that time, ACOE recognized the need to rebuild the breakwater:

[40] See DMMP/EIS Climate Change Section.

[41] https://www.onepetro.org/conference-paper/ISOPE-I-92-388

[42] https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=18589&context=rtd "The previous discussion of damage evaluation indicates that the structure is in imminent danger of failing. An exact prediction of when an actual failure event may occur is difficult because the return period for the most severe loading on the structure is unknown. The most probable prediction is that the failure can be expected during the next severe storm." Id. at p. 116.

> "The detached breakwater is the harbor's primary shield. Its condition is poor, having lost 6-10 inches of protective height, and there is a high probability of failure due to steel fatigue from over 75 years of service. Two breaches have previously occurred - both were large and expanded rapidly. Repairs to this structure continue, and will be completed by FY12."

In 2011-2013, ACOE sought $1-2 MM/yr for repairs of the Calumet Harbor Breakwater. ACOE is now planning to repair the breakwater at several locations of severe damage by the end of 2021. But, ACOE photographs of the breakwater show not only severe damage at some locations, but also that the entire breakwater lies very low in the Lake at current lake levels.[43] Given these ongoing structural issues, it is not at all clear that the Calumet Harbor Breakwater can ameliorate the impact of the predicted increase in high water levels and severe weather events on the proposed vertical CDF.

Calumet Harbor lake levels have risen dramatically – 5.5 feet since their low in January 2013.[44] Lake Michigan water levels have been recorded at Station 9087044 located at Calumet Harbor, IL, since 1905. (NOAA 2013) Water levels between 1969 and 2014 ranged from 176.13 to 176.93 IGLD.[45] But by January 2020, Lake Michigan lake levels were far higher -- averaging 581.6 feet above sea level, breaking the previous record for January set in 1987 by three inches and rising 5.5 feet above its lowest January average set in 2013.[46]

ACOE acknowledges record high Lake Michigan waters in the EIS and is well aware of the battering the Chicago shoreline and the Calumet Harbor Breakwater are experiencing. Indeed, ACOE is a major player in the regional planning efforts to address the impact of these rising waters and severe weather events on Chicago's shoreline. Thus, it is inexplicable why the DMMP/EIS provides no analysis of the risks this poses to the integrity of the expanded lakefront CDF alternative and to the Lake, beaches and surrounding ecosystem. Again, this is a glaring deficiency in light of ACOE's decision to build this 25 ft high /1.3 million cu. yard expansion on a 1984 structure which literally sits in the lakebed of Lake Michigan and within a FEMA lake surge floodplain.

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[43] See photographs accompanying ACOE's April 28, 2020 Application to IDEM for a Section 401 Water Quality Certification.

[44] http://www.chicagomag.com/Chicago-Magazine/April-2020/Lake-Michigan-Comes-for-Chicagos-Waterfront-Real-Estate/

[45] ERDC/CHL TR-18-3 *Nearshore Placement Techniques in Southern Lake Michigan*, March 2018, https://apps.dtic.mil/dtic/tr/fulltext/u2/1050543.pdf

[46] http://www.chicagomag.com/Chicago-Magazine/April-2020/Lake-Michigan-Comes-for-Chicagos-Waterfront-Real-Estate/

ACOE's complete failure to perform any analysis of the impact of Lake Michigan's rising waters and increases in severe storm surge on its proposed construction project is a glaring deficiency in the EIS and is also a violation of Executive Order 12653 and the Defense Department's own policies.

V. ACOE's Proposal Violates the Public Trust Doctrine and the Illinois Legislation Authorizing the Use of The Lakebed for the Original CDF

The DMMP/EIS reneges on the ACOE's 1982 promise to the people of the State of Illinois and Chicago's Southside communities to return this public trust land to the public. Under the Public Trust Doctrine, the ACOE cannot create a *de facto* permanent waste disposal site on Chicago's lakefront. Furthermore, the 1982 General Assembly authorization for ACOE's use of this land did not contemplate occupation beyond 10 years and did not contemplate an expansion of that use once the CDF was filled or the occupation of any additional public trust lakebed to accomplish such an expansion.

The Public Trust Doctrine was established over 100 years ago in the landmark case *Illinois Central Railroad Co. v. Illinois,* 146 U.S. 387 (1892) which focused on the construction of a railroad on the very Chicago Lake Michigan shore at issue here. The United States Supreme Court in *Illinois Central* held that neither the State of Illinois nor the City of Chicago could transfer the public's inalienable rights in the public trust lakebed to a private party – even though the railroad to be constructed arguably had social benefits for the City and the Region. Since that time, there have been a number of Illinois and federal cases making it clear that uses benefiting private industrial operations and excluding the public do not fall within the scope of uses permitted on the public trust shore. *Paepke v. Public Bldg. Comm.*, 263 N.E.2d 11, 15 (Ill. 1970) A waste disposal facility, designed to benefit private owner/operators of industrial facilities along the CAWS, does not fall within the scope of public uses for which the shore is held in trust. Further, allowing 60+ years and possibly indefinite occupation of the public trust shore by such a disposal facility to the exclusion of the public certainly cannot be considered a minor or temporary imposition on the public trust.

There can be no question that the CDF is public trust land and that its use and the public's right to use it are governed by the now well-developed legal concepts of the Public Trust Doctrine discussed above. It was built on the Lake Michigan lakebed.[47] In fact all the parties to the intergovernmental agreement allowing the ACOE access for the construction and operation of the CDF implicitly and

[47] "The Chicago Area CDF was built out into Lake Michigan at the mouth of the Calumet River in 1984, with the Illinois International Port District (IIPD) Iroquois Landing site as its western boundary and the Illinois- Indiana state boundary as its eastern boundary." DMMP/EIS Executive Summary, p. 2.

explicitly acknowledged the application of the Public Trust Doctrine to this property by requiring state legislation as a pre-condition to proceeding with the implementation process – though even that legislation did not transfer title to the State's public trust property to federal government and could not extinguish the inalienable public trust. Recognizing that this was public land, Illinois EPA, in issuing the CDF's initial 5-year permit on June 15, l982, required both state and local implementing legislation.[48] The intergovernmental agreement ("IGA") regarding the CDF between the United State of America (ACOE), the Illinois International Port District and CPD was entered into July 13, 1982, two weeks after the approval of the enabling legislation. The State implementing legislation came into effect on June 29, l982 (An Act in relation to the transfer of state and private lands to public recreational entities," Public Act 82-770, June 29, 1982.). (The Chicago Park District and the Port District also passed enabling acts or resolutions.).

The intent of the ACOE at the time was summarized in an unpublished report prepared by the Illinois Department of Transportation Division of Water Resources dated December 10, 1984: "After an extensive environmental assessment, the Corps concluded that a lakefront site was the most environmentally and economically acceptable, and would provide for a major addition to Calumet Park operated by the park district, when the site was filled."[49] (*emphasis added*). If this language is interpreted to allow ACOE to expand the CDF facility beyond its original intended capacity to accommodate more and more dredge, the park addition to Calumet Park, which was the justification for allowing ACOE's use of the public trust property in the first place, will never be provided.

Although there may be an untested argument that the public trust doctrine allowed the 1982 "trade-off" of allowing the occupation of this lakebed property in exchange for ACOE being allowed to construct and operate the original CDF for a limited number of years, that "deal" clearly requires that the terms that the State as Trustee legislated be adhered to. No reading of the history and documentation for the CDF as embodied in its enabling legislation allows any conclusion other than that the CDF be closed and become an operating park space upon the CDF's filling. The ACOE has acknowledged that the CDF is filled. It is now incumbent on the State as Trustee to insure that this intended dedication be implemented. In *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 490 (1970)**,** Professor Joseph Sax, a renown public trust expert, emphasizes this point quoting a case in the Ohio Supreme Court:

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[48] "Prior to construction or operation of this facility, legislation must be approved to allow the use of this area as a dredged material confined disposal facility." (1982 IEPA Div. of Water Permit, Sec. 8).

[49] Neil R. Fulton and Daniel A. Injerd, *Lake Michigan and the Public Trust: Its History and Application in Illinois*, Ill. Dept of Transp. – Div. of Water, Dec. 10, 1984, p.25 (hereinafter "Injerd")

> "The state as trustee for the public cannot by acquiescence abandon the trust property or enable a diversion of it to private ends different from the object for which the trust was created." *Sax*, supra. 486 , citing *State v. Cleveland & Pittsburgh R.R.*, 94 Ohio St. 61, 80, 113 NE.677, 682.

The use of public trust land diverted for a time should not allow the Trustee to imperil the intended use of the land as park. Williams, Serena M., *Sustaining Urban Green Spaces: Can Public Parks Be Protected Under The Public Trust Doctrine?*, 10 S.C. Environmental Law Journal 23, 51 (2002)

In *People ex rel. Scott v. Chicago Park District*, 360 N.E.2d 773, 66 Ill. 2d 65 (Ill. 1976), one of several seminal cases developing the public trust doctrine following *Illinois Central Railroad Co.*, the Illinois Supreme Court observed that, "[i]t is obvious that Lake Michigan is a valuable resource belonging to the people of this State in perpetuity ... and any attempted ceding of a portion of it in favor of a private interest has to withstand a most critical examination." *Id.* The Court ultimately concluded that the conveyance of land to U.S. Steel could not withstand this critical examination.

Injerd reconciles that "filling in of submerged lands with polluted dredged material *may not seem to be in the public interest",* but found justification for the initial CDF on the ground that this project would "produce a number of public benefits", including "providing 45 acres of new parkland. " *Injerd,* pp.25-26 *(emphasis added)*. The park was initially intended by the legislation to come into existence after 10 years of operation of the CDF. We are now 38 years later, and the 1982 legislative promise is still unfulfilled. Surely the public trust doctrine requires a good faith execution by the various parties to the agreements surrounding and creating the CDF to timely implement their initial promises in exchange for creating the contaminated land fill and carrying out a use which was not in the public interest. The current proposal could keep the CDF from ever becoming the promised park.

The CDF authorized by the legislature has been full for some time although its use has been extended by unapproved additions of walls and without the required legislative authority for several years. It is troubling that the Water Resources Division of the Illinois Department of Natural Resources which has oversight of the CDF as its legislatively designated trustee under the Lake Michigan Shore Line Act (615 ILCS 55) has not ordered a halt to this iterative violation of the IAG. It is equally troubling that the Chicago Park District as owner of this "parkland" has not also stepped in to halt further efforts to extend the life of the CDF. Under 615 ILCS 5/26 the Attorney General of the State of Illinois or the Cook County State's Attorney have the power to bring suit to require that these unkept commitments be carried out.

In its multiple renewals of the water permit for the operation of the CDF, the Illinois EPA, has consistently reiterated that the parties to the CDF are required to implement the promise to make it functioning parkland at the end of the permitting period. The numerous extensions and modifications of the IEPA permits for the CDF are clearly in violation of the public trust doctrine as applicable to the CDF. The ongoing private use of CPD designated park land for industrial waste dredged from the CAWS for the benefit of adjacent industrial owners and operators flies in the face of the public trust doctrine requirements. Sax, *Supra.* ("When a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to reallocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.")

The initial enabling legislation, the IGA, and IEPA permit conditions constitute a contract under the public trust which the parties are long overdue in implementing. In fact, applying due process requirements to the various promises made regarding the limited life of the CDF now mandates that the CDF be made into functioning parkland without further delay. It is a public outrage for the Army Corps to propose another 25+ year violation of their contractual commitments. Nothing can justify this cavalier and egregious breach of the public trust. The stated rationale for creating the CDF was its conversion to parkland within 10 years. That promise has now been ignored for 28 years. There can be no doubt that the legislative intent was that this CDF become public park, if not within 10 years, certainly when the CDF "was filled." The facts demonstrate that the CDF has been full for some time. ACOE has publicly stated that the existing CDF has reached its maximum capacity and will be closed by 2022. ACOE cannot continue to occupy this public property thereafter under the existing legislation.

VI. ACOE's Proposed Extension and Expansion of Its Use of the Existing CDF Location Requires the Approval of the Illinois General Assembly As Well as the Chicago Plan Commission

The State of Illinois' legislative authorization for the existing CDF limited the ACOE's use of the State's public trust land as a dredge depository to 10 years. Sec. 123 of the Rivers and Harbors Act, as in effect at the time of that the Corps was granted authority to use this public trust land, expressly limited the use of CDF facilities to 10 years:

> "(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate and maintain, contained spoil disposal facilities (confined disposal facilities) of sufficient capacity <u>for a period not</u>

> to exceed ten years to meet the requirements of this section." 33 USC 1293a [*emphasis added*]

While the 10-year limitation on the ACOE's authority was subsequently modified in another Act[50], the State of Illinois relied on the 10-year limitation in Section 123 of the Rivers and Harbors Act in its concomitant 1982 State legislation, Public Act 82-770, which transferred the Lake Michigan public trust lakebed to the Chicago Park District. That legislation said it was "intended for the improvement of certain harbor and park facilities, in order to further the public interest and benefit navigation, including the construction, use and maintenance upon such land of a contained spoil disposal facility as *contemplated by Section 123 of Public Law 91-611*." (*emphasis added*) That statutory language does not include the phrase "as amended" and at that time, 1982, the General Assembly and all parties to the IGA understood the life of the CDF to be limited to 10-years. They rightfully assumed this property would be developed as a park when those 10 years had elapsed. The existing CDF has already been in construction, operation and maintenance for 28 years beyond its statutorily authorized life without being turned over to the CPD as contemplated by the Illinois legislation. Therefore, absent the Illinois General Assembly agreeing to delay conversion of this property to a park, the existing CDF must be closed and capped, and the CPD must begin planning for the expansion of Calumet Park onto this 45 acres of public trust land.

Further, the Illinois Public Act 82-770 and IGA on which it was based were limited to the 10 year occupation of *specific lakebed land*. ACOE cannot simply confiscate additional lakebed, as it proposes to do in this DMMP/EIS, without new legislative authorization and intergovernmental agreements permitting it to do so. Yet ACOE, after repeatedly saying that its proposed vertical expansion would remain within the footprint of the existing CDF, is actually proposing to take another 4.32 acres of public trust lakebed to expand its operations to build a new dredge transfer dock on the north face of the existing CDF. It is an outrage that ACOE hides this fact in an exhibit to an appendix to the Final DMMP/EIS. See Appendix G - Real Estate, Exhibit 7. There ,ACOE states that the fee simple land area owned by the CPD will be 51.63 acres, *4.32 acres of which will be new bottomland will be created by the project*.

> "The proposed loading dock would be considered within the fee simple footprint of the project as newly created bottomlands with title vested to the Chicago Park District." *Id.* at p. 5.

[50] See Section 24(a) of the Water Resources Development Act of 1988.

ACOE acknowledges that in order to build beyond the original footprint of the existing CDF it will need new agreements from the Non-Federal Sponsors, including the Chicago Park District. (*Id.* pp. 5-6) But it entirely fails to acknowledge that it will need new authorization from the Illinois General Assembly to take that public trust state-owned land for this extension and expansion – just as it needed legislative authorization in 1982. Right now it is indisputable that the Chicago Park District does not own that 4.32 acres of additional lakebed. Moreover, in the face of the significant public opposition to ACOE's proposal to extend and expand its operations on the current CPD owned property and the significant local and regional support for converting this property to the long-awaited extension of Calumet Park, we posit that the Illinois General Assembly is unlikely to grant ACOE this additional public land.

In addition to requiring the General Assembly's enactment of new legislation, ACOE's proposed extended, expanded and effectively permanent occupation of the Chicago lakefront is prohibited by the Chicago Lakefront Protection Ordinance, Chapter 16-4 – Lake Michigan and Chicago Lakefront Protection Ordinance, which requires Chicago Plan Commission approval of any sale or lease of Lake Michigan lakefront property in the City of Chicago. It expressly states:

> "It is unlawful for any physical change, whether temporary or permanent, public or private, to be undertaken, including, but not limited to, *landfill*, excavation, *impoundment*, mining, drilling, roadway building or construction of any kind, within the Lake Michigan and Chicago Lakefront Protection District or for any acquisition or *disposition of real property by a public agency, whether by sale or lease, or other means*, to be consummated within the Lake Michigan and Chicago Lakefront Protection District without first having secured the approval there for from the Chicago Plan Commission as provided in Sections 16-4-100 through 16-4-140 of this chapter." *Id*. Section 16-4-150

ACOE has not acknowledging the major stumbling block that the need for these additional critical authorizations presents for the timely implementation of its vertical and lateral expansion alternative. Even if this extension and expansion is ultimately allowed by Illinois legislators and the Chicago Plan Commission, ACOE has not included in its cost/benefit analyses the cost of the uncertainty and delay that this extension and expansion will entail or the cost of acquiring the 4.32 acres of additional public land, which as discussed above is highly valuable real estate. Including these costs will only further demonstrate that the vertical expansion alternative is not the "least cost alternative" and should have been rejected by ACOE at the outset of its planning process.

CONCLUSION

Chicagoans, such as the thousands of members of Friends of the Parks, who have followed with this dredge management issue for decades know that ACOE's proposal of the vertical expansion option was a "last minute" decision in 2019, borne out of the Corps' conclusion that "time's up" and that this proposal is the path of least public resistance. The record demonstrates that ACOE long rejected the idea of expanding the existing CDF and it was never included in the alternatives considered up until 2019. ACOE's use of out-of-date assumptions and improper standards, lack of analysis of all available alternatives and incomplete cost/benefit analysis, as well as ACOE's overall conclusory approach in this DMMP/EIS, are a testament to this being a rushed decision.

This hasty decision is driven by ACOE's own delays and its false sense of urgency based on outdated dredge volume estimates. ACOE's perceived dilemma is one of its own making. Its deficient plan and EIS are a result of ACOE's continuing short-sighted focus on dredging and disposal rather than root causes, volume reduction and maximizing productive use of dredge, coupled with its insistence on only considering the development of new disposal locations in Chicago's 10th Ward.

We call on the ACOE to go back to the drawing board, as required by NEPA, its own Guidelines, and the many additional standards, prohibitions and problems identified in our comments above. ACOE should utilize the time created by the current high water in lake Michigan and the Calumet River to work with the City, County, State and regional planning commissions and stakeholders to develop a 21st Century Chicago Area Waterways dredge management plan. That plan should include the enactment of statutory and regulatory requirements that will reduce the ongoing sedimentation of the Calumet River and Cal-Sag Channel over the next twenty years. It should enlist all state, federal and private sector resources to identify opportunities to maximize truly beneficial uses for the cleaner harbor dredge material. It should also require the proper and safe landfilling of dredge that is too contaminated to be beneficially used. All state and federal resources should be assembled to identify a permitted landfill with access near the Calumet or Illinois Rivers and the capacity to safely and permanently manage the reduced volume of contaminated dredge that requires disposal.

Time is up for the federal government using Chicago environmental justice communities as a dumping ground. Time is up for the use of the 10th Ward's long promised park land as a cheap lakefront dump. The existing CDF must be closed, capped and returned to the Chicago Park District for the creation of the long-awaited addition to Calumet Park as soon as possible.

Please contact me, at (312) 857-2757 or IrizarryJ@fotp.org with any further questions.

Respectfully Submitted,

Juanita Irizarry

Executive Director

From:	C. J. Barlow
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] omments on the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region
Date:	Monday, August 17, 2020 4:21:09 PM

I write in opposition to the proposed vertical expansion of the CDF. The recent letter sent by Friends of the Parks articulates a thoughtful and comprehensive position that I fully support.

The existing CDF must be closed, capped, and returned to the Chicago Park District for the creation of the long-awaited addition to Calumet Park -- immediately.

Respectfully,

Charlie Barlow
South Shore resident

From: Maria Hernandez
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Chicago Area Waterway System Dredged Material Plan,
Date: Monday, August 17, 2020 4:21:43 PM

Hello,
I am a lifelong resident of the far Southeast Side of Chicago. As a child, my summers were filled with family and friends at the lakefront and later riding my bike to and around the lake. The steel mills blocked a large portion of the area in both view and use. Although the steel industry brought wealth to our community, it left us with plenty of pollution. As the neighborhoods on the Southeast side struggle to clean up and prevent other companies from polluting even further, we are also struggling to survive. Building a park that connects Steelworkers Park to Calumet Park would allow more flow to the neighborhoods, and hopefully commerce. I truly believe that this area is a hidden jewel that is slowly being unwrapped. Please think of what Burnham, Olmsted and the architects who followed would do. Please think of the wonderful legacy that connecting these parks would leave. .

Maria Hernandez
If we continue to set human borders and the economy as our highest priorities, we will never come to grips with the destructiveness of our activities and institutions.

David Suzuki

From: maryahealy
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Calumet harbor dredging
Date: Monday, August 17, 2020 4:22:48 PM

Hello
As a resident of a near west suburb of chicago, an employee of a special ed program in the south suburbs, and a friend of a church in the south shore area I feel to continue storing what the sediment that is dredged up from the calumet harbor places people and the environment at a higher risk of exposure to toxic chemicals and pollutants. The containment of what is allready there is questionable. The quality of the lake water is at risk. With changing weather patterns and increasingly severe storms how does the army core of engineers intend on preventing leakage/runoff into the lake and surrounding community? Once leakage had occured it will tske decades if ever a d significant funds to repair the damage done. Raising the height of the materials stored there only increases the risk to the surrounding area. Having grown up playing in a playground that eventually became a superfund site I am very concerned with what may happen.
The best and safest use of this land is for the current materials stored there to be properly and safely removed. The land can then be developed as a public park.

Thank You
Maureen Healy

Sent from my Samsung Galaxy , an AT&T LTE smartphone

From: Hilary Mac Austin
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Comment on proposed CDF extension on the Southeast side
Date: Monday, August 17, 2020 4:23:47 PM

Dear ACOE

The 10th Ward is not dumping ground and that communities on the Southeast Side deserve their long-promised parkland. It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming. The 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of this transformation of the Southeast Side.

ACOE should be a part of this reinvigoration. Close the existing CDF and return those 45 acres of public trust land to the Chicago Park District for the long-awaited final link in the south side Lake Michigan park system. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low".

Please withdraw your proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a 21st Century plan for future management of sediment in the Chicago Areas Waterway System ("CAWS").

Thanks you.

Hilary Mac Austin

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Examining the Evidence: Seven Strategies for Teaching with Primary Sources, Maupin House by Capstone Professional

From: Norma Claire Moruzzi
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Chicago Confined Disposal Facility
Date: Monday, August 17, 2020 4:29:26 PM

To the Army Corps of Engineers,

I am writing to urge you to CLOSE the Confined Disposal Facility on Chicago's South Side and transform the area into public parkland. This was promised in the original agreement, and has already been delayed by decades.

Not only is this closure and reclamation for parkland the ethical thing to do, it is the only safe thing to do. This facility is barely feasible as it is; it makes no sense to expand it under current and foreseeable future environmental conditions. Rising lake levels are increasing the possibility of breach and leakage of toxic materials into the Calumet River and Lake Michigan, the main source of drinking water for millions of residents in Illinois and neighboring states.

Please fully evaluate non-CDF alternatives and do not expand the CDF.

Thank you,
Norma Claire Moruzzi
Chicago resident, taxpayer and voter

From: Kaara Kallen
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Do not expand the CDF on public trust park land!!
Date: Monday, August 17, 2020 4:29:56 PM

Hello,

I adamantly oppose ACOE's 2019 proposal to vertically expand the existing Confined Disposal Facility (CDF) on public trust park land on Chicago's Southeast Side along the Lake Michigan waterfront. This location should have been returned to public use by 1994 and has for decades been an area the local community wishes to and should have the right to develop as they see fit.

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, and the 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract
with the Chicago Park District and Chicagoans is a significant part of this transformation.

ACOE could be a part of the revitalization of this area by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low."

denied this lakefront park for another 25 years (and likely forever) due to ACOE's short-sighted view of dredge management options.

PLEASE DO THE RIGHT AND REASONABLE THING and withdraw your proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a plan for future management of sediment in the Chicago Areas Waterway System.

Sincerely,

Kaara Kallen

From: Teddy Kent
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] comments against the expansion of the lakeside confined disposal facility
Date: Monday, August 17, 2020 4:33:43 PM

Hi-

My name is Teddy Kent, I'm a CPS teacher and a Chicago resident who utilizes park space on the southeast side.

I'm writing to urge the Army Corps to consider other sites for their disposal. Ultimately, there is no perfect site and I understand that. But the USACE must take a long term view of this- not a 5 or 10 year view, but on the scale of 25, 50 or even 100 years. Because our political system is motivated by 2 or 4 year election cycles, our politicians are often incentivized to take short term views of things, so we rely on groups like the USACE to be above that kind of short term thinking.

Waste has no place near our waterways or water sources. It's difficult to say where lake levels will be in our future, or what inclement weather events we will face, but it is safe to say that the lake will be a source of drinking water, and will be viewed as an asset for exercise and the environment. I'm sure we wished we had the foresight to develop amenities like the riverwalk or a fully realized lakefront path 50 years ago. This disposal facility will only serve as an obstacle in the future to that, and could put residents in an already environmentally vulnerable area in more danger (not to mention the whole city/region, with respect to the proximity to the lake).

That's all. Thank you for your time and consideration.

-Teddy

From: Julie Strauss
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Opposing the CDF facility
Date: Monday, August 17, 2020 4:37:03 PM

Dear Sir or Madam,
I am writing to strongly oppose expanding the CDF facility. Please see the Sun Times editorial below outlining why it is a bad idea. Please don't risk our drinking water by tainting it with toxins and pollutants.

Although the Corps would build protective berms, storing sediment tainted with mercury, PCBs and other toxins right next to the lake seems unwise at a time when rising water levels are weakening shoreline protections everywhere, threatening to wash the accumulated material right back into the lake. The Friends of the Parks says contaminants already are starting to leach into the lake — the source of our drinking water. As 35-year Southeast Side resident Marie Collins-Wright told us, "Why would you turn around and put more toxic [sediment] in an unsafe place?"

Please come up with another plan that protects our drinking water!
Sincerely,
Julie Strauss

From:	renate gokl
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region
Date:	Monday, August 17, 2020 4:39:13 PM

Dear Mr. Padilla,

I'm writing to express my full support of Friends of the Parks' comments sent on August 17, 2020 regarding the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region. I urge you to reconsider continuing and expanding the current dredge disposal facilities. The 10th Ward is not dumping ground and the communities on the Southeast Side deserve their long-promised parkland. ACOE's use of this Lake Michigan lakebed location was granted for only 10-years and it has already overstayed its welcome by 28 years. It is time for ACOE to join in the 21st Century vision for the Southeast Side of Chicago.

Please do not put short-term financial benefits above long-term environmental social justice.

I urge you to honor the decision to close the storage facility by 2022.

Sincerely, Renate Gokl

From:	Amy Rosenthal
To:	CELRC_Planning_ECON
Cc:	Carter O"Brien; Ellen Woodward; Mark Bouman
Subject:	[Non-DoD Source] Public Comment: Final Chicago Area Waterway System Dredged Material Plan, Integrated EIS
Date:	Monday, August 17, 2020 4:39:54 PM
Attachments:	Field_Museum_Integrated_Enviro_Impact_Statement.pdf

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Dear Sir or Madam,

Please find attached a letter regarding the concerns of scientists at the Field Museum's Keller Science Action Center about USACE's plan to extend operation of a Confined Disposal Facility site adjacent to Calumet Park and Lake Michigan on Chicago's Southeast side.

We look forward to your review of this matter and a response.

Sincerely,
Amy Rosenthal

--

Amy Rosenthal (she)
Rowe Family Director,
Keller Science Action Center

Field Museum <Blockedhttp://fieldmuseum.org>

1400 S. Lake Shore Dr.
Chicago, IL 60605
O: +1.312.665.7455

We are driven by our mission to find solutions for a brighter future rich in nature and culture.
We'll best achieve this by actively working to promote inclusion, diversity, equity, and accessibility (IDEA) in all that we do. While we're making progress, there's opportunity to do much more. We embrace a commitment to IDEA that tackles barriers to equity for the benefit of the entire Field community, including our workforce, public, scientific and community partners.

Fueling a journey
of discovery

August 17, 2020

U.S. Army Corps of Engineers
ATTN: Planning Branch
231 S. LaSalle Street, Suite 1500
Chicago, IL 60604

RE: Final Chicago Area Waterway System Dredged Material Plan, Integrated Environmental Impact Statement

To Whom it May Concern:

On behalf of the Field Museum's Keller Science Action Center, we join environmental advocacy groups and community stakeholders, including the Chicago Audubon Society, Sierra Club, Openlands, Friends of the Parks, Alliance of the SouthEast, and the Southeast Chicago Environmental Task Force, to urge you to halt your plan to extend operation of a Confined Disposal Facility (CDF) site used for dumping contaminated waterway sediment in a property adjacent to Calumet Park and Lake Michigan on Chicago's Southeast Side, for an additional 20 years.[1] As an institution grounded in science and dedicated to studying and sustaining natural areas and cultural diversity, we have played an active role in ecological restoration and community consultation in Chicago and the Calumet region.

We recognize the devastating effects for human communities and wildlife if 20 more years of contaminated dumping is permitted.[2] Chicago's Southeast neighborhoods have been subjected to years of industrial pollution that have had deleterious effects on the health and wellbeing of the people who live in these areas.[3] In contrast, tangible environmental and health benefits would accrue to these neighborhoods should a new park be created once the CDF site is moved. Green space offers beauty, cools summer heat, mitigates pollution and flooding, and brings physical, psychological, and spiritual benefits to residents. Nature-based solutions, like increased accessible green space, are long-term investments that will make Chicago communities more resilient in the face of a changing climate and other chronic stresses.[4]

As the Chicago Audubon Society notes in "Support a Southside Park, Say No to Toxic Waste,"[5] this lakefront location is of great ecological importance to local wildlife and the millions of birds that migrate through the Chicago region along the Lake Michigan flyway. These 30 acres are technically the property of the Chicago Park District, and urban planners, environmentalists, and community members have long anticipated the capping of the current CDF site in order to build new park space in a prime location that links Steelworkers Park and Calumet Park, creating an uninterrupted recreational and habitat corridor of immense value on the Southeast Side.

1400 S. Lake Shore Dr.
Chicago, IL 60605
fieldmuseum.org

A green lakeside corridor that includes the current CDF site will contribute to greater regional efforts to mitigate a long legacy of environmental injustice and improve accessibility to the lakefront, best exemplified by the Calumet Heritage Area. The Field Museum is a member of the Calumet Heritage Partnership, which works to "bring people together across state lines to conserve natural and cultural heritage, improve recreational opportunities, promote regional arts, support sustainable economic development, and create heritage-oriented educational programing."[6] The bi-state Heritage Area effort highlights and strengthens the region's incredible assets, especially its lakefront, parkland, and potential for nature-based tourism and recreation.

Finally, with unprecedented storms and rising waters damaging Chicago's lakeshore and nearby infrastructure, it is reckless to put current and future generations at risk by continuing to dispose of toxic materials in this area, which, if disturbed, could have ramifications for the region's drinking water source. The erosion-driven impacts on the U.S. Army Corps of Engineers' Northerly Island restoration project should be a potent reminder of the damage climate change-intensified storms can cause. Down-scaled global circulation models predict more storms of this nature for our region over the next 20 years. Field Museum scientists and stakeholders highlight the importance of preparing for future climate impacts like these in the Indiana Dunes National Park Climate Adaptation Plan.[7] Continuing to dispose of toxic materials in an area vulnerable to these threats endangers the people and nature of Chicago. The U.S. Army Corps must explore alternative options for the disposal of polluted sediment and maintain its promise to provide these 30 acres to the people of Chicago.

Sincerely,

Amy Rosenthal
Director
Keller Science Action Center

Mark Bouman
Director, Chicagoland Region
Keller Science Action Center

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[1] U.S. Army Corp of Engineers. 2020. Calumet Harbor and River/Chicago Area Waterway System Feasibility Study. Retrieved from: https://www.lrc.usace.army.mil/Missions/Civil-Works-Projects/ Calumet-Harbor-and-River/.
[2] The Field Museum. 2020. Calumet. Retrieved from: https://www.fieldmuseum.org/science/research/area/science-action-chicago/calumet.
[3] Better Government Association. 2018. Interactive Map: Pollution Hits Chicago's West, South Sides Hardest. Retrieved from: https://www.bettergov.org/news/interactive-map-pollution-hits-chicagos -west-south-sides-hardest/.
[4] City of Chicago. 2019. Resilient Chicago. Retrieved from: https://resilient.chicago.gov/.
[5] Chesky, Judy. 2020. Support a New Southside Park, Say No to Toxic Waste. Chicago Audubon Society. Retrieved from: https://www.chicagoaudubon.org/blog/2020/8/10/h1pnl0bki1y3kdn 1hbh89ywrf3pkrj.
[6] Calumet Heritage Area. 2020. Retrieved from: https://www.calumetheritagearea.org/.
[7] Indiana Dunes Climate Change Adaptation Plan. 2020. Save the Dunes: Resources. Retrieved from: https://savedunes.org/wp-content/uploads/2018/11/Indiana-Dunes-Climate-Change-Adaptation-Plan-2018-3.pdf

From: Cyndi Elliott
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Don"t expand the dump
Date: Monday, August 17, 2020 4:44:46 PM

It appears Illinois EPA has taken the position that this use of dredge does not fall within the parameters of a "beneficial use" and ACOE will have to demonstrate in its next Clean Water Act permit application (which must be granted by 2021) that the vertical expansion of the CDF, including the use of this dredge material as construction and capping material, will not result in a violation of applicable water quality standards. The outcome for that permit is uncertain. Data on the harbor dredge that ACOE provided to IEPA (and included in App. L to the DMMP/EIS) shows multiple exceedances of the Illinois risk-based standards for soils utilized for upland beneficial uses. Those exceedances are for the toxic contaminants: arsenic, mercury, iron, lead, manganese, benzo(a)anthracene, benzo(a)pyrene, benzo(b) fluoranthene, dibenzo(a) anthracene, indeno (1,2,3-cd) pyrene, and three PCB standards (Aroclors 1232, 1254, and total PCBS). This is a legitimate concern because this harbor dredge is proposed to be stored on-site and used eventually as the 2.5 ft. "cap" that will ultimately cover the entire CDF. The near-term off-loading and storage of this "cleaner" dredge, its drying and dewatering at the CDF location, the construction activity associated with constructing the berms and ultimately constructing the proposed 2.5 foot "cap" with this dredge (not to mention placement of the highly contaminated dredge into the new structure) – all of these ACOE operational activities at the CDF location (proposed to take place beginning in 2022 and extending over 20+ years) will be exposed to the winds, rain, snow and storm surge raging off Lake Michigan. Sheets of stormwater and snow melt will be running off the side of this steep mountain of dredge into the Lake during these activities and throughout the year, carrying the contaminants in that dredge directly into Lake Michigan.

--

Cyndi Elliott

312-282-4408
cyndielliott.com
<Blockedhttp://cyndielliott.com/>

From: Elizabeth Gonzalez
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Comment on ACOE"s CDF along Lake Michigan
Date: Monday, August 17, 2020 4:45:36 PM

Hello,

I adamantly oppose ACOE's 2019 proposal to vertically expand the existing Confined Disposal Facility (CDF) on public trust park land on Chicago's Southeast Side along the Lake Michigan waterfront. This location should have been returned to public use by 1994 and has for decades been an area the local community wishes to and should have the right to develop as they see fit.

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, and the 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of this transformation.

ACOE could be a part of the revitalization of this area by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low."

Another generation of Chicagoans and Southeast Side residents must not be denied this lakefront park for another 25 years (and likely forever) due to ACOE's short-sighted view of dredge management options.

PLEASE DO THE RIGHT AND REASONABLE THING and withdraw your proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a plan for future management of sediment in the Chicago Areas Waterway System.

Sincerely,

Elizabeth R. Gonzalez

Chicago Resident, zip code: 60640

From: Lisa
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Chicago Area Waterway System - Public Comments
Date: Monday, August 17, 2020 4:49:08 PM

I call on the ACOE to withdraw its proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a 21st Century plan for future management of sediment in the Chicago Areas Waterway System ("CAWS").

The 45-acre parcel1 of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of the transformation of Chicago's Southeast Side.

It is time for ACOE to do a full review of all alternatives and a genuine cost-benefit analysis as required by the River and Harbors Act, 33 U.S.C. 403 et seq., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 et seq..

Lisa Davis
Chicago Resident

Lisa Davis
Travel l Health l Lifestyle Editor & Writer
Blockedwww.lisadavismedia.com
773-220-6212
Apologies for any iTypos.

From: Anna Rozenich
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Stop the CDF!
Date: Monday, August 17, 2020 4:50:50 PM

Hi,

Please do not expand the CDF! As a Chicagoan, I cannot stress the importance of having a green space there in the form of a park instead. The residents of the nearby neighborhood would greatly benefit from a park, which would promote a happier and healthier community. I do not want to be drinking toxic water from Lake Michigan because of the CDF. There are countless other areas that you could move the CDF to.

Thanks,
Justine Rozenich
Ward 40

From: Robin Semer
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Southeast side
Date: Monday, August 17, 2020 4:54:03 PM

To Mr. Padilla,

I am writing to support the Chicago Friends of the Park comments about the southeast side dredge dumping in the southeast side, 10th ward. I would have written personal comments if I had more time to do so. Please consider community sentiment and change your EIS to reflect inadvisability for the project.

Robin Semer, PE
Environmental Engineers

From: tom drebenstedt
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] SouthEast Side CDF
Date: Monday, August 17, 2020 4:59:46 PM

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, especially in the last 10 years, with the designation of the Pullman National Monument, Ford's billion dollar reinvestment creating more jobs, the North Point Development, the Method Soap manufacturing campus, Gotham Greens, restaurants, the new Whole Foods Distribution Center, the Burnham Greenway, Big Marsh Bike Park and hemi-marsh restoration, the Chicago Park District's restoration of Indian Ridge Marsh and Hegewisch Marsh, and the creation of the Ford Environmental Center.

The 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of this transformation of the Southeast Side. In 2006, Friends of the Parks, as a part of its Last Four Miles Initiative identified the CDF location as the last significant link on the south side to complete Daniel Burnham's vision of a park system spanning the entire Chicago lakefront. In 2016, the Chicago Metropolitan Planning Commission, in partnership with the Mayor's Office, Friends of the Chicago River, and others, led thousands of stakeholders in the citywide Great Rivers visioning process which, among other things, seeks to reinvigorate the CAWS by creating multiple iconic river destinations by 2030. Among its goals is the transformation of the currently fenced-off, forbidding, and polluting CDF dredge management facility

into a "park destination that is simultaneously a riverfront and lakefront."

In the midst of these positive, healthy, job-based developments, ACOE could be a part of this vision of reinvigoration by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District for the long-awaited final link in the south side Lake Michigan park system. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low".

ACOE's use of this Lake Michigan lakebed location was granted for only 10-years and it has already overstayed its welcome by 28 years. It is time for ACOE to join in the 21st Century vision for the Southeast Side of Chicago. Another generation of Chicagoans and Southeast Side residents must not be denied this lakefront park for another 25 years (and likely forever) due to ACOE's short-sighted view of dredge management options.

I call on ACOE to withdraw its proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a 21st Century plan for

future management of sediment in the Chicago Areas Waterway System ("CAWS").

Tom Drebenstedt
Chicago, Illinois

From: Brian Brennan
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Chicago Area Waterway System in the Calumet Region
Date: Monday, August 17, 2020 5:01:36 PM

I support Chicago Friends of the Park and their stance on the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region.

Time is up for the federal government using Chicago environmental justice communities as a dumping ground. Time is up for the use of the 10th Ward's long promised park land as a cheap lakefront dump. The existing CDF must be closed, capped and returned to the Chicago Park District for the creation of the long-awaited addition to Calumet Park as soon as possible.

Thanks,
Brian Brennan
Chicago, IL

From: Dianne Luhmann
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Save the lakefront for people.
Date: Monday, August 17, 2020 5:04:03 PM

Don't add to the toxic waste on the lakefront & on the Calumet River.

Dianne Luhmann

We don't need to poison our city residendent. Clean air & water are vital for Chicago's health & growth.

From:	Daniella Pereira
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] CDF must be closed, capped and returned to the Chicago Park
Date:	Monday, August 17, 2020 5:04:43 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png

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I call on the ACOE to go back to the drawing board, as required by NEPA, its own Guidelines, and the many additional standards, prohibitions and problems identified in our comments above. ACOE should utilize the time created by the current high water in lake Michigan and the Calumet River to work with the City, County, State and regional planning commissions and stakeholders to develop a 21st Century Chicago Area Waterways dredge management plan. That plan should include the enactment of statutory and regulatory requirements that will reduce the ongoing sedimentation of the Calumet River and Cal-Sag Channel over the next twenty years. It should enlist all state, federal and private sector resources to identify opportunities to maximize truly beneficial uses for the cleaner harbor dredge material. It should also require the proper and safe landfilling of dredge that is too contaminated to be beneficially used. All state and federal resources should be assembled to identify a permitted landfill with access near the Calumet or Illinois Rivers and the capacity to safely and permanently manage the reduced volume of contaminated dredge that requires disposal. Time is up for the federal government using Chicago environmental justice communities as a dumping ground. Time is up for the use of the 10th Ward's long promised park land as a cheap lakefront dump. The existing CDF must be closed, capped and returned to the Chicago Park District for the creation of the long-awaited addition to Calumet Park as soon as possible.

Daniella Pereira

Vice President of Community Conservation

Pronouns: she/her/hers

25 E. Washington Street

Suite 1650

Chicago, IL 60602

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M: 718.419.4859

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<Blockedhttps://www.instagram.com/openlands.chicago/>
<Blockedhttps://www.linkedin.com/company/4861963>

From: Mary Mohr
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] Facility in the 10th Ward
Date: Monday, August 17, 2020 5:19:06 PM

Hello,

I adamantly oppose ACOE's 2019 proposal to vertically expand the existing Confined Disposal Facility (CDF) on public trust park land on Chicago's Southeast Side along the Lake Michigan waterfront. This location should have been returned to public use by 1994 and has for decades been an area the local community wishes to and should have the right to develop as they see fit.

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, and the 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract
with the Chicago Park District and Chicagoans is a significant part of this transformation.

ACOE could be a part of the revitalization of this area by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping ground. Incredibly, the DMMP/EIS ranks the "social considerations" for taking this prime lakefront park land as "low."

Another generation of Chicagoans and Southeast Side residents must not be denied this lakefront park for another 25 years (and likely forever) due to ACOE's short-sighted view of dredge management options.

PLEASE DO THE RIGHT AND REASONABLE THING and withdraw your proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a plan for future management of sediment in the Chicago Areas Waterway System.

Sincerely,

Mary Mohr

From:	Stacy Meyers
To:	CELRC_Planning_ECON
Cc:	Ders Anderson; Robert Megquier; Skrukrud, Cindy; Emily Reusswig
Subject:	[Non-DoD Source] Joint Comments re: Final Integrated EIS and DMMP - CEQ 20190081
Date:	Monday, August 17, 2020 5:21:06 PM
Attachments:	image002.png image003.png image004.png image005.png USACE CDF DCCP FEIS Jt Comments 08142020.pdf

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Good afternoon. Attached please find comments by Openlands and Sierra Club regarding the Chicago Area Waterway Systems Final Integrated Environmental Impact Statement and Dredged Material Management Plan (CEQ #20190081).

Kind regards,

Stacy Meyers

Senior Counsel

Pronouns: She / Her / Hers

25 E. Washington Street

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Chicago, IL 60602

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smeyers@openlands.org <mailto:smeyers@openlands.org>

openlands.org <Blockedhttp://www.openlands.org/>

Use the free, searchable, interactive Openlands Get Outside Map <Blockedhttps://www.openlands.org/getoutside/> to explore hundreds of great places to experience nature throughout the Chicago region.

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<Blockedhttps://www.linkedin.com/company/4861963>

August 17, 2020

U.S. Army Corps of Engineers
Chicago District, Planning Branch
Attn: Alex Hoxsie
231 North LaSalle Street, Suite 1500
Chicago, Illinois 60604

RE: Chicago Area Waterway Systems Final Integrated Environmental Impact Statement and Dredged Material Management Plan (CEQ #20190081)
Sent via email to: CELRC_Planning_Econ@usace.army.mil

Dear Mr. Hoxsie:

Openlands and the Sierra Club appreciate the opportunity to comment on the Final Integrated Environmental Impact Statement (FEIS) and Dredged Material Management Plan (DMMP) for the Chicago Area Waterways (CAWS), which was released on July 17, 2020[1]. We have serious concerns regarding the alternatives analysis and proposed plan for a vertical expansion of the existing Chicago Area Combined Disposal Facility (CDF) to store sediment dredged from the Calumet River:

1. The analysis falls short of what is currently required by the National Environmental Policy Act and the Clean Water Act to evaluate all reasonable alternatives and select the least damaging alternative.
2. Selecting the most damaging alternative to expand the CDF continues to pollute Chicago's rivers and threatens to contaminate Lake Michigan, our main source of drinking water.
3. The alternative is borne on the backs of divested communities, perpetuating long-standing environmental justice issues on Chicago's south side by continuing to stockpile 26,000 cubic yards per year of contaminated sediment in what should be a new lakefront park.
4. Another reasonable alternative exists that was not adequately explored, which would eliminate both the need to expand the CDF and, over time, reduce a significant source of the dredged material. This alternative, which was summarily dismissed, would improve water quality, remove a serious threat to the City's lake water, and offer an equitable solution that improves the quality of life in communities that have faced historic pollution.

We urge the United States Army Corps of Engineers (Corps) to pause and reconsider the proposed reasonable alternative as the least damaging and most compelling option in light of our

[1] Federal Register (Jul. 17, 2020) https://www.federalregister.gov/documents/2020/07/17/2020-15444/environmental-impact-statements-notice-of-availability

comments, so that Chicago is more resilient, equitable, healthy and competitive, living up to its name: "Urbs in Horto" - City in a Garden.

Openlands is a non-profit organization, whose mission is to protect the natural and open spaces of northeastern Illinois and the surrounding region to ensure cleaner air and water, protect natural habitats and wildlife, and help balance and enrich our lives. Openlands was one of many organizations that participated in the water quality standards proceedings before the Illinois Pollution Control Board to better protect the insurgence of people recreating on and in the CAWS and Lower Des Plaines River, as well as aquatic life that depends upon the integrity of these waters.

In addition to its involvement in stormwater management programs, such as Space to Grow, a strong number of its 9,000 supporters hike, bike, watch wildlife, canoe, kayak, and otherwise recreate on and along areas of the CAWS, including areas of the Chicago River system that are subject to this FEIS.

The Sierra Club, Illinois Chapter, a non-profit organization represents over 30,000 members in Illinois including nearly 10,000 members in Chicago alone. The Sierra Club has been working for many years with partners like Openlands to improve the quality of the waters in the CAWS and to prevent pollution of Lake Michigan, the drinking water source for 6.6 million Illinoisans.

The FEIS and DMMP evaluate alternatives to dispose of dredged materials generated in the operation and maintenance of the CAWS, which is made up of six federal navigation projects: Calumet Harbor and River; the Calumet-Saganashkee (Cal-Sag) Channel; Chicago Harbor; Chicago River; the South Branch of the Chicago River; and the Chicago Sanitary and Ship Canal. Specifically, the drafts evaluate potential locations along to Calumet Harbor and Calumet River to confine 20 years' worth of dredged material.

Currently, contaminated sediment dredged within the CAWS is disposed in a CDF in Calumet Harbor, located on Lake Michigan near 95th Street. The 43-acre facility is anticipated to be filled to capacity by 2022. Finding that the contaminated sediment is not suited for open water placement or in-water beneficial use, the USACE's Tentatively Selected Plan (TSP) is to vertically expand the existing CDF facility. A DMDF with a 530,000 cubic yard capacity would be built on top of the CDF.

I. The FEIS Did Not Adequately Consider Reasonable Alternatives as Required under NEPA and the Clean Water Act.

The FEIS and DMMP should be revised to include a complete identification of all reasonable alternatives for managing sediment dredged from the Calumet River. The USACE must "rigorously explore and objectively evaluate all reasonable alternatives" for achieving the purpose and goals

of the project.[2] This requirement is the heart of NEPA and extends to "all alternatives that appear reasonable and appropriate for study,"[3] "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate."[4]

The CDF facility was not compared to reasonable alternatives in evaluating the best option to manage dredged sediment from the CAWS. In developing the TSP, the DMMP / EIS provided that "when all sites are environmentally compliant and technically feasible, then the selected alternative is the least costly option." It is a primary error in the DMMP/EIS to take this statement as correct. The Corps must consider less environmentally damaging alternatives.[5]

Four alternative sites were assessed in the EIS and DMMP: LTV, Wisconsin Steel, KCBK, and 116th and Burley. As shown below, all four sites are 100% industrial, uncapped brownfields with long histories of unregulated deposition of polluted waste products.[6] No comprehensive Phase 2 environmental studies (test borings) were accomplished on the sites, yet costs for CDF development were projected which could be substantially incorrect.

KCBX	Deposition of dredging spoils before 1953
LTV	Deposition of "steel industry waste" and "ash & cinders" before 1953
116th/Burley	Deposition of "steel industry waste" and "dredging spoils" before 1953
Wisconsin Steel	Dep. of "steel industry waste", "ash and cinders", "dredging spoils" 1902-1927

None of these alternative sites should have been compared and contrasted with the existing CDF within the given context in the studies because of their known on-site pollutants. Since each of them adjoins the Calumet River, they are probable sources of windblown, non-point stormwater, and infiltrated stormwater sources of polluted sedimentation in the Calumet River. Since these sites did not meet the criteria of "environmentally compliant", and the existing CDF if properly contained and capped might be considered "environmentally compliant", the only viable site for a facility truly assessed in the study was the existing CDF. It is not the most or least costly, but the only site.

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[2] 40 C.F.R 1502.14(a). Please note that, since the new NEPA procedural rules do not take effect until September 14, the rules that are in accord with historic case law cited above are still mandatory for the FEIS and DMMP.

[3] *DuBois v. U.S. Dep't of Agriculture*, 102 F.3d 1273, 1286 (1st Cir. 1996).

[4] *Simmons*, 120 F.3d at 670; *Alaska Wilderness Recreation & Tourism v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995).

[5] *Simmons*, 120 F.3d 664; *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986).

[6] See *Characterization of Fill Deposits in the Calumet Region of Northwestern Indiana and Northeastern Illinois,* U.S. Geological Survey Report 96-4126 (1997).

The analysis of the CDF also fails to consider the Landfill Moratorium of the City of Chicago. In June 2005 the Chicago City Council imposed a ban on new landfills in the city for a 20-year period. Residents of the southeast side of Chicago had tried for years to see this ban imposed. The DMMP/EIS does not acknowledge this legal moratorium, which precludes locating the "new" CDF facility within City limits.

Moreover, the FEIS muddies the water by creating a sliding timeline in the potential use of the CDF beyond the proposed 20-year time horizon. The FEIS recommends that the plan for the proposed CDF "should consider the long-term sustainability of the project and opportunities for providing additional dredged material management capacity beyond the current planning period of analysis either as part of the current Base Plan or through expansion or modification of the Base Plan in the future."[7] This intent was never brought up in any public meeting or hearing during the site selection process.

The FEIS sets the stage for a major expansion of the proposed CDF in the future, as well as an extension of multiple years by which the site would be withheld from public access, a position never publicly stated in any of the public hearings or meetings during the multi-year site selection process.

This change in the proposal represents an expansive shift in the scope of the proposal for the site location of the CDF, upsetting the alternatives and environmental impact analysis. It sets the stage for the landfilling of contaminated sediments to be an activity that, for generations to come, never leaves the southeast side of Chicago, nor allows the development of the site to public access uses. It would close one of the last remaining gaps in the lakefront park system, denying the community access to a new lakefront park that they were promised would come to fruition starting in 2022.

II. Source Reduction and Out-of-City Landfilling is a Reasonable Alternative to the CDF Facility.

With the moratorium in place, the Corps should have taken a harder look at alternatives to disposal facilities. Fortunately, one exists: Combine actions to reduce sediment at its source with transporting dredged material to a landfill outside of the City. Ultimately, reductions in sediment will make it less expensive to dewater and transport, since much of the load will be alleviated. This alternative will also ultimately prevent contaminants on neighboring industrial sites from polluting the water, improving the quality and availability of the CAWS. Overall, it will eventually eliminate, rather than perpetuate the continued piling of contaminated dredged material on land in divested communities that have historically endured pollution.

The Corps refers to its ERDC report that identified the industrial corridor along the Calumet River as the primary geographic source of contaminants. The surrounding communities, neighborhoods, and environmental groups for years have raised the issue of uncovered materials storage in the industrial corridor. The ERDC office of the USACE found in a 2017 study that heavy metal pollution sources in the

[7] See FEIS, Sec. 1.15, p.23.

Calumet River were likely from "anthropogenic activities along this stretch of the river." The principal sources would be a combination of surface stormwater runoff, wind-blown material, infiltrated stormwater into adjoining brownfields causing groundwater flow transferring pollutants to the river, and stormwater or combined-sewer outfalls. The ERDC report established effectively little impact from Lake Calumet, Pullman Creek, Indian Creek or backwash from Calumet Harbor. Lake Calumet itself provides a large sink for sediments that have filled the northwest corner of the lake and continue to fill the lake's center channel, since it was dredged 20+ years ago. The "anthropogenic activities" are located on approximately 2,500 acres of industrial properties and abandoned uncapped brownfields along the Calumet River corridor.

The FEIS acknowledges this opportunity:

> "**Source Reduction** While dredging needs would not be completely eliminated, reducing dredging requirements could provide cost savings and extend the life of sediment management alternatives. Best management practices that address sediment sources can improve the financial and environmental sustainability of the navigation projects and may provide significant benefits. However, these opportunities may also require significant detailed analyses to determine their effectiveness. The USACE Chicago District has been working with the Engineer Research and Development Center (ERDC) in Vicksburg, MS to investigate potential principal sources of sediment and associated contamination deposited in the Calumet River (Perkey, Chappell, and Seiter 2017). Based on the results of their preliminary investigation, it appears the sediment sources are primarily stormwater and combined overflow sewer outfalls, channel outlets (particularly the channel outlet known as Pullman Creek), non-point sources and overland flow."[8]

Where appropriate and supported by the surrounding community, brownfields in the Calumet region should be capped and seeded to pasture grass or prairie to infiltrate rainwater and remove polluted sediment to prevent it from entering the river. One capped acre of brownfield would remove approximately ten cubic yards of polluted sediment (on average) from entering the river each year. The city, state, and federal agencies must work together to find a solution that would minimize or eliminate the source of 25,000 cubic yards of polluted sediment entering the river. It is far beyond time for these agencies to create a plan to minimize or eliminate sediment and secure funding to implement the plan with community input.

The Army Corps should identify the "hot spots" in the river corridor that are generating polluted sediment loads, develop a plan that would rate every acre in terms of its role in sediment loading to the river, and then start capping and solving the sediment problem in systematic order based on reducing the loads in the shortest time frame. Admittedly, it will take time to address the sources of polluted sediment, but the current CDF has capacity for several years and the new CDF is not proposed to be

[8] FEIS at p. 67.

completed until 2026. By 2026, the need for the project could be largely or fully eliminated through pursuit of alternatives.

The FEIS notes that while "best management practices at the individual property/parcel level may be effective in reducing sediment accumulation from non-point sources and overland flow, it is outside of the Corps' authority to regulate those practices for private landowners." FEIS Executive Summary, p. 4-5.

Yet, as of the date of this study, the Corps is *required* to evaluate all reasonable alternatives, even those outside of its jurisdiction.[9] This is similar to environmental studies about roads that fail to consider transit because that alternative would require another agency to take action.

The FEIS did not consider Landfilling with Source Reduction as part or all of an alternative, and instead focused solely on removing annual sediment loads. This is akin to choosing to capture 25,000 cubic yards of leaking oil each year from a broken oil pipeline instead of fixing the pipe. The alternative of reducing the amount of sediment entering the waterways must be fully evaluated, rather than narrowly focusing on removing sediment once it is already in the waterway. Both the Draft EIS and FEIS make clear that this alternative shows promise, but then inexplicably fail to consider it. Dredged sediment from the Calumet River (25,000 cubic yards per year) was not fairly assessed in the current FEIS or DMMP as a management measure for three reasons: "Cost, Scale, and No guarantee of capacity." All three reasons are insufficient grounds for denial, and a landfill alternative should be reassessed for the following reasons:

1. <u>Cost.</u>

The CDF Vertical Expansion is arguably the "most expensive" alternative. The Corps fails to consider the costs of full compliance with water quality standards for both the lake and river. It does not account for measures to ensure (if possible) that the facility would be properly engineered, and impenetrable to pounding high waves and other escalating storm impacts due to climate change and lake fluctuations. (We have concerns that even this alternative will not be compliant, given natural resource and community impacts.)

The cost also does not consider the lost value of lakefront parkland as an important city amenity in a divested area. The EIS should include the appraised value of replacement parkland that is comparable in view and use to the community. This should include the importance of the 30 to 40 acres as significant

[9] See 40 C.F.R. 1502.14(c) (EIS must "include reasonable alternatives not within the jurisdiction of the lead agency."; cited by Milwaukee Inner-City Congregations Allied for Hope v. Gottlieb, 944 F. Supp. 2d 656 (W.D. Wisc. 2013) ("[E]ven if the defendants do not have the authority to expand transit capacity of the region, … NEPA still requires them to examine and identify any cumulative environmental impacts that might result …" if that alternative were not selected. *Id.* at 669. Again, any changes to this underlying rule have not gone into effect.

lakefront habitat for wildlife, including birds that rest along the Lake Michigan Migratory Flyway.[10] The loss of significant acreage which would have been added to this migratory flyway after 2022 should also be evaluated as part of the environmental impacts of the Proposed CDF.

The true full costs of the CDF should be juxtaposed to the reasonable alternative of disposing sediment in out-of-city landfills in the northeastern Illinois and northwestern Indiana region, as well as source reductions well beyond the 20-year horizon. Since the amount of sediment will slowly reduce over time, the amount that it will cost to landfill should also be accordingly reduced to reflect resolving that issue.

The FEIS skews the likely cost of source reductions and landfilling as a reasonable alternative. The EIS states that landfills are "potentially viable for small-scale applications. However, due to the increased cost of pursuing private management at the scale of this study and the lack of assured capacity, it was not retained for inclusion in the study alternatives." All three assumptions are incorrect.

a. *Landfilling is viable for projects much larger than the projected scale (26,000 cubic yards per year) of the Source Reduction / Landfilling alternative.*

The EIS rejected the cost of the landfilling / source reduction alternative "due to the increased cost of pursuing private management at the scale of this study." The proposed alternative is more akin to a small-scale landfill operation. Between 2001 and 2017, the maximum amount dredged by the Corps was 135,000 cu. yds. in 2003. No dredging occurred over the span of four years, and the remaining four years respectively saw the removal of: 7,000, 35,000, 56,000 and 60,000 cubic yards per year. These are not large amounts compared to the 2014 to 2015 Grand Calumet River restoration project between Cline Avenue and Kennedy Avenue in Indiana, where 350,000 cu. yds. of contaminated dredgings were trucked to a landfill more than 50 miles distant.

b. The FEIS makes assumptions on the cost of the source reduction/landfill alternative without providing a factual basis.

The FEIS does not assess the costs of a landfill alternative, and does not compare these costs to the CDF alternatives while factoring in costs for these alternatives that were not included as described elsewhere in these comments. The EIS makes an assumption without a factual basis.

c. *The FEIS conclusion that there is a lack of assured landfill capacity is unfounded.*

The Army Corps refused to include an assessment of landfilling alternatives, while 10 miles to the SE 350,000 cubic yards of contaminated dredgings, from one restoration stretch of the Grand Calumet River, were landfilled at a site 50 miles distant. The multi-billion-dollar landfill industry is handling the residential, commercial, and industrial waste stream of the entire bi-state Chicago metropolitan region. It will continue to do so at existing sites which collectively have enormous capacity, and new sites that the industry will develop, as long into the future as the metropolitan region generates waste. The

[10] See e.g. https://www.bcnbirds.org/greenpapers_files/GPflyway.html#:~:text=Literally%20millions%20of%20birds%20migrate,they%20follow%20as%20they%20migrate.

contaminated dredge material can be deposited at any certified landfill, which the Army corps admitted in its public meeting at its headquarters in the spring of 2019.

Subsidies could be identified to make the cost of transporting dredged Calumet River sediment comparable to the development of vertical expansion at the existing CDF site. The Calumet Tax Increment Financing District (TIF) could be a source of this funding, as the goals of a TIF District is to enhance the local community, encourage reinvestment, and develop a sustainable employment base. The TSP instead proposes continuing 25 years of landfilling at the current CDF site. As expressed in our discussion of environmental justice issues, this will perpetuate the perception of the Calumet area as a dumping ground, an image the community has combated for decades to overcome. Another source of funding could be the institution of a special service area tax on the industrial properties in the Calumet River corridor to subsidize removal of the sediments which emanate from these sites.

2. Scale.

The amount of annual transport and disposal of dredged sediment in an out-of-city landfill is minimal compared to the amount of surrounding truck traffic and landfill capacity in the surrounding metropolitan region. If dredging generated 25,000 cubic yards of sediment per year, it would likely take four to five 30 cubic-yard trucks per day for 200 days to transport the dredged material to a certified landfill. This is a small number of trucks considering the thousands of trucks that pass through daily in area IDOT ADT truck movement counts. For instance:

Bishop Ford Expressway & 107th	10,800 trucks/day (2018)
95th Street & Calumet River	470 trucks/day (2017)
Indianapolis Boulevard & 102nd	840 trucks/day (2017)
Skyway & 102nd	4550 trucks/day (2013)

The EIS mentions only in passing that there are forms of transportation in addition to shallow and deep draft shipping. There is no clear consideration of how much of the traffic for which dredging may be needed could be replaced economically by alternative means of transportation. This constitutes both a failure to consider alternatives and a fundamental mistake in the cost/benefit analysis and public interest review.

Even if the alternative of landfilling the material is inadequate by itself, the Corps must consider combinations of approaches that will address the purpose and need.[11] This could include approaches that address varying qualities of sediment and handling them differently—for example, finding alternatives to land disposal for sediments of sufficient quality.

[11] *Simmons*, 120 F.3d at 669.

3. No Guarantee of Capacity.

The Chicago Metro region has landfills which in 2017 had 85 million cubic yards of capacity remaining. The annual fill rate is 7.7 million cubic yards per year. The landfill industry continues to open new facilities as existing landfills begin to reach capacity. New or expanded landfills have continued to open over the last 40 years. With the waste generation of a metropolitan region there will continue to be expanded landfill capacity.

4. The Distortion of Cost, Scale and Capacity is Compounded by Failing to Consider Other Contributing Factors, such as the Tunnel and Reservoir Project, which Make Landfilling and Source Reduction More Viable

It is unclear from the EIS whether the Corps considered whether the portion of the Tunnel and Reservoir Project (TARP) that is already complete will obviate a substantial portion of its purpose and need, and render the landfill/source reduction alternative the more attractive solution. Using loading data from prior decades regarding sediment loading without adjusting for the work that has been done to control pollution is inappropriate. This failure to study what has already occurred detracts both from the necessary consideration of alternatives of the project by potentially distorting the costs of the no action alternative, the consideration of costs/benefits, and the public interest required by the Corps regulations established under the Clean Water Act. This is evidenced by the 2017 Corps report referenced above.

III. The FEIS and DMMP Fail to Account for the Full Environmental Impacts of the CDF Extension Alternative, and Compare it to the Sediment Reduction and Landfilling Alternative

The FEIS is fatally flawed under the National Environmental Policy Act (NEPA) and the project cannot properly be undertaken under the Clean Water Act because alternatives have not been properly considered and the full cumulative impacts on local communities and the environment have not been given proper weight. The USACE is required to take a "hard look" at the environmental consequences of all reasonable alternatives.[12] The discussion of environmental impacts is designed to provide a "scientific and analytical basis" for comparing the various alternatives for achieving the agency's goals.[13] A proper analysis of the alternatives can be carried out only if the agency provides a complete and accurate description of the environmental consequences of all reasonable alternatives.

Since the FEIS excluded the alternative of source reduction and landfilling, on its face, it does not include the requisite analysis of all direct, indirect and cumulative effects of federal actions of each reasonable alternative to the Agency's proposed action.[14] Moreover, the analysis of the CDF expansion is deficient

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[12] *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).
[13] 40 C.F.R. 1502.16; *DuBois v. U.S. Dep't of Agriculture*, 102 F.3d 1273, 1286 (1st Cir. 1996).
[14]See e.g. *Fox Bay Partners v. U.S. Army Corps of Eng'rs*, 831 F.Supp 605, 608-09 ((N.D. Ill. 1993).

in that it does not consider relevant factors and important aspects of its actions.[15] Further, it appears that the proposal would negatively impact people living in nearby communities and is not economically justified and, thus, is not in the public interest and cannot be permitted under the Clean Water Act.[16]

A. Water quality impacts from Point Source and Non-Point Source Pollution Must be Addressed in Much Greater detail in the FEIS.

1. <u>The Corps must address serious deficiencies in its analysis of whether the CDF will cause water quality issues or violations in Lake Michigan and the Calumet River System</u>.

The FEIS makes clear that the sediments that are to be placed into the CDF may be highly polluted. It does not consider, however, the levels of pollutants likely to reach Lake Michigan or their potential impacts. It is assumed, without proof, that nothing can travel from the CDF. The once a calendar year monitoring that has been done, however, indicates that as to a number of pollutants, pollution levels are higher in the immediate vicinity of the existing CDF than background levels and much higher than applicable water quality standards (e.g phosphorus, WQS =.007 mg/L). See e.g. Routine Monitoring for the Year 2016.[17]

On its face, this would indicate that the CDF is leaking. The Corps' reports offer various untested theories as to why pollution levels might be expected to be higher near the CDF than background levels, but it is clear that what is needed is greater monitoring, not speculations as to why the monitoring reports do not mean what they seem to mean. Indeed, if the current calendar year monitoring program that calls for comparing near CDF pollutant levels for certain pollutants with background levels is not adequate to detect problems, expansion of the CDF must not be seriously considered until a more adequate monitoring system is devised, that improved system is put into effect for the amount of time needed to draw valid conclusions, and it is scientifically determined that the CDF is as secure as the Corps assumes.

While it is not proposed to bring much material from the Cal-Sag Channel, the extent to which phosphorus may enter Lake Michigan by being hauled from the Cal-Sag to the lake should be better studied. The Cal-Sag Channel sediment must contain high levels of phosphorus from the Metropolitan Water Reclamation District Calumet STP, the Thorn Creek Sanitary District and other sources. Taking this sediment—probably now in large part biologically unavailable to algae and cyano-bacteria from the bottom of a water body thought to be relatively insensitive to phosphorus pollution—and placing it into a facility on Lake Michigan is clearly not something that should be done without thorough study. Such a movement of phosphorus could potentially cause further violations of applicable Lake Michigan water quality standards.

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[15] See *Friends of the Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1128 (8th Cir. 1999).
[16] See, 33 U.S.C. § 1344(c), 40 CFR §230.10(c)(4) and 33 U.S.C. §320.4.
[17] Monitoring reports from 1996 through 2016 can be viewed at: https://www.lrc.usace.army.mil/Portals/36/docs/projects/calumetharbor/FOIA%202019_Routine%20Water%20Monitoring%20Reports/2016%20Routine%20Water%20Monitoring%20Report.pdf

Even if it is correct that the CDF will never allow pollution from the CDF into the lake, the act of stirring up the sediment in the Cal-Sag may cause the sediment that is not taken into the CDF to become biologically available to nuisance algae. It cannot, then, be assumed that water quality in the Cal-Sag will benefit from expansion of the CDF. This is also true for the Calumet River and Calumet Harbor to an undetermined extent.

In addition, given the grave concerns regarding the potential for the expanded CDF to erode into Lake Michigan, more attention must be paid to whether the DCCP can meet Illinois' regional conditions of NW 16[18] to not cause violations of the Illinois Environmental Protection Act (Act), water pollution defined and prohibited by the Act, violation of applicable water quality standards and interference with water use practices near public recreation areas or water supply intakes.

2. <u>The FEIS Must Fully Evaluate Non-Point Source Reductions as Part of a Reasonable Alternative and Compare it to the Environmental Impacts of the Proposed CDF</u>.

While the Corps may not have the authority, it does have the ability, and should show the same leadership it displayed in 2017, to provide strategies and recommendations within the EIS on non-point source reduction that give guidance to the governmental agencies that do have authority: the City of Chicago, IEPA, and USEPA. At the very least, the FEIS must include a robust environmental analysis of non-point source reductions as part of a reasonable alternative, and this must be compared to the proposed CDF to understand the difference in environmental impacts.

If revised, the FEIS could still lay the groundwork in identifying principal responsible property owners who are allowing contaminants to enter the river. As it stands, the FEIS fails to identify basic recommendations to minimize and control non-point pollution from entering the river, such as covering/roofing materials storage, periodic street sweeping of industrial yards, and capping of unused, exposed brownfields.

The FEIS should identify funding sources for implementing non-point source reduction strategies, and to control non-point contaminant discharges by wind or stormwater runoff into the river. For instance, the FEIS could list funding sources such as GLPF funding, Coastal Management funding, Chi-Cal grants, State of Illinois Capital Development Infrastructure funding, and other sources. Non-point and point source reductions are wholly tied to the dredging volumes and financing assessments of the EIS. The FEIS fails to recognize and consider the importance of alternatives that address this connection.

With the upcoming focus on studying water quality parameters in the CAWS, the Corps could have proposed a requirement that overlaps with that effort to identify the primary source types and locations of pollutants entering the Calumet River system. After two years of study, the Corps could develop an intergovernmental strategy to begin source reduction of pollutants by year three, with a goal of achieving a sediment load removal of 5,000 cubic yards per year by 2030.

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[18] Final Notice of Issuance of Nationwide Permits, Illinois EPA, Feb. 27, 2017, at: https://www.lrc.usace.army.mil/Portals/36/docs/regulatory/pdf/NWP-IEPA-2017.pdf at p. 12.

Certainly, it has not been carefully considered whether full compliance by the Metropolitan Water Reclamation District, the City of Chicago and other municipalities in the area with the requirements regarding CSOs and MS4s would substantially reduce the need for continuing to add to the confined disposal facility. Reducing pollution before it reaches the CAWS and Calumet Harbor could be a superior approach as an environmental matter, save significant financial resources, and offer an equitable solution for south side residents.

1. Windblown and Stormwater runoff of on-site pollutants.

The City of Chicago has recently responded to outside, unroofed, manganese storage, but still has not effectively required covers on other stored material, nor has required periodic street-sweeping of surface pollutants at active industrial sites.

2. Storm sewers (SS) and combined sanitary sewers (CSS)**.**

The City of Chicago should monitor all nine SS and CSS outfalls to determine the 2-3 most egregious discharges of pollution into the river and begin design work to install traps and filters that would eliminate or greatly minimize heavy metal and other pollutants of concern. GLRI funding should be sourced for these retrofits.

3. Pollutant transfer from adjoining uncapped brownfields driven into the Calumet River by infiltrated stormwater.

The most difficult situation to assess and allocate responsibility towards, but total suspended solids (TSS) monitors and chemical monitors should be installed along both riverbanks to determine the most egregious sources. Property owners responsible for these primary sources should be considered Principal Responsible parties by the USEPA and given a limited period of time to fully cap their landholdings substantially at their expense or have enforcement action taken. Great Lakes Restoration Initiative funding should be sought to assist in financing the capping. Multiple best management practices could be identified and instituted in short time frames, while a thorough, comprehensive two-year study of the adjoining brownfields is undertaken to determine the most egregious sources of pollution.

A Source Reduction strategy should be an integral component of the TSP regardless of what dredging and storage alternative is assessed. If the Army Corps and associated responsible public agencies had designed and implemented a source reduction initiative in the 1990's, in the early years of the existing CDF, the surrounding community and neighborhoods would not be facing a proposal to extend filling dredged material for an additional 20 years. Given the environmental justice issues inherent in this project area, and associated air and water pollution impacts, any consideration to accommodate, or even estimate, the storage demand for an additional 20 years should not occur in a vacuum without an aggressive source reduction component.

C. **The FEIS Fails to Address How Point Source Reductions Will Affect Dredging Volumes and Costs Associated with Either the Proposed CDF or the Landfill/Sediment Reduction Alternatives**.

The FEIS refers to how the Corps is "actively involved in efforts such as the Chicago Underflow Plan (CUP) that help reduce stormwater and combined sewer overflows in the waterways now and in the future." No further description of the CUP or other efforts are "included in the EIS which would allow one to assess the potential effectiveness and timing of these actions on point-source reduction. This information will affect the projection of dredging volumes and financing assessments in the EIS. Since combined sewer overflows are picking up contaminants from the industrial land uses along the Calumet River, the same basic site management strategies listed in the comments re: non-point source reduction would also apply to minimizing the contaminant loads from the point-sources. The FEIS point-source reduction reference should have substantially expanded and discussed the same three non-point source reduction recommendations listed in this response.

Successful source reduction would result in a lessening of the contaminated dredging material that needs to be deposited in a storage facility. This EIS identifies its proposed CDF site based on a design capacity, rather than a commitment of a specific closure year, regardless of whether full capacity is achieved. Thus a 20-year proposed capacity could become a 40 or 60-year utilization of the site if effective source-reduction of contaminants into the river is achieved. This situation was never discussed in public meetings, nor is it clearly explained in the EIS.

The FEIS should be revised to include the following:

- The EIS should establish a commitment to a 20-year closure date of its proposed CDF and confirm it through a federal court order; and

- The EIS should include several 20-year scenarios of contaminated dredging storage needs and the financing of these needs based on the effectiveness of 3-5 source reduction rates which lessen contaminated dredging volumes.

D. **The FEIS Omits an Analysis of Climate Change Impacts on the Existing and Proposed CDF**

As of the date of this EIS, climate change must be evaluated as a cumulative impact in studying and comparing all reasonable alternatives. (cite) Yet, the FEIS falls short in considering severe damage that could need to be addressed in either its impacts or economic analysis.

1. <u>The FEIS is silent on how storm events and lake levels could damage the CDF, polluting the lake and resulting in greater expenses for repairs</u>.

The FEIS describes various GHG emission rates of economic end-users, but is silent on the critical impacts of climate change on the existing and proposed CDF's, storm events and lake levels.

The World Climate Research Program published, in the *Reviews of Geophysics* 7-22-2020[19], its newest assessment of climate change, narrowing the expected temperature rise to represent a 2.6 degree Celsius to 4.1 degree Celsius increase. This recent assessment of expected climate change impacts should be incorporated in the FEIS, with an analysis of storm and lake level events that would potentially challenge the integrity of the CDF's and their construction standards. Corps reports raise substantial questions and concerns regarding the design standards which have been made with regard to the current CDF. "Stone sizes on in-lake CDF's were typically designed to withstand a 20-year storm. Dike Height was typically designed to limit overtopping by waves with a 20-year lake level and a 20-year storm.[20]

The FEIS fails to evaluate three key points that are critical to evaluating the effectiveness and impacts of its proposed CDF alternative:

- The FEIS does not incorporate up-to-date climate projections and an assessment of those scenarios on storm, wind and wave events, Lake Michigan lake levels, rainfall intensity, infiltration and erosion, and other factors that will affect the integrity of the existing and proposed CDF.

- The FEIS fails to identify the storm and lake level design standards under which the existing CDF was constructed, as well as the design standards which guide the proposed CDF.

- The FEIS fails to report if the storm and lake-level design standards of the existing CDF was improved during its 38-year life to date.

2. <u>The FEIS does not evaluate the integrity of the Calumet Harbor Breakwater to Protect the Existing and Proposed CDF from more intense inclement weather.</u>

The integrity of the current and proposed CDFs, under the stresses of strongly elevated lake levels and strong storm and wave events, depends on the design and integrity of the Calumet Harbor breakwater. This exposes the current and proposed CDF's to the substantial risk that a storm and wave event will enter from the southeast where there is no breakwater in place.

The Calumet Harbor breakwater requires repair and restoration on a periodic basis as various sections deteriorate. Repairs as reported by the Corps in recent years run into millions of dollars. Since the existing CDF represents the largest facility investment value among the land uses "protected" by the breakwater, the FEIS should have recognized the critical importance of maintaining and enlarging the breakwater to protect this publicly financed investment. Yet, the FEIS is deficient in its analysis in that it failed to consider the following:

- Changes in lake level, storm and wave events that are anticipated to occur under climate change scenarios;

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[19] *International analysis narrows range of climate sensitivity to CO2*, World Climate Research Programme, Jul. 22, 2020. (https://www.wcrp-climate.org/news/science-highlights/1604-climate-sensitivity-2020)

[20] *Great Lakes Confined Disposal Facilities*, USACE and USEPA, Apr. 2003, p. 14.

- Projected costs over a 20-year period to maintain the Calumet Harbor breakwater;

- Projected costs to enlarge the Calumet Harbor breakwater due to increased intensity or occurrence of storm events associated with climate change and lake level fluctuations;

- Impacts on the Existing and Proposed CDF of current expected storm events or climate change-induced storm events with wind and wave events from the southeast into the harbor where there is no breakwater protection;

- An assessment of the risks and related costs of damage by higher lake levels and more intense storm events on the integrity of the Existing and Proposed CDF if such events occurred when the breakwater deteriorates prior to repairs;

- Estimated costs of increasing the size and effectiveness of the breakwater under climate change scenarios as a necessary investment to protect the integrity of the Existing and Proposed CDF;

- An amendment of the 20-year projected costs of the proposed CDF at the lakeshore location to include a specific apportionment of funds to repair the breakwater under current short term conditions, and costs to construct a larger breakwater to withstand climate change conditions.

3. Failure to Consider the Risk of Contamination Due to Storm Events Skews the Risk Analysis of the Proposed CDF Alternative in the FEIS.

The FEIS asserts that the risk of contamination associated with the Vertical Expansion (CDF) Alternative is the "lowest of all study alternatives."[21] Yet, the risk of contamination due to current potential storm, wind, and wave events as well as potential such events due to climate change make this lakefront site the highest risk site as compared to the inland "Upland Site" alternatives which do not face the Lake Michigan impacts.

E. The FEIS Fails to Consider Mitigating Air Quality Considerations in Landfilling Dredged Material

The FEIS fails to consider the current shift in truck and auto engine technology to electric, which greatly modifies, and potentially negates, statements in the EIS regarding air pollution created by vehicles. Multiple sections of the FEIS[22] discuss air quality, especially as related to GHG and vehicle emissions**.** The air quality assumptions are based on an apparent and misguided belief that gasoline and diesel powered vehicles will continue to be dominant in the 20-year future of this report. The FEIS fails to consider the current shift in truck and auto engine technology to electric, which greatly modifies, and potentially negates, statements in the EIS regarding air pollution created by vehicles. The FEIS also does not factor the ongoing shift in truck and auto engine technology to electric, which should reduce estimates in the EIS regarding air pollution created by vehicles.

[21] See HTRW, p. 126.
[22] See FEIS, pp. 38,39,95-98.

Moreover, the FEIS uses 2017 as a base for traffic estimates, even though that number is higher than both the three-year average and 2010. Coal traffic is assumed to continue at its current level for the whole period, although the traffic has fallen considerably since 2000 and coal-generated electricity is acknowledged to be in steep decline, simply because coal traffic has not yet fallen to "zero."

The impact of overall air quality in communities surrounding the CDF must be evaluated as cumulative impacts[23], and the disproportionate levels of air pollution already experienced by predominantly minority populations and/or low income populations around the project location must be considered. This should be properly called out as a social justice issue, and evaluated accordingly.

The Corps should also consider unique vulnerabilities, special exposure pathways, prior exposures, social determinants of health and cultural practices associated with minority populations and low income populations in the affected environment, and the degree to which any other extenuating factors amplify identified impacts such as the presence of vulnerable populations (pregnant women, elderly, groups with high asthma rates or other health concerns) and the condition of physical infrastructure (e.g., substandard housing conditions, old or no in-home HVAC/filtration, older windows, inability to make in-home changes due to rental vs. home-ownership). This additional environmental justice analysis is needed to ensure a comprehensive review of potential disproportionately high and adverse impacts to minority populations and low-income populations. The Corps should reassess whether there are, in fact, any disproportionately high 5 and adverse impacts expected, and if those disproportionately high and adverse impacts are considered "significant" under NEPA through a review of context and intensity. Consistent with applicable requirements, the Corps should state in the FEIS whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.[24]

F. The FEIS does not Account for Negative Health Consequences of Using Promised Parkland for the Proposed CDF

The EIS statement that there would be no adverse impact to the human environment is incorrect. Delaying the opportunity for developing the CDF site for public access and park uses will have negative health consequences for at least 20 years and much longer if the site utilization is extended in time.

G. Taking Promised Parkland to Build Up the CDF will Adversely Affect Wildlife

Delaying the opportunity for developing the Proposed CDF site for any level of habitat restoration for 20 years or longer will have negative effects on bird migration which is already under stress due to loss of habitat and climate change. The EIS statement that there would be no adverse impact to the natural

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[23] Since this study predates September 14, 2020, it is required to include a thorough review of cumulative impacts that would be caused by each alternative compared to a no-action baseline.
[24] See 40 CFR §1502.2(c), as it is in effect of the date of the study.

environment is incorrect. During the COVID-19 pandemic it has become abundantly clear how important publicly accessible parks and preserves are to people and communities. To deny access to a promised public open space amenity for another generation, will cause significant negative health and quality of life consequences for the community.

In addition to the creation of environmental risk of CDF facility failure from storms and rising lake levels, the continued use of the site for the proposed CDF facility removes it from use by migrating birds. The Lake Michigan Migratory Flyway is a critical migration corridor and all habitats along the lakeshore are utilized during the migration season. Even if a portion of the site was set aside for bird habitat and the remainder active-use parkland, the site would become a critical refuge during the migration season.

IV. The FEIS and DMMP Fail to Account for the Environmental Justice Impacts of the CDF Extension Alternative

The FEIS and DMMP still do not disclose the full brunt of impacts to natural resources and environmental justice communities. For instance, the FEIS lists a litany of contaminants of concern that were identified in the Calumet Harbor and River sediment, such as arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, cyanide, etc. See 2019 DEIS, p. 28. While acknowledging that semi-volatile organic compounds were tested, the FEIS is silent on the results of relevant analytical testing.

Despite establishing that sediment from the area is highly contaminated, the FEIS does not assess how dewatering, transportation and disposal of sediment, as well as continued CDF operations, could expose the surrounding community to harmful acute or chronic levels of air pollution. This is despite the studied effects of contaminants such as manganese in the area, and known residential areas within a half mile to a mile of the CDF. The FEIS did not provide a comprehensive analysis and supporting data on exposure and risk, with proposed adequate mitigation measures to meet regulatory air emissions requirements.

In addition, the FEIS did not adequately address environmental justice in minority and low- income populations in the project area, in accordance with Executive Order 12898. That order requires that agencies "identify ... and address ... as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." The Corps here did not state whether the affected communities meet the definition of an environmental justice population based on income because it compared the 22 percent of individuals in the area living under the poverty level to the general population of Chicago. The City of Chicago averages indicate that about 20 percent of individuals live below the poverty line. The USACE therefore concluded that the low-income population of the study area is not "meaningfully greater than the percentage in the general population."

This conclusion remains flawed in that the poverty data in the FEIS draws from averages across Chicago neighborhoods where communities at both ends of the scale skew the overall average of

the general population. It is illogical that nearly a quarter of the residents in the study area living below the poverty line, most of whom are children, would not be considered significant.

Furthermore, the 22 percent of individuals in these communities living in poverty rises to the level at which the U.S. Census Bureau defines a locale as a "poverty area." The Corps should recognize and adequately account for the adverse impacts this project would have on a poverty- stricken area.

Despite finding that the study area has a combined minority population of more than 83 percent and therefore clearly meets the definition of a minority community, the Corps found that the proposed action presents no potential for disproportionately high adverse impacts on human health and environment. Administrative agencies possess considerable discretion in how they conduct environmental justice analyses. As long as the analytical methodology is reasonable and adequately explained, the agency's selection is owed deference[25] "An agency is not required to select the course of action that best serves environmental justice, only to take a 'hard look' at environmental justice issues."[26] The Corps, however, improperly focused its analysis on whether any impacts from the proposed construction would be consistent across races and income levels, stating that short term impacts to residents "would be the same regardless of race or income." The analysis should have instead looked at whether such adverse impacts would disproportionately affect low-income and minority communities as a result of the facility's location and operation in communities that are predominantly made up of minority individuals and low-income households.

We concur with the U.S. EPA that the Corps failed to include a proper discussion of the adverse impacts to human health and environment that would result from the proposed action, such as degraded air and water quality, particularly for those populations that are most vulnerable to these negative effects. Given the high percentage of minority and low-income individuals in the surrounding communities, disproportionately high adverse impacts on air quality to these populations should have been considered. The FEIS likewise never included a full environmental justice analysis of the proposed action, fully addressing whether disproportionately high adverse impacts to minority and low-income populations exist, whether those adverse impacts are significant and further analyzing environmental health risks, exposure pathways and social context in determining whether health and environmental harms can be avoided.

The failure to include a full analysis of environmental justice is compounded by the discriminatory multi-year site selection process. Every site assessed by the Army Corps over the past several years was located in close proximity to African-American or Hispanic neighborhoods and communities, which have attempted over recent decades to climb out of economic and environmental stress.

The proposed site for the CDF: 1) displaces an existing community facility, a site promised to the community for future parkland after its 2022 closure, capping, and seeding and 2) disrupts social patterns or activities, by not allowing the multiple recreational and social activities occurring in Calumet Park to expand to the site.

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[25] *Communities Against Runway Expansion, Inc. v. F.A.A.*, 355 F.3d 678, 689 (D.C. Cir. 2004).
[26] *Sierra Club v. Fed. Energy Reg. Comm'n*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

The Social Consideration Consequence Rating of the Proposed CDF should have been rated as "high." Instead, the FEIS states that the CDF (Vertical Expansion) "may be the most favorable site for local community to support."[27] Yet, in multiple meetings and comments to the Corps, the community consistently expressed opposition to locating the Proposed CDF in the 10th Ward. Similarly, the FEIS erroneously states that "the likelihood that the proposed facility would negatively impact future development in the study area is "Low".[28]

Building the "Vertical Expansion" (Proposed CDF) will have a direct bearing on property values in the surrounding area. It is unfathomable that property next to a CDF that is actively accepting contaminated dredging will have the same market value as a lakefront park. While the EIS notes that in Chicago, prominent aesthetic resources near the CAWS include the city skyline, the shoreline of Lake Michigan, city park...", the EIS then goes on to disregard this importance in undervaluing the use of the existing CDF site as public open space.

The EIS fails to acknowledge that both its operating CDF and proposed CDF, located on the shoreline of Lake Michigan and bracketed north and south by Chicago Park District parks on the shoreline of Lake Michigan, substantially detracts from the aesthetic resources of the shoreline, city parks, which will result in negative consequences to public access, private and public investment, and quality of life of nearby neighborhoods.

The very act of reneging on its commitment to close the existing CDF after its capacity is reached in 2020 and transfer it as lakefront parkland is contrary to the Corps statement that "the construction of the [CDF] facility will not displace any existing community facilities or disrupt existing social patterns or activities." To the contrary, the park will commandeer a promised community amenity for its operations. The failure to value the land that was promised to the public underscores the environmental justice and public trust issues raised by the proposed project. This in itself represents a significant adverse impact, contrary to its finding in the FEIS.[29]

Moreover, Executive Order #12898 does not use the qualifier "existing". This qualifier was wrongly added by the Army Corps to narrow the scope of environmental justice impact assessment, in an attempt to justify the siting location. Executive Order #12898 does state: "The order is intended to promote non-discrimination in federal programs that affect human health impacts or environmental effects."

The blind eye to Social Justice Issues compounds the Corps failure to adequately evaluate the impacts of the Proposed CDF to human health and the environment. The FEIS states that "No adverse impacts to the human and natural environment are anticipated as a result of constructing a DMDF. Therefore, no minority or low-income populations would be exposed to disproportionately high human health impacts or environmental effects."[30]

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[27] See FEIS, Section 6.2.2., p. 127 (Social Considerations).
[28] *Id.*
[29] See FEIS, p. 106.
[30] FEIS, p. 106.

The proposal to continue the CDF activity for at least 20 years and (with the potential of substantially longer), removes a major addition of public parkland to Calumet Park, negating the healthy human activity that parklands create. A large addition to Calumet Park, especially on the lakefront, would have attracted an increase in the park's attendance and usage. Healthy active living opportunities at the site would have lowered incidences of multiple health issues, including diabetes, obesity, heart disease, certain cancers, as well provided for positive psychological health impacts, as multiple active living health studies have pointed out.

On a broader scale, many excellent transformative projects have occurred on the Southeast Side over the past 10 years: President Obama's creation of the Pullman National Monument, Ford's reinvestment and job expansion in its manufacturing plant, the redevelopment of the Republic Steel site into a major warehouse distribution center including a Ford pre-assembly facility, the creation of the Big Marsh Bike Park and restoration of 200 acres of habitat by the Chicago Park District, the opening of Steelworkers Park on Chicago's lakefront, the expansion of bike trails locally and across the state border, the Method Soap Plant, Gotham Greens, Walmart, Whole Foods Distribution Center, the Pullman Multi-Sport Complex, and the Ray and Joan Kroc YMCA Community Center.

These are the types of projects that give the Southeast Side jobs and a quality of life that is healthy, sustainable, and uplifting to neighborhoods and communities. The Southeast side community has fought for decades to close landfills, fly-by-night waste reclamation sites, and hazardous brownfields. The CDF is the only remaining contaminated waste deposition activity remaining in the Southeast side of Chicago and thus continues to cast an image of the Southeast side that communities have fought to overturn. If the CDF were to close in 2022, as promised, the economic development marketing opportunities for the SE side would be completely transformed to a positive image and positive opportunity for reinvestment. The continued operation of the CDF pushes this opportunity backwards, characterizing the SE side as the location of waste deposition. Immediately to the north of the existing CDF is the abandoned U.S. Steel site which represents a transformative development opportunity for the SE side. The CDF's continued operation has a direct and negative effect on investors who would seek to develop this site for positive quality of life land uses and job opportunities.

V. Conclusion

In conclusion, we stress that the FEIS is not adequate under NEPA and the project cannot be permitted under the Clean Water Act because alternatives have not been properly considered and the full direct, indirect and cumulative impacts on local communities and the environment have not been thoroughly evaluated and given proper weight. The Corps must consider less environmentally damaging alternatives – specifically, alternative approaches to dealing with the sediment, not alternative locations that raise the same concerns as the proposal to expand the current CDF.

Sincerely,

Stacy Meyers
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From:	Bob Eder
To:	CELRC_Planning_ECON
Cc:	Friends of the Parks
Subject:	[Non-DoD Source] Comments on the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region
Date:	Monday, August 17, 2020 5:29:38 PM

August 17, 2020

Mr. Michael C. Padilla, PMP

U.S. Army Corps of Engineers, Chicago District

231 S. LaSalle Street, Suite 1500 Chicago, IL 60604-1437

Re: Comments on the Army Corps of Engineers' Final Dredge Material Management and Integrated Environmental Impact Statement for the Chicago Area Waterway System in the Calumet Region

Dear Mr. Padilla:

As a member of Friends of the Parks I appreciate this opportunity to submit comments on the U.S. Army Corp of Engineers' ("ACOE") July 17, 2020 Final Dredged Material Management Plan and Integrated Environmental Impact Statement ("DMMP/EIS") for the Chicago Area Waterway System in the Calumet region.

Introduction

As a city-wide parks advocacy organization, Friends of the Parks' mission is to inspire, equip, and mobilize a diverse Chicago to ensure an equitable park system for a healthy Chicago. A year ago, FOTP submitted lengthy comments detailing deficiencies in the ACOE's Draft DMMP/EIS. Those comments opposed ACOE's 2019 proposal to vertically expand the existing Confined Disposal Facility ("CDF") on public trust park land on the Southeast Side's Lake Michigan waterfront, a location that should have been returned to public use by 1994. Further, Friends of the Parks has for decades joined with the local community in opposing the creation of any new dredge disposal facilities at any 10th Ward location.

It is time for a change in how the ACOE thinks about the Southeast Side of Chicago, its Lake Michigan waterfront, and its river system. The Southeast Side is transforming, especially in the last 10 years, with the designation of the Pullman National Monument, Ford's billion dollar reinvestment creating more jobs, the North Point Development, the Method Soap manufacturing campus, Gotham 2 Greens, restaurants, the new Whole Foods Distribution Center, the Burnham Greenway, Big Marsh Bike Park and hemi-marsh restoration, the Chicago Park District's restoration of Indian Ridge Marsh and Hegewisch Marsh, and the creation of the Ford Environmental Center

The 45-acre parcel of lakefront and riverfront where ACOE proposes to renege on its contract with the Chicago Park District and Chicagoans is a significant part of this transformation of the Southeast Side. In 2006, Friends of the Parks, as a part of its Last Four Miles Initiative identified the CDF location as the last significant link on the south side to complete Daniel Burnham's vision of a park system spanning the entire Chicago lakefront. In 2016, the Chicago Metropolitan Planning Commission, in partnership with the Mayor's Office, Friends of the Chicago River, and others, led thousands of stakeholders in the citywide Great Rivers visioning process which, among other things, seeks to reinvigorate the CAWS by creating multiple iconic river destinations by 2030. Among its goals is the transformation of the currently fenced-off, forbidding, and polluting CDF dredge management facility into a "park destination that is simultaneously a riverfront and lakefront."

In the midst of these positive, healthy, job-based developments, ACOE could be a part of this vision of reinvigoration by simply living up to its commitment to closing the existing CDF and returning those 45 acres of public trust land to the Chicago Park District for the long-awaited final link in the south side Lake Michigan park system. That was the "deal" that ACOE struck with the City, the State and the people of Chicago four decades ago. But instead, ACOE continues to see the Southeast Side and its lakefront as a convenient "least cost" dumping

ground. Incredibly, the DMMP/EIS ranks the “social considerations” for taking this prime lakefront park land as “low”.

ACOE’s use of this Lake Michigan lakebed location was granted for only 10-years and it has already overstayed its welcome by 28 years. It is time for ACOE to join in the 21st Century vision for the Southeast Side of Chicago. Another generation of Chicagoans and Southeast Side residents must not be denied this lakefront park for another 25 years (and likely forever) due to ACOE’s short-sighted view of dredge management options. We call on ACOE to withdraw its proposal, return the public trust land on which the existing CDF sits to the public for park use as intended by the Illinois General Assembly, and join forces with the City of Chicago, Cook County, the State of Illinois and local stakeholders to create a 21st Century plan for future management of sediment in the Chicago Areas Waterway System (“CAWS”).

Regards,

Bob Eder

bob.eder@hotmail.com <mailto:bob.eder@hotmail.com>

847.624.6892

From:	Veronica Cook
To:	CELRC_Planning_ECON
Cc:	Friends of the Parks
Subject:	[Non-DoD Source] CDF in Southeast Chicago- a matter of environmental justice
Date:	Monday, August 17, 2020 5:49:30 PM

Dear Sir:

We concur wholeheartedly with the clear and positive views laid out by The Friends of the Parks in their official comments to you. They portrayed the situation as it might be- a creative re-thinking of an incredibly short-sided plan for maintaining and even adding to the existing CDF.

My view: the implementation of the Army Corps proposal would be an egregious injustice to an already under served and struggling community. This kind of environmental hazard would not even be considered for a north side site, making clear the implicit racism that it involves. The water and air pollution resulting from this facility are added afflictions which you have no right to impose.

I urge you to take this opportunity to right a great wrong, and as FOTP suggests to

"be a part of this vision of reinvigoration by simply living up to its commitment to closing the existing CDF and returning those 45acres of public trust land to the Chicago Park District for the long-awaited final link in the south side Lake Michigan park system."

Sincerely,
Veronica Cook
2650 N. Lakeview, Apt.1808
Chicago, Il 60614

From:	amy.lardner@sbcglobal.net
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] R.E. Proposed Expansion of U.S. Army Corps of Engineers "confined disposal facility" on the Calumet River
Date:	Monday, August 17, 2020 6:00:26 PM

Attn:
Mr. Michael C. Padilla, PMP
U.S. Army Corps of Engineers
Chicago District
231 S. LaSalle Street, Suite 1500
Chicago, IL 60604-1437

Regarding the proposed expansion of the referenced "confined disposal facility", I am writing to express my support for the views expressed by Friends of the Parks, Openlands, local community activist groups, environmental groups, and many others - individuals and organizations alike, as well as the points referenced in the recent Sun Times editorial.

The rescinding of the agreed upon plan to turn this land into a park in 1995 is a bad decision.

It is bad not only because the dramatic changes forecast for our local Great Lakes and river watershed, exacerbated by the increasing extremes of climate change, increase the likelihood this site will eventually leech contaminants, but also for these two reasons:

- the neighboring communities have already born the brunt of generations toxic pollution

- and the Calumet area is an incredibly important area for wildlife conservation.

As Cornell University found, North America has lost nearly 3 billion birds in the past 50 years due to climate change and habitat loss.

Additionally, the impact of the current pandemic should increase our motivation for going back to that 1995 plan to turn this land into a park. Chiefly:

- in this time of pandemic, the healthful benefits of getting out into nature are needed now more than ever, especially for urban populations;

- the future appeal and economic viability of the Chicagoland region would be significantly enhanced by reclaiming this lakefront for recreation and wildlife conservation, ideally as part of that last four miles project, also championed by Chicago's Friends of the Parks.

It was the work of visionaries like Dwight Perkins and Jens Jensen and others, including the Prairie Club, that saved the section of lakefront that is now the Indiana Dunes National Lake Shore. The ideas of urban greenswards connecting via transit and boulevards out to nature preserves and dunes were deemed essential to create healthful cities and offset the effects of industrialization, even then recognized as injurious to the health and welfare of humans and nature alike. All of that was incorporated into the famous Burnham Plan.

With the former U.S. Steel land and this adjacent site, the Chicagoland area has an incredible opportunity to transform this industrialized, damaged landscape into an even more significant important natural resource not only for neighboring communities, but for the greater Chicagoland area, as well as for the Midwestern region and beyond.

As others have pointed out, if this extension is approved, and even if it does not leech contaminants into the surrounding areas, the project will destroy the future ability of this land to ever become lakefront accessible park. Surely, there's a higher future use than creating an elevated parking lot? Coming up with 21st Century solutions to

remove and reduce contaminated sediment, as discussed in the Sun Times piece, is surely worth a concerted effort. Our natural areas are limited, finite and under threat. Let's move towards enhancing and increasing them, rather than doubling down on past centuries' ideas.

Thank you for your consideration.

Sincerely,

Amy Lardner
1130 N Dearborn St. #2901
Chicago, IL 60610

Referenced sources:

Blockedhttps://chicago.suntimes.com/2020/8/14/21368202/calumet-river-army-corps-engineers-chicago-southeast-side-park-environment

Blockedhttps://fotp.org/wp-content/uploads/2020/08/FOTP-CDF-FOTP-Comments-on-Final-EIS-8-17-20-FINAL.pdf

Blockedhttps://www.birds.cornell.edu/home/bring-birds-back/

From:	Amalia NietoGomez
To:	CELRC_Planning_ECON
Subject:	[Non-DoD Source] Re: Comments on the Final Calumet Harbor & River CAWS/DMMP and Integrated EIS
Date:	Monday, August 17, 2020 6:15:56 PM
Attachments:	ASE comments on CAWS DMMP Environmental Impact Statement 08-17-2020 final.pdf

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Good afternoon.

Attached below are comments from the Alliance of the SouthEast (ASE), regarding the Final Calumet Harbor & River Chicago Area Waterway System/Dredged Material Management Plan and Integrated EIS.

Please let me know if you have any questions. My contact information is below.

Sincerely,

Amalia NietoGomez
Executive Director
Alliance of the SouthEast (ASE)
9204 S Commercial Ave., Ste 301, Chicago, IL 60617
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August 17, 2020

US Army Corps of Engineers
ATTN: Planning Branch
231 S. LaSalle St. Suite 1500
Chicago, IL 60604
Email: CELRC_Planning_Econ@usace.army.mil

Re: Comments on the Final Calumet Harbor & River Chicago Area Waterway System/Dredged Material Management Plan and Integrated Environmental Impact Statement

To whom it may concern: United States Army Corp of Engineers

On behalf of the Alliance of the SouthEast (ASE), we are submitted comments regarding the proposed expansion of the Confined Disposal Facility and the final Calumet Harbor & River Chicago Area Waterway System/ Dredged Material Management Plan and Integrated Environmental Impact Statement. We submitted comments a year ago, and many of our concerns remain still the same.

We appreciate the U.S. Army Corps of Engineers endeavors to find beneficial use for some of the dredge material. We also recognize that the U.S. Army Corps of Engineers (USACE) choice to NOT to build a NEW CDF facility on Chicago's southeast side, in the 10th Ward. This was a result of local residents mobilizing and submitting 8500+ comments in opposition to ANY new Confined Disposal Facility on Chicago's southeast side, which is already heavily environmentally overburdened. As a result, Illinois State Senator Durbin ordered an environmental review, which the USACE has conducted. Residents were very clear that we do not want more toxic dredgings, especially so close to residential space. We refer the USACE to the comments and signatures submitted in opposition previously, as to why we do not want any more toxic dredgings.

Here are some of our major concerns regarding the proposed expansion:

- **Location of toxic dredgings near Chicago's source for drinking water, esp. given record high Lake levels and storm surges in the last 2 years.**
    - The current CDF and its proposed expansion sit at the mouth of the Calumet River and Lake Michigan. Lake Michigan is the source of drinking water, not only for the City of Chicago and the state of Illinois, but the Midwest region (including Indiana, Wisconsin, and Michigan).
    - **Lake Michigan has experienced record high lake levels, and storm surges that are eating away at beaches, including Calumet Beach to the south of the CDF and the South Shore neighborhoods** to the north. What is the effect of erosion on the CDF berms- both current and for the proposed expansion?
        - Please see attached article by Mark Konkol, "Could The Calumet Park Beach House Crumble Into Lake Michigan?" Patch. (February 7, 2020) https://patch.com/illinois/chicago/could-calumet-park-beach-house-crumble-lake-michigan
    - **USACE was hired to do a lakefront erosion analysis, which was should be included in the EIS.**
    - Moreover, **the EIS should take into account the effect of erosion on the current CDF as well as the proposed expansion, and ensure toxins are not leaching into the region's drinking water.**
    - **USACE should be testing nearby water for highly toxic chemicals, including PCBs, mercury and arsenic.**
    - **USACE should use the Illinois Pollution Control Board's Lake Michigan Basin Water Quality Standards.** Under the Clean Water Act, federal projects are required to meet state standards.
- **USACE does not address issues created by the proposed expansion taking place in an environmental justice community. The proposed expansion will disproportionately affect minority & low-income communities with vulnerable populations** (including children, pregnant women, elderly, and groups with high asthma and cancer rates).
    - One concern is the effects on air quality. The area also has older housing, which does not filter air well (there are older windows and many are not able to afford in-home upgrades to improve inside air quality).

Recommendations

USACE should:

- **Address the disproportionately high & adverse impacts to minority, low-income, & vulnerable populations, & perform additional environmental justice analysis** to ensure review of these impacts to minority, low-income, and vulnerable populations. Populations are already environmentally overburdened, exposed to other contaminants, and have high cancer and asthma rates. This was stated in our previous comments, and additional environmental justice analysis still hasn't taken place.
    - Please see attached map: "Cumulative Burden of Environmental Exposures & Population Vulnerability." References on Environmental Burden on Chicago's southeast side:
        - Geertsma, Meleah. "New Map Shows Chicago Needs Environmental Justice Reforms." NRDC. (October 25, 2018). Website accessed: 07/30/18. https://www.nrdc.org/experts/meleah-geertsma/new-map-shows-chicago-needs-environmental-justice-reforms
        - Yeo, Sophie. "A Clever New Map Shows which Chicago Neighborhoods are most at risk from Pollution." Pacific Standard. (Jan. 15, 2019) Website accessed: 07/30/19 https://psmag.com/environment/which-chicago-neighborhoods-are-most-at-risk-from-pollution
    - **Asthma rates for nearby, impacted community areas:** Chicago's asthma rate for 2017 was 9.1. Comparatively, South Chicago has an asthma rate of 14.4. South Deering has an asthma rate of 20.7. Hegewisch and East Side data were not available. Source: Chicago Health Data. "Asthma: Adults who have been diagnosed with asthma." Chicago Health Atlas. Website accessed: 08/01/19. https://www.chicagohealthatlas.org/indicators/asthma
    - **Cancer death rates for nearby, impacted community areas:** Chicago's cancer death rate for 2017 was 179.2. Comparatively, South Chicago has a cancer death rate of 229.0. South Deering has a cancer death rate of 220.5. East Side and Hegewisch had cancer death rates of 189.0 and 197.9 respectively. Source: Chicago Health Data. "Cancer deaths: People who died due to cancer." Chicago Health Atlas. Website accessed: 08/01/19. https://www.chicagohealthatlas.org/indicators/cancer-deaths

- **Consider the potential exposure of air-borne toxic material and impact on residents and commit to regular monitoring**, since USACE proposes to air dry highly contaminated material from the Calumet River and Cal-Sag Channel.

- **Commit to appropriate mitigation measures to reduce exposures** below regulatory thresholds.

- **Consider the effect of South Chicago in the Environmental Impact Statement**, as residents are near to the site, and are in the area immediately affected (within 1 mile radius of the site). South Chicago is closer than some of the other community areas that were already listed in the EIP. As noted in the aforementioned comments, South Chicago is an environmentally overburdened community area, and while South Chicago is supposed to be included in the revised EIS, there is no adjustment to the analysis performed by USACE. For example, there are 3 senior buildings in South Chicago- the Victory Centre, Villa Guadalupe, and the South Chicago Senior Housing, and seniors are experiencing high death rates due to Covid-19. USACE needs to consider the effects on air quality. The area also has older housing, which does not filter air well (there are older windows and many are not able to afford in-home upgrades to improve inside air quality).

- **Pro-actively protect our drinking water.** Given the closeness to Chicago's source of drinking water, provide explanation on how contaminants and toxic material are managed, to prevent contaminated water from the drainage pond from entering Lake Michigan. The original liner had holes that were covered with a "sand blanket." Best practices recommend 2 liners, surrounded by clay.

- **Provide information on how the addition of more toxic dredged material will affect the aquatic environment**, especially since the original liner had holes that were covered with a "sand blanket." Again, best practices recommend 2 liners, surrounded by clay.

- **Describe your long-term plan after 20 years, when the expanded CDF is filled**.

- **Create a plan, with the City of Chicago, for pollution source reduction for the Calumet River, establishing goals and measurable outcomes for source reduction.** The current plan does not set any goals or metrics, and is not currently incorporated into the DMMP or EIS. Research by USACE has identified the chemical signatures of toxins in the river sediment and shown that most of them come from industrial properties along the river. Further study could pinpoint the most significant sources, and corrective action — better management at local industries or protective covering over chemicals stored along the river, for example — could reduce pollutants significantly.

- **Provide the cost analysis of 20-year site compared to alternatives**.

- **Consider alternatives** that do not adversely affect already overburdened communities, and that doesn't impact recreational amenities and natural resources. Hold public discussions on alternatives considered and the detailed analysis.

- **Not consider residential areas for future sites.**

- **Ensure full transparency and community feedback.** There was no public presentation/ response from USACE to concerns outlined in previous hearing.

The Alliance of the SouthEast (ASE) is a multicultural, interfaith, and intergenerational alliance consisting of churches, schools, businesses, and community organizations that prioritize grassroots participation to address the challenges facing the neighborhoods of southeast Chicago. ASE's mission is to build the capacity of leaders, organizers, and associations in order to carry out community and social change.

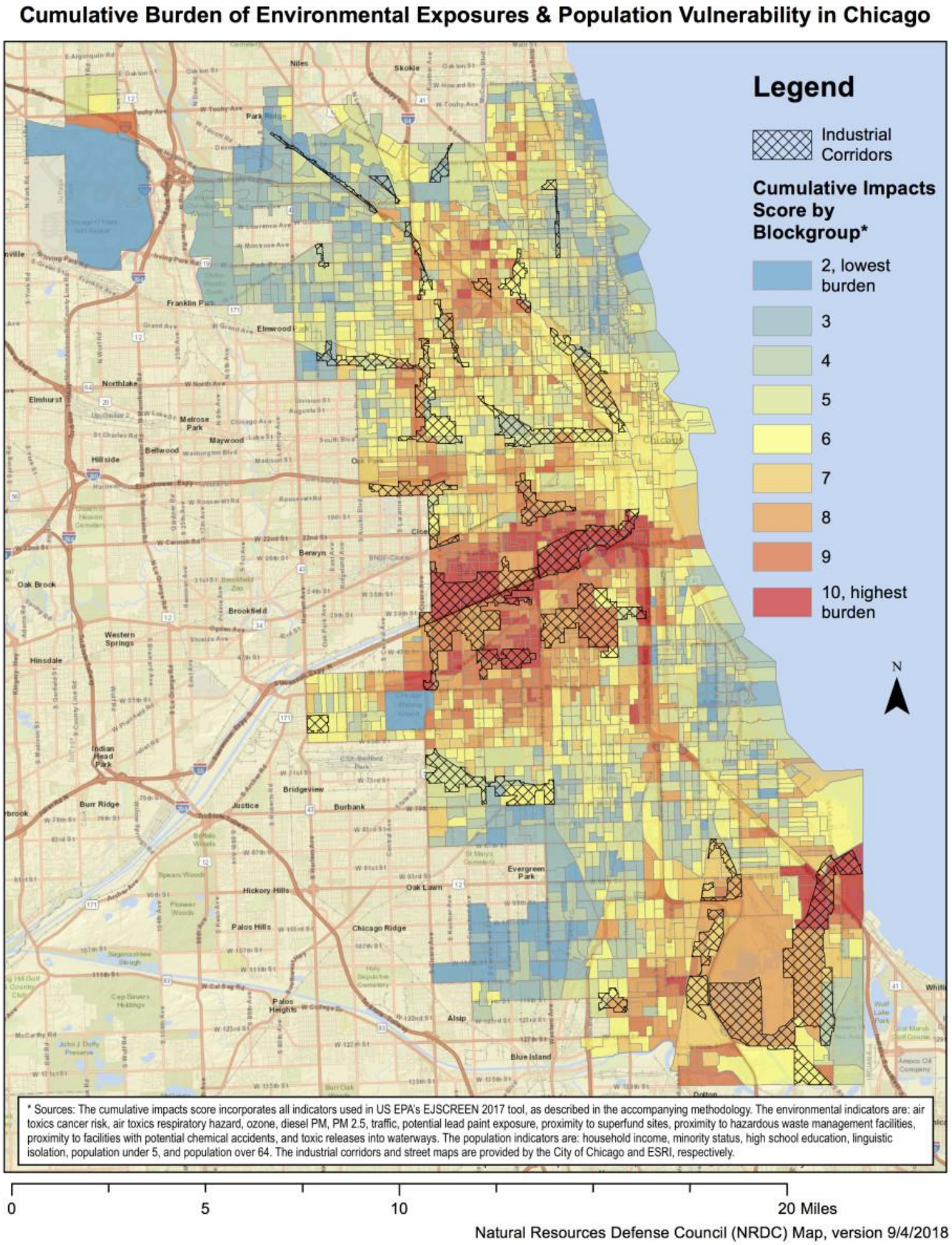
We urge you to consider the recommendations above. If you have any questions, please contact me at 773-221-8908 or amalia@asechicago.org. Thank you for your consideration.

Sincerely,

Amalia NietoGomez
Executive Director

Attachments:

- Chicago Map of "Cumulative Burden of Environmental Exposures & Population Vulnerability." Created by National Resource Defense Council. 09/2018
- Chicago Map of "Asthma: Adults who have been diagnosed with asthma" 2015-2017, by community area. Chicago Health Atlas. Website accessed: 08/01/19.
- Chicago Map of "Cancer deaths: People who died due to cancer" 2015-2017, by community area. Chicago Health Atlas. Website accessed: 08/01/19.
- Chicago Map of "Chronic Disease Rates." Created by Juan Martin Luna Nunez. 04/28/2020.
- Konkol. Mark. "Could The Calumet Park Beach House Crumble Into Lake Michigan?" Patch. (February 7, 2020) https://patch.com/illinois/chicago/could-calumet-park-beach-house-crumble-lake-michigan

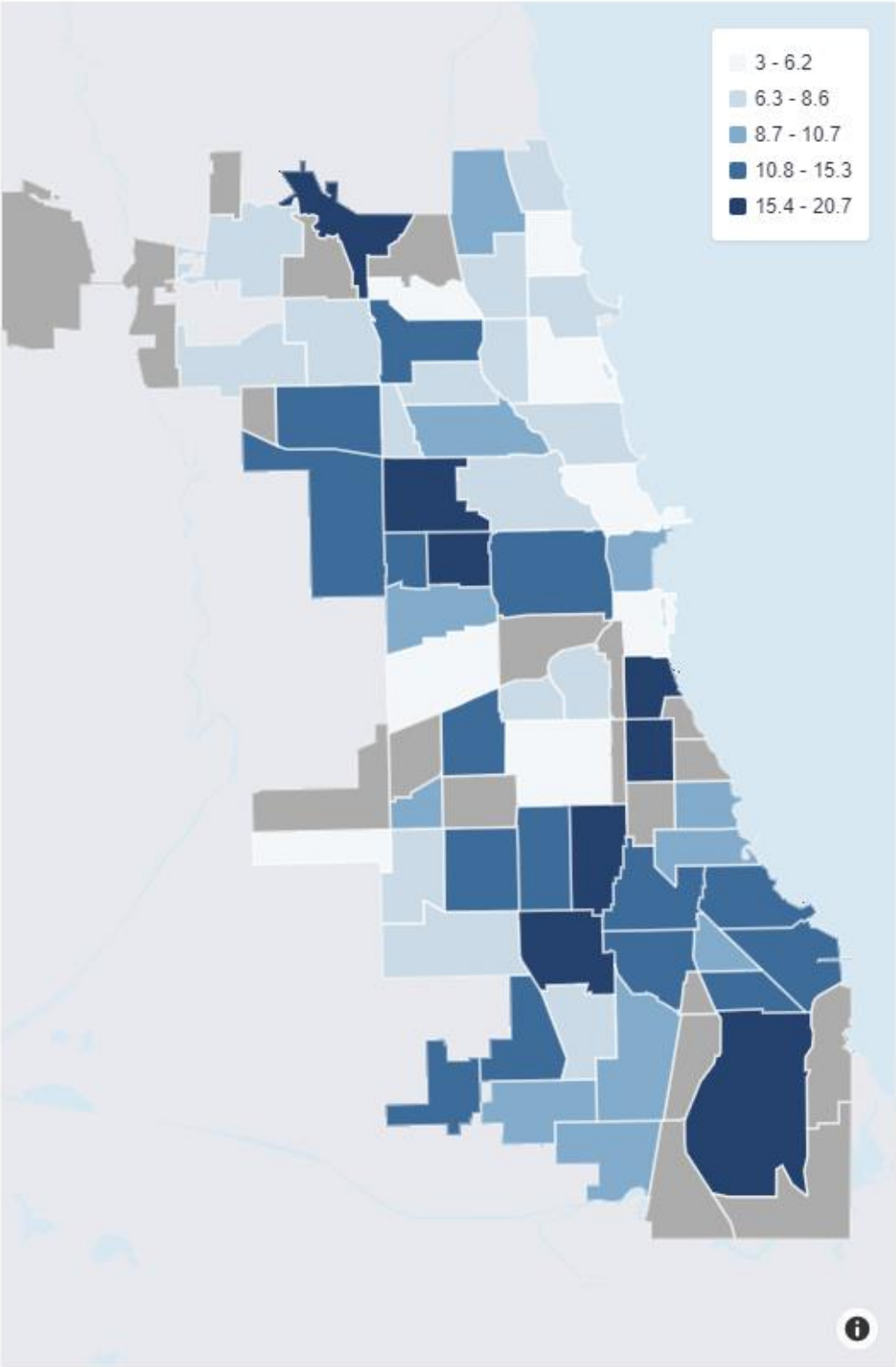


The NRDC's Industrial Corridors and Cumulative Impacts Map for Chicago shows which of the city's neighborhoods are most at risk from pollution. (Photo: Natural Resources Defense Council)

Source: Yeo, Sophie. "A Clever New Map Shows which Chicago Neighborhoods are most at risk from Pollution." Pacific Standard. (Jan. 15, 2019) Website accessed: 07/30/19
https://psmag.com/environment/which-chicago-neighborhoods-are-most-at-risk-from-pollution

Asthma

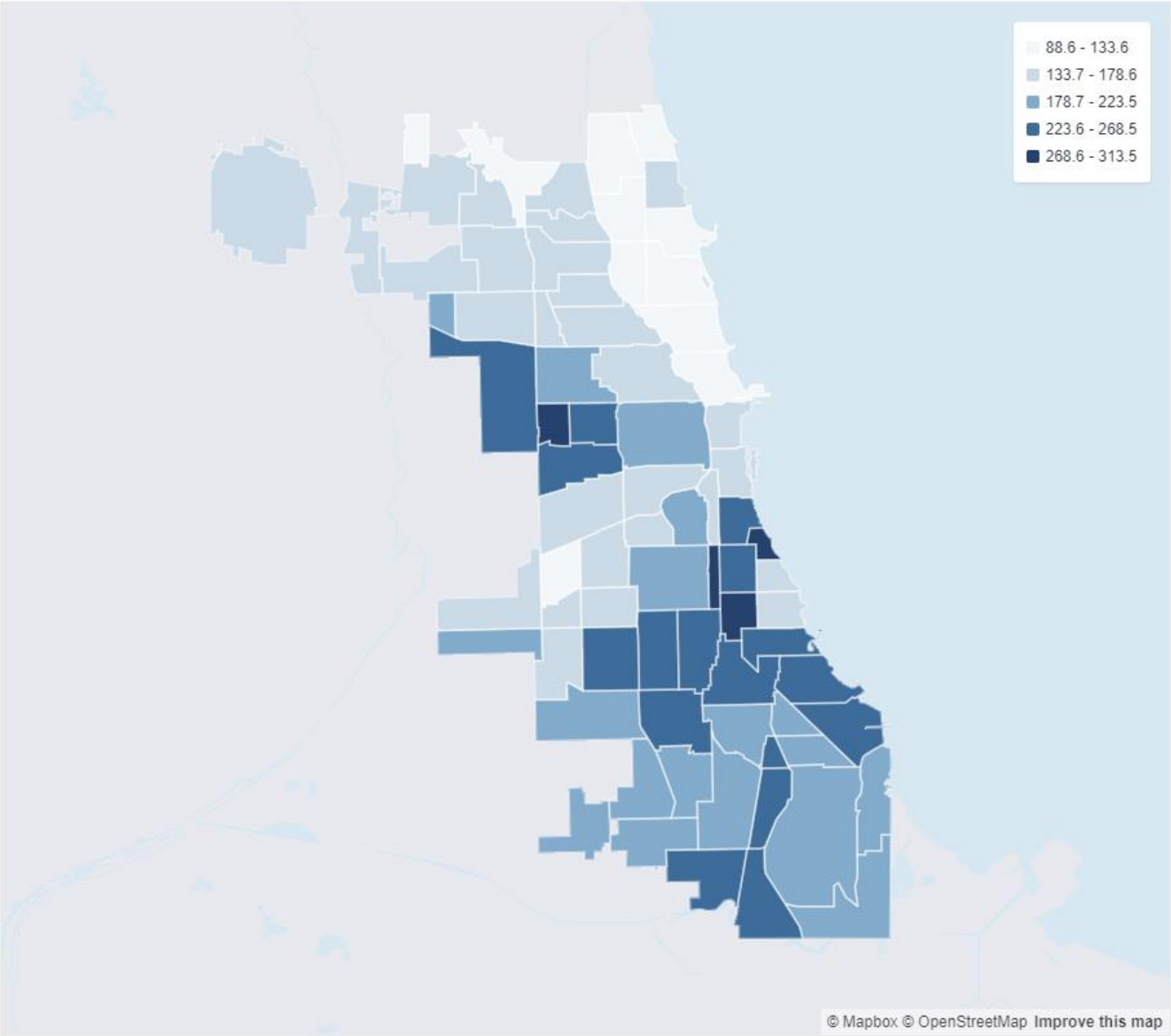
ADULTS WHO HAVE BEEN DIAGNOSED WITH ASTHMA, 2015-2017



Source: Chicago Health Data. "Asthma: Adults who have been diagnosed with asthma." Chicago Health Atlas. Website accessed: 08/01/19. https://www.chicagohealthatlas.org/indicators/asthma

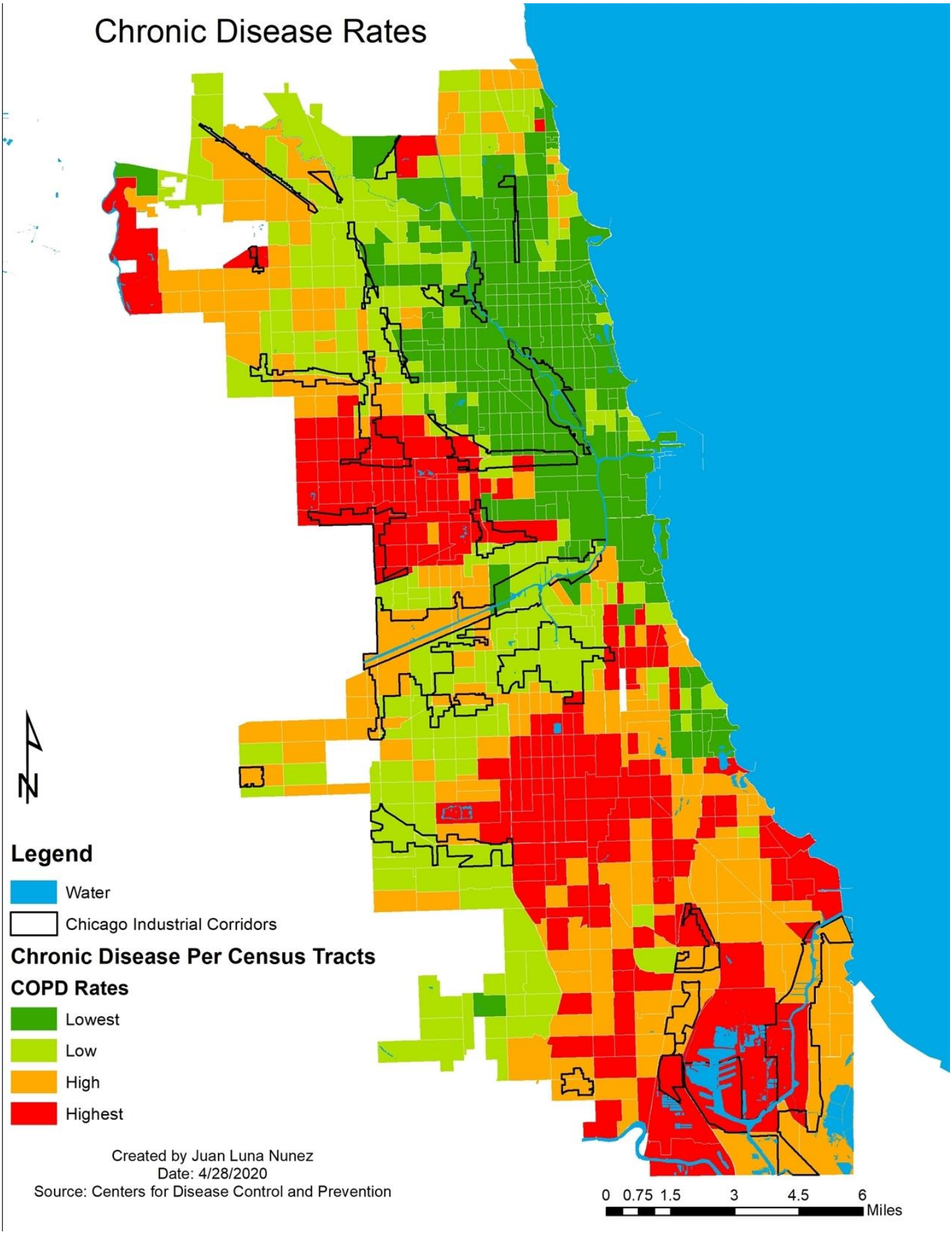
Cancer deaths

PEOPLE WHO DIED DUE TO CANCER



Source: Chicago Health Data. "Cancer deaths: People who died due to cancer." Chicago Health Atlas. Website accessed: 08/01/19. https://www.chicagohealthatlas.org/indicators/cancer-deaths

Chronic Disease Rates



Created by Juan Luna Nunez
Date: 4/28/2020
Source: Centers for Disease Control and Prevention

Politics & Government

Could The Calumet Park Beach House Crumble Into Lake Michigan?

City and state officials want Federal Emergency Management Agency to declare Chicago's lakefront a disaster zone, fund erosion protection.

By Mark Konkol, Patch Staff Feb 7, 2020 6:18 pm CT

Could the Calumet Park beach house, built in 1962 by the Artistic Stone Company for $213,000, crumble into Lake Michigan? (Mark Konkol)

EAST SIDE — On Friday, Mayor Lori Lightfoot, flanked by Lt. Gov. Juliana Stratton and U.S. Sen. Dick Durbin, called for the Federal Emergency Management Agency to declare the city's lakefront a national disaster area.

Lake Michigan has gobbled beaches in Rogers Park, devoured lakefront paths near Hyde Park and crumbled sea walls near lakefront high-rises in South Shore. City officials estimate that the combination of powerful winter storms and record-breaking lake levels have already caused more than $25 million in damage, a burden too big for the City of Big shoulders alone.

"While the City has worked extensively, over the past few months to respond to the damage and to secure the infrastructure and beaches along our lake front - it is clear that this is a challenge we can't solve alone. ... We have declared disaster status to ensure Chicago receives the supports needed for addressing the scope of this issue for the long term," Lightfoot said. "We remain committed to working with all stakeholders at the state and federal level in order to protect and preserve this vital piece of Chicago's landscape."

While the disappearance of beaches in Rogers Park, devoured lakefront paths near Hyde Park and damages sea walls have gotten the most attention, city and Chicago Park District officials are still trying to determine the extent of erosion damage and which sections of the lakeshore that are at risk.

The Calumet Park Beach House, built to open in 1962 by Artistic Stone Company for $213,000, has taken a beating this winter.

Drone video, shot in August as part of the park district's shoreline assessment and strategic plan, shows that lake levels at Calumet Park Beach had already reached the beach house steps. Only sandy corners of the beach remained above the water line.

Video: https://youtu.be/9bMoJgWmzJ8

On Friday morning, Chicago's southernmost beach near the Indiana border was completely underwater.

Metal railings and the concrete patio near the concession stands were covered in ice.

A wooden platform attached to the beach house steps, heavy with ice, leaned toward the lake.

A section of lakefront path near the beach house had succumbed to sink holes created when waves washed away sandy soil beneath the concrete sidewalk.

Video: https://youtu.be/XGoAUqQGTwg

Could the Calumet Park beach house face a similar fate?

A park district spokesman didn't have a clear answer on Friday.

Park district crews and contractors are currently assessing which sections of the shoreline need the most urgent attention, he said, and Calumet Beach is part of that effort.

Source: https://patch.com/illinois/chicago/could-calumet-park-beach-house-crumble-lake-michigan

From: ANNE ABRAMSON
To: CELRC_Planning_ECON
Subject: [Non-DoD Source] No to Expansion of the Confined Disposal Facility
Date: Monday, August 17, 2020 6:25:01 PM

Dear Mr. Padilla

I strongly object to the ACOE's expansion of the Confined Disposal Facility on Chicago's lakefront. This area is public trust land which should be converted into a park as planned decades ago. The expansion of this dump also puts at greater risk the water supply for the entire city.

I sincerely hope that the ACOE will instead adopt the three pronged plan proposed by environmental groups and the community instead of degrading further our precious lakefront and jeopardizing our water supply. Turning this area into a park as originally planned and in keeping with Burnham plan for a free and clear lakefront is the best solution for the whole city now and in the long term.

Thank you for your consideration.

Anne Abramson

2 nd Ward