



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 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 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

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.](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. ACOE Has Failed to Fully Evaluate the Non-CDF Alternatives

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.

⁵ACOE "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. Beneficial Use of Harbor Dredge at Off-Site Locations

⁷ See USEPA Comments dated December 18, 2014 on 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

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. Proper Disposal of Contaminated Dredge at a Permitted Landfill

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 zone¹² 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

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.

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. ACOE Attributes No Real Estate Costs to the Vertical Expansion Alternative

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.

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 County²¹ 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.

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.civiced.org/sites/default/files/100405_CookCountyAssessmentPrimer.pdf. See p. 25.

²² https://www.civiced.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 jobs²⁵, tourism²⁶, property values²⁷, natural goods and services²⁸, health benefits²⁹, and direct use benefits³⁰. 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

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/EGMI6-03.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. Higher Costs for Stormwater Management Due to the Proposed Vertical Construction of the CDF at the Lakeshore Location Must Be Included

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 District³⁵, 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 fails to 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 Michigan³⁶ 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.

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 1988³⁸, 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.

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:

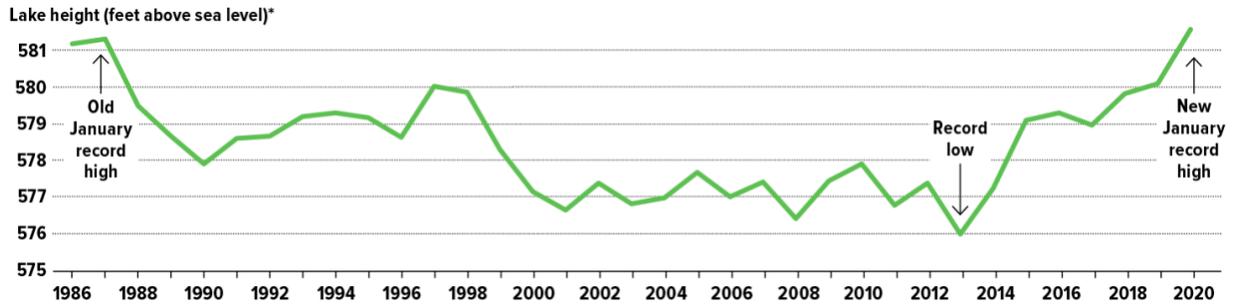
“A changing climate will have real impacts on our military and the way it executes its missions...Our *coastal installations are vulnerable to rising sea levels and increased flooding*, while droughts, wildfires, and more extreme temperatures could threaten many of our training activities. Our supply 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>

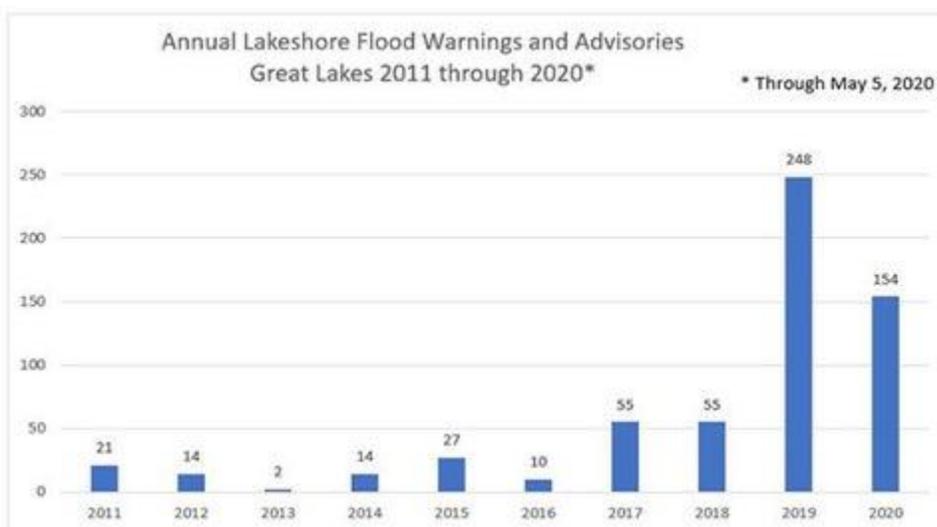


*January average SOURCE: U.S. Army Corps of Engineers

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=rttd> “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.

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, 1982, 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, 1982 (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:

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 for a period not

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 Act⁵⁰, 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,

A handwritten signature in cursive script that reads "Juanita Irizarry". The signature is written in a dark ink and is positioned centrally below the text "Respectfully Submitted,".

Juanita Irizarry
Executive Director