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Sent via email to CELRC_Planning_Econ@usace.army.mil.

August 1, 2019

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

RE: Chicago Area Waterway Systems Draft Integrated Environmental Impact Statement and Dredged Material Management Plan (CEQ #20190081)

Dear Mr. Hoxie:

Openlands appreciates the opportunity to comment on the Draft Integrated Environmental Impact Statement (DEIS) and Dredged Material Management Plan (DMMP) for the Chicago Area Waterways (CAWS), which was released in April 2019. Openlands has several concerns regarding the alternatives analysis and proposed plan for a vertical expansion of the existing Chicago Area Combined Disposal Facility (CDF) to store sediment dredged from the Calumet River: (1) the analysis falls short of what is required by the National environmental Policy Act; (2) expanding the CDF raises serious water pollution and environmental justice issues; and (3) another reasonable alternative exists that was not adequately explored, which would eliminate both the need to expand the CDF and, over time, a significant source of the dredged material.

Openlands is a non-profit organization, whose mission is to protect the natural and open spaces of northeastern Illinois and the surrounding region to ensure cleaner air and water, protect natural habitats and wildlife, and help balance and enrich our lives. Openlands was one of many organizations that participated in the water quality standards proceedings before the Illinois Pollution Control Board to better protect the insurgence of people recreating on and in the CAWS and Lower Des Plaines River, as well as aquatic life that depends upon the integrity of these waters. In addition to its involvement in stormwater management programs, such as Space to Grow, a strong number of its 9,000 supporters hike, bike, watch

wildlife, canoe, kayak, and otherwise recreate on and along areas of the CAWS, including areas of the Chicago River system that are subject to this DEIS.

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

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

I. The DEIS Did Not Adequately Consider Reasonable Alternatives as Required under NEPA.

The DEIS and DMMP should be revised to include a complete identification of all reasonable alternatives for managing sediment dredged from the Calumet River. The USACE must "rigorously explore and objectively evaluate all reasonable alternatives" for achieving the purpose and goals of the project. 40 C.F.R 1502.14(a). This requirement is the heart of NEPA and extends to "all alternatives that appear reasonable and appropriate for study," DuBois v. U.S. Dep't of Agriculture, 102 F.3d 1273, 1286 (1st Cir. 1996). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." Simmons, 120 F.3d at 670; Alaska Wilderness Recreation & Tourism v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

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

Four alternative sites were assessed in the EIS and DMMP: LTV, Wisconsin Steel, KCBK, and 116th and Burley. As shown below, all four sites are 100% industrial, uncapped brownfields with long histories of unregulated deposition of polluted waste products.[1]

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

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

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

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

With the moratorium in place, the USACE should have taken a harder look at alternatives to disposal facilities. Fortunately, one exists: Combine actions to reduce sediment at its source with transporting dredged material to a landfill outside of the City. Ultimately, reductions in sediment will make it less expensive to dewater and transport, since much of the load will be alleviated. This alternative will also ultimately prevent contaminants on neighboring industrial sites from polluting the water, improving the quality and availability of the CAWS.

A. <u>Source Reduction Is Critical to Resolve Rather Than Perpetuate Pollution</u>

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

The DEIS did not consider Source Reduction as part or all of an alternative, and instead focused solely on removing annual sediment loads. This is akin to choosing to capture 25,000 cubic yards of leaking oil each year from a broken oil pipeline instead of fixing the pipe.

The ERDC office of the USACE found in a 2017 study sediment in the Calumet River were likely from "anthropogenic activities along this stretch of the river." The principal sources would be a combination of surface stormwater runoff, wind-blown material, infiltrated stormwater into adjoining brownfields causing groundwater flow transferring pollutants to the river, and stormwater or combined-sewer outfalls. The ERDC report established effectively little impact from Lake Calumet, Pullman Creek, Indian Creek or backwash from Calumet Harbor. Lake Calumet itself provides a large sink for sediments that have filled the northwest corner of the lake and continue to fill the lake's center channel, since it was dredged 20+ years ago. The "anthropogenic activities" are located on approximately 2,500 acres of industrial properties and abandoned uncapped brownfields along the Calumet River corridor.

With the upcoming focus on studying water quality parameters in the CAWS, the USACE could have proposed a requirement that overlaps with that effort to identify the primary source types and locations of pollutants entering the Calumet River. After two years of study, the USACE could develop an intergovernmental strategy to begin source reduction of pollutants by year three with a goal of achieving a sediment load removal of 5,000 cubic yards per year by 2030. Individual regulatory agencies such as the City of Chicago, IEPA, IDNR, and USEPA could target and resolve obvious sources of pollutants immediately.

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

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

3. Pollutant transfer from adjoining uncapped brownfields driven into the Calumet River by infiltrated stormwater. The most difficult situation to assess and allocate responsibility towards, but total suspended solids (TSS) monitors and chemical monitors should be installed along both riverbanks to determine the most egregious sources. Property owners responsible for these primary sources should be considered Principal Responsible parties by the USEPA and given a limited period of time to fully cap their landholdings substantially at their

expense or have enforcement action taken. Great Lakes Restoration Initiative funding should be sought to assist in financing the capping. Multiple best management practices could be identified and instituted in short time frames, while a thorough, comprehensive two-year study of the adjoining brownfields is undertaken to determine the most egregious sources of pollution.

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

B. Landfilling with Source Reductions is a Reasonable Alternative to Expanding the CDF

Landfilling dredged sediment from the Calumet River (25,000 cubic yards per year) was not seriously studied in the June 2015 DEIS or DMMP, nor is it fairly assessed in the current DEIS or DMMP, as a management measure for three reasons: "Cost, Scale, and No guarantee of capacity." All three reasons are insufficient grounds for denial, and a landfill alternative should be reassessed for the following reasons:

1. Cost. The CDF Vertical Expansion Alternative could be construed as the "most expensive" since it the only alternative considered that could even arguably be "environmentally compliant." (We have concerns that even this alternative should not be viewed as compliant, given natural resource and community impacts.) The cost analysis should also include the reasonable alternative of disposing sediment in out-of-city landfills in the northeastern Illinois and northwestern Indiana region, as well as source reductions well beyond the 20-year horizon.

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

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

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

3. No Guarantee of Capacity. The Chicago Metro region has landfills which in 2017 had 85 million cu.yds. of capacity remaining. The annual fill rate is 7.7 million cu.yds./year. The landfill industry continues to open new facilities as existing landfills begin to reach capacity. New or expanded landfills have continued to open over the last 40 years. With the waste generation of a metropolitan region there will continue to be expanded landfill capacity.

III. The Draft EIS and DMMP Fail to Account for the Full Pollution and Environmental Justice Impacts of the CDF Extension Alternative

The USACE is required to take a "hard look" at the environmental consequences of all reasonable alternatives. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The discussion of environmental impacts is designed to provide a "scientific and analytical basis" for comparing the various alternatives for achieving the agency's goals. 40 C.F.R. 1502.16; *DuBois v. U.S. Dep't of Agriculture*, 102 F.3d 1273, 1286 (1st Cir. 1996). A proper analysis of the alternatives can be carried out only if the agency provides a complete and accurate description of the environmental consequences of all reasonable alternatives.

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

Despite establishing that sediment from the area is highly contaminated, the DEIS does not assess how dewatering, transportation and disposal of sediment, as well as continued CDF operations, could expose the surrounding community to harmful acute or chronic levels of air

pollution. This is despite the studied effects of contaminants such as manganese in the area, and known residential areas within a half mile to a mile of the CDF. The Final EIS should provide a comprehensive analysis and supporting data on exposure and risk, with proposed adequate mitigation measures to meet regulatory air emissions requirements.

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

This conclusion is flawed in that the poverty data in the DEIS draws from averages across Chicago neighborhoods where communities at both ends of the scale skew the overall average of the general population. It is illogical that nearly a quarter of the residents in the study area living below the poverty line, most of whom are children, would not be considered significant. Furthermore, the 22 percent of individuals in these communities living in poverty rises to the level at which the U.S. Census Bureau defines a locale as a "poverty area." The USACE should recognize and adequately account for the adverse impacts this project would have on a poverty-stricken area.

Additionally, despite finding that the study area has a combined minority population of more than 83 percent and therefore clearly meets the definition of a minority community, the USACE found that the proposed action presents no potential for disproportionately high adverse impacts on human health and environment. Administrative agencies possess considerable discretion in how they conduct environmental justice analyses. As long as the analytical methodology is reasonable and adequately explained, the agency's selection is owed deference.[2] "An agency is not required to select the course of action that best serves environmental justice, only to take a 'hard look' at environmental justice issues."[3] The USACE, however, improperly focused its analysis on whether any impacts from the proposed construction would be consistent across races and income levels, stating that short term impacts to residents "would be the same regardless of race or income." The analysis should have instead looked at whether such adverse impacts would disproportionately affect low-income and minority communities as a result of the

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

facility's location and operation in communities that are predominantly made up of minority individuals and low-income households.

We concur with the U.S. EPA that the USACE failed to include in the DEIS a proper discussion of the adverse impacts to human health and environment that would result from the proposed action, such as degraded air and water quality, particularly for those populations that are most vulnerable to these negative effects. Given the high percentage of minority and low-income individuals in the surrounding communities, disproportionately high adverse impacts on air quality to these populations should have been considered. The FEIS should include a full environmental justice analysis of the proposed action, fully addressing whether disproportionately high adverse impacts to minority and low-income populations exist, whether those adverse impacts are significant and further analyzing environmental health risks, exposure pathways and social context in determining whether health and environmental harms can be avoided.

Thank you again for the opportunity to provide comments on this important issue. We look forward to your review and further discussion.

Sincerely,

Stacy Meyers
Senior Counsel
Openlands