

**NOTICE OF APPLICATION FOR FEDERAL CONSISTENCY REVIEW
LAKE MICHIGAN COASTAL ZONE PROGRAM**

Project Number: ER-17744

Name of Applicant: Col. Christopher T. Drew

Address of Applicant:

Chicago District, US Army Corps of Engineers
231 South LaSalle Street, Suite 1500
Chicago, IL 60604

Project Description:

Restoration project of natural plant communities, topography, hydrology, and public access and recreation in the current floodway; also riparian corridor enhancement through the light re-grading of river banks and native planting along Burns Ditch and the Little Calumet River, City of Portage

Location of Project: Porter Co., Indiana

Send comments to the following no later than August 10, 2014:

Federal Consistency Review Coordinator, Environmental Unit
Division of Fish and Wildlife
Department of Natural Resources
402 West Washington Street, Room W273
Indianapolis, IN 46204
Electronic mail: environmentalreview@dnr.in.gov

Copies of the request, accompanying information and data are available for inspection at the following location:

Environmental Unit
Division of Fish and Wildlife
Department of Natural Resources
402 West Washington Street, Room W273
Indianapolis, IN 46204



DEPARTMENT OF THE ARMY
CHICAGO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
231 SOUTH LA SALLE STREET, SUITE 1500
CHICAGO IL 60604

15 JUL 2014

Technical Services Division
Design Branch
Hydraulic and Environmental Engineering Section

Darrin Miller, North Branch Team Manager
Indiana Department of Natural Resources
Division of Water
402 W Washington Street, Room W264
Indianapolis, IN 46204-2641

Dear Mr. Miller:

The United States Army Corps of Engineers (USACE), Chicago District will be undertaking a restoration project along Burns Ditch and the Little Calumet River. Restoration of the project area was included in the City of Portage Parks and Recreation Department's 2007-2011 Master Plan. The project plan calls for the restoration of natural plant communities, topography, hydrology, and public access and recreation in the current floodway. There is to be enhancement of the riparian corridor through the light re-grading of river banks and native planting along Burns Ditch and the Little Calumet River.

The proposed activity complies with Indiana's approved coastal management program and will be conducted in a manner consistent with such program.

Under the principles of sovereign immunity, we believe the United States is not required to obtain a floodway permit from the Indiana Department of Natural Resources (IDNR). The Supremacy Clause precludes application of local codes to federal projects where such laws attempt to regulate the plans and specifications of the federal project. See e.g., *United States v Montana*, 699 F Supp 835 (1955, DC Mont). We are not aware of the existence of a waiver of sovereign immunity that would apply to this permit.

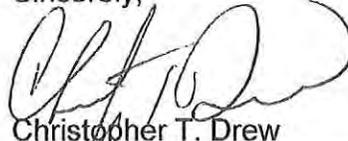
A copy of this letter has been sent to IDNR Environmental Unit for Federal Consistency.

Please let us know if IDNR has any concerns or questions about the Corps' decision to not apply for a permit, and we can arrange a meeting to discuss any issues. If IDNR believes that the permit applies to the Corps, please provide us with a detailed jurisdictional analysis for our consideration. We are submitting the enclosed project documents as a matter of comity and for information purposes only. We will continue to forward updates and plan changes to your department as they occur.



Please feel free to contact Ms. Kim Sabo, District Counsel, at (312) 846-5350 or Mrs. Mo Bak-Pylinski, Hydraulics, at (312) 846-5572 with questions about the project. We are looking forward to working with you on advancing our mutual understanding of applicable requirements for the project.

Sincerely,



Christopher T. Drew
Colonel, U.S. Army
District Commander

Enclosure



Porter County FEMA 1000ZONES

