Meeting Date: 3/3/2009
Agenda Item: PC. 6a)
CC. 6a)

Planning Commission/ City Council Agenda Report

City of Scandia

14727 209th St. North
Scandia, MN 55073 (651) 433-2274

Action Requested: Determine the next step in the review of the Environmental Assessment Worksheet (EAW) for the Tiller Corporation's Zavoral Mining and Reclamation Project.

Deadline/ Timeline: 30-day comment period on EAW ended February 11, 2009. The City must make a decision on the need for an EIS between 3 and 30 days following the review period, or extend the review period as provided by Minnesota Rules 4410.1700.

Background:

- The attached memorandum from City Planner Sherri Buss describes the project and the EAW process to date. The City received 49 comments on the EAW. The next step is to respond to the comments and to made a determination on the need for an EIS (Environmental Impact Statement)
- After reviewing the comments, the proposer, city staff and consultants have concluded that the city does not have sufficient information to address a number of the issues identified in the comments, including noise, rare and endangered species, groundwater, surface water, future reclamation and visual impacts.
- The Planner has identified two options for proceeding given the need for additional information: either making a positive declaration for an EIS and include the needed studies in the scope of the EIS; or, postpone a decision on the need for an EIS and allow the proposer to perform the additional studies before making a decision sometime later this year.

Recommendation: The Planning Commission should review the comments on the EAW and the staff report, and make a recommendation to the City Council on the preferred option.

The City Council should consider adopting one of the two draft resolutions provided. Option A would order preparation of an EIS; Option B would delay the decision until the completion of additional analyses (no later than November 30, 2009.)

Attachments/ Materials provided:

- TKDA Memorandum dated February 26, 2009
- Zavoral Mine EAW—Proposed Additional Data and Analyses (Tiller Corporation, dated February 24, 2009)
- List of Public Comments, EAW for Zavoral Mining and Reclamation Project
- EAW Comments
- Correspondence from Lisa Schlingerman (2/6/09, with letters dated 1971)
- Draft Resolutions (A & B)

Contact(s): Sherri Buss, TKDA (651) 292-4582
Prepared by: Anne Hurlburt, Administrator

(Tiller-Zavoral EAW)

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MEMORANDUM

To:	City Council and Planning Commission	**Reference:**	Tiller Corporation - EAW/CUP
	Anne Hurlburt, City Administrator		Application for Zavoral Mine
Copies To:	Mike Caron, Tiller Corporation		City of Scandia, Minnesota
	Kirsten Pauly, Sunde Engineering		
From:	Sherri Buss, R.L.A.	**Proj. No.:**	14059.015
Date:	February 26, 2009	**Routing:**	

SUBJECT: Tiller Corporation, Inc. - EAW and CUP Application for Zavoral Mining and Reclamation Project

MEETING DATE: March 3, 2009

LOCATION: Sections 18 and 19, Township 32 North, Range 19 West

APPLICANT: Tiller Corporation
P.O. Box 1480
Maple Grove, Minnesota 55311

120-DAY PERIOD: N/A

ZONING: Agricultural District

ITEMS REVIEWED: CUP Application, Plans, EAW and Related Submittals, EAW Comments, Outline for Additional Studies

LEGAL REFERENCE: Minnesota Statutes 116 (particularly 116D.04); Minnesota Rules 4410
City of Scandia Mining Ordinance No. 103

BRIEF DESCRIPTION OF THE REQUEST:

Tiller Corporation has submitted an application for a Conditional Use Permit and an Environmental Assessment Worksheet (EAW) for the Zavoral Mining and Reclamation Project. Tiller is requesting to operate a gravel mine and processing operation on a dormant, un-reclaimed gravel mine site. The application does not include mining into the ground water. The site was mined by multiple operators before it was taken out of production in the 1980's.

The 114-acre site is located along St. Croix Trail North (State TH 95) near its intersection with State TH 97. A portion of the site is located in the St. Croix River District Zone. The Application indicates that the area proposed for sand and gravel mining activity is located outside the limits of the St. Croix River District zone. The application proposes reclamation activities within the Riverway Zone. Mining is not permitted within the Riverway Zone.

State Rules 4410.4300 subpart 12 specify that an EAW is required for gravel mining activities that will excavate 40 or more acres of land to a mean depth of 10 feet or more. The previous mining activities on the site were not subject to environmental review.

The site is proposed for mining and related processing activities, and is within the General Rural/Agriculture area in the City's adopted Comprehensive Plan and Land Use map. It is zoned for Agriculture under the City's current Zoning Map. Mining is an allowed use within the Agriculture zone. The City's 2030 Comprehensive Plan proposes Mining as a specific land use designation. This site is not included in the areas designated for Mining in the 2030 Plan. However, since the 2030 Comprehensive Plan has not yet been adopted by the City, this Application must be reviewed under the current, adopted plan.

EAW PROCESS TO DATE

The General Provisions of Scandia's Mining Ordinance No. 103 state that "In cases where a mandatory or discretionary EAW is required, or an EIS is required, those documents shall be prepared and accepted by the City before application for a CUP." [Section 3.1(3)] The City may not issue the CUP for the proposed project until the EAW process has been completed. Therefore, completion of the EAW process is the first step in the Application process for the Zavoral Mine.

The City is the Responsible Governmental Unit (RGU) for the EAW. The City is responsible to verify the completeness of the EAW if prepared by the Applicant, and comply with the rule timeframes for the EAW process.

<u>The EAW process to date has included the following steps</u>:

November 25, 2008	EAW and CUP Application submitted to the City
December 4	Revised EAW submitted to the City and determined complete for distribution
December 16	Council approved EAW for distribution
January 5, 2009	Notice of EAW availability for comment submitted to the Minnesota EQB for publication in the EQB Monitor • The Planner developed the mailing list for the EAW with the City, including all of those identified on the EQB's Distribution List (attached), and others recommended by the City. • Press release sent to local newspaper (required by EAW Rules)
January 12	Notice published in the EQB Monitor that the EAW for Zavoral Project was available for review. The 30-day review period started on this date.
February 3	Public Meeting at the Planning Commission meeting to receive comments on the EAW
February 11	30 day review period ended--49 comment letters received

NEXT STEPS IN THE EAW PROCESS AND CRITERIA FOR DECISION-MAKING

The next steps in the EAW process will include the following:

- The City must respond in writing to all substantive comments received during the comment period. The City may choose to respond to late comments received after the comment period.

- The City will determine the need for an EIS and complete the Record of Decision about the need for an EIS.

- Minnesota rules require that RGU's that have a council or board make a decision on the need for an EIS between 3 and 30 days after the comment period ends. (Minnesota Rules 4410.1700 Subpart 2A). The City may postpone the decision for an additional 30 days, or a longer period of time, as agreed with the proposer, if there is a need to gather additional information to respond to the comments.

Minnesota Rules 4410.1700 Subpart 7 state the criteria the City must use to decide whether a project has the potential for significant environmental effects, and requires completion of an EIS. These criteria include the following:

A. Type, extent, and reversibility of environmental effects;
B. Cumulative potential effects of related or anticipated future projects;
C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EIS's

ISSUES IDENTIFIED IN THE COMMENTS RECEIVED ON THE ZAVORAL EAW

The City received 49 comment letters on the EAW. The comment letters addressed a wide range of issues, that can be summarized in the following categories:

- Potential impacts to surface waters, including the St. Croix River, Zavoral/Spring Creek, and wetlands
- Potential impacts to the quality and quantity of groundwater resources, including seeps and wells
- Erosion control and surface water runoff management
- Potential impacts to rare species and wildlife populations
- Noise impacts from traffic and mining operations
- Dust impacts from traffic and mining operations
- Traffic volume and safety issues
- Potential impacts of light pollution
- Visual impacts to recreation users on the St. Croix and to views from roadways and "gateway" to the City of Scandia

- Impacts of proposed processing activities
- Adequacy and potential impacts of the reclamation plan
- Economic impacts
- Cumulative impacts

OPTIONS TO ADDRESS THE IDENTIFIED ISSUES AND RESPOND TO THE COMMENTS

City staff and consultants have reviewed the comment letters and the information provided in the EAW, and determined that the EAW does not include sufficient data and analyses to address many of the issues raised in the comments adequately.

The City has two options available as a next step in the process, as described in Minnesota Rules 4410.1700 Subpart 2a: "If the RGU determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking, but could be reasonably obtained, the RGU shall either:

A. Make a positive declaration (of the need for an EIS) and include within the scope of the EIS appropriate studies to obtain the lacking information; or

B. Postpone the decision on the need for an EIS, for not more than 30 days or such other period of time as agreed upon by the RGU and proposer, in order to obtain the lacking information. If the RGU postpones the decision, it shall provide written notice of its action, including a brief description of the lacking information, within five days to the project proposer, the EQB staff, and any person who submitted substantive comments on the EAW.

- The City's staff and consultants believe that the City does not have sufficient information at this point to address a number of the issues identified in the comments. The additional information needs to be gathered and analyzed through either option A or B. Examples of the information needed, include the following:

  - Example: Noise Issues—in order to determine the significance and potential reversibility or regulation/mitigation for potential noise impacts, the City needs to know the current noise levels at key locations, such as at the mine site, on the St. Croix, and at surrounding residences. The City then needs to know how much noise the proposed mining and processing activities will generate, and how this compares to applicable standards for residential and recreational areas. The City needs to determine whether the levels would exceed permitted standards, and that any mitigation proposed by the applicant would not bring the noise levels below the permitted levels, or avoid any irreversible or significant impacts.
  - Example: Rare and Endangered Species—the EAW lacks current field data that identifies rare species locations within the site and area that may be impacted by mining and processing activities as the site hampers the City's ability to determine whether there are signficant or irreversible impacts from the proposed activities. Without this information, the City cannot determine whether mitigation could be proposed or required to avoid or minimize these impacts to a level that is not significant.

The Applicant has indicated that they prefer to move forward under option B. The outline of Tiller Corporation's proposed additional work and schedule for the additional studies are attached. The outline for most items is conceptual at this point, and staff believe that additional specificity will be needed if option A or B is selected to adequately address the issues raised in the comments.

The work plan could be used as the basis for developing a scope for an EIS, under option A above, or for developing a work plan and scope for additional studies for the EAW under option B.

NEXT STEPS IF OPTION A IS SELECTED

If the Council recommends that Option A is selected, to make a positive declaration and include within the scope of the EIS appropriate studies to obtain the lacking information, the next steps in the process would be:

- Adoption of a Finding of Fact and Resolution requiring an EIS (attached)
- Determine the scope of the EIS, under the process described in Minnesota Rules 4410.2100
    - The Findings of Fact and Resolution will be published in the EQB Monitor.
    - The project proposer must submit a scoping cost payment to the City
    - A public scoping meeting will be held by the City. Within 15 days of the public scoping meeting, the City shall issue its final decision regarding the scope of the EIS. The decision must be made at the next regularly scheduled meeting of the body following the scoping meeting, but not more than 45 days after the positive declaration is published in the EQB Monitor.
    - Government agencies and the public will be notified of the scoping meeting and may submit comments and participate in the scoping meeting and process.
- The EIS process is likely to last 1 year or longer.

NEXT STEPS IF OPTION B IS SELECTED

City staff and consultants recommend the following if the Council selects option B:

- Adoption of the resolution extending the EAW process, indicating that the decision on the need for an EIS be postponed until after the additional data and analyses are provided by the Applicant, and reviewed by the staff, consultants and Council. The City can extend the review process with the agreement of the Applicant (Minnesota Rules 4410.1700 Subpart 2).
- Require that the Applicant provide copies of the specific scope and timeline for each of the studies to the City for review and approval, along with the name and qualifications of the firms or individuals that will complete the work.
- Review the proposed work plans with the commenting agencies where appropriate, such as reviewing the scope of work for analyses affecting the St. Croix Riverway with the National Park Service, and work plans for surface and ground water analysis with the Carnelian Marine St. Croix Watershed District.
- That the City will have up to two months to review the results of the analyses before finalizing the responses to comments and Record of Decision.

- The City Council, staff and consultants will review the additional data and analyses. The Council may require further analyses or revised analyses, if the initial work does not provide the information needed to determine whether an EIS is required.

The Applicant will also need to respond fully to the issues identified in the comments that are not proposed for additional studies. Staff anticipate that they will need to provide additional information on issues such as traffic volumes and safety and economic impacts in order to address the issues raised in the comments.

The Applicant's estimated that the additional analyses could be completed and results available to the City during the summer of 2009. The schedule is based on the need to complete a number of field inventories and analysis that need to be completed during the spring and summer.

When the necessary analyses have been completed to determine whether an EIS is needed, the City will complete the Findings of Fact and Record of Decision. If the results of the analyses are available by September 1, 2009, the Findings of Fact and Record of Decision could be completed at the earliest on November 15, 2009. The proposed resolution suggests extending the EAW process to November 30, 2009. The notice of decision will also be published in the EQB Monitor.

POTENTIAL APPEAL OF THE CITY'S DECISION

The City's decision to prepare or not prepare an EIS can be appealed in the county district court where the project would take place. The appeal must be filed within 30 days of the date on which the RGU makes its decision (the date on which the Council takes action). There is no administrative appeal of an RGU decision; the Environmental Quality Board has no jurisdiction to review the City's decision. (Minnesota Rules 4410.0400 Subpart 4)

PROCESS FOR THE CONDITIONAL USE PERMIT (CUP)

The Planner has notified Tiller Corporation that the application submitted for the CUP is not complete. Several items are missing to comply with the requirements of the City's Mining Ordinance.

When an EAW has been ordered, no final governmental decision may be made to grant a permit, approve or begin a project, or construct a project until the environmental review is completed. Review is completed when either the RGU determines that no EIS is needed (issuance of a negative declaration), or when the EIS is completed and found adequate. (Minnesota Rules 4410.3100) Therefore, review of the CUP is currently suspended, pending City determination that no EIS is needed, or completion of an EIS if that is required. The 60-day review period for the CUP may start after the last action is completed in the environmental review process.

ACTION REQUESTED:

Staff request that the Council review this report, consider options A and B, and adopt the appropriate resolution.

ZAVORAL MINE EAW—SCANDIA, MN –PROPOSED ADDITIONAL DATA AND ANALYSES
Provided by Tiller Corporation
February 24, 2009

In order to enable an informed response to each of the comments that have been received, more information is needed. The following issues that have been raised during the Environmental Assessment Worksheet comment period, will require more in depth analysis in order to determine whether or not the potential for significant impacts exists.

Groundwater Quantity: *Determine whether use of water in dust control and processing has the potential for significant environmental effects related to the amount of groundwater available.*

A groundwater study will be completed which will indentify the quantity of water to be used for both washing and dust control activities. The study will include an evaluation of the water source for the proposed activities, identification of adjacent potable water supplies (residential wells or spring boxes) and groundwater dependent natural resources such as the springs, wetlands and creeks located in the vicinity of the site. The study will include modeling to predict potential impact to these features, evaluate improvements, and provide a proposed mitigation and monitoring plan.

Groundwater Quality: *Determine whether the operations as proposed and as regulated through City, local government and state permitting programs have the potential for significant effects to quality of groundwater resources.*

A report on the potential impacts to groundwater quality will be prepared. The report will identify the possible sources of impacts related to aggregate production and evaluate the potential for groundwater impacts from the Project as proposed and regulated. This evaluation will address any potential for effects to potable water supplies, The St. Croix River and related groundwater dependent natural resources. The report will include an evaluation of improvements such as BMP's and provide a proposed mitigation and monitoring plan.

Noise: *Determine whether the Project as proposed could generate noise levels at nearby receptors in excess of applicable standards and evaluate the ability of mitigation to avoid the potential for significant noise effects. Also determine whether there are anticipated noise effects to the St Croix Riverway interests.*

An inventory of ambient sound levels will be obtained. An evaluation of predicted sound levels will be prepared for sound associated with operation of the site and truck traffic generated from the site. The evaluation will include the consideration of current and projected background noise levels, as well as noise levels generated from operating equipment. A model will be developed which will take into account site specific conditions, including topography, equipment placement, truck traffic and operating hours. Potential receptor locations will be identified which will include receptors using the St. Croix River for recreational purposes. The report will evaluate project modifications which can provide effective mitigation measures.

Biological Survey: *Determine whether the project has the potential to permanently adversely affect the viability of rare plant and animal species and their habitat.*

A biological survey will be conducted to identify any presence of rare plant and animal species as well as native plant communities and other sensitive ecological resources located within the proposed mining area itself. In addition a survey of similar occurrences in the surrounding area will be completed. The biological survey of the plant and animal species will include an analysis of the project's potential impacts on these resources and the reversibility of such impacts. In addition Project modifications that could lessen identified impacts will be evaluated.

Reclamation Plan: *Present a more detailed description of plans for reclaiming the site and previously mined areas. Determine whether there are potential environmental effects which can be avoided by revisions to the Reclamation Plan.*

A detailed reclamation plan will be prepared for the site. The reclamation plan will include the phasing and timing of reclamation activities, planting schedules, habitat reconstruction and invasive species removal as may be necessary. The reclamation plan will include the input of the Mn Department of Natural Resources and U.S. Department of Interior for certain portion of the project that is located within the Wild and Scenic District and/or scenic easement area. An evaluation of whether there may be potential for environmental effects from reclamation will be presented as well as a plan for evaluating and monitoring the success of the reclamation.

Surface water resources: *Determine whether there is a potential for significant environmental effects to identified resources resulting from management of surface water in conducting the Project.*

The inventory of identified surface water features will be evaluated to determine any connection with the Project and its surface water management. Possible impacts to wetlands, Zavoral's Creek and the others relating to the presence of phosphorous, TSS, heavy metals, PAH's and temperature in run off waters from aggregate production and asphalt recycling will be inventoried and the potential for such impacts to occur in the course of this Project will be evaluated. In addition the potential for impacts from ambient dust to surface waters and the need for surface water monitoring will be evaluated.

Viewshed Analysis: *Determine whether there are potential significant environmental effects to viewsheds as a result of the Project.*

An evaluation of visual impacts will be prepared for the site. The evaluation will include a viewshed analysis completed in ArcGIS. A model will be developed which will take into account site specific conditions, including topography, vegetation and equipment and stockpile placement. Potential viewshed locations will be identified which will include neighboring residences, the St. Croix River, the bluff areas to the east in Wisconsin and State Highways 95 and 97. The report will evaluate alternatives and provide proposed mitigation measures.

Time Frame for In Depth Analysis and Response to Comments

Issues have been raised during the Environmental Assessment Worksheet comment period that will require more in depth analysis in order to determine whether or not the potential for significant impacts exists. The proposed studies include a groundwater quantity study, a groundwater quality report, a noise evaluation, a biological survey, review of a detailed reclamation plan, an evaluation of surface water resources and a viewshed analysis.

Work on all of the proposed analyses start immediately. The noise evaluation and viewshed analysis may be extended into the growing season in order to compare such things as leaf off conditions to leaf on conditions.

The scope of the more in depth surface water resources evaluation and biological survey will require that some of the investigations and evaluations, which could last from two to three weeks, be conducted during the active growing season. Depending on the particular growing season, these investigations and evaluations will not be able to be completed until late May or possibly mid to late June.

Compiling the information and completing the various reports and analyses and developing informed responses to the comments received will likely take up to four weeks from the time the investigations and evaluations are completed.