CITY OF SCANDIA, MINNESOTA
PC RESOLUTION NO. 01-07-13-01 D

DENYING CONDITIONAL USE PERMIT FOR THE ZAVORAL MINE AND RECLAMATION PROJECT

WHEREAS, Tiller Corporation ("Applicant") has applied for a Conditional Use Permit (CUP) to operate the Zavoral Mine and Reclamation Project ("Project") on a property owned by James Zavoral, located east of the intersection of State Trunk Highway 97 and State Trunk Highway 95 ("Site"); and

WHEREAS, the Property is located in Washington County, Minnesota and legally described in Attachment A; and

WHEREAS, the Applicant submitted an application for a CUP for the Project to the City on November 25, 2008, including the required Environmental Assessment Worksheet (EAW); and

WHEREAS, the City reviewed the EAW for the project and the City Council approved the Findings of Fact and Record of Decision for the EAW for the Project on March 3, 2009 that concluded that an Environmental Impact Statement (EIS) was needed to determine the project's potential for significant environmental impacts; and

WHEREAS, the City Council approved a Scoping Decision Document for the EIS on April 21, 2009, hired a consultant to complete the EIS, and established a Project Advisory Committee for the EIS in December, 2009; and

WHEREAS, the Applicant revised the project to eliminate all aggregate processing activities at the Site, and based on the revised Project, the City conducted a formal Scope Amendment Process and approved a Revised Scoping Decision Document for the Project in January 2010; and

WHEREAS, the City and its consultant completed the Zavoral Mine and Reclamation Project EIS to meet the requirements of Minnesota Rules 4410, and the EIS concluded that if the mitigation recommendations included in the EIS were implemented that the Project will not have significant environmental impacts; and

WHEREAS, the City Council approved the Findings of Fact and Record of Decision that found that the Zavoral Mine and Reclamation Project EIS was adequate to serve as the environmental review for the Project because it met the criteria set forth in Minnesota Rules 4410.2800 and the requirements of Minnesota Statutes Chapter 116D on September 25, 2012; and

WHEREAS, The EIS and CUP application analyzed a number of complex issues about compliance with, or possible negative effects on, the Comprehensive Plan; the general public welfare; public health and safety, enjoyment of other property in the immediate vicinity; impairment of property values and scenic views; and significance of, or potential for impacts on environmental and cultural resources of local, state, regional and national significance; and

WHEREAS, the Applicant submitted a revised application for the Conditional Use Permit for the Project on October 9, 2012 and the City determined that it was complete for review on October 23, 2012; and

WHEREAS, Scandia Ordinance No. 103 regulates the mining of sand and gravel and related activities and each operation requires a CUP and is also required to obtain an Annual Operators Permit; and

WHEREAS, The Planning Commission is responsible to provide guidance to city staff and make findings of fact and recommendation to the City Council regarding acceptance or denial of the Conditional Use Permit application; and

WHEREAS, the Planning Commission held a public hearing on the Project on December 4 and December 12, 2012; and

WHEREAS, 1. The City of Scandia Development Code, Chapter 1, Section 8.0 Conditional Use Permits, 8.4 General Criteria states, *"As may be applicable, the evaluation of any proposed Conditional Use Permit request shall be subject to and include, but be not limited to, the following general criteria:*
(1) The conditional use will be in compliance with and shall not have a negative effect upon the Comprehensive Plan, including public facilities and capital improvement plans.
(2) The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.
(3) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values or scenic views.
(4) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
(5) Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.
(6) The conditional use shall conform to the applicable regulations of the district in which it is located and all other applicable standards of this Chapter.
(7) The conditional use complies with the general and specific performance standards as specified by this Section and this Chapter."

WHEREAS, Planning Commission's findings related to the request for approval of the Conditional Use Permit include the following:

A. The proposed Project does not comply with Section 8.4 (1) that requires that the Project "be in compliance with and shall not have a negative effect upon the 2030 Comprehensive Plan including public facilities and capital improvement plan," based on the following findings:

1. The City of Scandia Development Code, Section 1.3 states, *"It is the policy of the City of Scandia that the enforcement, amendment, and administration of the Scandia Development Code be accomplished consistent with the recommendations contained in the City Comprehensive Plan, as developed and amended by the Planning Commission and City Council of the City. The Council recognizes the City Comprehensive Plan as the official policy for the regulation of land use and development in accordance with the policies and purpose herein set forth. In accordance with Minnesota Statutes Chapter 273, the City will not approve any rezoning or other change in these regulations that are inconsistent with the Comprehensive Plan;"* and

2. The City of Scandia spent almost two years developing the 2030 Comprehensive Plan, the first Comprehensive Plan adopted by the City of Scandia, in accord with the system statement [requirement] of the Metropolitan Council issued to Scandia in November 2005, and a Comprehensive Plan Committee (CPC) was formed, chaired by the Mayor and including members of the City Council, the Planning Commission, the Parks and Recreation Committee, and citizen representatives. The CPC considered background materials compiled by a consultant team as well as extensive public input provided through public meetings, focus groups and public surveys. The planning process included three rounds of public meetings to solicit input from a diverse group of individuals; and focus groups representing the St. Croix River corridor, the village, the lakes, and the rural residential areas and agricultural producers helped create a Comprehensive Plan that is responsive to the needs of each area and group. Residents were surveyed to complete the sentence "In 2030, I believe Scandia should . . .," and they were also asked to select their top three picks from a list of factors defining "rural character" and to describe how development should occur in an area that maintains its rural character; and interviews were conducted with 26 existing Scandia businesses focusing on perceptions of the current businesses environment and expectations for the future; and

3. Scandia's 2030 Comprehensive Plan is "the official public document adopted...as the policy guide for decisions about its future development and redevelopment. It consists of a vision for the community, background data, goals, policy statements, standards and programs for guiding the physical, social and economic development of the community," and

4. The completion of the 2030 Comprehensive Plan in 2008 and its adoption in March 2009 followed the city's taxpayer's direct expenditures of $60,000 and, conservatively counted, hundreds of citizen volunteer and city staff hours, and

5. The completion of the 2030 Comprehensive Plan followed a year and a half of twice-a-month committee meetings, numerous additional consultation sessions, 5 public meetings, multiple focus groups, and 2 citywide surveys, and

6. Scandia is more than half way through the life span of the 2030 Comprehensive Plan: it has been almost 6 years since work on the 2030 Comprehensive Plan was first begun, 4 years and 4 months since work on the 2030 Comprehensive Plan was completed, and 3 years and 10 months since the 2030 Comprehensive Plan was officially adopted by the city, and

7. The 2020 Comprehensive Plan has been obsolete for almost four years, and

8. The 2030 Comprehensive Plan has been the governing document of the city for almost four years, and

9. The 2030 Comprehensive Plan was adopted by the City Council at their March 17, 2009 meeting, and the Metropolitan Council found that the City's Comprehensive Plan update met all of the Metropolitan Land Planning Act requirements and conforms to the regional system plans, and is consistent with the 2030 Regional Development Framework and is compatible with the plans of adjacent jurisdictions; and

10. The Metropolitan Council authorized the City of Scandia to put its 2030 Comprehensive Plan Update into effect without any modifications, and the City has brought its ordinances into conformance with the 2030 Comprehensive Plan; and

11. The City of Scandia Comprehensive Plan provides guiding principles for defining future land use in the area through 2030, embodying a new vision for Scandia, *"Emphasizing the protection of natural resources that define Scandia's character, economy, and quality of life;"* and the 2030 Comprehensive Plan does not allow gravel pits as a permitted use under current Agricultural Core Area (AG C) zoning of the proposed mine site; and

12. The 2030 comprehensive Plan states the vision is *"to maintain Scandia's unique rural character, agricultural heritage, rural charm and natural resources. Development in all areas protects and enhances the City's green infrastructure – trails, green corridors, natural systems, surface and groundwater systems, scenic vistas and night skies."*; and

13. According to the 2030 Comprehensive Plan, "the Mining Area (of Scandia) includes areas in the City of Scandia with **active, permitted mining operations**." These include one in northwest Scandia and one in southeast Scandia. (p. 113) and *Future Land Use Areas and Parcels with Homes Map #29* (p.115); and

14. According to the 2030 Comprehensive Plan, Map #6 *Extent of Sand and Gravel Deposits"*, the proposed Zavoral Mining Project land is keyed as a "Previous Sand and Gravel Pit" (p.21); and

15. The city has determined it shall apply to this CUP application the **current** criteria, which were the same as the criteria in the code that implemented the 2020 Comprehensive Plan, related to CUP applications, Chapter One – Section 8 and Chapter 4 the Mining Ordinance; and

16. Under the city's current Development Code, Chapter Two Zoning Regulations, the area proposed by the Zavoral Mining Project is zoned Agriculture District – Core; and mining is not a permitted use in the Agriculture District – Core; and

17. In April 2009, initial city input suggested that the city believed that the 2020 Comprehensive Plan would have to be used to evaluate the CUP application, the applicant Tiller Corporations' legal staff would have known that the city could, in fact, apply the newly completed 2030 Comprehensive Plan to the CUP application; and

18. The applicant Tiller Corporation knew it was taking a calculated business risk when it chose to allocate funds to pursue city approval for mining at the Zavoral Project Mining site and the money allocated by Tiller Corporation for gaining approval for the Zavoral Mining Project is a calculated business risk expense; and

19. The actual money allocated by the city of Scandia, and the additional value in terms of the hundreds of hours volunteered by its citizens for the development of the city's 2030 Comprehensive Plan was a secure civic decision – not a risk – expense; and

20. The City of Scandia 2030 Comprehensive Plan does not contemplate additional active mining operation within the city. In fact, there is a requirement in the 2020 CP that calls for reclamation of "gravel pits" – an obligation that has been ignored on the Zavoral property for decades; and

21. The City's Comprehensive Plan Map 4, Natural Resources, identifies the proposed mine site as High Sensitivity for Ground Water Sensitivity to Groundwater Pollution - Prairie du Chien and Jordan Aquifers; and the entire proposed mine lies within a "Natural Resource Priority Areas" overlay Map 26 ; and the Comprehensive Plan states, *"In overlay areas, increased consideration of natural resources is required in addition to the requirements of the underlying land use area"*; and

22. The Planning Commission therefore concludes that the proposed mine fails to meet the criteria of being "*in harmony with the general purposes and intent of the City's Development Code and applicable Comprehensive Plan*," in that it presents an unacceptable risk of irreparable harm to the city's "*most precious assets.*"

B. The proposed Project does not comply with Section 8.4(2) of Chapter 1 of the Development Code which requires that "the establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort," based on the following findings:

1. The applicant is non-compliant with this requirement because it presents an endangerment to public safety with truck traffic particularly at the intersection of highways 95 & 97 and at the intersection of highway 97 and Lofton and the intersection of Lofton and 223rd St. Traffic volume on Hwys 95 & 97 has increased significantly over the past four years and has likely more than doubled again in the past two years.

Testimony from citizens and a traffic control professional, Vernon Swing, President/CEO, and Principal Transportation Engineer, RLK Inc., agree that reconfiguration of that intersection that will accommodate the mining project will make it less safe, at an intersection that is already considered to be one of the most dangerous in the community; and

2. An increase in the potential for severe or fatal accidents at the intersection of TH97 and Scenic Highway 95 has been testified to by Vernon Swing. Citing Federal and State Access Management Manuals, Swing testified that "Even if the Tiller mine access were constructed according to MnDOT guidance [as required to receive the access permit to operate the mine], there would still be a 100% increase in the risk for severe or fatal collisions;" and

3. A report by Scott C. Alexander, Research Scientist and Environmental Health Specialist, Departments of Geology & Geophysics and Environmental Health & Safety, stated that "The existing blow out area may be related to the end of the paleo-channel where it intersects the St. Croix River Valley. Increased recharge on the Zavoral site, during mining operations, could reactivate the blow out area. Highly focused or point recharge will raise water levels in a concentrated area following storm events, increasing localized risk. (Ref. Alexander, "A LIDAR Based Review of the Tiller/Zavoral Mining and Reclamation Project). Alexander also noted "that a ravine is beginning to form on the side of the current sand mine berm." [on the north side of the existing gravel pit leading to Crystal Springs – pages 2, 3 and 4 of Alexander's report] and the Groundwater Study conducted on behalf of the City during the EIS and subsequent conflicting expert testimony did not establish assurance that there would be no negative impact to the groundwater resources and the groundwater dependent resources down gradient of the Project Site; and

4. The Separation between the excavation and groundwater may be insufficient to protect groundwater and groundwater-dependent resources if the separation is less than 25 feet. See: a) Alexander, "A LIDAR Based Review of the Tiller/Zavoral Mining and Reclamation Project for discussion regarding implications of potentially higher water table at the site relative to exposure of groundwater to surface contaminants; and

5. The EIS analysis stated that the proposed Zavoral Mine does not create or add jobs to Scandia's job base, but merely moves jobs onsite, temporarily, from other city and county locations; and

C. The Project does not comply with Section 8.4(3) of the Development Code, which requires that "the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values or scenic views, based on the following:

1. Nearby landowners may experience a potential loss in property value, that may disproportionately impact low income homeowners, for whom their property essentially represents their personal estate. Anyone attempting to sell or remortgage their house or land during the duration of mining activities could be subject to a potential financial loss

of from 2% to 5% (EIS Analysis) and the Property Value Study conducted on behalf of the City during the EIS did not establish assurance that there would be no significant negative impact to the value of existing properties and presented no opportunity for further study or mitigations sufficient to ensure no negative impact; and

2. As witness testimony citizens and business owners in the community testified about their own knowledge and experience, that property values in the vicinity of the mine and the haul route has already been impacted by location near a mine site. Such data does not appear in sales records when a property is evaluated for purposes of refinancing a mortgage or when a property is valued too low for a sale to occur; and

3. Although there is considerable disagreement on the degree of Project impact to property values, the Planning Commission agrees a potential loss of 5% per EIS analysis is possible and that this amount may be enough to prevent refinancing, per witness testimony. If a property is devalued to the extent that the owner is unable to refinance a mortgage, it is reasonable to view this as "substantial" impact; and

4. The agreed upon impact of 5% of value, if it were applied to assessed values for calculating property taxes, when taken in aggregate of the total properties affected, could amount to a sum far exceeding the $75,000 in taxes that may be collected from the project, leading to a net loss, not a net benefit to the community. The applicant has referred to the taxes to be paid as "substantial." The taxes to be paid by the applicant may be a far smaller sum than the total 5% of properties that may be affected; and

5. The access road to the mine would be directly off of Highway 95, a Minnesota State Scenic Byway; and Highway 95 Highway 97 intersection adjacent to the proposed mine is designated as a Scandia Gateway on Map 15, Character Districts; and the City's GUIDELINES FOR THE PROTECTION OF SCANDIA'S PRIORITY SCENIC VIEWSHEDS, Resolution No. 05-15-12-01, Exhibit A, states *"In Scandia, views with highest Visibility/Duration were those at gateway points (e.g... Hwy. 97 and 95) that sustained themselves along corridors creating a density of scenic views, (e.g... Hwy 97 east of the village approaching Hwy 95)*"; and

6. The Mining Project will require hundreds of trucks hauling on TH 97 and TH 95 may negatively impact Scenic Views because while it may be possible to screen the mine entrance from public views, it is not possible to screen the truck traffic from public views. Nearly all non-commercial vehicles that may travel on the roadways through Scandia are smaller than a gravel truck. The proposed number of large trucks hauling gravel cannot be screened from other traffic, and in fact, the trucks themselves create a screen to through---traffic which obstructs and interferes with scenic views along 5.5 miles of roadway; and

7. Multiple areas along Scandia roads that have been identified as viewsheds of significance are located along the proposed haul route, but any view in Scandia as seen from roads and highways, including the entirety of the proposed haul route (which constitutes nearly the entirety of the main route through Scandia), may be considered in

the future for such status. Views from private property are not considered for this status, just views that are visible to through traffic. Trucks hauling gravel in the numbers proposed by this project would impair the entire haul route from being scored as scenic per the viewshed rating process; and

8. Viewsheds in Scandia are evaluated on the basis of objective and subjective criteria, among which are scores for duration of view and ephemeral qualities. Scores for Duration of View along the haul route will be shortened by any vehicle taller than the vehicle containing the viewers, and in proportion to the number of these vehicles present. It is not possible for this impact to be removed through screening or other conditions, other than to remove the truck traffic responsible for the obstruction. Scores for Ephemeral Quality of the view considers several factors, including the nature and quality of the soundscape. The industrial quality of sounds at the mine and inherent to the trucks along the haul route diminish the ephemeral quality of the viewscape and the soundscape and therefore impair the scenic value of the views along the route, independent of Federal, State, or City noise limits; and

D. Section 8.4(5) of Chapter 1 of the Development Code requires that "adequate public facilities and services are available or can reasonably be provided to accommodate the use which is proposed, " and the proposed Project does not comply with this criteria based on the following:

1. It does not include an analysis which shows how much additional City resources will be needed to monitor potential of 150 conditions (including AOP) if the CUP is granted to provide the following: services to monitor and analyze compliance and support deliberations of such with Tiller Corporation; and accounting resources to collect billable expenses, prepare invoices and conduct deliberations with Tiller Corporation. This will represent a substantial additional workload on city staff in preparation of and defense of non-compliance claims in addition to the normal execution of the city's business; and

E. Section 8.4(6) of Chapter 1 of the Development Code requires any conditional use "to conform to the applicable regulations of the district in which it is located and all other applicable standards of this chapter," the applicant is non-compliant with this performance standard based on the following:

1. The Noise studies conducted on behalf of the City during the EIS did not ensure that there would be no significant negative impact on the enjoyment of existing adjacent uses, including but not limited to nearby homes, businesses and institutions along the haul routes, as well as users of the adjacent St. Croix National Scenic Riverway, including the full diversity of resident and migrant wildlife communities, and which presented no opportunity for further study or mitigations sufficient to ensure no negative impact; and

2. It cannot be shown that highway noises will be within the City's noise standards at all times. As Mr. Caron of Tiller Corporation stated in a September 15, 2012 letter referencing the FEIS, "Noise standards would be exceeded at a limited number of residences along Hwy 97 during maximum hauling conditions. However, the low and

maximum traffic conditions (with the exception of Subalternative 3A) would not change as a result of the project, and the noise impacts to residences and Scandia Elementary School are not predicted to change from current conditions." Even though we have a condition for monitoring noise which includes a mining shutdown if the standard is exceeded, mitigation is very difficult and Tiller concedes that some above-standard noise readings will occur in certain situations; and

3. Operation of the Project may result in an increase in mine-related noise audible to recreational users of the St. Croix National Wild & Scenic Riverway, at a level considered by the National Park Service to exceed its policies. Based on the reasonable expectations of the public when visiting this section of the National Scenic Riverway (managed as "quiet waters") this noise would unreasonably diminish the unique values for which the river was designated Wild and Scenic; and

3. Testimony by Chris Stein, superintendent of the St. Croix National Scenic Riverway, the National Park Service objects to the project on the basis that the use and enjoyment of the riverway in the vicinity of the mine will be impaired and the St. Croix National Scenic Riverway is a unit of the National Park Service whose authority stems from two Acts of Congress: the 1916 Organic Act which established the NPS, and the 1968 Wild and Scenic Rivers Act and;

4. The City of Scandia Development Code, Section 1.5 Application states,
"(1) In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements necessary to accomplish the general and specific purposes of the Development Code.
(2) Where the conditions imposed by any provisions of this Chapter are either more or less restrictive than comparable conditions imposed by other law, ordinance, rule, or regulation of the city, state, or federal government, the law, ordinance, rule, or regulation which imposes the more restrictive condition, standard, or requirement shall prevail;" and

5. The 114-acre Zavoral site is designated as part of a Regionally Significant Ecological Area (RSEA) Map 9 of the 2030 Scandia Comprehensive Plan; it is immediately adjacent to the lands and waters of the St. Croix National Scenic Riverway, and the area is designated as part of the St. Croix Bluffs Important Bird Area; and

6. There is a high quality native brook trout stream that runs on the Zavoral property and neighboring property that is under consideration for state designation, and the Rustrum Wildlife Management Area is on the river immediately below the bluff where the mine is proposed; and

7. The neighboring property north of the proposed mine has been determined by the DNR to meet the standards for a State Scientific and Natural Area designation, with documented rare features such as old growth forest, significant geologic features and documented occurrence of nearby Minnesota special concern species (November 21, 2012 DNR letter to Gregory Page); and

8. Federally endangered freshwater mussel species are known to occur in the St. Croix within 2000 feet and downriver of the site. These mussels are part of a diverse assemblage of mussel species in the St. Croix that is of international significance. The City recognizes that all of these resources (including the handful of butternut trees on the site) meet the definition of "environmentally sensitive resources" according the Environmental Quality Board Guidelines; and

9. Comments received on the EIS stated that many of these outstanding and remarkable community assets are known to be highly sensitive and vulnerable to impact, with narrowly defined habitat requirements; and

10. The CUP Application proposes mining 9 acres of white pine-hardwood forest, which the DNR describes as a community of moderate quality and in comments for the public record, as "a native plant community rare in the St. Croix Valley" and "a loss of biodiversity value;" and

11. The Planning Commission believes that the history of damaging environmental accidents, for example the Grantsburg mine accident in April 2012 and the 1976 blow out, at mining operations in the St. Croix Valley has made clear the reasonable limitations of Best Management Practices, mitigations, establishment of permit conditions and monitoring, both broadly and in the specific case of this site and this mine operator and therefore a higher standard of caution and care is prudent and reasonable when managing community assets such as these that are at the same time valuable, rare, and known to be highly sensitive to irreparable harm; and

12. The City of Scandia recognizes that the combined impacts of the mining operation as a whole (including those cited above) shall be considered to constitute a significant negative impact on the 2030 Comprehensive Plan, the interpretation of the Development Code, the City of Scandia and its citizens.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SCANDIA, WASHINGTON COUNTY, MINNESOTA, that it should and hereby does recommend that the City Council deny the Applicant's request for a Conditional Use Permit for the Zavoral Mine and Reclamation Project located on the Site east of the intersection of State Trunk Highways 95 and 97.

Adopted by the Scandia Planning Commission this 7th day of January, 2013.

Christine Maefsky, Chair

ATTEST:

Kristina Handt, Administrator/Clerk