

September 10, 2012

Ms. Anne Hurlburt, City Administrator  
City of Scandia  
14727 209<sup>th</sup> St. N  
Scandia, MN 55073

Dear Ms. Hurlburt and Members of the Council:

My name is Missy Bowen. Our family property is located at 20699 Quint Ave. N., nearly adjacent to the proposed Tiller-Zavoral mine. We have lived there since 1962. I was the 49<sup>th</sup> commenter on the Draft EIS for the suggested project.

The final EIS in its present form is inadequate and should be rejected by the City Council. The FEIS does not reflect the full scope and possible outcomes of developing – or not developing – a gravel mine on the site. It fails to address many concerns cited by government agencies, experienced professionals, and residents.

Moreover, the responses made by the city to the comments on the Draft EIS are equally incomplete and unsatisfactory. Comments made on the DEIS and the FEIS ignore many specific findings – particularly those made by environmental and traffic evaluation experts – and points made regarding omissions and mis-interpretations.

The volume of material – the DEIS, appendices, the 220-page redlined Final EIS, a 79-page response to 83 comments, etc. - makes it difficult for any private individual to address the issues on a point-by-point basis. Examination of even one or two points of discussion, however, quickly reveals that the FEIS is grossly inadequate for a project of such critical importance to the environmentally fragile St. Croix River Valley, to the safety of school children and drivers, and to the economy of the area.

I carefully studied the Draft EIS and offered substantive suggestions and concerns. I read the Response to Comments with dismay and read the Final EIS with disbelief. The FEIS ignores or glosses over expressed by me and by many others, including highly-qualified experts, regarding noise, traffic, erosion into the St. Croix River, and damage and pollution of adjacent wetlands, wells, and waterways. It fails to provide adequate technical analysis of these issues – particularly traffic and safety impacts, noise, property values, and ecological impacts (edge effects and set-backs).

The following areas are of particular concern:

### **ALTERNATIVES**

Numerous issues regarding alternatives were raised in the public comments. These must be adequately addressed, but they are not. According to the response to comments, alternatives were identified by the City based on “timeframes that the proposer (Tiller) identified as feasible to extract the estimated 0.8 – 1.2 million tons of aggregate available.”

Timeframes as preferred by the for-profit, private developer cannot be the sole criteria for selection of alternatives for a project that affects many other people and private property as well as a national park. The Guide to Minnesota Environmental Review Rules, quoted in the Response to Comments, also makes this statement:

In applying exclusion criteria, the RGU must not be overly restrictive in defining the project's purpose and need. Occasionally, an RGU will claim desirable but nonessential elements as part of the project's purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and while important, they cannot overrule environmental considerations. At the same time, the RGU should not examine extraneous alternatives just to make an EIS more complicated. **The intent of the 1997 revisions is to ensure that the RGU takes a serious look at whether significant environmental impacts can be avoided or minimized by carrying out the project in another way.** (<http://www.mnplan.state.mn.us/pdf/rulguid3.pdf>).

The entire EIS needs to be expanded, with details for each scenario made far clearer. Tiller says they can do it in 5-10 years, in less than 5 years, or in 150 days. **The FEIS fails to detail the specific scenarios, instead relying on cut-and-paste tables using the same language and estimates for each scenario, although the difference between 150 days and 10 years is substantial.**

### **NO BUILD ALTERNATIVE**

Substantial and specific instructions direct RGUs to include discussion of the "no-build alternative" in every EIS (<http://www.mnplan.state.mn.us/pdf/rulguid3.pdf>). The Zavoral Mine EIS pays cut-and-paste lip service to this mandate, as discussed at length in my May 18 response to the DEIS and essentially ignored.

This alleged need for the project is an *opinion*, put forth by the for-profit Tiller Corporation, that the land in question is in need of reclamation from mining that occurred on all but 9 acres of that land over 30 years ago. This *opinion* has not been proven.

Again, as with the question of timeframes as mentioned above and as the Response to Comments states, if all alternatives to Tiller's desired plan were selected solely on the basis of reclamation (and/or their convenience in when to dig the gravel out), then the entire EIS needs to be re-done with reclamation issues thoroughly and scientifically documented and referred to substantially in the comparison tables and texts. The Final EIS fails in this area.

### **NOISE ON THE RIVER AND IN NEIGHBORING HOMES**

There are many issues with noise, and the FEIS does not adequately address them with technical studies or with mitigating alternatives. Take back-up alarms, which are purposely set at the most acute level of hearing. We are supposed to be placated with the assurance that Tiller will address the concern by driving their trucks, backhoes, and earthmovers in a circle, thus eliminating the need for back-up alarms. We are talking about an estimated 368 large, unmuffled trucks *per day*, with backhoes and earthmovers digging and dumping gravel in them just a few hundred feet from a Scenic Riverway. Really? Driving the trucks in a circle so they don't have to back up is the way to address this issue?

Truck noise will absolutely be heard on the river and in neighboring homes. It will be disruptive to property, people, and nature. Measurements must be taken in several ways and considered in context. As it stands, the EIS fails to do this.

Far more technical analysis is needed, and the FEIS must adequately address all the points raised by commenters regarding this complex issue.

## **RECLAMATION**

Almost no detail is included regarding reclamation, and the Response to Comments pushes this issue into the future. What exactly will Tiller do? Who makes them do it? What about worst-cases scenarios? What if we have a catastrophic rain event, with the washout into the river that occurred when the land was mined 30 years ago? I remember that happening. It is not an opinion. Tiller's dismal record, as mentioned by several commenters, should sound loud alarm bells, and cause the Council to be very cautious on this topic.

Specifics must be included in the FEIS to allow the Council to make an informed decision. This decision will include a consideration of how much enforcement and oversight will be needed of Tiller's activities, and how much time and resources will be needed to ensure that the reclamation – such an essential part of rehabilitation – is thorough.

Now we have 30 years' established soil, grasses, and trees. We need a very detailed plan, with allowances for natural catastrophes, addressing reclamation, and the FEIS does not provide that.

I foresee a major rain event that causes unanticipated erosion, possibly involving my property, and certainly involving our river.

I also live in New Orleans. I speak from bitter and sad experience. Water is powerful. The roots of grasses and trees are critical in preventing destructive erosion. Nature does things you don't think she will do. The EIS for this project MUST thoroughly deal with this issue, but it does not.

## **ENVIRONMENT, EDGE EFFECTS, SETBACKS**

I do not have time to go into all the points that are erroneous or misleading, or into the FEIS's failure to take into account the findings of Applied Ecological Services regarding edges and set-backs to protect the St. Croix River. I will point out that Tiller claims the 9 acres of previously-unmined land is 50% of their profit. That leaves 58 acres representing the remaining 50%. Claims that creating edges and setbacks would be onerous are specious – the math doesn't add up.

In keeping with the spirit of the EIS process, consider this from the Guide to Minnesota Environmental Review Rules:

In applying exclusion criteria, the RGU must not be overly restrictive in defining the project's purpose and need. Occasionally, an RGU will claim desirable but nonessential elements as part of the project's purpose or need, thus eliminating alternatives that should be included. **In many cases, these are cost-related factors and while important, they cannot overrule environmental considerations.**

## **WATER**

Effect on water systems adjacent to the proposed mine: no facts or analysis are provided regarding negative impact to wells, seeps, wetlands, or waterways. The response to DEIS comments is completely inadequate and draws conclusions without providing facts.

Nine acres: The Response to Comments is completely off-base – and flies directly in the face of the rules for an EIS – in saying that, because half of Tiller’s anticipated revenue lies in mining a virgin 9 acre tract, the full impact Costs and economic gain on the part of the proposer are not to be considered within an EIS. Period.

## **TRAFFIC**

The FEIS fails to take into account the traffic impacts and plan deficiencies presented by RLK and Associates, experts in the field. Truck traffic will cause dangerous situations along 97 and at the intersection of 97 and 95. This includes an elementary school, a church, and other places where people will get hurt or die. The EIS must present thorough information on this issue, but does not.

In summary, the Final Environmental Impact Statement for the Tiller Mine proposed on the property owned by Dr. James Zavoral is incomplete and misleading, and should be rejected. It draws conclusions without substantiation, ignores alternatives and mitigation possibilities, and is vague about critical components such as rehabilitation.

Consider the role of the Environmental Impact Statement as described by the Guide to Minnesota Environmental Review Rules, and ask if this EIS, the primary decision-making document, is accurate and thorough? Does it stand as the “heart of the program?” Are you, elected to serve your constituents, completely comfortable with this document? If not, do not accept it.

The primary purpose of the Minnesota environmental review program is to prepare an Environmental Impact Statement for each project with “potential for significant environmental effects,” as mandated in Minnesota Statutes, section 116D.04, subdivision 2a. Although prepared much less frequently than an EAW, the EIS is the heart of the program. The EIS provides information about the extent of these potential environmental impacts and how they may be avoided or minimized.

Intended primarily for government decision-makers who must approve the project, the information is used by the proposer and the general public as well.

A key point: the EIS is not a means to approve or disapprove a project, but is simply a source of information to guide approval decisions. Occasionally, the information results in an alternative site or design being selected. More commonly, the information suggests changes or mitigative measures to minimize potential impacts that can later be imposed via governmental approvals. However, the legal basis for choosing an alternative other than the proposer’s preference or for imposing mitigative measures comes from other statutory authorities. Again, the EIS can only point out problems and solutions, it cannot enforce them.

Minnesota has a variety of independent statutory authorities to carry out solutions suggested by an EIS. State agencies can reject the proposer’s preference in favor of a “feasible and prudent” alternative if the former is “likely to cause pollution, impairment or destruction” of natural resources (Minnesota Statutes, section 116D.04, subdivision 6). Citizens have similar authority through judicial action under the Environmental Rights Act, Chapter 116B.

I ask the Council to consider the many taxpayers who will suffer from this project instead of the single landowner and for-profit corporation that will benefit. This document is a disservice to the people of Scandia, its economic health, its visitors, and the land we cherish.

Sincerely,

Missy Bowen  
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and  
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