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December 12, 2012

Scandia City Council
Scandia Planning Commission
14272 209th Street North
Scandia, MN 55703-8503

Re: Zavoral Mining and Reclamation Project: Comprehensive Plan Considerations

Dear City Council Members and Planning Commission Members,

This letter is written on behalf of Tiller Corporation, the Applicant for the Zavoral Mining and Reclamation Project (the "Project"). Tiller Corporation seeks a Conditional Use Permit (the "CUP") authorizing it to mine and reclaim approximately 64 acres of a 114 acre former gravel mine site adjacent to Minnesota State Highway 95 and lying just west of a railroad line and west of the scenic easement area buffering the St. Croix Scenic Riverway.

The purpose of this letter is to describe the conformance of the Project with the City's 2020 Comprehensive Plan. The project is essentially the completion of the mining activities begun on the subject property decades ago. The Project will include both mining of additional material and the reclamation of both former and current mined areas. The resulting landform to be established will resemble a river terrace formation similar to that found on the property immediately to the north of the site. Once reclaimed the Project site will be free of the barren areas, irregular terrain, undesirable plant species and stockpiles currently on the site and will be suitable for an appropriate and meaningful use. The Project site will also fit in with the surrounding land forms presenting a more natural appearance. This culmination of the Project will result in the very land form necessary to support the uses described in the City's 2030 Comprehensive Plan.

The application for the CUP was initially submitted in November of 2008 following an extensive period of discussions with New Scandia Township, Scandia City and Washington County staff and officials relating to the project. The result of that consultation was to defer the permitting proceedings until after the Incorporation Proceedings for the City were completed. Once the City was incorporated and had established a mining ordinance governing the mining use, Tiller Corporation submitted its application for permitting its Scandia Mine. Once that permitting was near completion the Project application was submitted. In that context, the application for the CUP was submitted and the City began its review of the application and prepared an EAW. The request was reviewed against the City's 2020 Comprehensive Plan, however at about that same time the City began to review its 2020 Comprehensive Plan and eventually adopted an updated 2030 Comprehensive Plan during environmental review of the Project. Throughout the review

of the Project the City has consistently made a conscientious choice that the Project would be governed by the City's 2020 Comprehensive Plan.

Accordingly the application before the Planning Commission currently is reviewed for conformance with the 2020 Comprehensive Plan. The 2020 Comprehensive Plan describes the area where the Project is located as a General Agricultural area with agriculture as its primary proposed uses. In these areas the Project would be very compatible. Specifically:

- The 2020 Comprehensive Plan shows that the Project area is located at the intersection of two state highways designated as arterial roadways. The plan suggests expected traffic daily volumes of 5600 trips on Highway 97 and 9,050 trips on Highway 95.

- The 2020 Comprehensive Plan presents Rural Area Issues important to the community. In that segment, gravel pits were identified as "necessary." The plan specifically states that gravel pits should have "better screening." It also states that land restoration must be executed with care. Truck traffic was identified as an issue that could create problems requiring careful management. This supports the operation of the Project as is being proposed with appropriate conditions relating to screening, restoration and traffic.

- The 2020 Comprehensive Plan describes Community Vision and Values. In discussion of the Natural Landscape, the Plan calls for managing natural resources with care and specifically calls out the ability to accomplish reclamation of gravel pits. This provision is direct support for the Reclamation component of the Project.

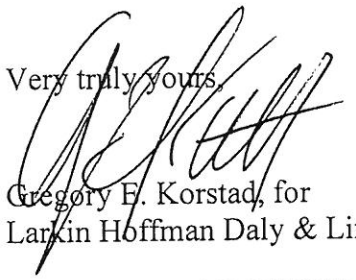
- The 2020 Comprehensive Plan has a segment on General Community Goals which provides for maintenance of a rural lifestyle without utilities and high density residential development. It also provides for protection and enhancement of natural resources in the area for both present as well as future generations. The Land Use Plan for the General Rural Area highlights the importance of the large, open space and large lot nature of the General Rural Area of the City to preserve the rural character and identity of the City. This General Rural Area is presented as appropriate for agricultural production. The Land Use Plan specifically discourages large lot (5-10 acre parcels) development in this area and calls for limited density (4 units per 40 acres) residential use. The proposed mining and reclamation project is consistent with this goal as it will result in a significant large parcel in a river terrace land form.

- The General Rural-Agricultural Area Land Use policies presented in the 2020 Comprehensive Plan has an extensive discussion of rural area development. The initial policy statements are focused on agricultural production as the primary land use in the General Rural-Agriculture Area. The proposed Zavoral mining and reclamation project is compatible with those uses and functions to significantly advance that policy. The rest of the policy statements in this segment of the Plan relating to the General Rural-Agriculture Area all focus on efforts to discourage residential development density. The proposed Project is consistent with those policies.

- The 2020 Comprehensive Plan has a Transportation Segment which provides a focus on function of Trunk Highway 97 and Trunk Highway 95 as arterial roadways. The 2020 Comprehensive Plan identifies an off road bituminous trail running south of Trunk Highway 97 and biking opportunities on the shoulders of Trunk Highway 95 north and Trunk Highway 97. Accordingly, the off road trail is intended to not proceed north of Highway 97.

The implementation of the Project is consistent with the 2020 Comprehensive Plan and land use goals which the City Council has directed govern the Project.

Very truly yours,



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14272 209th Street North
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Re: Review of Zavoral Mine and Reclamation Project Conditional Use Permit Application

Dear Council and Planning Commission Members,

I write on behalf of Tiller Corporation, the applicant for a conditional use permit (the "CUP"), authorizing the Zavoral Mine and Reclamation Project (the "Project"). Tiller Corporation, as the Project proposer, holds a mining lease from Dr. James Zavoral, the Project property owner. This mining lease authorizes Tiller to execute the Project including site preparation, facility operations and site reclamation in accordance with the Project presented in the application and its supplemental materials, the environmental review of the Project as well as any terms and conditions imposed by the City in connection with issuance of the CUP.

Project Background. The Project property (approximately 114 acres) in Section 18 and 19 between State Highway 95 and the adjacent railroad is a readily accessible mineral deposit which has been the site of sand and gravel mining and production since the 1960's. Most recently, excavation of material ceased in the 1980's and the site was operated as a storage and distribution operation for materials which had previously been excavated, sorted and stock-piled. Although no material has been removed from the site since 1990, there remain multiple significant stockpiles of materials awaiting transportation to markets. Because the site was terminated based on lack of product markets and was used for many years as a stockpile storage facility, site reclamation has not occurred. When active excavation ceased, the site was stabilized to minimize safety hazards and reduce erosion, however the site remains predominately un-vegetated and/or is populated by invasive plant species or less desirable shrubs and trees.

The Onsite Deposit. The un-mined materials remaining onsite have been evaluated by Tiller and generally comprise a viable sand and gravel deposit overlying the bedrock. These materials contain a suitable mix of size and quality which are very suitable to construction aggregate uses. In order for this material to be able to be used and consumed in the market, it must first be sorted by size and screened for size distribution, in addition, it is necessary that fines be removed by washing in order to meet construction aggregate specifications. The material from the Project has an adequate concentration of rock that it would be useful in supplementing materials used for production at Tiller's Scandia mine facility and other sites.

Development Plans. Tiller's initial development plans for the Project were simply to reopen the facility and continue the mining with updated state of the art operating procedures to protect resources, adjacent properties, the natural environment and other interests. Tiller's original plan for this site was to process materials in the same fashion as processing occurs at other gravel pits in the City--performing washing, screening, stockpiling and distribution functions onsite. The initial plan for this site was premised on completion of reclamation of the areas mined as well as those areas not reclaimed when the site operations had previously been suspended and development of a final land form compatible geologic conditions in the vicinity of the Project.

Revised Approach. Tiller has now (following completion of a very detailed Environmental Assessment Worksheet, an extensive three-year process of preparing an Environmental Impact Statement and numerous public hearings and meetings with the community) identified a proposed plan of operations for the Project which is substantially limited in scope and function. These revisions to the project were made to address issues raised in the public comments made in the environmental review and other proceedings by the City. The revisions make this a unique gravel pit without processing washing sorting stockpiling and storage activities commonly conducted at similar facilities. The revised Project is now merely the excavation and transportation of material and reclamation of the site.

In spite of this extraordinary effort, the Project continues to be criticized by those who would require that Mr. Zavoral's property not be used at all but remain a permanently unused, unoccupied open space and only serve to provide a wooded view from adjacent property for the benefit of those properties and become wildlife habitat to the exclusion of human activity. That is not an option for this Project.

The intent is that this property will become actively used for purposes authorized by the Scandia Comprehensive Plan. The current Project does not establish a permanent use of the Property. To the contrary, it establishes a project limited in size, scope and duration by the parameters of the resource being excavated and then will result in establishing a landform for final, permanent development.

Planning Commission Review of the Application. The issues presented to the Planning Commission by this application are an important part of the regulatory activities performed by a City, however it is very important that this action is taken only as authorized by law. Land use permitting decisions affect property rights and thus must necessarily follow strict defined guidelines:

- This is not a popularity contest. It does not matter whether a use is favored or welcomed by its neighbors. State law requires that the Planning Commission make an objective judgment about the proposal on its merits. The Planning Commission may not impose its will on the Project.

- State law requires that the Planning Commission decision be rational and not arbitrary or capricious. This means that there must be a real basis in fact for the action taken. The best way to consider this requirement is to evaluate what *will occur* rather than what

might occur. This also means that a claim of impact must be real and not speculative. No "what ifs" are to be considered unless the scenario is truly capable of occurring.

- State law requires the Planning Commission to consider mitigation (reasonable conditions) before any claimed impact can be used to deny a permit.

- The Council has given the Planning Commission a set of standards that it must use in its deliberations. Those standards are in the City Code and present the criteria for issuance of the CUP.

The Zavoral Mining and Reclamation Project meets all seven of the general criteria for issuance of a Conditional Use Permit promulgated by the City Council as follows:

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.

This Project is reviewed for conformance with the City's 2020 Comprehensive Plan which provides for protection of natural resources as well as accommodating the mining use at the project site. The Project if approved would be an authorized conditional use in a General Ag district under the 2020 Comprehensive Plan. As an authorized use it would be compatible by definition. In addition we have provided a separate analysis of the 2020 Comprehensive Plan and how the Project would be compatible with specific provisions of that plan. Although not part of the 2020 Comprehensive Plan, we note that the current zoning for the Project is Agricultural Core District. The City's three issued permits for mining facilities authorize those facilities to be located in the Agricultural Core District or immediately adjacent thereto.

2. The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and not be detrimental to or endanger the public health, safety, morals or comfort.

The Zavoral Mining and Reclamation Project will provide economic value to the City by producing property taxes and aggregate production taxes and providing economic activity and employment. In addition, the Project will produce valuable construction aggregates, a material that is found in limited supply and only at increasingly inaccessible locations. An additional benefit to the general public welfare is that this un-reclaimed gravel pit site will be fully reclaimed as a consequence of the Project, thus significantly improving the neighborhood, the Project site and eliminating a blighted area in the area of the city where the Project is located.

The Project will be highly regulated by federal, state and local government regulations applicable to the sand and gravel mining industry regulating air emissions, noise, groundwater, surface water natural resources and other interests. The City has prepared an Environmental Impact Statement which confirms that the Project would not have substantial adverse affect on public health, safety, morals or comfort. The Project is designed to be executed over a limited period of time. Accordingly, there are could not be permanent affects on 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.

As discussed above, the City has prepared an Environmental Impact Statement which identifies areas of concern from adjacent property owners. The City's EIS has also determined that mitigation of those areas of concern will protect properties from injury or harm. The City developed a comprehensive set of regulations it imposes on mining uses which are conducted in agriculture districts of the City. The proposed facility will be operated in compliance with those conditions in order to avoid injury to other property in the immediate vicinity. Operation of the proposed project will not prevent the current use of residential and recreation property located in the vicinity of the Project. Those properties will continue to be able to operate. In fact many of those are uses which were operating when this site was previously mined. Operation of the Project will not have an effect on the primary use in the zoning district where the project is proposed, agriculture. To the contrary the Mining and Reclamation Use is wholly unaffected by nearby agriculture. The City's Environmental Impact Statement concluded that there would not be a significant effect on property value if the Project is operated in accordance with mitigation described in the EIS. The EIS concludes that there is not an effect on scenic vistas. Specifically, the Project has been designed so that components of the Project are limited in height and scale so as not to impair visual aesthetics.

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.

The City's zoning code provides that this project is in the Agricultural Core District. Development in the Agricultural Core District is substantially limited to low density residential agricultural uses. The project will not establish any physical impairments to the ability to develop further agricultural uses in the district. Nor will any structures or activities operate to prevent rural residential uses from being established. The EIS confirms the absence of potential impacts, to off site properties thus this use would not effect the availability of lands in the vicinity of the Project for low density development.

5. Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.

The proposed project only uses highway transportation facilities as the sole infrastructure support for the Project. The highway transportation infrastructure is operated by the Minnesota Department of Transportation which has confirmed the availability of driveway access permit as well as the configuration of roadway access to Highway 97 and Highway 95. Both of these routes are capable of supporting the traffic generated by this facility. Current traffic patterns on these roadways accommodate sand and gravel truck hauling from sources from outside the City. That the traffic is generated within the City would not change that capability.

6. The conditional use shall conform to the applicable regulations of the district in which it is located and all other applicable standards of Chapter 1 of the Zoning Code.

As a conditional use, the permit and conditions imposed will operate to assure that the regulations in the City Zoning Code, which are applicable will be met. In addition the City has the ability to use its Annual Operating Permit as an additional assurance that all requirements will be met.

7. The conditional use complies with the general and specific performance standards as specified by Section 8 and Chapter 1 of the Zoning Code.

The City Council is expected to issue both a conditional use permit and an Annual Operating Permit with conditions for the operation as mandated by City Code. Use of the annual operating permit to license the operator will enable the City to assure that all of its applicable regulations are met.

Conclusion. Tiller Corporation having demonstrated that the Project meets the standards in the City Code is entitled to a Conditional Use Permit for the Project with reasonable conditions.

Very truly yours,

Gregory E. Korstad, for
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