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February 19, 2012

The Honorable Randall Simonson, Mayor of Scandia
and Members of the Scandia City Council
14272 209th Street North
Scandia, MN 55703-8503

Re: Zavoral Mining and Reclamation Project: Conditional Use Permit Approval

Dear Mayor Simonson and City Council Members,

This letter is written on behalf of Tiller Corporation, one of the applicants and the proposed operator of the Zavoral Mining and Reclamation Project (the "Project") in Scandia (the "City"). Tiller Corporation asks the City to issue its conditional use approval for the Project and to approve the Project in accordance with state law, the City's Development Code and the extensive information and analysis which has already been obtained concerning the Project.

Tiller corporation representatives have been working with City staff as the City Council develops the terms and conditions of the City's Conditional Use Permit (the "CUP"). It is clear from these extensive discussions that there is a tremendous pressure from project opposition to impose as permit conditions various items that do not advance the understanding of the Project, provide any protection to the regulatory interests of the City or improve performance of the Project. The additional unnecessary expense is substantial. There are several items that the City has been asked to consider in the CUP with which Tiller Corporation disagrees including the points discussed below.

The Draft CUP would condition the project on actions of third parties (including the City and its consultants) over which obviously neither Tiller Corporation nor the Owner of the Project Site have control.

This an unreasonable imposition because it places Tiller Corporation in the circumstance that it does not have the ability to control the satisfaction of the conditions of the approval. Tiller Corporation does not seek to control the actions of the City, but does need to control its own destiny. There is a simple way to address this item. The CUP conditions should be described objectively based on the circumstances of the Project without reserving to the City the ability to arbitrarily fail to meet the described condition. The City should not be placed in the position of being asked to cause a failure of conditions in the CUP.

Shortening the Duration of Mining Operations Yields Avoidable Traffic Increases.

The City has been asked to limit the operating period of the mining segment to a shorter duration than what was reviewed by the City's EIS. To start the term of the operation 30 days after issuance of the permits for the Project is contrary to the basis for the project as described in the EIS. This ignores the calculations of the project impacts on the basis of **39 months of mining of the material**. The additional time needed to begin site clearing is very important, especially because of the limited construction season and the uncertainty of the schedule for the remaining permissions.

In addition it is also very important to recognize that the City's decision to impose a shortened duration on the Project will operate to put increased pressure on the Project to move greater quantities of materials during hauling events. The lessened ability to base hauling on market demands means more intense hauling activities as was described in the EIS. The intensity and visibility of hauling activities is substantially decreased with a longer duration that allows material to be extracted based on market and customer requirements and use. This likely means that the traffic impacts would be greater than necessary because of the need to meet artificially imposed deadlines and requirements for removing product. That situation is one of the tradeoffs that results from shortening the duration of the Project.

The appropriate approach is to follow the alternative reviewed in the EIS allowing the mining over a period of 3.3 -5 years and to measure the duration of the mining activities from the time it begins to operate and not from an artificial beginning point.

The Requested Permitting Framework Ignores the Extensive Information Developed by the City at Tiller's Expense in a Four Year Long Environmental Review of the Project.

The project opponents' proposed regulatory framework for this Project is to ignore the extensive information assembled in the EIS and to substitute a detailed and expensive monitoring regimen for each of the following areas about which public comment was received:

- Traffic
- Noise
- Air Quality
- Surface Water
- Ground Water
- Zavoral Creek
- Highway 97 Traffic

Each of these items was extensively measured, calculated, modeled and analyzed with the result that the EIS concludes that the Project would not have the potential for significant effects if it is **operated as proposed**. The City, however has been asked to overlay these conclusions with additional proposed performance "monitoring" in connection with operation of the Project,

notwithstanding there is significant evidence that none of these issues will be affected by operating the Project as described in the Conditional Use Permit.

The City staff's proposed Resolution 02-19-13-04 approving the CUP makes the findings required by the City's Development Code based upon the information currently known about the Project. In the resolution the Council is asked to find that the **information known about the Project today** supports the conclusion that the Project as it is presented meets the City's Development Code standards. None of those findings is aided or improved by the additional monitoring proposed to be added to the Project.

There are no longer any unanswered questions about the Project of any significance or substance. That may have been the case before Tiller Corporation was required to spend four years and hundreds of thousands of dollars on an Environmental Impact Statement. Tiller Corporation asked the City to allow it to supplement the EAW. This effort would have provided all of the relevant substantive information upon which the permitting decision is based several years earlier. Now, ironically, the City having investigated the issues presented by preparing the Environmental Impact Statement, the City is now being further pressed to require Tiller Corporation to monitor those same circumstances all at significant expense to the Company and its customers.

Groundwater Separation Monitoring

The CUP would have Tiller Corporation monitor the depth to groundwater separating the floor of the mined area from groundwater. This condition effectively imposes a 25-foot minimum separation between mining and groundwater at the Property. The City is asked to impose this condition notwithstanding that its ordinances allow and accommodate sand and gravel mining intersecting groundwater. Project opponents cite no regulatory provision proscribing a separation distance greater than three-feet. The discussion of water table separation in the EIS does not support this requirement.

Traffic Monitoring

The City has been asked to include in the CUP an obligation that Tiller Corporation pays the cost of monitoring the traffic from the facility. This proposed condition fails to recognize that **the Project is a substitution for exiting traffic serving Scandia Mine and does not create significant new traffic**. It is also significant that all traffic from the Project will be entering the highways from the increased safety of a **controlled intersection**. The EIS thoroughly evaluated the Project's ability to produce traffic that would use State Highway 95 and State Highway 97. The City does not manage or operate those highways nor does it regulate traffic on those highways. Accordingly, it has limited regulatory interests to be furthered by controlling the traffic generated by the Project.

More importantly than the limited ability to govern traffic is the scope magnitude and nature of the Project as it has evolved. The Project is the excavation and removal of naturally occurring sand and gravel to be processed and utilized elsewhere. The materials so produced will be used to supplement engineered materials processed at Tiller's Scandia facility substituting directly for materials currently being hauled by trucks on State Trunk Highways 95 and 97 and traveling directly past the facility. The substitution of material excavated at the Project for material being transported past the Project means that the traffic from the Project would not be increased. Accordingly, there is no basis for needing monitoring of the traffic as it is the traffic that is present under current conditions.

Noise and Sound

The City has been asked to require that sound generated at the facility be monitored periodically. Periodic monitoring of sounds generated is only justified rational if the source of the sounds increases above state noise limits. The Project as it is described in the EIS and as it has been presented to the City is the excavation of materials directly from the ground with the same commonly used heavy construction equipment found at most earth moving operations. During hauling events and site operations the equipment is operating ten hour construction days, four and a half days a week.

Although there may be days when the operation is not running, the maximum ability to generate sound is measured by the noise level of those items of equipment and vehicles. Thus once one knows the loudest noise and its duration, the ability to exceed noise standards is well defined and any further sound measurements simply describe lawful circumstances and add nothing to regulation of the use. The EIS thoroughly measured the sound levels presented by the equipment to be used at the Project. This measurement was analyzed by modeling sound attenuation using accepted sound evaluation protocols and concluded that the maximum ability of the Project to generate noise would be below state noise level standards. Accordingly, there is no benefit to the Project or the City by periodic monitoring once the maximum sound levels have been determined to not exceed state standards.

The City has been asked to monitor sound levels at the St. Croix River, notwithstanding that the EIS found that noise levels produced by activities other than the Project currently generate sound levels above what the Project produces. In addition, the City is prohibited by statute from imposing a regulatory standard more restrictive than the state standards and has no regulatory authority over the river. No state or federal agency charged with preserving the operation of the river has any regulatory jurisdiction over the Project. In other words, information about sound levels gathered will have no affect on operation of the Project.

Surface Water Monitoring

The City is asked to require that Tiller Corporation pay for extensive monitoring to be performed at Zavoral Creek, Middle Creek and wetlands in the vicinity of the Project. The EIS does not describe how the Project could impact any of those water bodies. Comments on the Project from various sources stated the fear of an effect, but none described what that effect may be or

whether it was likely to occur. Absent any identified potential effect to these surface water resources, there is not a rational basis to require the extensive monitoring that is being proposed.

Air Emissions Monitoring

The EIS identifies two potential sources of air emissions from the Project: loading vehicles and travel on dusty roads. The limited scope of the Project requires that vehicles be loaded directly from material in the ground and thus does not establish stockpiles which could desiccate and generate air emissions. The Project requires that roads be treated to avoid dust. Following these conditions does not require extensive monitoring to determine that they have in fact been met. The expensive air emissions monitoring regimen that the City has been asked to impose ignores an essential element of the Project—there is no processing! The monitoring proposal is one typically used for sand and gravel facilities where there is processing, crushing, screening, stockpiling, sorting, etc. Without those activities there is no basis to support the need for the extensive monitoring described.

Conclusion

Tiller Corporation understands and appreciates the political pressure from neighbors opposing the Project. It is obvious that the City Council is responding to that to public opposition, however that response is still required by law to be based rationally on the Project itself as well as the City's regulation of the industry. This means that opponents' demands for conditions which are not rationally based cannot lawfully be granted.

Tiller looks forward to operating the Project as a productive economic addition to the City. In addition, Tiller is excited that this Project will enable reclamation of the Property and the Project Site to reclaim the current barren unproductive land to be a meaningful ecological resource for the community. This substantial improvement will have the greatest beneficial impact to properties in the immediate vicinity of the Project.

This Project continues to provide a significant benefit to the City in the reclamation of the Project site to a higher standard than would typically be done and to enable the reclamation to occur within the next several years. It provides benefit to the City in the economic activity of producing materials from the site for processing as well as reducing the need for traffic coming into the city north of Highway 97 for at least the term of the Project. Tiller Corporation has a benefit by being able to obtain these materials and market them to construction industry in the vicinity of the Project and finally, those in the vicinity of the Project know that it is the most restrictive way to accomplish the above goals.

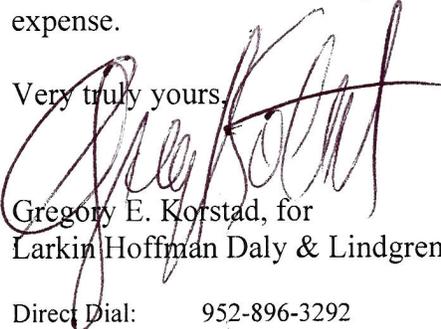
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Upon completion, this Project takes a significant area of barren, ecologically impaired property and reclaims it to be once again assimilated into the riverway topography all without any public expense.

Very truly yours,



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