



Memo

To: Mayor and City Council
From: Anne Hurlburt, City Administrator
Sherri Buss, City Planner
Date: September 21, 2012 for September 25, 2012 Special City Council Meeting
Re: Zavoral Mining and Reclamation Project
Determination of Adequacy, Final Environmental Impact Statement (FEIS)

The purpose of the September 28, 2012 Special City Council meeting is to consider whether the Environmental Impact Statement (EIS) for the Zavoral Mining and Reclamation Project is “adequate.” Attached for your review is a draft resolution adopting the Record of Decision, including findings of fact, conclusions and an order determining that the EIS is adequate.

There are three criteria for determining whether the EIS is adequate, based on Minnesota Rules:

- the EIS addresses the potentially significant issues and alternatives that were raised in the scoping document so that all significant issues for which information can reasonably be obtained have been analyzed;
- the EIS provides responses to the substantive comments that were received during the draft EIS review concerning the issues raised in the scoping document; and
- the EIS was prepared in compliance with the Environmental Policy Act.

The Council should use these criteria to determine whether it finds the EIS to be adequate.

Final EIS Process

The City Council approved distribution of the Final EIS on August 8. Notice of availability of the FEIS was published in the EQB Monitor on Monday, August 20, 2012 and a public comment period ran through Monday, September 10, 2012. A total of 21 comment letters were submitted during this period. They were provided to the Council and are an attachment to the Record of Decision.

After review of the comments, staff and consultants found the following:

- Many of the comments were similar or identical to comments received on the Draft EIS. Responses to those comments were provided in the “comments and responses” section of the Final EIS.
- Some comments concerned issues outside of the scope of the EIS. The EIS does not need to address issues that were not included in the Scoping Document.

- Some comments did not address the EIS or its adequacy, but concerned the future regulatory process that will occur after the environmental review has been completed (Tiller's pending CUP request).
- There were two specific issues related to the adequacy of the EIS that require additional response: these concern 1) noise, specifically how it relates to the National Park Service's recommended standards and tourism, and 2) providing the background data that was gathered to complete the FEIS traffic analysis.

Responses to these two issues are summarized beginning on page 18 of the draft Record of Decision. The responses include additional mitigation to address noise, and a new Appendix F to be added to the FEIS that includes the traffic data requested in the comments.

Staff believes that with the addition of this information that the EIS meets the adequacy criteria in Minnesota Rules. AECOM and City staff are prepared to discuss the issues raised in the comments and how they are addressed in the Final EIS with the Council at the meeting on September 25.

Alternatives for City Council Action

At the September 25 meeting, the City Council may:

1. Adopt the resolution adopting the Record of Decision, finding the EIS to be adequate and thus ending the environmental review process.

The city would have five days to notify all persons who received the FEIS of this action and a notice would be published in the EQB Monitor. The next step would be review of the Conditional Use Permit (CUP) for the project. If Tiller submits all of the information needed to determine that the application is complete by October 5, the Planning Commission could hold the public hearing at its November 7, 2012 meeting.

2. Postpone action to a future date, if the Council needs additional information in order to make a decision. If this is the case, then the Council should be specific about what data is needed and set a date to continue its discussion.
3. Find that the EIS is inadequate. The Council would make this finding if it believes that the Final EIS does not meet the three criteria identified above.

MEQB Rules require that the City prepare an adequate EIS. "Denying" the FEIS or ending the process without preparing an adequate FEIS is not an option.

If the Council finds the FEIS is inadequate, the City would have up to 60 days to prepare an adequate EIS. Therefore, in making such a finding, it would be very important for the Council to be specific about what is needed to make the EIS adequate. A revised EIS would need to be circulated in the same manner as the FEIS distributed in August.

Recommendation

We recommend that the City Council adopt the Resolution approving the Record of Decision determining the FEIS for the Zavoral Mining and Reclamation Project to be adequate.

Attachments:

- Draft Resolution No. 09-25-12-01, with Attachments:
 - Record of Decision
 - Figure 1 (Project Location Map)
 - Attachment A1, Tabular List of Comments Received on Final EIS and Copies of All Comments
 - Attachment A2, Final EIS Additions
 - Revised Pages ES-42 and 5-4
 - Appendix F: 2012 Traffic Analysis