

**COMMENTS RECEIVED AND RESPONSES CONCERNING
THE SCOPING ENVIRONMENTAL ASSESSMENT WORKSHEET (SEAW) FOR**

**Minnesota Valley Sand Mining Operation SEAW
Louisville Township
Scott County, Minnesota**

**The headings for the SEAW Item topics are in brackets.
Organization of the comment are in Bold.
Staff responses are in Italics**

Note: Comments received note the name of the commenter and are either quotes from their comments or are paraphrased by staff to capture the essence of the concern as it relates to the EAW item in question. *Staff responses to the comments follow each comment and are in italics and noted as Staff Response.* Comments received that were of similar concern are addressed once throughout the document. The comments considered in this document were all received within the designated comment period or presented at Public Meeting held on August 12, 2015.

Contents

8. Permits and Approvals.....	3
9. Land Use.....	4
11. Water Resources	5
13. Fish, Wildlife, Plant Communities, and Sensitive Ecological Resources (rare features)	6
14. Historic Properties	7
15. Visual 16. Air 17. Noise	8
18. Transportation	8
19. Cumulative Potential Effects	9
21. Other Comments.....	10

8. Permits and Approvals

U.S. Army Corp of Engineers:

If the Minnesota Valley Sand project involves a discharge of dredged or fill material into waters of the United States, a Clean Water Act (CWA) permit would be required. CWA Section 301(a) prohibits discharges of dredged or fill material into waters of the United States, unless the work has been authorized by a Department of the Army permit under Section 404. Information about the Corps permitting process can be obtained online at <http://www.mvp.usace.army.mii/Missions/Regulatory.aspx>.

If a CWA permit is required, we would consider direct impacts to waters of the United States located within the Minnesota Valley Sand project site, which may include aquatic resources such as wetlands and ditches, as well as any other aquatic resources that would be indirectly affected by the proposed direct impacts to waters of the United States, such as the Minnesota River, floodplain wetlands, or Gifford Lake. The Corps' evaluation of a CWA permit application involves multiple analyses, including (1) evaluating the proposal's impacts in accordance with the National Environmental Policy Act (NEPA) (33 CFR part 325), (2) determining whether the proposal is contrary to the public interest (33 CFR § 320.4), and (3) determining whether the proposal complies with the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230).

If the proposal requires a CWA permit, the Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR § 230.10(a)). Time and money spent on the proposal prior to applying for a Section 404 permit cannot be factored into the Corps' decision whether there is a less damaging practicable alternative to the proposal.

The Guidelines also require that when a project is not "water dependent," that is, it does not need to be located in or near wetlands to serve its basic purpose, it is presumed that there are alternative upland sites available and that the use of the upland sites would be less environmentally-damaging than would be the proposed alteration of the wetland. The proposed Minnesota Valley Sand project does not require access to, or proximity to, or siting within a wetland to fulfill its basic purpose. Therefore, if a CWA permit is needed, it will be incumbent upon the applicant to clearly rebut the presumption that upland sites are available and would be less environmentally-damaging than the proposal. The fact that the applicant may not own the upland site is not, by itself, sufficient to rebut this presumption as long as upland property is available at a reasonable cost.

If, during the planning stages, it seems that a Corps permit may be needed for this project, we encourage the project proposer to request a pre-application consultation meeting with the Corps to obtain information regarding the data, studies or other information that will be necessary for the permit evaluation process.

Staff Response: If it is determined during the environmental review process that a Corp permit may be needed the developer will request a pre-application consultation meeting with the Corp and will include any information gathered in the draft EIS for review.

MnDOT:

Any work that impacts MnDOT right of way will require a permit. Permit forms are available from MnDOT's utility website at: <http://www.dot.state.mn.us/utility/>. Include one 11 x 17 plan set and one full size plan set with each permit application. Direct any questions regarding permit requirements to Buck Craig, MnDOT's Metro Permits Section, at 651-234-7911.

Staff Response: The developer will apply for all required permits accordingly.

Metropolitan Council:

The Scoping document states that approval by Scott County and Three Rivers Park District would be required for a lease agreement that is under consideration for a portion of the former railroad corridor. This corridor was purchased with a grant from the Metropolitan Council that was comprised of funds from the Parks and Trails Legacy Fund and Metropolitan Council bonds. The land is subject to a restrictive covenant agreement that limits the use of the land to regional recreation open space purposes only. Any sale, lease, easement, or other encumbrance on the property is subject to review and approval by the Metropolitan Council. The Metropolitan Council should be added to the list of units of government for required approvals.

Staff Response: In Section 8 Permits and Approvals required it is stated that "lease agreement for portion of the former railroad corridor is under consideration and may be submitted to Scott County Board and Three Rivers Park District. This statement is an error and will be corrected in the Final SDD, Minnesota Valley Sands is not proposing to lease the former railroad. However, easements may be needed as the former railroad dissects the Minnesota Valley Sands property. If an easement is needed the Metropolitan Council will be notified.

9. Land Use.

Three Rivers Park District:

The Scoping EAW includes the following statement: *Decades of limestone mining on the Project and adjacent property suggests that the proposed Project will be compatible with the surrounding public land use for recreational and wildlife areas (9b).* This is a rather simplistic assumption and it implies that the surrounding public land use for recreation and wildlife areas has not been negatively affected by previous mining activity when in reality it most likely has been temporarily and permanently affected. It also assumes that past levels of impact are acceptable when they most likely are not. The Park District requests that the Final Scoping Decision Document require the applicant to thoroughly study environmental and land use, including recreation, impacts and not rely on past land uses to determine acceptable levels of impact or compatible land uses.

Staff Response: We agree this is an assumption. The draft Scoping Decision Document states in 4.2A The EIS will assess the impacts on the current land use in the areas adjacent to the project.

Metropolitan Council:

The Metropolitan Council oversees the long range planning of the regional parks system, which is governed by the *2040 Regional Parks Policy Plan (2040 RPPP)*. The planned Minnesota River Bluffs Regional Trail is a component of the regional parks system and will be developed in the future by Scott and Carver Counties. The regional trail will follow the abandoned Union Pacific Railroad Spur from

downtown Chaska through Carver and will cross the Minnesota River to Louisville Township, where it dissects the Minnesota Valley Sands project site.

The document acknowledges that Scott County owns former railroad right of way land that is present between the Project site parcels and the adjacent Malkerson Sales property that is intended for use as "a future trail." The EIS needs to acknowledge the Minnesota River Bluffs Regional Trail by name and evaluate potential impacts to the trail corridor land by the mining activities. Additionally, the Minnesota Valley State Trail and the Minnesota Valley National Wildlife Refuge complement the regional parks system and are afforded protection through the 2040 RPPP. Impacts to these facilities that are adjacent to the site need to be addressed in the EIS as well.

Figure 8: Public Land and Trails of the SEAW needs to show the abandoned rail corridor as public land and also depict the planned alignment of the Minnesota River Bluffs Regional Trail through the site. Geospatial data of the regional trail system for incorporation into the map can be downloaded at: <http://www.datafinder.org/metadata/TrailsRegional.html>

Staff Response: The Minnesota River Bluffs Regional Trail will be identified by name in the EIS and on Figures where appropriate. The EIS will evaluate the impacts to the Minnesota River Bluffs Regional Trail, the Minnesota Valley State Trail, and the Minnesota Valley National Wildlife Refuge.

11. Water Resources

City of Chaska:

The Minnesota River is designated as an impaired waters of the State. Since the majority of surface runoff from Chaska is directed to the River, Chaska's Water Management Plan guides land use activities toward the goal of zero degradation. The proposed mining operation needs to be held to this same standard in relation to ground and surface water impacts to the River, which is directly adjacent to the site.

Staff Response: Scott County ordinances also require water quality mitigation with land use development. The applicant will be required to prepare a Resources Management Plan showing how they will meet the ordinance. The County ordinance largely states that applicants need to follow the requirements in the MPCA's NPDES Construction Site permit which the agency has found to meet nondegradation. In addition, ground water impacts have been called out in the Scoping EAW as an area of study for the EIS.

U.S. Army Corp of Engineers:

We note that section 11, b, iv., of the Environmental Assessment Worksheet (EAW) indicates that there are several known wetlands within the project location. The EAW indicates there are no anticipated impacts to those wetlands. If the proposal does not include any direct impacts to wetlands or other waters of the U.S. (i.e. Minnesota River, tributaries to the Minnesota River, etc.) then a permit may not be required from the Corps. Please note that we have conducted an Approved Jurisdictional Determination on Wetland 13 (identified on Figure 17 in the EAW) and determined that basin to be isolated and not regulated by the Corps.

Staff Response: The developer will note in the EIS that an Approved Jurisdictional Determination on Wetland 13 has been conducted.

Carver County:

The Minnesota Geologic Survey identifies areas that are highly susceptible to groundwater contamination throughout the Minnesota River Valley. Carver County supports the steps identified in the EAW to further investigate drinking water supply impacts and ensure no negative impacts to surrounding communities. Carver County strongly values the shared resource of the Minnesota River that forms our boundary with Scott County. As the project continues to move forward, Carver County encourages that opportunities be considered to have no net impact on water resources by meeting all state and local requirements.

Staff Response: The developer is required to prepare a hydrogeological investigation and assess impacts to surface and groundwater. The developer is required to meet all applicable state and local requirements.

Sunde Engineering, PLLC:

The response to this item indicates that springs or seeps were not identified on the Site. Field work conducted in conjunction with the Merriam Junction Sands project, which initially included the Minnesota Valley Sands property, has verified that there are seeps and springs associated with the wetland complex that lies in part within the Minnesota Valley Site, east of the railroad tracks. In addition there are springs and seeps associated with the Louisville Swamp that is located on the Fish and Wildlife Service property located southwest of the MVS site. The springs and seeps should be considered when moving forward with studies to assess the potential impacts to groundwater and surface water features conducted as part of the Environmental Assessment Worksheet.

Staff Response: The EIS will include the springs and seep on site. The EIS will consider the spring in the hydrogeological study and assessment of potential impacts to ground and surface water.

13. Fish, Wildlife, Plant Communities, and Sensitive Ecological Resources (rare features)

City of Chaska:

The proposed facility is directly adjacent to a managed US Fish and Wildlife Preserve. This Preserve represents a unique amenity to local and area-wide residents. Protection of this federal park area is of paramount importance to the City. In addition, Chaska operates a ball field on the historical register abutting the Preserve with direct trail connections between the two resources. Lastly, State Highway 41 runs adjacent to Historic Downtown Chaska and the burial mounds in City Square Park, both of which are important cultural assets. All of these assets may be negatively impacted by the proposed use and therefore should be the subject of additional analysis as part of this process.

Staff Response: It is important to Scott County to protect the wildlife preserve and archeological, historical, and architectural significant properties. A land use assessment, traffic analysis, and viewshed analysis will be included in the EIS. A Phase I archaeological survey will be completed as a part of the EIS and the developer will identify any impacts or mitigation to archeological, historical, or architectural properties.

Department of the Army:

We also note that in section 13, the EAW states that there is likely a bat colony located within the project site boundary. If a CWA permit is required, the Corps will be required to review the project for compliance with Section 7 of the Endangered Species Act. The northern long-eared bat (*Myotis septentrionalis*) is currently listed as a threatened species. This is provided for your information so potential impacts to this species can be considered in the environmental review process.

Staff Response: The developer has been notified of that they must be in compliance of Section 7 of the Endangered Species Act.

City of Carver:

Item 13a states *"The proposed Project use has several decades of demonstrated compatibility with the natural wildlife refuge and is anticipated to have no negative impact on the ecosystem."* This statement is conclusory without evidence to support the statement, and others would likely disagree. In reality, the proposed use is an expansion to the existing use, and the document confirms that a permit will be sought for the taking of a state-threatened plant (Kitten-tails) in the SE portion of the project. It is recommended that consultation with the Department of Natural Resources and the US Fish and Wildlife Services occur to determine what types of analysis may be needed to determine impacts on either the ecosystem or individual species.

Staff Response: The EIS will include a field study to re-evaluate the site for the occurrence of any State listed species and potential impacts to rare features. The EIS will include an evaluation of the potential for securing a permit from the DNR for the taking of a State threatened plant. Also, please see response to Three Rivers Park District comment in Section 9

14. Historic Properties

Department of the Army:

We note that the EAW identified potential historic properties within and adjacent to the project site. If a CWA permit is required, the Corps will be required to address potential effects to historic properties under Section 106 of the National Historic Preservation Act. Actions that may be required to fulfill this responsibility include a determination of the area of potential effect, potential Phase I and Phase II archaeological surveys, and coordination with the SHPO and Tribes, among others.

Staff Response: The developer has been notified of that they must be in compliance of Section 106 of the National Historic Preservation Act. The developer will identify any impacts or mitigation to archeological, historical, or architectural properties.

Minnesota Historical Society:

Due to the nature and location of the proposed project, we recommend that a Phase I archaeological survey be completed. The survey must meet the requirements of the Secretary of the Interior's Standards for Identification and Evaluation, and should include an evaluation of National Register eligibility for any properties that are identified. For a list of consultants who have expressed an interest in undertaking such surveys, please visit the website preservationdirectory.mnhs.org, and select "Archaeologists" in the "Search by Specialties" box. We recommend that you consult with the Minnesota Office of the State Archaeologist regarding possible burial mounds that may be located within the project area.

We will reconsider the need for survey if the project area can be documented as previously surveyed or disturbed. Any previous survey work must meet contemporary standards. Note: plowed areas and right-of-way are not automatically considered disturbed. Archaeological sites can remain intact beneath the plow zone and in undisturbed portions of the right-of-way. Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36CFR800, procedures of the Advisory Council on Historic Preservation for the protection of historic properties. If

this project is considered for federal assistance, or requires a federal license or permit, it should be submitted to our office by the responsible federal agency.

Staff Response: The Final SDD will be modified to state that a Phase I archaeological survey will be completed as a part of the EIS.

15. Visual 16. Air 17. Noise

City of Chaska:

Besides the noise, emissions and dust associated with truck traffic, the City is also concerned with these issues as associated with the operations area. Again, downtown Chaska is only a short distance to the north, with both TH 41 and the Minnesota River acting as unobstructed corridors for transmission of odors, emissions, noise, and dust.

Staff Response: Noise and Air quality impacts will be assessed in the EIS. A viewshed analysis will be completed as a part of the EIS.

18. Transportation

City of Chaska:

Section 18 of the EAW states that there is potential for the proposed operation to generate up to 150 truck trips per day. Based on the noted range of 15 trips per hour, the hauling operation runs 24 hours per day. In the event the shipment by rail is not possible, truck traffic will increase significantly. The proposed facility is adjacent to TH 169 just west of TH 41 which by default means these highways would become the major hauling routes. Only a short distance to the north, TH 41 acts as the City's main street through the downtown area, with houses; apartments, hotels, and businesses built right up to and lining the State's right-of-way. Once past downtown, TH 41 proceeds north at a steep upward grade as the highway moves traffic toward the TH 212 freeway. The analysis of impacts should not end in Scott County, as is suggested, by the Draft Scoping Decision Document (Section 4.11b); but should extend into Carver County and specifically address impacts on Historic Downtown Chaska. There are also a number of traffic signals along the entire length of this highway that handle local traffic along an already congested corridor where noise and emissions are existing issues. Any additional truck traffic along TH 41 from the proposed mining operation will cause significant impacts for Chaska.

As a separate note, TH 41 is subject to seasonal flooding as it crosses the MN River basin.

Staff Response: A traffic analysis will be completed for the EIS. The analysis will include predicted volume of traffic that will go west on TH41 into Carver County. The traffic analysis will take into consideration seasonal flooding and mitigation measures.

MnDOT:

The rail line that Minnesota Valley Sand will be using extends north and crosses MN 41 northwest of Dem-Con Road. MnDOT has concerns with the impacts associated with potential traffic queues as motorists wait for the rail traffic to pass. MnDOT recommends the evaluation of the queuing, associated

impacts, and potential mitigation if needed in the upcoming EIS. For questions concerning these comments please contact Tod Sherman at 651-234-7795

MnDOT has concerns with the truck use of 145th. Left turns onto US 169 pose a risk for high severity right angle crashes. MnDOT did not see plans to accommodate future public access across the mining site to serve as part of a future road network. The corridor is currently being studied by both MnDOT and Scott County to aid in planning for future safety and mobility improvements, which includes access management. The traffic impact analysis needs to consider routes without a full access at 169/145th ST. Access management improvements to the corridor may include full closure, median closure, and $\frac{3}{4}$ access. For questions concerning these comments, please contact David Sheen (651-234-7824) in MnDOT Metro District's Traffic Engineering Section.

Staff Response: We will clarify in the SDD that the traffic analysis must include potential traffic queues as motorist wait for the rail traffic to pass. Also, the traffic analysis will include how trucks will access US 169 from 145st. The analysis may consider routes without full access at 169/145th St. The developer will identify internal roads on the project site as a part of the End Use Plan.

Three Rivers Park District:

The Scoping EAW and Draft Scoping Decision Document do not address potential transportation conflicts between the planned Minnesota River Bluffs Extension and Scott County Connection Regional Trail and the proposed Minnesota Valley Sand Silica Sand Mine site which the regional trail is planned to travel through. While the timing of trail development is not yet known, it is imperative that trail safety be addressed in the Final Scoping Document in respect to trucks and heavy equipment potential crossing the trail corridor and mining and rail operations occurring immediately adjacent to the trail corridor. The Park District requests that the Final Scoping Decision Document require the applicant to study and devise a plan to ensure trail safety throughout the duration of the mining activity should the regional trail be constructed within the next 25 years.

Staff Response: The EIS will analyze trail safety throughout the duration of the mine and post mine and possible mitigation measures.

Carver County:

Trunk Highway 41 is a principal arterial that runs through the heart of Chaska's downtown. While this is a MNDOT managed highway, TH 41 provides a critical Minnesota River crossing and greatly impacts traffic flow on connecting County roads. CSAH 61 for example serves as part of a truck route that connects TH 212 with TH 169 via TH 41. The County is concerned about increased truck traffic related to the proposed project and the potential impacts of queuing as motorists wait for trains to cross TH 41 south of the river crossing. Carver County requests further evaluation of traffic and queuing impacts on TH 41 and the directly adjacent critical truck routes like CSAH 61.

Staff Response: A traffic analysis will be completed for the EIS that includes predicted volume of traffic that will go west on TH41 into Carver County. We will clarify in the Final SDD that the traffic analysis must include potential traffic queues as motorist wait for the rail traffic to pass.

19. Cumulative Potential Effects

Carver County:

The EAW notes that the proposed Merriam Junction Sands project would add significant truck traffic to TH 41 and TH 169. Concerns expressed in the prior traffic section of this letter should be applied to the cumulative impacts assessment as well.

Staff Response: The EIS will identify and evaluate potential cumulative impacts from rail and truck traffic associated with the proposed Project and Merriam Junction Sands

21. Other Comments

Three Rivers Park District:

Recreation – The Scoping EAW and Draft Scoping Decision Document do not adequately address potential impacts to existing and planned nature-based recreation offerings of the adjacent publicly held lands including lands held by the Minnesota Department of Natural Resources (MDNR), US Fish and Wildlife Service (USFWS), and Scott County. The Park District requests that the Final Scoping Decision Document requires the applicant to further study and identify potential impacts (noise, view sheds, air quality/dust, lighting, etc.) to existing and planned nature-based recreation. In addition, the applicant should outline best management practices to reduce potential impacts as well as mitigation strategies should there be any significant impacts.

Staff Response: The developer will study potential impact (noise, viewshed, air quality, and lighting) and provide mitigation strategies in the EIS. We will clarify in the Final Scoping Decision Document this includes to existing and planned nature-based recreation.

Minnesota Department of Health:

The Environmental Quality Board's (EQB) Tools to Assist Local Governments in Planning and Regulating Silica Sand Projects was developed for silica sand mine projects and is a useful resource. This EQB publication includes applicable tools that could be implemented on the project site to minimize impacts to groundwater and surface water quality as well as minimizing other environmental and public health impacts from silica sand mine land uses. Additionally, although the site is not located within a wellhead protection area, MDH's Wellhead Protection Issues Related to Mining Activities also provides tools that could be implemented to minimize impacts to drinking water.

Staff Response: Scott County and the developer will consider using the "Tools to Assist Local Governments in Planning and Regulating Silica Sand Projects" and the "MDH's Wellhead Protection Issues Related to Mining Activities" in the EIS process.

Sue Ramthun, Rochester MN

Please do not approve this project. There is a down turn in frac mining due to low demand, and oil prices are low. Given these issues it doesn't make sense to approve any sand mining. The dewatering and other pieces of this proposal also don't make sense in these times of drought and decreased drinking water sources. Thank you for consideration.

Staff Response:

The Scoping EAW, Scoping Decision Document, and EIS are not a permitting process. However the proposed project will complete an EIS, which will study environmental impacts and possible mitigation measures. This information will be used by permitting authorities.