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October 28, 2025

Emily Schmitz, Community Development Director
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Director Schmitz:

Friends of the Mississippi River (FMR) appreciates the opportunity to comment on the Final Environmental Impact Statement (FEIS) for the proposed Nelson Mine Backwaters Project.

FMR is a non-profit organization with a mission to engage community members and other stakeholders to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities region. We represent thousands of people in the metropolitan area who care deeply about the river, including over 6,000 who participate as FMR advocates, volunteers, and members each year.

We continue to have serious concerns about this proposed Nelson Mine expansion into the Mississippi riverbottom. The Mississippi River is a natural, cultural, and historic wonder that helps define our metro area. In recognition of this, its 72-mile stretch through the Twin Cities is not only a state-designated Critical Area but also a national park afforded special protective policies.

We submit that the FEIS is inadequate for reasons set out in our previous comments, comments of other parties, and the comments below. In particular, the City must reject the FEIS, and the project as proposed, because there is no legal basis for the company to mine nonmetallic minerals in the Shore Impact Zone or riverbed of the Mississippi River. The company has not supplied information necessary to substantiate analyses fundamental to the project and the EIS. See Minn.R. 4410.2300, subp. J2.

Thank you for your attention to the following comments.

I. The Proposed Expansion Is Prohibited by the Plain Language of the Applicable Ordinance.

We disagree with Amrize's response to several Draft EIS (DEIS) comments questioning the legality of Alternatives B, C, and E under Mississippi River Corridor Critical Area (MRCCA) regulations:

"The City's MRCCA regulations do not prohibit expansion of nonmetallic mining operations. Nor do the MRCCA regulations prohibit expansion of existing nonmetallic mines. Rather, the MRCAA rules prohibit only 'new nonmetallic mining' in certain locations. The definition of

‘nonmetallic mining’ is found in Section 11-13-14 of Chapter 13 of the City Code, which is the codification of the City’s MRCCA regulations, as adopted. While the definition includes expansion of ‘any facility for the extraction, stockpiling, storage, disposal, or reclamation of nonmetallic minerals such a stone, sand, and gravel,’ the definition is simply that, a definition and does not operate as a prohibition on expansion of such a facility. The expansion of an existing mine is not ‘new nonmetallic mining.’”

Amrize’s explanation makes no sense. As noted by Amrize, the ordinance prohibits “new nonmetallic mining” in the shore and bluff impact zones. Ordinance, Ch. 13 § 11.-13-7. The ordinance also supplies a definition of “nonmetallic mining” which includes “expansion . . . of any facility for the extraction . . . of nonmetallic minerals.” Ordinance, Ch 13 § 11-13-4. Where the legislative body has provided a definition of a term, the definition is used to interpret the law. In other words, the prohibition on “new nonmetallic mining” means, by the plain terms of the ordinance, a prohibition on “new [expansion of a facility for the extraction of nonmetallic minerals].” See *U.S. Jaycees v. McClure*, 305 N.W.2d 764, 766 (Minn. 1981) (courts must use definition supplied by legislature to interpret statute).

The proposed project is a new expansion of nonmetallic mining in the Shore Impact Zone. Therefore it is prohibited. Amrize has provided no factual or legal basis for approval of the project.

II. The Project Cannot Proceed As a Legal Nonconforming Use.

We’d also like to respond to this part of Amrize’s response to our DEIS comments:

“Alternative B proposes expansion of mining operations that have operated continuously on an adjacent site since the 1950s. State law recognizes the principle that a diminishing asset, such as a mineral deposit, should be permitted to be mined to the extent of the entire deposit and not merely that area in which operations were being conducted at the time of the adoption of the ordinance. See *Hawkins v. Talbot*, 248 Minn. 549 (1957).”

This argument is misguided. *Hawkins* and later cases do not offer a freestanding allowance for companies to mine “to the extent of the entire deposit” of any diminishing asset. Rather, Minnesota courts have articulated a limited doctrine about legal nonconforming uses.

The FEIS has not demonstrated that Amrize even has a legal nonconforming right to mine the Shore Impact Zone of the MRCCA. Furthermore, even if Amrize demonstrates that its *current* mining operations constitute a legal nonconforming use, Minnesota law does not permit Amrize to relocate that use into the Mississippi riverbed.

A. The FEIS Fails To Establish That Amrize Has Legal Nonconforming Rights.

Nonconforming use rights are “defined by the uses lawfully existing at the time of the adverse zoning change.” *Aim Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 333 (Minn. 2020). The adverse zoning change relevant to this proposal goes back to at least 2021, when the MRCCA regulations prohibited new nonmetallic mining in the Shore Impact Zone. Given that timeline, Amrize can claim a nonconforming right to the mining activities it was lawfully engaged in within the Shore Impact Zone, if any, in 2021, or whenever the City first restricted nonmetallic mining in this area.

Those facts have not been established. According to the City, Amrize has mined "since the early 1950s" and has a lease with PAS Associates that "remains in place." But the FEIS omits any information about whether the company or its predecessors (1) held the necessary property interests in the Shore Impact Zone when MRCCA protections or any other local restrictions took effect, and (2) were in fact using those property interests to conduct mining in the Shore Impact Zone at that time.

Without providing that foundation, there is no basis for the City to claim that Amrize has a legal nonconforming right to violate MRCCA rules, and the FEIS lacks "information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project." Minn. Stat. § 116D.04, subd. 2a(i). The City must amend the FEIS to justify Amrize's claim to a nonconforming right.

B. If Amrize Has a Legal Nonconforming Right, the City's Preferred Alternative Is an Unlawful Expansion of that Right.

If Amrize is engaging in a legal nonconforming use under the MRCCA, the company may *continue* that use into the future, but it cannot *expand* that use. Expansions of nonconforming uses are prohibited in the City's ordinance, a prohibition permitted by Minnesota law. Minn. Stat. § 462.357, subd. 1e; see *AIM Dev.*, 946 N.W.2d 330 at 333.

The City references one mid twentieth century judicial opinion, *Hawkins v. Talbot*, 248 Minn. 549 (1957), to argue that Amrize can move its mining operation into the Mississippi riverbed without expanding a nonconforming use. This claim ignores modern precedent. When the Minnesota Supreme Court revisited *Hawkins* in 2020, the court clarified that a nonconforming use becomes an unlawful expansion if it "unreasonably prolonged the lifespan of the nonconformity and made it more difficult to convert the land to a different use when the nonconformity was eliminated." See *AIM Dev.*, 946 N.W.2d 330 at 340; see *Cty. of Freeborn v. Claussen*, 203 N.W.2d 323, 325 (Minn. 1972).

Under both elements of this standard, Amrize's proposal is an unlawful expansion. Moving the company's mining operation further into the Shore Impact Zone would indefinitely "prolong the lifespan of the nonconformity," contradicting the "well-established rule that nonconforming uses are to be restricted in a way which will be conducive to their ultimately being phased out." *Hawkinson v. County of Itasca*, 231 N.W.2d 279, 282 (Minn. 1975); see also *Claussen*, 203 N.W.2d at 325 ("The public policy behind that doctrine is to increase the likelihood that such uses will in time be eliminated due to obsolescence, exhaustion, or destruction.").

With regard to the second criterion, the Supreme Court articulated in *AIM* the principle that nonconforming uses should not grow in ways that interfere with the long-term purpose of affected land. In *Claussen*, that meant ensuring land remained amenable to eventually joining "a uniform residential area." 203 N.W.2d at 327. Here, the long-term intended "use" of the Mississippi riverbed is preservation to ensure use and enjoyment of a public water for which the state holds title in trust for all citizens. If Amrize's proposal moved forward, it would interfere with rare and endangered species while threatening sediment transport, water quality, and many other environmental effects. The proposal would adversely impact the use and enjoyment of the River as a designated public water resource under state and federal law. See 16 U.S.C. § 460zz (establishing the Mississippi National River

and Recreation Area). These impacts would last for decades or more, making it “difficult to convert the land” to its intended status as a healthy and protected riverbed. *AIM Dev.*, 946 N.W.2d 330 at 340.

Taken in context, state law supports a commonsense conclusion: Even if Amrize has nonconforming rights in its existing mining operations (which this record does not establish), relocating their mine into the Mississippi riverbed would expand this use. That expansion must conform to modern environmental standards and the long-term intended uses of the area. It does not. For that reason, the City must correct the FEIS to recognize that Alternatives B, C, and E of Amrize’s proposal are subject to MRCCA prohibitions against new nonmetallic mining in the Shore Impact Zone.

Thank you for your consideration.

For the river,

A handwritten signature in black ink that reads "Colleen O'Connor Toberman". The signature is written in a cursive, flowing style.

Colleen O'Connor Toberman
Land Use & Planning Director