

Application Date: April 13, 2015

Owners/ Agents: Dale & Jodi Spohn (owners)  
Birch Bay RV Resort

**Contact Information:**

Owner: Dale Spohn  
5116 145<sup>th</sup> St NW  
Royalton, MN 56373  
320-250-4154

**Property Identification:**

14-357-0030	14-357-0070	14-357-0080	14-357-0090
14-357-0100	14-368-0105	14-368-0110	14-368-0115
14-368-0120	14-368-0125	14-368-0130	14-368-0135
14-368-0140	14-368-0145	14-368-0150	14-368-0155
14-368-0160	14-368-0165	14-368-0170	14-368-0175
14-368-0180	14-368-0205	14-368-0210	14-368-0215
14-368-0220	14-368-0225	14-368-0230	14-368-0235
14-368-0240	14-368-0245	14-368-0250	14-368-0255
14-368-0260	14-005-2303		

**Property Description:**

PLS Location: NW ¼, Section 5, Township 134 N., Range 29 W.

**Application:** Mandatory Environmental Assessment Worksheet

**Project Description:** Involves converting the Birch Bay Golf Course and Resort into a seasonal RV Resort. The proposed RV Resort would have 170 new sites located on 46.2 acres. Each site would be 50 ft. wide and 90 ft. long and have water, electrical, and sanitary sewer hookups. The existing Birch Bay Resort consisting of 10 private lakefront cabins and 7 lakeview rooms in the inn, would remain in operation.

Entire 94 Page Worksheet is available for review on the Cass County Environmental Services Dept. website or at the Fairview Town Hall.

Fairview Township Board of Supervisors reviewed the EAW and composed the following letter:

*May 13, 2015  
Dear Mr. Fairbanks;*

*The Board of Supervisors of Fairview Township has reviewed the EAW submitted to the Cass County ESD and has many concerns about the proposed project, both for the surrounding residents and for the overall environment.*

*The township has not been approached by the proposer or invited to provide any input into these plans, which could possibly have addressed some of our concerns. We understand that there is no foundation for blocking this plan, so we can only hope to mitigate some of the potential affect it may have on the surrounding environment.*

*Our first and foremost concern is the sheer density of this proposal. 170 sites seems way too aggressive for a newly proposed project, Agate Lake, this piece of land and for the surrounding residential neighborhood.*

*This EAW refers to construction taking place in three phases. The Fairview Board would propose that a specific amount of time (perhaps 2 years) be spaced in between the phases, allowing the surrounding residents and the surrounding environment to adapt to the changes being made. This would also allow time to gauge whether the allotted septic systems are sufficient to meet the needs of each phase.*

*The Fairview Board of Supervisors would recommend the first phase of construction of new campsites be made at the north end of the property and along County Rd 77, closer to the clubhouse and existing cabins, allowing surrounding residents to adapt to the changes in their environment.*

*The Board would like to see the overall density reduced, allowing for the creation of a dense tree/foilage buffer around the perimeter of the RV Resort, and increasing the sizes of the lots for that "up-north style resort" referred to in the EAW. A dense buffer is especially needed along Birch Drive across from lots 10 through 19, opposed to the septic system site located directly across from Lot 15.*

*There has been a history of run-off from the golf course running across the road and through Lot 15. This should specifically be addressed.*

*The effect of the density of this RV Resort on Agate Lake, AIS, the watershed, and the land is not easy for the Board to determine, and they will rely on the findings of the DNR and MPCA for their direction. What is easy to realize is that the local public access boat ramps on Gull Lake are already taxed to capacity. Where will these additional, up to 170 vehicles and trailers, find room to park if they are encouraged to trailer their boats to the nearby Gull Lake?*

*The Board would like some form of assurance that the proposer will indeed follow through with the policy to not allow personal watercraft, wakeboard or ski boats (or similar) on Agate Lake.*

*The proposers of this project have chosen to circumvent the township in the process of making their plans, which has put the Board at a disadvantage in both having input in how the township infrastructure plays into these plans, and in our interaction with the surrounding residents as they have voiced their anger, anxiety and frustration over the changes being proposed in their own environment.*

*Sincerely,  
Fairview Township Board of Supervisors*

The township received the following response from the Birch Bay RV Resort planners in response to the letter:

"Density meets the standards of the zoning district and is below maximum build-out. Timing of phase will be determined based on a number of factors. Proposer will be able to better inform Fairview Township at a later date regarding timing of phases. The proposer plans to start construction closer to the existing infrastructure. The proposer plans to increase the number of trees on the site and will work with neighbors to ensure appropriate vegetative buffers are in place. Proposer appreciates the information about past run-off issues. These runoff concerns will be addressed in the stormwater plan required for the project. The exact parking needs of the resort guests (especially at off-site landings) is

difficult to quantify at this time. Conditions placed on the project during the CUP approval process are the appropriate enforcement vehicle for many of these concerns.”

Cass County ESD received well over 50 letters from area residents as well as the DNR, MPCA, MN Dept of Health, MN Dept of Agriculture, and the MN Historical Society.

**On July 21, 2015**, the Cass County Planning Commission held a special meeting to review the EAW and to determine if an EIS should be prepared. The minutes of that meeting are as follows:

The Cass County Planning Commission/Board of Adjustment conducted a special meeting July 21, 2015 in the meeting room of the Cass County Land Department in Backus. The meeting was conducted in order to review the Environmental Assessment Statement (EAW) prepared for the proposed RV Park to be located on Agate Lake and to determine if the preparation of an Environmental Impact Statement (EIS) should be prepared.

Sundberg called the meeting to order at 10:00 a.m.

Members present: Fitch, Froehlig, Kostial, LaPorte, Moore, Pehling and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Fairbanks summarized the EAW process and written comments received.

Sundberg called for comments from those in attendance of which a copy of the recording of the entire meeting may be obtained by contacting ESD at 218-547-7291.

LaPorte introduced the following resolution and moved its adoption:

RESOLUTION REGARDING ENVIRONMENTAL REVIEW FOR THE PROPOSED BIRCH BAY RECREATIONAL VEHICLE RESORT IN FAIRVIEW TOWNSHIP, CASS COUNTY, MINNESOTA WHEREAS, pursuant to Minn. Rules 4410.1000-4410.1700, and Minn. Rule 4410.4300, subpart 20a, Cass County, as the Responsible Governmental Unit (RGU), has prepared an Environmental Assessment Worksheet (EAW) for the proposed Birch Bay Recreational Vehicle (RV) Resort (hereinafter "Project"); and

WHEREAS, pursuant to Minn. R. 4410.1500, the EAW was distributed to the EQB mailing list and other interested parties on April 13, 2015; and

WHEREAS, Cass County notified the public of the availability of the EAW for public comment, and a news release was provided to the Walker Pilot Independent: thereafter the EAW was published in the EQB Monitor on April 13, 2015, and was made available for review on the Cass County Web site at co.cass.mn.us on April 13, 2015; and WHEREAS, the public comment period for the EAW began on April 13, 2015 and ended on May 13, 2015. During the 30-day comment period, Cass County received 52 comments from citizens and 6 comment letters from government agencies; and WHEREAS, a number of the comments received from government agencies and other interested parties have indicated a belief that there is a necessity for further information to be developed in order to properly evaluate the project; and

WHEREAS, the Planning Commission has conducted a hearing, reviewed the record compiled to date, and determined that information necessary for a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking but could be reasonably obtained; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, when there is a determination that information necessary to make a reason decision is lacking but could be reasonably obtained, the RGU may postpone the decision on a need for an EIS in order to obtain the lacking information; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, if the RGU postpones the decision in order to obtain additional information, said postponement is to be for 30 days unless another period of time is agreed upon by the RGU and the project proposer; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, if the RGU postpones the decision in order to obtain additional information it is to provide written notice of that action within five days to the project proposer, the EQB, and any person who submitted substantive comments on the EAW, and that notice is to include a brief description of the lacking information.

NOW THEREFORE, BE IT RESOLVED by the Cass County Planning Commission as follows:

1. Based upon the record prepared to date, and the hearings and discussions in this matter, the Planning Commission hereby determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking but could be reasonably obtained.

2. As a result thereof, the Planning Commission hereby postpones the decision on the need for an EIS in order to obtain the lacking information.

3. The Planning Commission hereby directs the staff of the Environmental Services Department to request the project proposer to prepare and to present the following information to the Environmental Services Department in order for the Planning Commission to make a reasoned decision on the need for an EIS:

a. Confirm MPCA SSTS RV site flow rate b. Confirm SSTS permitting RGU.

c. Determine site specific SSTS treatment locations with site specific soil data.

d. Determine location private wells within  $\frac{1}{2}$  mile.

e. Based on information available, determine ground water flow direction.

f. Determine location of parking area(s) for boat trailers.

g. Determine by soil testing the presence, if any, of chemical residue from golf course green or fairway treatment.

h. Determine the number of docks and boats moored currently located upon Agate Lake.

i. Identify on a site plan the specific sites where woodland alteration will be located.

j. Identify on a site map the location of permanent vegetative buffer and the location of proposed buffer to neighboring property.

k. Determine at fifty feet intervals water depth from the resort to mid-lake.

l. Consult with Cass County Highway Department as to current traffic flow on County #77 and what concerns, if any, they have in regard to volume and safety.

m. Obtain as available site specific geological information as it relates to subsurface materials,

4. Pursuant to Minn. Rule 4410.1700, subpart 2, the decision on the need for an EIS is to be postponed for not more than thirty (30) days unless another period of time is agreed upon by the RGU and the project proposer. Staff is directed to provide this information to the project proposer, and, absent any agreement for another period of time in which to obtain the lacking information, staff is directed to have this matter back before the Planning Commission for a decision on the need for an Environmental Impact Statement not more than sixty (60) days from the date of this Resolution.

5. Any and all additional information obtained as a result of this Resolution is to be submitted by staff to all agencies that have commented on the EAW prepared in this case with a request that they make comment upon the additional information and that they indicate whether the additional information satisfies any requests for further information they have. That any comments that they make be returned to the County within fifteen (15) days of submission of the information to them.

6. Pursuant to Minn. Rule 4410.1700, subpart 2, staff is directed to provide a copy of this resolution

within five (5) days to the project proposer, the EQB staff, and any person who has submitted substantive comments on the EAW.

The motion for the adoption of the foregoing was duly seconded by Moore and upon vote being taken thereon, the following voted in favor thereof: Fitch, Froehlig, Kostial, LaPorte, Moore and Sundberg.

And the following voted against the same: None.

Whereupon said resolution was declared duly passed and adopted.

**On December 28, 2015**, the Cass County Planning Commission held another special meeting to, again, review the EAW and to determine if an EIS was necessary. The following are the minutes of that meeting:

The Cass County Planning Commission/Board of Adjustment conducted a special meeting December 28, 2015 in the meeting room of the Cass County Land Department in Backus. The meeting was conducted in order to review the Environmental Assessment Statement (EAW) prepared for the proposed RV Park to be located on Agate Lake and to determine if the preparation of an Environmental Impact Statement (EIS) should be prepared.

Sundberg called the meeting to order at 10:00 a.m.

Members present: Fitch, Kostial, Moore, Pehling and Sundberg.

Citizens present: Attached.

Staff Present: Fairbanks and Ringle.

Fairbanks summarized the EAW process and written comments received.

Sundberg called for comments from those in attendance of which a copy of the recording of the entire meeting may be obtained by contacting ESD at 218-547-7291.

Moore introduced the following resolution and moved its adoption:

Findings & Resolution for a Negative Declaration for the Preparation of an Environmental Impact Statement for the Proposed Birch Bay RV Park on Agate Lake.

Minnesota Rule 4410.1700, Subpart 1. EIS Decision: An EIS shall be ordered for projects that have the potential for significant environmental effects.

The MSN Encarta dictionary defines significant as 1. meaningful: having or expressing a meaning, 2. communicating secret meaning: having a hidden or implied meaning, 3. momentous or influential: having a major or important effect, and 4. substantial: relatively large in amount.

The proposed RV Park does not reach the potential for significant environmental effects because the Conditional Use Permit process will measure and track potential effects and results that can be efficiently and accurately utilized to assess issues raised by the EAW prior to Phase 1. Also, the information/data gathered during and following the Phase 1 development, can be utilized to approve, deny or modify additional phased development based upon the following findings:

Findings:

1. The Phase 1 waste water treatment system will be designed based upon current flow and soil requirements by licensed professionals with review and approval by ESD licensed professionals.
2. Water use will be measured for each site by electronic means to determine daily, monthly and seasonal demand which will be utilized as the basis for possible future phased development. In addition, such measurement can be utilized to accurately measure occupancy.
3. The waste water treatment system will be operated based upon a best management plan prepared and implemented by licensed professionals with review and approval by ESD licensed professionals.

4. The primary waste water treatment system will be located more than 300 feet from the lake and an approved designed, installed, maintained, and monitored system will not degrade water quality.
5. Possible soil contamination will be determined as to type, depth and extent with best management practices implemented for mitigation that could include exclusion of identified contamination areas from proposed RV site locations, additional soil placed over contamination soil site along with vegetation or if determined necessary, excavation and removal. The services of the Minnesota Department of Agriculture's Agriculture Voluntary Investigation & Cleanup (AgVIC) Program will be utilized.
6. The number of existing permanent mooring sites on Agate Lake will not be increased.
7. Access to the boat launching area will be locked and controlled by management office sign-in. An electronic pass card system may be considered which could better control the number of watercraft on the lake and, in addition, provide daily, monthly and seasonal usage information.
8. Calls for service to the Cass County Sheriff's Department will be monitored by ESD on a monthly and seasonal basis in order to assess the impact on neighboring properties.
9. ESD will work with the Cass County Highway Department to determine what impact development of Phase 1 has on County #77 on a monthly and seasonal basis in order to assess the impact on neighboring properties and to determine if other infrastructure such turn as lanes, lighting or signage is required.
10. Each proposed phase shall be subject to a separate CUP. Information gathered and outcomes observed in the course of the initial phase or phases can be utilized to evaluate subsequent applications. Such subsequent applications shall be accepted after a two season interval between each phase.

WHEREAS, pursuant to Minn. Rules 4410.1000-4410.1700, and Minn. Rule 4410.4300, subpart 20a, Cass County, as the Responsible Governmental Unit (RGU), has prepared an Environmental Assessment Worksheet (EAW) for the proposed Birch Bay Recreational Vehicle (RV) Resort (hereinafter "Project"); and

WHEREAS, pursuant to Minn. R. 4410.1500, the EAW was distributed to the EQB mailing list and other interested parties on April 13, 2015; and WHEREAS, Cass County notified the public of the availability of the EAW for public comment, and a news release was provided to the Walker Pilot Independent and the Brainerd Dispatch; thereafter the EAW was published in the EQB Monitor on April 13, 2015, and was made available for review on the Cass County Web site at [co.cass.mn.us](http://co.cass.mn.us) on April 13, 2015; and

WHEREAS, the public comment period for the EAW began on April 13, 2015 and ended on May 13, 2015. During the 30-day comment period, Cass County received 52 comments from citizens and 6 comment letters from government agencies; and

WHEREAS, a number of the comments received from government agencies and other interested parties have indicated a belief that there is a necessity for further information to be developed in order to properly evaluate the project; and

WHEREAS, the Planning Commission has conducted a hearing, reviewed the record compiled to date, and determined that information necessary for a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking but could be reasonably obtained; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, when there is a determination that information necessary to make a reason decision is lacking but could be reasonably obtained, the RGU may postpone the decision on a need for an EIS in order to obtain the lacking information; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, if the RGU postpones the decision in order to obtain additional information, said postponement is to be for 30 days unless another period of time is agreed upon by the RGU and the project proposer; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, if the RGU postpones the decision in order to obtain additional information, said postponement is to be for 30 days unless another period of time is agreed upon by the RGU and the project proposer to which said extension was requested by the project proposer and agreed to by the RGU; and

WHEREAS, pursuant to Minn. Rules Section 4410.1700, subpart 2, if the RGU postpones the decision in order to obtain additional information it is to provide written notice of that action within five days to the project proposer, the EQB, and any person who submitted substantive comments on the EAW, and that notice is to include a brief description of the lacking information which was fulfilled by the RGU: and

WHEREAS, the additional information was submitted to ESD and distributed to all written commenters November 30, 2015 with a comment submittal date of December 15, 2015 to which 19 comments were received.

NOW THEREFORE, BE IT RESOLVED by the Cass County Planning Commission as follows 1. Based upon the record prepared to date, and the hearings and discussions in this matter, the Planning Commission hereby determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts has been submitted.

2. The request for supplemental information to the Environmental Services Department is in order along with the initial information is available for the Planning Commission to make a reasoned decision on the need for an EIS.

3. The proposed project is not unique in terms of land use, natural resources, surface water, waste water, wetlands, woodland, access and storm water run-off when compared to other projects that have been reviewed, mitigated and regulated to which the EAW comments will provide a basis for review and regulation and if approved in some form a basis for mitigation with CUP conditions.

4. Areas where the potential for significant environmental effects may exist have been identified along with potential mitigation measures that will be incorporated into the proposed project design and permits.

5. Based upon M.R. 4410.1700 there are no potential significant environmental effects that can be reasonably expected to occur that cannot be addressed through the CUP process conducted prior to each phase and that the preparation of an EIS will only serve to further delay the final outcome of the proposed project and cannot be expected to reveal additional relevant and actionable information.

**6. Therefore, based upon findings and items 1 - 5 an EIS is not required.**

**The motion for the adoption of the foregoing was duly seconded by Kostial upon vote being taken thereon, the following voted in favor thereof: Fitch, Kostial, Moore, Pehling and Sundberg.**

**And the following voted against the same: None.**

**Whereupon said resolution was declared duly passed and adopted.**

An EIS has not been required. The proposers will now move on to the process of applying for a CUP.