



Cass County
Planning Commission/Board of Adjustment

March 18, 2013

The Cass County Planning Commission/Board of Adjustment conducted a special meeting March 18, 2013 in the meeting room of the Cass County Land Department in Backus.

Sundberg called the meeting to order at 9:00 a.m.

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

Staff Present: Fairbanks and Ringle.

Citizens Present: Nick David, John Erickson, Terry Freeman, Nathan Kestner, Larry Kramka, Ben Meister, Doug Schultz, Warren Warmbold and Wayne Warmbold.

MS/P Moore/LaPorte based upon the following findings and conclusions do adopt a negative declaration in the matter of the preparation of an Environmental Impact Statement for the proposed Bluewater Marian Expansion.

**STATE OF MINNESOTA
COUNTY OF CASS**

**IN THE MATTER OF THE DECISION ON THE NEED FOR AN ENVIRONMENTAL
IMPACT STATEMENT FOR THE PROPOSED BLUEWATER LODGE MARINA EXPANSION**

FINDINGS AND CONCLUSIONS

Pursuant to Minn. R. 4410.1000 - 4410.1700, the Cass County Environmental Services Department (ESD) has supervised an Environmental Assessment Worksheet (EAW) for the proposed expansion of the marina located in Allen's Bay of Leech Lake. Based upon the Cass County ESD review, comments, and information received during the comment period, and other information in the record, the Cass County Planning Commission as designated by the Cass County Board of Commissioners hereby makes the following Findings of Fact, Conclusions of Law, and Order.

The marina currently consists of one docking structure of about 23,210 square feet containing 22 slips. The proposed expansion consists of a 31,890 square feet docking/gas sales structure including 16 slips. Total existing and proposed would contain 55,100 square feet.

Notice of the EAW was published in the Environmental Quality Board (EQB) December 24, 2012, edition of the *EQB Monitor*. Initial public comment period was from December 24, 2012 to January 23, 2013. Certain issues raised by the comment received from the Minnesota DNR caused ESD to request additional information from the project proposer. Because of the request for additional information, those who commented were notified of the request for additional information and afforded an opportunity to submit additional comments.

PROCEDURAL HISTORY

1. Pursuant to Minn. R. 4410.1000, subp. 3(A), an EAW was prepared on the proposed project. Pursuant to Minn. R. 4410.1500, the EAW was distributed to the EQB mailing list.
2. Notice of the EAW was published in the *EQB Monitor* on December 24, 2012, and was available from Cass County ESD.
3. The public comment period for the EAW began December 24, 2012 and concluded January 23, 2013. During the 30-day comment period, the County received comments from John Eaton, John Erickson on behalf of the Leech Lake Association, Robert Gisvold, the US Army Corps of Engineers, the Minnesota DNR and the Minnesota PCA. After the 30-day comment period ESD staff, representatives of the project and DNR staff met to discuss their comments and to determine the need for additional information. To that end, at the request of ESD, project representatives submitted additional information in regard to property boundary, clarified marina availability, size of the proposed expansion structure and potential demand for additional slips. Based upon the request for additional information from the proposer, those who provided comments to the EAW were offered the opportunity to submit supplementary comments which were received from John Eaton, John Erickson, on behalf to the Leech Lake Association, and the Minnesota DNR.
4. Responses to the comments received during the 30-day public comment period were made. All documents submitted as part of the EAW process are a part of the record of the proceedings, the record of decision, and are maintained by Cass County.

CRITERIA FOR DETERMINING THE POTENTIAL FOR SIGNIFICANT ENVIRONMENTAL EFFECTS

1. Under Minn. R. 4410.1700, Cass County must order an EIS for projects that have the potential for significant environmental effects that are reasonably expected to occur. In deciding whether a project has the potential for significant environmental effects, Cass County must compare the impacts that may be reasonably expected to occur from the project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:
 - A. the type, extent, and reversibility of environmental effects;

- B. cumulative potential effects of related or anticipated future projects;
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

THE COUNTY FINDINGS WITH RESPECT TO EACH OF THESE CRITERIA

A. Type, Extent, and Reversibility of Environmental Effects

The County will review and regulate according to the applicable ordinances and will consider appropriate mitigation measures as part of the CUP process in addition to those of the DNR in their permit if granted. The EAW and the comments do not provide or establish compelling information that an EIS is necessary to determine additional or special mitigation measures.

- (1) **Site and Project Description.** The area of the proposed project is Allen's Bay of Leech Lake (GD) and contains 17 acres of surface water. It is located in Section 2 of 143-31. The proposed project is mandatory because it exceeds the 20,000 square feet expansion threshold.
- (2) **Project Magnitude.** 16 slip dock and gas dock consisting of 31,890 square feet including maneuvering area.
- (3) **Land Use.** The area is classified Water Oriented Commercial (WOC). Shoreland Residential for the purposes of zoning which allows for water related commercial activities such as resort, restaurant, harbor and marina all which require a conditional use permit (CUP).
- (4) **Fish, Wildlife, and Ecologically Sensitive Resources.** The DNR, the LLA and other parties have suggested that the construction of additional slips and subsequent boat traffic could affect fish habitat of certain species, including the Pugnose Shiner which the DNR's natural heritage database indicates as present in Allen's Bay, in the immediate area of the proposed additional boat slips. Also, the proposer has acknowledged that the construction of the piers would result in the removal of some submerged aquatic vegetation within the proposed marina expansion area.

However, there appears to be little, if any, readily available evidence that such habitat disturbance would extend to other areas of Allen's Bay or have a measureable, material and substantial impact on water quality, sport fishing or other recreational and environmental aspects, particularly when considering Leech Lake as a whole. Potential harm to the Pugnose Shiner from the loss of submerged vegetation could be mitigated by establishing "idle speed only" signage at the marina site and providing information on speed restrictions to all marina slip occupants.

Allen's Bay is open to boat traffic and is an active open water and ice fishing location.

(5) Erosion and Sedimentation. An erosion control plan was implemented as part of the initial dock placement and the County is not aware of existing erosion problems. Access to the proposed dock will utilize the existing configuration.

(6) Water Surface Use - Allen's Bay contains 17 acres of surface water, Leech Lake contains over 100,000 acres therefore the proposed expansion should not increase boat traffic significantly on the lake or the bay when taking into account use by slip occupants during the course of the boating season.

(7) Water Quality - Surface Water Runoff. Storm water management is in place. The County is not aware of any existing run-off related problems.

(8) Water Quality - Waste Water. All waste water will be domestic in nature and will be treated in on-site systems. The systems will be permitted by the County and subject to all applicable County and MPCA requirements.

(9) Traffic/Parking. Traffic will use the existing road system with no effect to capacity or safety. The existing parking area will be utilized along with the nearby events facility parking area if additional spaces are needed.

(10) Odors, Noise. It is not anticipated that during the course of the boating season that the increased number of slips and resulting boats that engine odors or noise will alter or impair public health or effect other's enjoyment of the resource.

(11) Nearby Resources. The route of the Paul Bunyan Trail lies across the bay from the marina to which the expansion will have no effect. An upland area of DNR ownership has been designated an Aquatic Management Area in order to protect the surface currently open to fishing and boating. There is no information to indicate that the current dock has had a detrimental effect on fishing or that the proposed expansion will cause significant degradation of the resource assuming that prudent and reasonable control of boat speed is observed.

(12) Compatibility with Plans and Land Use Regulations. In addition to a permit from DNR, the proposed project will require a CUP from the County.

(13) Impact on Infrastructure and Public Services. No effect, expansion or alteration will be required.

(14) Cumulative Impacts. The potential for cumulative effects to the proposed expansion is limited based upon the on-site management of run-off, shoreline vegetation, parking, access and recommended idle boat speed near the slips and within Allen's Bay.

B. Cumulative Potential Effects of Related or Anticipated Future Projects

No future stages are planned or anticipated for the marina site.

C. The Extent to which the Environmental Effects are Subject to Mitigation by Public Regulatory Authority

The potential environmental effects associated with this project are not significant when the total project water surface area is compared with the total water surface area of the lake which is classified *General Development*. The potential environmental effects of the project are subject to mitigation through DNR permit and County CUP as noted herein and in the record.

D. The Extent to which Environmental Effects can be Anticipated and Controlled as a Result of Other Available Environmental Studies Undertaken by Public Agencies or the Project Proposer, Including Other EISs

The EAW and comments refer to information and resources that provide information to review, regulate and mitigate potential environmental effects. No EIS for a similar sized project is known to be available.

CONCLUSIONS

1. The County has jurisdiction in determining the need for an EIS for this proposed project. The EAW process and the response to comments prepared and the evidence in the record are adequate to support a decision regarding the potential significant environmental effects that are reasonably expected to occur from this proposed project.
2. The EAW and the information gathered throughout the EAW process are adequate. Further investigation is not required.
3. Areas where the potential for environmental effects may exist have been identified and appropriate mitigation measures have been identified.
4. Based on the criteria established in Minn. R. 4410.1700, there are no potential significant environmental effects reasonably expected to occur from the proposed project.
5. An EIS is not required.

MS/P Kostial/Froehlig based upon the following findings and conclusions to adopt a negative declaration in the matter of the preparation of an Environmental Impact Statement for the proposed Winnemucca Farms Cass County Potato Farm.

**STATE OF MINNESOTA
COUNTY OF CASS**

**IN THE MATTER OF THE DECISION ON THE NEED FOR AN ENVIRONMENTAL
IMPACT STATEMENT FOR WINNEMUCCA FARMS CASS COUNTY POTATO FARM**

FINDINGS AND CONCLUSIONS

Pursuant to Minn. R. 4410.1000 - 4410.1700, the Cass County Environmental Services Department (ESD) has supervised an Environmental Assessment Worksheet (EAW) for the conversion of about 1,450 acres of forest land to irrigated farm land. Based upon the Cass County ESD review, comments, and information received during the comment period, and other information in the record, the Cass County Planning Commission as designated by the Cass County Board of Commissioners hereby makes the following Findings of Fact, Conclusions of Law, and Order.

Notice of the EAW was published in the Environmental Quality Board (EQB) December 24, 2012, edition of the *EQB Monitor*. Initial public comment period was from December 24, 2012 to January 23, 2013. Certain issues raised by the comments received from the Minnesota DNR and the Minnesota PCA caused ESD to request additional information from the project proposer. Because of the request for additional information, those who commented were notified of the request for additional information and afforded an opportunity to submit supplemental comments.

PROCEDURAL HISTORY

1. Pursuant to Minn. R. 4410.1000, subp. 3(A), an EAW was prepared on the project. Pursuant to Minn. R. 4410.1500, the EAW was distributed to the EQB mailing list.
2. Notice of the EAW was published in the *EQB Monitor* on December 24, 2012, and was available from Cass County ESD.
3. The public comment period for the EAW began December 24, 2012 and concluded January 23, 2013. During the 30-day comment period, the County received comments from Don Jackson, the US Army Corps of Engineers, the Minnesota DNR and the Minnesota PCA.
4. Responses to the comments received during the 30-day public comment period were made. All documents submitted as part of the EAW process are a part of the record of the proceedings, the record of decision, and are maintained by Cass County.

CRITERIA FOR DETERMINING THE POTENTIAL FOR SIGNIFICANT ENVIRONMENTAL EFFECTS

1. Under Minn. R. 4410.1700, Cass County must order an EIS for projects that have the potential for significant environmental effects that are reasonably expected to occur. In deciding whether a project has the potential for significant environmental effects, Cass County must compare the impacts that may be reasonably expected to occur from the project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:
 - A. the type, extent, and reversibility of environmental effects;
 - B. cumulative potential effects of related or anticipated future projects;
 - C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
 - D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

THE COUNTY FINDINGS WITH RESPECT TO EACH OF THESE CRITERIA

A. Type, Extent, and Reversibility of Environmental Effects

The County has no regulatory permit requirements for this project although the County is designated as the Responsible Governmental Unit (RGU). The EAW and the comments do not provide or establish compelling information that an EIS is necessary to determine additional or special mitigation measures.

(1) **Site and Project Description.** The project will take place within an area of 1,450 acres consisting of several parcels located in Byron Township. The land has been managed for commercial timber production and over the years leased to private parties for hunting. The area will be prepared by the removal of timber, stumps and under brush for irrigated potato farming. The project is a mandatory EAW because it exceeds the 640 acre conversion threshold.

(2) **Project Magnitude.** 1,450 total acres with about 900 acres in cultivation.

(3) **Land Use.** The area is mainly classified Agriculture/Forestry (AF) with some minor area of Shoreland residential within $\frac{1}{4}$ mile of public waters for the purposes of zoning. The County does not regulate the conversion activity.

(4) **Fish, Wildlife, and Ecologically Sensitive Resources.** The DNR has identified numerous endangered and threatened resources. The DNR response identifies a process that should be

utilized to "identify key habitats and then develop procedures to preserve and enhance them." In addition, DNR calls for on-going testing and monitoring of surface and sub-surface hydrology. The proposer in their response has agreed to the DNR's call for additional planning and testing.

(5) Because the County has no regulatory oversight in the matter, the interaction contained in the DNR comments along with the responses prepared by Houston Engineering are adopted as finding because of their inclusive nature in providing clear response and indication to implement actions to address concerns raised by the DNR and MPCA.

B. Cumulative Potential Effects of Related or Anticipated Future Projects

No future stages are planned or anticipated for the site. The proposer conducts similar commercial agriculture activity on property about four miles from this site which is not expected to create or contribute to potential cumulative effects.

C. The Extent to which the Environmental Effects are Subject to Mitigation by Public Regulatory Authority

The potential environmental effects associated with this project are subject to mitigation through MDNR and MPCA permit authority as noted herein and in the record.

D. The Extent to which Environmental Effects can be Anticipated and Controlled as a Result of Other Available Environmental Studies Undertaken by Public Agencies or the Project Proposer, Including Other EISs

The EAW and comments refer to information and resources that provide information to review, regulate and mitigate potential environmental effects.

CONCLUSIONS

1. The County has jurisdiction in determining the need for an EIS for this project. The EAW process and the response to comments prepared and the evidence in the record are adequate to support a decision regarding the potential significant environmental effects that are reasonably expected to occur from this proposed project.

2. The EAW and the information gathered throughout the EAW process are adequate. It is however, recommended that the on-going investigation and monitoring as discussed in the comments and response to comments be implemented.

3. Areas where the potential for environmental effects may exist have been identified and appropriate mitigation measures have been identified, proposed and agreed to for the most part by the project proposer. In addition, it should be noted that the proposer has extensive experience with similar cultivation including operations in Hubbard and Wadena Counties and that best management practices promulgated by the Minnesota Department of Agriculture and

the University of Minnesota have been implemented. The proposer has not encountered any substantial environmental issues on other Winnemucca Farms potato operations.

4. Based on the criteria established in Minn. R. 4410.1700, there are no potential significant environmental effects reasonably expected to occur from the proposed project provided that the recommendations discussed in the comments and responses are implemented.

5. An EIS is not required.

MS/P Fitch/Kostial at 11:53 am, to adjourn.

P. Fairbanks