

**Docket Number:** 23/12678

**Applicants:** Harold Lande (Property Owner)  
15171 NE 22<sup>nd</sup> Street, Huxley, IA  
50124 and John McMullen of  
McAninch Corp (Representative) 100  
E Grand, Suite 350, Des Moines, IA  
50309

**Request:** The applicants are requesting a Conditional Use Permit to allow for an extraction use of a borrow pit on property located within the “AG” Agricultural District. The borrow pit will provide earth fill for the adjacent Iowa Department of Transportation I-35 widening project.

**Subject Property / Surrounding Land Uses:**

The subject property is located at 15171 NE 22<sup>nd</sup> Street, Huxley, and is described as a portion of the North ½ of the Southwest ¼ of Section 7 of Township 79 North, Range 23 West of the 5<sup>th</sup> P.M. (Elkhart Township). The subject property is approximately 48.44 acres in size and is zoned “AG” Agricultural District. The property is owned by Harold Lande and contains a single family dwelling and one accessory structure used for storage of agricultural production equipment.

The subject property has approximately 430 feet of frontage along NE 22<sup>nd</sup> Street and Interstate 35 runs parallel to the eastern boundary of the property. All surrounding properties are also zoned “AG” Agricultural district and are primarily used for row crop production with a few scattered single-family acreages. The closest residence to the excavation site is located just northwest of the subject property approximately 1,767 feet from the main extraction area. The City of Alleman corporate limits are approximately 1 mile southwest of the subject property and the City of Ankeny corporate limits are approximately 2.70 miles south of the subject property. See *Attachment A* for a vicinity map of the subject property and surrounding area.

**Application Details / Discussion:**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 2, Table 4.1, Table of Uses* permits borrow pits as an extraction use within the “AG” Agricultural District upon granting of a Conditional Use Permit by the Polk County Board of Adjustment. The subject property is owned by Harold Lande and is used for row crop production and contains a single-family dwelling and accessory structure. John McMullen of McAninch acting as representative for applicant Harold Lande, is proposing a borrow pit extraction site on the east side of the subject property to extract approximately 228,000 cubic yards of suitable clay for use on the Iowa Department of Transportation Interstate 35 construction project. Extraction would begin in May of 2023 and continue until project completion in the fall of 2024. The rate of removal will range from 2,500 cubic yards to 7,500 cubic yards per day. See *Attachment B* at the end of this report for a copy of the application

As a result of the borrow pit the end use of the extraction site will be a 1.4 acre pond. The extraction area where the pond will be located meets the 150 foot minimum setback for adjacent agricultural uses. The main haul route will be directly from the extraction site to Interstate 35 adjacent to the subject property to the East. The applicants have also proposed an additional route utilizing NE 22<sup>nd</sup> Street south to NE 126<sup>th</sup> Street to provide fill for work taking place at the NE 126<sup>th</sup> Street exit ramp. If this Conditional Use Permit application is approved, the applicants

are required to obtain a grading permit with an approved grading plan, haul routes, and drainage report for the proposed pond. The applicants will also be required to obtain a NPDS Permit No. 2 from the Iowa Department of Natural Resources. See *Attachment C* at the end of this report for a copy of the exhibit showing the proposed end use grading plan and location of the pond.

### **Public Testimony**

Staff mailed out a total of six (6) notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 500-foot notification boundary. To-date staff have received one (1) response in support and zero (0) in opposition regarding this application.

### **Natural Resources / Environmental**

The subject property contains mapped floodplain Zone A that follows the mapped wetlands on the property from the south central portion of the property to the northeast portion of the property where it flows under Interstate 35 to the east. Floodplain designation Zone A denotes areas with a 1% annual chance of flooding. Although the grading and excavation takes place outside of the mapped floodplain, McAninch Corporation will be required to submit a Polk County Floodplain Development Permit. The property contains many undulations consistent with row crop production. There are a few mature trees that follow the wetland area that cuts through the property as well as some trees and landscaping near the single family dwelling on the property. Seeding of the disturbed area around the pond will be required as part of the end use plan.

### **Roads / Utilities**

The property has approximately 430 feet of accessible frontage onto NE 22<sup>nd</sup> Street, a paved local roadway maintained by Polk County. The borrow pit can be accessed via NE 22<sup>nd</sup> Street as well as the I-35 Iowa DOT Right of Way parallel to the East property line. The existing single-family dwelling is served by a 3-inch DMWW water main on the west side of NE 22<sup>nd</sup> Street. The subject property also contains an onsite wastewater treatment system. The proposed borrow pit will not affect any existing utilities onsite.

### **Analysis**

The Board of Adjustment in reviewing an application for a Conditional Use permit shall consider the proposal in terms of:

**1. Existing zoning and land use in the vicinity of the uses.**

The subject property and all surrounding areas are zoned “AG” Agricultural District. Land uses in vicinity of the subject property consist of a few rural residences and are primarily large agricultural parcels in row crops and pasture land with existing creeks, woodlands and floodplain.

**2. Planned and proposed public and private development, which may be adversely affected by the proposed use.**

There are no major public or private developments planned in the area.

**3. Whether and to what extent the proposed use, at the particular location for which it is**

**suggested, is necessary or desirable to provide a development which is in the interest of the public convenience or which will contribute to the general welfare of the area or Polk County.**

The proposed borrow pit will provide dirt for the Iowa Department of Transportation Interstate 35 construction project which will benefit the surrounding area and Polk County as a whole. A farm pond is proposed for the end use with surrounding land being restored back to row crop, prairie and pasture. The farm pond identified in the submittal will likely be beneficial to the applicant, adjacent land owners and may serve as a habitat for wildlife.

**4. Whether and to what extent all steps possible have been taken by the developer to minimize any adverse effects of the proposed use on the immediate vicinity and on the public health, safety and welfare in general.**

See staff's recommended conditions of approval at the end of the report. The proposal will require the applicants to obtain a grading permit with an approved grading plan, haul routes, and engineered drainage calculations for the proposed pond. The implementation of the end use plan will ensure that grading and restoration is completed in accordance with the approved grading plan.

**Findings**

The application shall be denied if the Board of Adjustment finds any of the following:

**a. The application and record fail to establish compliance with the standard made applicable to the proposed development by the provision of this Ordinance.**

Extraction uses are permitted within the "AG" Agricultural District upon the granting of a Conditional Use Permit by the Polk County Board of Adjustment. The application will be in compliance with the granting of the Conditional Use Permit by the Polk County Board of Adjustment and compliance and/or completion of the conditions identified in this staff recommendation.

**b. The proposed use, developed in the proposed manner, and at the proposed location, would be inconsistent with the standards pursuant to the provisions of this Ordinance.**

If the Conditional Use Permit is granted, McAninch Corporation is required to comply with all conditions of approval. Additionally, the required grading permit submittal and review will ensure compliance with all County requirements for the use.

**c. The adverse impacts on the overall public health, safety and welfare are not balanced by the public or private benefits of the proposal. The Board of Adjustment shall include in this balance, any proposals of the applicant and any conditions that it might impose on the development, pursuant to the provisions of this Ordinance, to ameliorate problems associated with the development.**

See recommended conditions of approval at the end of this report.

**In addition, no application for a Conditional Use Permit shall be approved unless the Board of Adjustment specifically finds the proposed conditional use appropriate in the location for which**

it is proposed. This finding shall be based on the following criteria:

- A. **The proposed use is not in harmony with the general purpose, goals, objectives, and standards of the following:**
  - 1. **Polk County Comprehensive Plan:** The proposal is consistent with the goals and policies of the 2050 Polk County Comprehensive Plan.
  - 2. **Polk County Zoning Ordinance:** The Ordinance allows the proposed use pending approval of this Conditional Use Permit by the Board of Adjustment, and pending the following: Future approval of the grading permit review, grading plan, haul routes, engineered drainage calculations, SWPPP, and NPDES Permit No.2.
  - 3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** The petitioner will be required to meet the Polk County Noise Ordinance, maintain a dust free surface on drives, and keep roads free of dirt and debris.
  
- B. **The proposed location of the use is not consistent with policies or provisions of the following:**
  - 1. **Comprehensive Plan:** The proposed location of the use appears to be consistent with some of the goals of the 2050 Polk County Comprehensive Plan. The use is adjacent to a previous extraction use to the south of the subject property.
  - 2. **Polk County Zoning Ordinance:** The use is permitted in the zoning district subject to Conditional Use Permit approval and grading permit approval.
  - 3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** The applicant will be required to meet the Polk County Natural Resource Protection requirements including Stormwater Drainage and Erosion Control Management, Polk County Noise Ordinances, and Polk County Air Quality requirements to reduce any errant dust generated from the site.
  
- C. **The proposed use at the proposed location results in a substantial or undue adverse effect on any of the following either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Comprehensive Plan, this Ordinance, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County or other governmental agency having jurisdiction to guide growth and development:**
  - 1. **Adjacent property:** Adjacent properties are similarly zoned, and currently used in row crop production. Interstate 35 runs along the east border of the subject property. There are few residences nearby, with the closest over 1700 feet away from the proposed borrow pit location. Most of the residences also appear to be located on active farming operations. Property owners within 500 feet were notified of this request, with one response in support no responses in opposition received to-

date. The current zoning and future land use of the larger surrounding area is agricultural.

2. **Character of the neighborhood:** Surrounding property consists of agricultural land, residences, creeks, woodlands and floodplain. The use is temporary and provides regional benefits. The future farm pond will likely enhance the property and the area.
3. **Traffic conditions:** Truck traffic to and from the site will be mostly directly from the site to I-35 to the east without the use of local roads. Additionally, trucks will be allowed to use local roads along the approved haul routes. The petitioner will be required to meet Polk County transportation requirements.
4. **Parking:** The proposed use will not generate additional onsite or offsite parking.
5. **Public improvements:** The increase in heavy truck traffic will likely require ongoing review for repairs and the operator will need to be responsible for repairs to the roadway. See suggested conditions from Recommendation below.
6. **Public sites or rights-of-way:** No impact upon public sites or adjacent right-of-way is anticipated.
7. **Other matters affecting the public health, safety, and general welfare:** The petitioners will be required to meet the Polk County Noise Ordinance requirements.

**D. The proposed use in the proposed area is not adequately served by or imposes an undue burden on any of the following.**

1. **Public improvements:** Adequate for proposed use.
2. **Public facilities:** Adequate for proposed use.
3. **Public utilities:** Adequate for proposed use.
4. **Public services:** Adequate for proposed use.

**Recommendation**

Staff recommends approval of the Conditional Use Permit for dirt extraction from a new borrow pit, with the end use as a farm pond and surrounding land returned to prairie, pasture or farm land. Approval is subject to the following conditions:

1. Prior to any extraction activity applicants shall obtain a grading permit with an approved grading plan, haul routes, and drainage calculations from an Iowa licensed engineer.
2. The Conditional Use Permit to extract dirt from the borrow pit on the subject property shall end at the completion of the Interstate 35 DOT construction project.

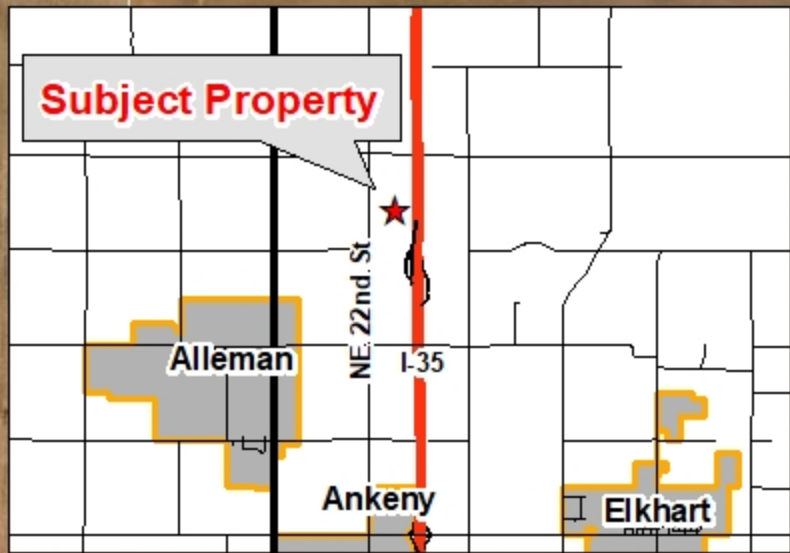
3. Extraction of dirt may only occur within the borrow limits as shown on the Conditional Use Exhibit.
4. Shall provide a completed Polk County Floodplain Development Permit Application, and receive approval/issuance of the Floodplain Permit prior to commencing any work on the property.
5. The petitioner shall meet State of Iowa Stormwater Pollution Prevention Plan (SWPPP) requirements and meet Polk County Natural Resource Protection requirements including Stormwater Drainage and Erosion Control Management, and the protection of streams and drainageways.
6. Prior to the completion of the extraction use, the borrow pit site shall be converted to a pond along with restoration of the surrounding land as identified on the End Use Grading Plan *Attachment C*.
7. The operation shall comply with all Polk County Air Quality Division requirements to maintain dust free surfaces on drives, reduce errant dust generated from the subject property, and clean all dirt and mud generated by the site from adjacent roadways.
8. Polk County Board of Health Rules & Regulations Chapter V – Air Pollution, Article IX, Division 1, Section 5-23 shall be followed to minimize fugitive dust.
9. The petitioner shall comply with the Polk County Noise Ordinance requirements. Shall also comply with the lighting standards contained in the Polk County Zoning Ordinance if any artificial lighting is used.
10. Due to the thin lift pavement on NE 22<sup>nd</sup> St., it is likely that NE 22<sup>nd</sup> St. from the entrance to the borrow pit, south to NE 126<sup>th</sup> Street., will experience pavement and subbase damage throughout the time period of the Conditional Use Permit. Therefore, the McAninch Corporation shall be responsible for the costs to repair any road damage that the County, as represented by the Public Works Department, shall determine is directly caused by the heavy truck traffic on NE 22<sup>nd</sup> Street from the pit entrance, south to NE 126<sup>th</sup> St. Trucks exiting the site will not be allowed to go north to confine the damage to NE 22<sup>nd</sup> St. south of the pit.
  - a. Before excavation begins McAninch Corporation is required to contact the County Engineer who will review the condition of NE 22<sup>nd</sup> St. south of the pit entrance to NE 126<sup>th</sup> Street.
  - b. If emergency repairs are needed throughout the project timeframe, the County shall contact McAninch Corporation to arrange a site review and course of action. If the McAninch Corporation cannot repair in a timeframe acceptable to the County, the County shall arrange for repairs to be made and forward such costs to McAninch Corporation for reimbursement.
  - c. Upon the closure of the borrow pit, McAninch Corporation is required to contact the County Engineer to survey NE 22<sup>nd</sup> Street to determine the damage caused by heavy loads on the surface and what repairs are needed to maintain safe traffic.

The County will forward the identified repairs to the McAninch Corporation who must complete the repairs within 30 days of notification.

d. McAninch Corporation shall file a bond with the County before the extraction starts on the borrow pit equal to the cost to place a 1.5" HMA overlay on NE 22<sup>nd</sup> St. from the pit entrance, south to NE 126<sup>th</sup> St. The McAninch Corporation shall obtain the cost of this bond from the County prior to issuance.

11. Failure to abide by any of these terms shall result in the immediate suspension of the Conditional Use Permit until such issues are resolved to the County's satisfaction.





2671

Attachment 'A'

15647

**Subject Property**

I-35

15318

15308

15241

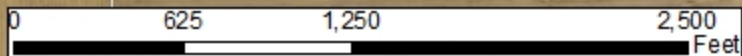
15171

15334

15102



NE 150th Ave



Unknown St

14775



**Grading & Site Improvement Permit Application**



A site improvement permit is required to begin grading and/or site improvement construction associated with an approved site plan or approved grading plan. Site improvement permits are required when no new building construction is taking place. Any property or development site to conduct land-disturbing activities including fill in excess of three (3) feet, or excavation exceeding five (5) feet, or work that involves greater than 50 cubic yards of excavation, or fill or any grading or clearing activity that disturbs an area of five thousand (5,000) square feet or greater within unincorporated Polk County shall obtain a permit prior to any land-disturbing activities.

(time stamp)  
Official Use Only

**1. Title Holder / Property Owner Information:**

Harold J Lande  
Print Name  
15171 NE 22nd St  
Address, City, State and Zip  
Email Phone

**2. Contractor Information:**

John McMullen McAninch Corp  
Print Name Business Name  
100 E Grand, Suite 350, Des Moines, IA 50309  
Address, City, State and Zip  
jmcmullen@mcaninchcorp.com (515) 267-2500  
Email Phone

**3. Subject Property Information:**

15171 NE 22nd St 21000076005010 Agricultural  
Property Address District and Parcel Number Zoning District

**4. Description of site improvements and grading activity:** (New house, office, warehouse, pond, swale, etc.)  
Excavation of the existing hillside and top. This material will be exported and used as fill for the I-35 project. A new pond will be created as a result of the excavation.

**5. Information regarding the grading activities on the site:**

- a. Total area to be disturbed by grading or filling: 15.9 acres dimensions, square feet or acres.
- b. Maximum depth of fill: 2 ft. - Total area of fill: 30 ft. x 500 ft.
- c. Depth of excavation: 28 ft. - Total area of excavation: 1000 ft. x 700 ft.
- d. Is fill being brought in or hauled off site? Hauled off site  
If fill is being hauled in or out of the site, how many loads are proposed? 228,000  
Provide haul routes to and from the site on grading plan, including the origin and/or destination of the material.
- e. Are you building a pond?  Yes  No

6. Please review the list below to state whether other permits are required. (If yes, please attach permit received and/or application materials for review)".

- a. Polk County Flood Plain Development Permit: Yes  No  Unsure
- b. Polk County Grant Permit (work in right-of-way); Yes  No  Unsure
- c. State of Iowa –Department of Natural Resources: Yes  No  Unsure

Properties required to obtain a Polk County Grading Permit shall comply with requirements for sites covered by the Iowa DNR NPDES General Permit No. 2. (Site disturbance activity that disturbs an area larger than 1 acre in area). A copy of the Stormwater Pollution Prevention Plan (SWPPP) is required along with copy of the Letter of Authorization from the DNR prior to approval of the Polk County Grading Permit.

<https://www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Storm-Water/Permits-Guidance-Forms>

- d. Army Corp of Engineers 404 Permit : Yes  No  Unsure

Section 404 of the Clean Water Act regulates the discharge of dredged, excavated, or fill material in wetlands, streams, rivers, and other U.S. waters. The U.S. Army Corps of Engineers is the federal agency authorized to issue Section 404 Permits for certain activities conducted in wetlands or other U.S. waters. Depending on the scope of the project and method of construction, certain farming activities may require this permit. Examples include ponds, embankments, and stream channelization.

<http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WetlandsPermitting.aspx>

7. Grading drawing/plan - required with submittal of application showing the following:

- Existing and proposed contours
- Show entrance to be used for access to property and for trucks entering and exiting the site.
- Information on the property and other properties in the area sufficient to show drainage patterns, existing facilities, existing vegetation and or other natural features and drainage courses.
- The methods and materials to be used to prevent erosion and control sediment on the site, including the location of any and all silt fence and other best management practices.
- Location of the grading limit line - showing the area to be disturbed.
- General identification of trees or treed areas in the disturbed area also shows the trees to be protected along with location of staked barrier fence. Trees outside the area to be disturbed shall also be protected as required.

*If an Iowa DNR NPDES General Permit No. 2 is required the drawing/plan must be prepared by an Iowa licensed Engineer or Certified Professional in Erosion and Sediment Control.*

8. Fee - \$143.00

9. Certification:

As the owner, I agree that all proposed work shall be done in accordance with the requirements of the Polk County Zoning Ordinance for the Unincorporated Polk County, Iowa and with all other applicable County ordinances and the laws and regulations of the State of Iowa. I hereby give permission for the Polk County to enter onto the property at reasonable times for purposes of assuring compliance with any permits and approvals pertaining to this request. I also understand that this application must be reviewed by the Zoning Administrator, and I may not initiate improvements until the permit has been issued. I also understand this permit, upon issuance shall be valid for a period of one year from the date of issuance and work must be initiated within six months. Upon expiration of the permit, a new application shall be submitted along with applicable information and a new permit fee. If dirt, silt or debris enters the street or adjacent property, ponds, storm sewers, swales or ditches, the permit holder is responsible for cleanup upon notification. If the permit holder fails to do this, the county may arrange cleanup and assess the cost against the property.

Signature of Titleholder

Date

**A completed application with required documentation must be submitted.  
Incomplete submittals will not be processed.**

Return forms to: Polk County Public Works, Planning Division 5885 NE 14th Street, Des Moines, IA 50313  
Phone (515) 286-3705 • Fax (515) 286-3437 • Forms available online

<https://www.polkcountyiowa.gov/public-works/forms-and-resources/>



Attachment 'C'

LANDOWNER: LANDE, HAROLD J

INSTALL SILT FENCE OR APPROVED SEDIMENT CONTROL MEASURE (TYP)

POND OUTLET

PROPOSED POND SURFACE AREA = 1.4 ACRES

Haul to go to I-35 ROW

Haul Route Out to 22nd Street (to go to 126th Interchange)

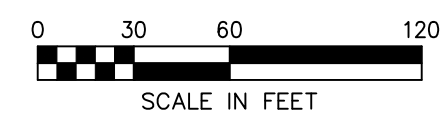
GRADING LIMITS

LANDOWNER: DRA PROPERTIES LC

NOTES:

EXCAVATION = 242,300 CY  
FILL = 1,050 CY

POND AREA = 1.4 ACRES  
POND WATERSHED = 13.5 ACRES  
POND:WATERSHED RATIO = 9.7



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PRELIMINARY  
- NOT FOR  
CONSTRUCTION

DRAWN BY	MMO
APPROVED BY	CRB
ISSUED FOR	REVIEW
ISSUE DATE	4/12/2023
PROJECT NUMBER	21230191P
FIELD BOOK	#####