

Docket Number: 23/12681

Applicants: Larson Brothers LLC (Property Owner) 301 NE 166th Avenue, Huxley, IA 50124 and Cody Malloy 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 legally described as Outlot ‘X’ of Larson Plat 1, located within the Northwest ¼ of Section 6 of Township 81 North, Range 23 West of the 5th P.M. (Elkhart Township). The subject property is approximately 56.96 acres in size and is zoned “AG” Agricultural District. The property is owned by Larson Brothers LLC and consists of land used in row crop production.

The subject property has approximately 1708 feet of frontage along NE 166th Avenue to the North, 510 feet along NE 22nd Street to the West 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 including the property to the North across NE 166th Avenue which is in Story County. There are a few rural residences adjacent to the subject property located around the intersection of NE 166th Avenue and NE 22nd Street. The closest residence to the excavation site is located just northwest of the subject property approximately 400 feet from the extraction area, this property is owned by a member of the Larson Family. The City of Alleman corporate limits is approximately 2.26 mile southwest 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 Larson Brothers LLC. and is used for row crop production. Cody Malloy of McAninch acting as representative for applicant Larson Brothers LLC., is proposing a borrow pit extraction site on the east side of the subject property to extract approximately 91,000 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.

The end use plan for the borrow pit will allow the land to continue to be used for row crop production. The extraction area meets the 150-foot minimum setback for adjacent agricultural uses. The haul route will be directly from the extraction site to Interstate 35 adjacent to the subject property to the East, Polk County roads will not be used for this site. If this Conditional Use Permit application is approved, the applicants are required to obtain a grading permit with

an approved grading plan before work can begin onsite. 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.

Public Testimony

Staff mailed out a total of eight (8) 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 zero (0) responses regarding this application.

Natural Resources / Environmental

The subject property contains mapped floodplain Zone A that cuts through the Northeast corner of the property along a mapped wetland that cuts under Interstate 35 to the East. Floodplain designation Zone A denotes areas with a 1% annual chance of flooding. Although grading and excavation is taking place outside of the mapped floodplain, McAninch Corporation will be required to obtain a Polk County Floodplain Development Permit. The property contains many undulations consistent with row crop production. There are few trees on the subject property with a bulk of them along Interstate 35 within the Iowa DOT Right-of-Way. The disturbed area will be able to return to row crop production once excavation is complete.

Roads / Utilities

The subject property has approximately 1703 feet of accessible frontage along NE 166th Avenue, a paved local roadway maintained by Polk County. It also has approximately 510 feet of frontage along NE 22nd Street another local roadway maintained by Polk County. The borrow pit will be accessed exclusively through the Iowa DOT Right-of-Way to the East of the subject property along Interstate 35. Although there are no service connections as there are no dwellings or accessory structures, the property has access to a 3-inch DMWW water main along the west side of NE 22nd street.

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.

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 to ensure all necessary precautions are met. 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, floodplain permit, 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 proposal is consistent with the goals and policies of the 2050 Polk County Comprehensive Plan.
2. **Polk County Zoning Ordinance:** The use is permitted in the zoning district subject to Conditional Use Permit approval and a 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 400 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 zero (0) responses 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.

3. **Traffic conditions:** Truck traffic to and from the site will be directly from the site to I-35 to the east without the use of local roads. Traffic should not be affected by the borrow pit.
 4. **Parking:** The proposed use will not generate additional onsite or offsite parking.
 5. **Public improvements:** No public improvements needed as hauling will be directly to Iowa DOT Right-of-Way.
 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 of land restored to active row crop production.

1. Prior to any extraction activity applicants shall obtain a grading permit with an approved grading plan.
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 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 restored to the conditions 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. 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.

Attachment 'A'
NE 166th Ave

560th Ave

1675

2151

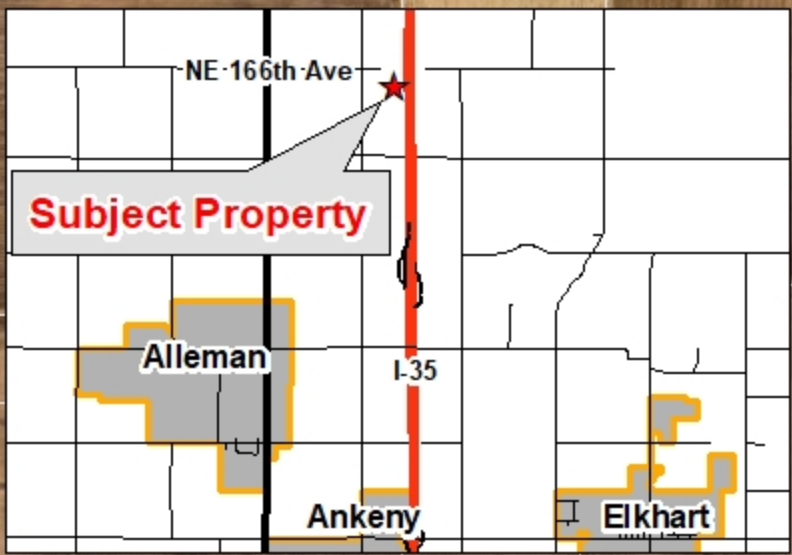
16575

2301

16510

Subject Property

16360



16280

NE 22nd St

I-35

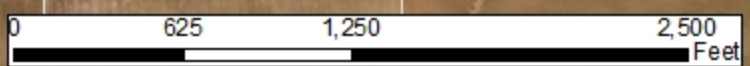
16120



1924

1790

NE 158th Ave



15647

2671

Conditional Use Permit Application

Conditional Uses are those uses which may have a special impact or uniqueness demanding closer scrutiny and analysis to the site and the surrounding environment. When such a use is proposed, a review and report by Planning Division staff of the location, design, configuration, and impact will be conducted, comparing the proposed use to fixed standards and presented to the Board of Adjustment for action at a public hearing. Notices of the request are mailed to all property owners located within 500 feet of the subject property.



Please complete the entire application, submit with fee and review the standards on page 3.

To: **Polk County Board of Adjustment**

1. The undersigned Petitioners request that the Board consider this application for a Conditional Use Permit for the following use: (Describe briefly the nature of the use.)

Excavation of an existing farm field and export of material off-site to utilize as fill material for the Interstate 35 reconstruction project.

2. Subject Property Address: 301 NE 166th Ave, Huxley, IA 50124

3. Subject Property District and Parcel Number: 21000584002001

4. Subject Property Legal Description (attach if necessary):

EX THAT PART FORMERLY PARCEL B BOOK 9525 PAGE 988 NW FRL 1/4 NW FRL 1/4 SEC 6-81-23- OUTLOT X LARSON PLAT 1

(time stamp)
Official Use Only

5. Filing Fee: - \$457.00

6. Applicant(s) Information:

Larson Brothers LLC
Applicant (Print Name)

Signature

4-13-2023
Date

Owner Cory Larson <CLarson@KeenProjectSolutions.com>

Interest in Property (owner, renter, perspective buyer, etc.) Email

301 NE 166th Ave, Huxley, IA 50124 515-357-7038 N/A
Address, City, State and Zip Phone Fax

7. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below.

Cody Malloy
Applicant Representative (Print Name)

McAninch Corp
Firm or Business Name

100 E Grand, Suite 350, Des Moines, IA 50309
Address, City, State and Zip

cmalloy@mcaninchcorp.com (515) 267-2500 (515)210-8673
Email Phone Fax

8. Property Owner Consent:

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

Cory Larson
(Print Name)

Signature

4-13-2023
Date

Andrew Larson
(Print Name)

Signature

4-13-2023
Date

Shane Larson

Page 1 of 3
4-13-2023

9. Written description:

Please provide a written description providing specific detail and reasons for the proposed Conditional Use Permit. (attach if necessary)

The site of the proposed excavation is currently an agricultural field adjacent to Interstate 35. The proposed project includes excavating approximately 91,100 CY of IDOT suitable clay from the hillside and hilltop of the field. Grades will be flattened across the proposed excavation area, and at completion slopes will range from 2-4% across the site. The excavated material will be hauled from the site and utilized as fill material for the Interstate 35 reconstruction project. Rate of removal will range from 2,500-7,500 CY per day for approximately 91,100 CY beginning 5/15/2023. Material will be removed in a combination of ways utilizing Case IH Quad Tracs with K-Tek 1228 scrapers, Caterpillar Excavator with ADT's (Caterpillar 740) or Caterpillar Excavator with Jet Co. Side Dumps. Further vehicle information listed below:
 Case IH 580 QuadTrac weights approximately 48,780 lbs., K-Tec 1228 Scraper empty weights approximately 29,550 lbs. (max load rating 68,000 lbs.), Semi Side Dump combination 80,000 lbs. loaded., Caterpillar 740 ADT empty weight approximately 71,400 lbs.

Clay removed from the proposed borrow site will be placed on the IDOT I-35 construction project per IDOT specs. Using Type A compaction, clay material will be disc'd and conditioned to meet the required moisture content and then will be compacted using sheeps foot rollers. Due to the wet conditions of the soil removed, it is not expected to need water added for soil conditioning. Should water be needed, we historically have worked with local municipalities and have rented water meters and purchased water from them.

10. Required Information: (must be included prior to making submittal)

- A. Complete Application including the detailed description of requested Conditional Use Permit, including specific information about the request.
- B. Submit six (6) copies of a fully dimensioned, to scale site plan meeting site plan requirements, as required.
 - 1. Provide additional information as required by Zoning Ordinance specific to the use requested.
 - 2. Submit a reduced size, 11"X17" site plan that is legible that can be reproduced.

**A completed application with required information and filing fee must be submitted.
 Incomplete submittals will not be processed and will be returned to the Applicant.**

Return forms to: Polk County Public Works, Planning & Development Division 5885 NE 14th Street
 Des Moines, IA 50313
 ▪ Phone (515) 286-3705 ▪ Fax (515) 286-3437 ▪
 email: PublicWorks@polkcountyiowa.gov

Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar [Calendar](#)

OFFICIAL USE ONLY			
Received by		Docket Number	
Application deadline		Date Received	
BOA meeting date		BOA Approved	Y / N

Conditional Use Permit Standards

Section 1. Review Standards

The review determines whether the proposed use should be permitted by weighing public need for and benefits to be derived from the use against the local impact which it may cause. The review shall consider the proposal in terms of:

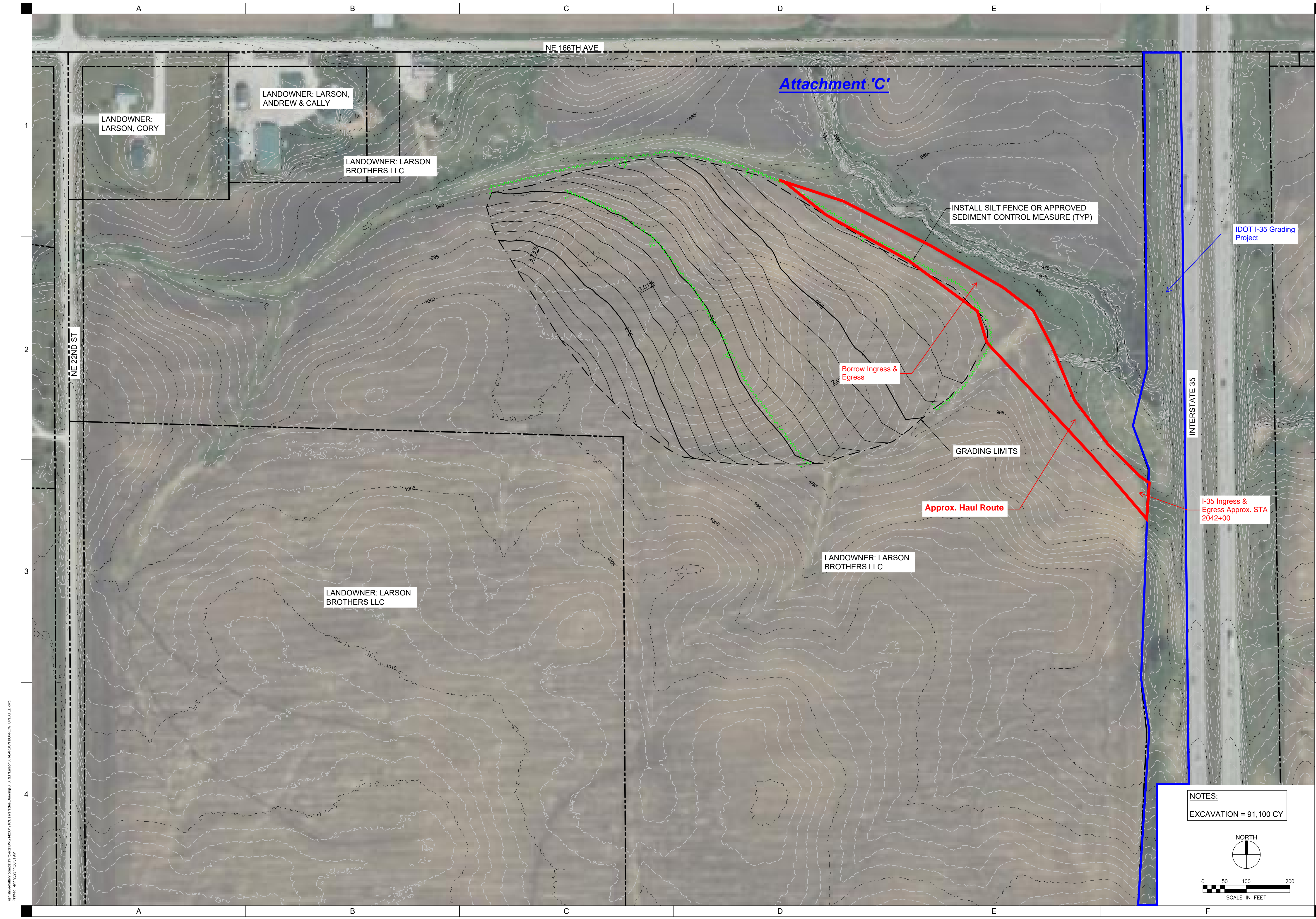
- (A) Existing zoning and land use in the vicinity of the use; and
- (B) planned and proposed public and private developments which may be adversely affected by the proposed use; and
- (C) whether and to what extent the proposed use, at the particular location for which it is suggested, is necessary or desirable to provide a development which is in the interest of the public or which will contribute to the general welfare of the area or Polk County; and
- (D) 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.

Section 2. General Standards

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:

The proposed use shall be in harmony with the general purpose, goals, objectives, and standards of the Polk County Comprehensive Plan, this Ordinance, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.

- (A) The proposed location and use shall be consistent with policies or provisions of the Comprehensive Plan, this Ordinance, or other plans or programs of the County.
- (B) The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare, 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.
- (C) The proposed use in the proposed area will be adequately served by, and will not impose an undue burden on, any public improvements, facilities, utilities, and services. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use in the proposed location, the applicant shall, as part of the application and a condition to approval of the proposed conditional use permit, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time, and in a manner consistent with the Comprehensive Plan, this Ordinance, and other plans, programs, maps, and ordinances adopted by Polk County to service the development. The approval of the conditional use permit shall be conditioned upon such improvements, facilities, utilities, and services being provided and guaranteed by the applicant.



Attachment 'C'

LANDOWNER:
LARSON, CORY

LANDOWNER: LARSON,
ANDREW & CALLY

LANDOWNER: LARSON
BROTHERS LLC

INSTALL SILT FENCE OR APPROVED
SEDIMENT CONTROL MEASURE (TYP)

IDOT I-35 Grading
Project

Borrow Ingress &
Egress

GRADING LIMITS

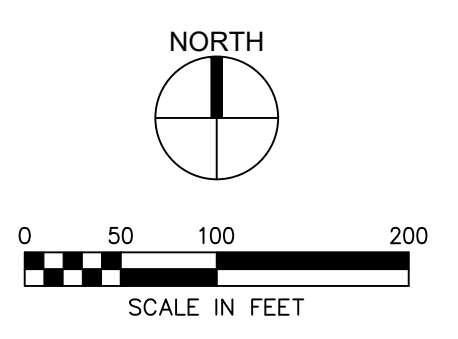
Approx. Haul Route

I-35 Ingress &
Egress Approx. STA
2042+00

LANDOWNER: LARSON
BROTHERS LLC

LANDOWNER: LARSON
BROTHERS LLC

NOTES:
EXCAVATION = 91,100 CY



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 Printed: 4/17/2023 11:30:31 AM

**PRELIMINARY
- NOT FOR
CONSTRUCTION**

DRAWN BY	M/MO
APPROVED BY	CRB
ISSUED FOR	REVIEW
ISSUE DATE	4/10/2023
PROJECT NUMBER	214230/91P
FIELD BOOK	#####