



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Steve Wills, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

NOTICE OF PENDING LAND USE ACTION

The following request has been submitted for review by this Department. Any comments you wish to provide must be received by 5:00 p.m. May 2, 2024. All comments will be appreciated; however, Oregon law requires that written comments specify which application criteria apply to submitted testimony.

APPLICANT NAME: Steve & Terry Miller

LANDOWNER: Same

FILE NUMBER/TYPE OF REQUEST: PD24-0054; a conditional use permit application for a Class IV or worse dwelling, pursuant to LCC 928.626(C)(3). Also, a variance to the side property line structural setback standard, pursuant to LCC Chapter 934.

LOCATION OF PROPERTY: The property is located north of Kingwood Avenue, approximately 1.04 miles northeast of the intersection of Dogwood Road and Kingwood Avenue, and adjacent to the North Santiam River and southern border of the city limits of Gates. (T09S, R03E, Section 34, Tax Lot 1102).

PLAN DESIGNATION/ZONE DESIGNATION: Agricultural Resource / Exclusive Farm Use (EFU)

URBAN GROWTH BOUNDARY/PLANNING AREA: N/A

SUMMARY OF REQUEST: A conditional use permit application to site a Class IV or worse non-farm dwelling on a 1.17-acre property. According to a detailed soil analysis, the property is predominately comprised (98.59%) of Class IV or worse soils. Also, an application for a variance to the side property line setback standard of 50 feet to site the dwelling 22 feet from the west (side) property line and 15 feet from the east (side) property line. The purpose of this notice is to solicit comments and input from surrounding property owners and affected agencies regarding the applicable decision criteria (attached) so that the Department may make a final land use decision.

COMMENTS: [Blank lines for comments]

BY [Blank] AGENCY (IF ANY) [Blank] DATE [Blank]

STAFF CONTACT PERSON: Kate Bentz; (541)967-3816, ext.2368 or kbentz@co.linn.or.us

Table with 3 columns: Linn County, State of Oregon, and Other. Rows include various departments like EHP, Parks, Assessor, GIS, Sheriff, Bldg Official, Roads, Surveyor, Flood Official, DEQ, DOGAMI, DSL, Water, ODFW, ODOT/OSHD, ODSF, DLCD, Parks, State Fire Marshal, School, Landowners, City Of, RFD: Gates, and Other: Davis Airport.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

1. A copy of the application, all documents and evidence submitted by or on behalf of the applicant and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost. For applications scheduled for public hearing, a staff report will be available for inspection at the Department at least seven days prior to the hearing. A copy of the staff report will be provided at reasonable cost.
2. Oregon law [ORS 215.416(5)] requires that local governments make copies of applicable decision criteria available to any participant in a land use hearing. This application will be reviewed, and a decision made, using the decision criteria listed below.

Linn County Land Development Code (LCC) Sections 933.500(B), 933.310(B)(1-4), and 938.300 contain the decision criteria specified for use with this application.

**SECTION 933.500(B) - DECISION CRITERIA**

- (1) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- (2) The dwelling will be sited on an authorized unit of land that is predominately composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique Class I or Class II soils.
- (3) The dwelling will be sited on an authorized unit of land created before January 1, 1993.
- (4) The dwelling will not materially alter the stability of the overall land use pattern of the area.
  - (a) In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, the hearing authority shall consider the cumulative impact of possible new non-farm dwellings and parcels on other authorized units of land in the area similarly situated.
  - (b) To address this standard, the county shall:
    - (i) Identify a study area for the cumulative impacts analysis.
      - (I) The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas.
      - (II) Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.
    - (ii) Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardships, etc.) and the dwelling development trends since 1993, and determine the potential number of non-farm dwellings and pre-85 dwellings that could be approved under LCC 933.706 and 933.707 and 933.500, including identification of predominant soil classifications, the authorized units of land created prior to January 1, 1993 and the units larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under LCC 933.510.
    - (iii) Make findings that describe:
      - (I) the study area;
      - (II) its boundaries;
      - (III) the location of the subject authorized unit of land within the area;
      - (IV) why the selected area is representative of the land use pattern surrounding the subject unit and is adequate to conduct the analysis required by this standard;
      - (V) the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could

result from approval of the possible non-farm dwellings under this subparagraph; and

- (VI) whether approval of the proposed non-farm dwellings and pre-85 dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
- (5) The dwelling complies with such other conditions as the governing body or its designate considers necessary.
- (6) If a single-family dwelling is established on an authorized unit of land as set forth in LCC 933.705 to 933.750, no additional dwelling may later be sited under this section.
- (7) The property meets decision criteria in LCC 933.310(B)(1-4).
- (8) *Requirement.* The property shall be disqualified from special assessment pursuant to ORS 215.236.

**SECTION 933.310(B) – RURAL RESOURCE ZONE CONDITIONAL USES; GENERALLY**

- 1) The development site has physical characteristics needed to support the use. Those characteristics include, but are not limited to, suitability for a sewage treatment system, and an adequate supply of potable water.
- 2) The development will not be located within a mapped geologic hazard area or within a 100 year floodplain unless it is demonstrated that the proposal can be designed and engineered to comply with accepted hazard-mitigation requirements.
- 3) The proposal will not have a significant adverse impact on sensitive fish or wildlife habitat.
- 4) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.

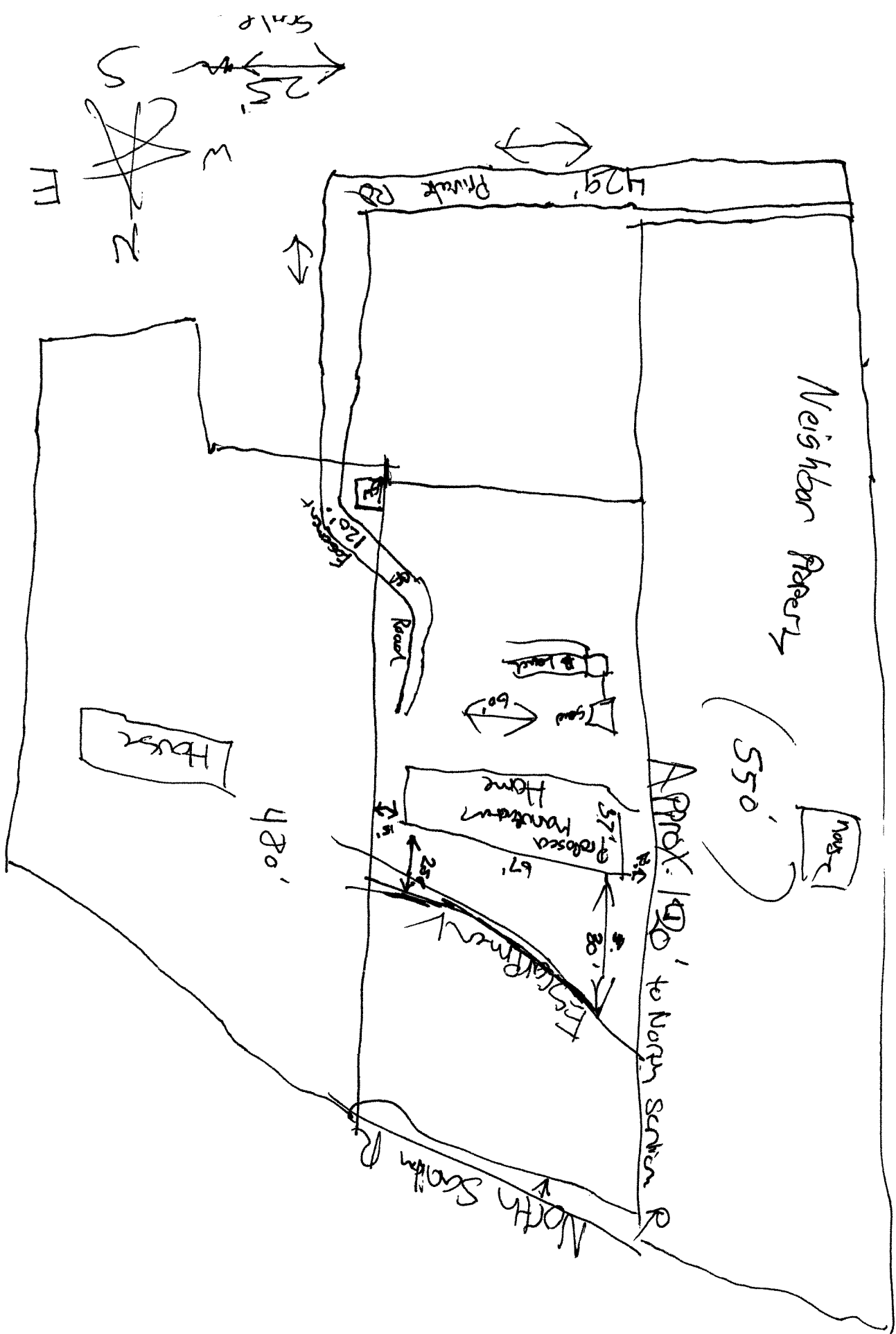
**Section 938.300(B) – Decision criteria**

(B) Decision criteria.

- (1) A variance from a development standard as set forth in LCC 934 (Development Standards Code) is needed because conditions or circumstances or both exist on the land or structure involved that renders development impractical or impossible;
  - (2) Granting a variance from a development standard will not have a significant adverse effect on property, improvements, or public health or safety in the vicinity of the subject property; and
  - (3) Approval of the variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use.
3. All testimony and evidence must be directed toward the criteria described above or other criteria in the plan or land use regulations, which you believe, apply to the decision. Failure to raise an issue before the close of the record during the comment period/final evidentiary hearing, by letter or in person, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue.
  4. Please note the deadline stated in the accompanying notice for submitting your written comments for decisions to be made by the Planning and Building Department.
  5. If a public hearing is scheduled before either the Planning Commission or the Board of County Commissioners, written and/or oral comments may be submitted either before and/or during that hearing. Please note the time and date of the hearing in the accompanying notice.
  6. A map(s) depicting the parcel under review and surrounding lands is attached to the notice.

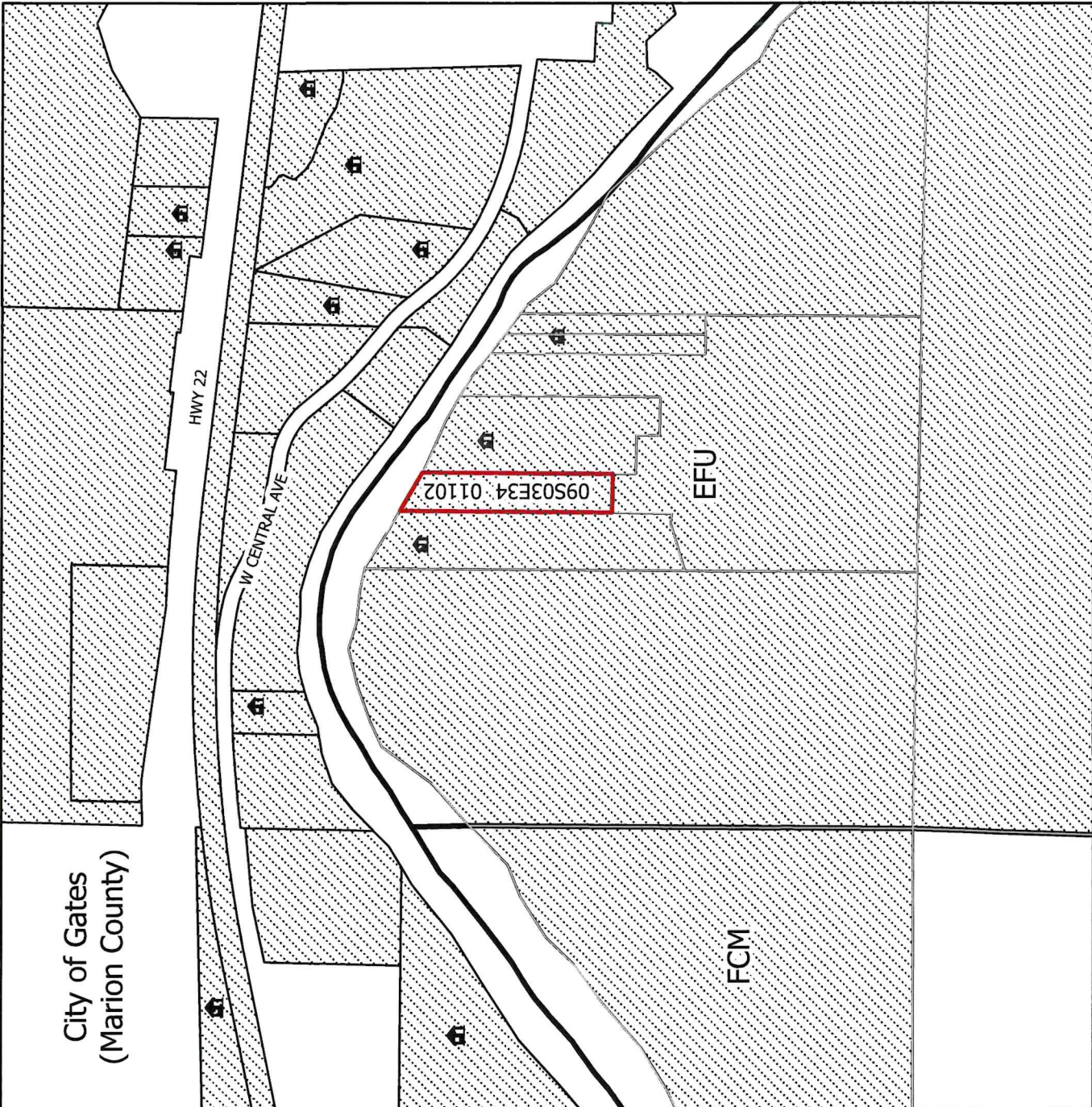
7. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the 150-day time limitations of ORS 215.428.
8. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The decision maker shall grant the request by either (a) continuing the public hearing or (b) leaving the record open for additional written evidence or testimony. If the decision maker grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the initial hearing.
  - (a) At the continued hearing, persons may present and rebut new evidence and testimony. If new written evidence is submitted, any person may request, prior to the close of the continued hearing that the record be left open for at least seven more days to submit additional written evidence or testimony to respond to the new written evidence.
  - (b) If the record is left open, it shall remain open for at least seven days. During the period the record was left open, any participant may file a written request with the local government for an opportunity to respond to new evidence submitted. If the record has been closed and such a request has been timely filed, the record shall be reopened. Unless waived by the applicant, the applicant shall have at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. **If the record is reopened to admit new evidence or testimony, any person may raise new issues, which relate to the new evidence, testimony or decision criteria for the application.** Except when requested or agreed to by the applicant, the extension shall be subject to the 150-day limitations of ORS 215.428.
9. Appeals from Departmental decisions result in a hearing before the Planning Commission; appeals from Commission decisions result in a new hearing before the Board of County Commissioners.
10. Testimony or evidence previously submitted to the Commission must be **resubmitted** by the parties to the Board for the new hearing.
11. If this case is scheduled for a public hearing, the hearing will begin with a declaration of any ex parte contacts (contacts which occurred outside of the public hearing) or any conflict of interest by the decision makers. This will be followed by the staff report from the planning department. Then the applicant (or appellant if case is an appeal) will testify, followed by testimony by other people in support of the application. After the people who are in favor of the application are finished, testimony from opponents will begin. This will be followed by testimony from people who neither favor nor oppose the application. The applicant will then be given the opportunity for rebuttal. The decision makers are free to ask questions of any person who has testified or of staff at any point during the hearing.

If the hearing is continued or the record is left open, the chairperson will announce the date, time, and place for resumption of the hearing and/or what limitations exist on further testimony or submittal of written materials. If a site visit is warranted, the chairperson will announce the time and date of such a visit. If the hearing and record are closed, the decision makers will begin deliberations and/or will announce the time, date and place when the decision will be made.



# Linn County Planning & Building Department

# Notice Map



- Subject Property
- Taxlots
- Zoning Boundaries
- Notice Area

09S03E34 01102  
MILLER STEVEN J & TERRY D  
1.17 acres



1 inch = 400 feet

04/10/2024