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Vol. 115 11541

KLAMATH COUNTY PLANNING COMMISSION

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE  
APPLICATION FOR AN  
ADMINISTRATIVE ZONE  
CORRECTION NO. 75-52  
BY HENRY AND  
GERALD WOLFF

O R D E R

This matter having come on before the Klamath County Planning Department upon the application of HENRY AND GERALD WOLFF for an Administrative Zone Correction No. 75-52, pursuant to Article 117, Ordinance No. 17, the same being the Klamath County Zoning Ordinance, said application requesting a zone correction from AF (Agricultural Forestry) zone to SP-12 (Quarry) zone, a description of the real property referred to in said application being that property generally located in the SE $\frac{1}{4}$  Section 31, Township 34 So., Range 9 EWM, and the N $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6, Township 35 So., Range 9 EWM, Klamath County, Oregon, and more particularly described on that certain aerial photograph marked Exhibit A, attached hereto and by reference made a part hereof, said application having been examined and such studies conducted as were required, the following findings of fact are brought forth:

1. A description of the real property for which a zone correction is requested is that property located generally in the SE $\frac{1}{4}$  Section 31, Township 34 So., Range 9 East of the Willamette Meridian, and the N $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6, Township 35 So., Range 9 EWM, all in Klamath County, Oregon, and more particularly described on that certain aerial photograph

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marked Exhibit A, attached hereto and by reference made a part hereof.

2. The land in question is currently zoned AF (Agricultural Forestry).

3. The requested zone correction is for SP-12 (Quarry).

4. The part of Klamath County affected by the application was zoned under Ordinance No. 17 on December 7, 1972.

5. Exhibit B, attached hereto and by reference made a part hereof, shows a continuing use of applicant's land as a source of diatomite with surface material also being used for fill purposes.

6. Land use studies were not conducted on applicant's land or in the vicinity prior to adoption of the Klamath County Comprehensive Land Use Plan and Zoning Ordinance, which would have revealed the proper designation on applicant's land.

7. The present Land Use Plan designation is Agriculture, whereas the Land Use Plan designation "Heavy Industry - Limited to Quarrying" is the common designation applied to these circumstances.

8. The SP-12 zone is appropriate to the applicant's use of his property.

Based upon the above findings of fact, the following conclusions of law are made:

1. The land in question was zoned unintentionally and erroneously.

2. Prior to December 7, 1972, the land in question was actually used for mining of diatomite with surface material also being used for fill purposes, and such use existed lawfully.

3. The proper zone district for the use lawfully existing prior to December 7, 1972, is SP-12 (Quarry) zone.

4. The proper Comprehensive Land Use Plan designation is Heavy Industry - Limited to Quarrying.

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5. Even if there had not been actual use of the land in question as a quarry, substantial expenditures are defined by the Klamath County Zoning Ordinance No. 17, and specifically \$60,000 core sample drilling, were made prior to December 7, 1972, which are more consistent with the land's use as a quarry than with any other use which could be made of the land.

6. For the above recited reasons, it has been determined that the zone correction necessary to provide for this vested right is the SP-12 (Quarry) zone, and that the property Comprehensive Land Use Plan designation is Heavy Industry - Limited to Quarrying.

NOW, THEREFORE, IT IS HEREBY ORDERED that Application No. 75-52, submitted by Henry and Gerald Wolff, requesting a zone correction from AF (Agricultural Forestry) zone to an SP-12 (Quarry) zone, and a Comprehensive Land Use Plan correction from Agriculture to Heavy Industry - Limited to Quarrying, a description of the real property referred to in said application being that property generally located in the SE $\frac{1}{4}$  Section 31, Township 34 So., Range 9 EWM, and the N $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6, Township 35 So., Range 9 EWM, Klamath County, Oregon, and more particularly described on that certain aerial photograph marked Exhibit A, attached hereto and by reference made a part hereof, is hereby provisionally approved and that the county zoning and land use maps be changed to show such corrections. Unless an appeal is filed prior to *October 23, 1975*, this ORDER shall become permanent.

DONE AND DATED THIS *22nd* day of *September* 1975.

*Archie W. Surber*  
Klamath County Planning Director

APPROVED AS TO FORM

*Robert L. Surber*  
County Legal Counsel

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## AFFIDAVIT OF GERALD C. WOLFF

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2 STATE OF OREGON )  
3 County of Klamath ) ss.

4 In the summer of 1944, Wolff Ranch, a partnership,  
5 purchased from D. E. Colwell, R. D. Colwell and Ada Rice properties  
6 situated in the South Range in Township 34, Range 9, Section 31 and  
7 Township 35, Section 6 of Range 9, purchased from Della Barber on  
8 August 12, 1947, for the purpose of expanding our cattle and hog  
9 operation. These properties consisted of mostly low lying meadows  
10 covered with sage brush. Subject to occasional flooding of the  
11 South Range, the land is higher near the river and slopes away  
12 slightly to the south. This is caused by sediment built up as  
13 the water over the centuries deposits its silt upon leaving the  
14 turbulence of the river bed. This created a situation ideal for  
15 diking and bank control, which we began with a 1/2 yard bucyrus Irie  
16 Oragline in the summer of 1945. We obtained assistance on this  
17 project from the U.S.A.S.C. program. It included rough sloping  
18 of the river dike and a central drain ditch up the middle of the  
19 valley to the dike where we installed flood control head gates.  
20

21 In the spring of 1946, we purchased a TD 14 cat and 12-  
22 yard carryall, which we finished shaping the dike and building a  
23 road on top of the spoil bank from the drain, as well as on top  
24 of the dike.

25 The spring of 1947 flooding of melting snow caused some  
26 damage to our new dike which had not had sufficient time for  
proper composition. We had leveled our fields and did not want to

AFFIDAVIT OF GERALD C. WOLFF - Page 1

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SUITE A  
97601

1 disturb the new seeding of domestic grasses and legumes, so we  
 2 decided to get the repair materials off of a nearby knoll. We  
 3 started a 24 hour a day project to pull the surface soil out on  
 4 the dike. The stripping of the knoll revealed 14" of sandy pumice  
 5 soil, 8 to 12" of pea rock and allurial sand. These overlaid a  
 6 white chalk-like material. Being immediately available and not  
 7 knowing where else to get material, the operator decided to use  
 8 this white material. It cut rather hard, but broke up readily  
 9 when spread in position. The next morning when I came on the job,  
 10 I was considerably startled and concerned about this matter and  
 11 the material being suitable for this application as it seemed so  
 12 light and powdery that I couldn't conceive ever getting any  
 13 compaction out of it. However, I decided, as did the swing shift  
 14 operator, that it would have to do because of its availability to  
 15 the dike site.

16 Several days later, we had an extremely heavy rainfall which  
 17 puddled up the carryall ruts and low spots. This delayed our  
 18 operation for several days. When it sufficiently dried, we began  
 19 carryalling again. We immediately noticed that this white material  
 20 had properties similar to cement. The white chalk-like substance  
 21 solidified and by a quirk of fate we had discovered a material  
 22 excellent for ditch and dike repair.

23 By mid-summer the soils all became critically dry and  
 24 dust from the cat operation caused a white cloud residue visible  
 25 for several miles. One hot afternoon in late July, a car pulled  
 26 into a pit where I was operating the cat. He hailed me, asked

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1 numerous, dumb, obvious questions about the operation. To my  
 2 surprise, the man was a professional geologist coming back from  
 3 Lakeview and had recognized the substance. The man's name was  
 4 Hank Reed, Assistant Manager of Raw Materials Research, Industrial  
 5 and Economic Development of Burlington-Northern Railroad. By  
 6 the year 1974, we had at least two miles of primary ditches lined  
 7 or constructed wholly from diatomaceous earth. Mr. Hank Reed  
 8 subsequently issued a report on his findings. His report No. 2  
 9 printed in July of 1971 has innumerable references to the Wolff  
 10 Ranch diatomite deposits. This report is a condensation of  
 11 his 1970 explanations, explicitly noted on pages 25 through 34.  
 12 Mr. Reed told me that the diatomite was as pure as any he had ever  
 13 seen and wanted to take a sample to the laboratory for various  
 14 tests and microscopic analysis. During our discussion, I mentioned  
 15 observing our Black Angus cattle using the exposed diatomite to  
 16 dust in. The cattle would walk several miles from their pasture  
 17 to the pit to dust and lick the material. Mr. Reed informed me  
 18 that the reason for the cattle using this was to eliminate the  
 19 horse and face flies. He said he had a friend who was an  
 20 entomologist and had talked with him about it. He said that  
 21 insects or flies have portholes along the side of their bodies  
 22 instead of lungs and that these diatoms were microscopic particles  
 23 of silica which plugged the portholes and caused Silicosis or  
 24 reaction similar to it, causing the insect to asphyxiate.

25 Each spring we haul loads of the diatomite and dump in  
 26 piles in our various pastures for the cattle to dust in. I have

1 sold numerous loads to ranchers in the Lakeview and Hart Mountain  
2 areas.

3 After several months passed, I was contacted by a  
4 geologist working for Great Lakes Carbon Corporation in the spring  
5 of 1948. He made us an offer to purchase the deposit. We had  
6 the deposit drilled to determine the amount of the deposit. It  
7 was a joint operation by Wolff Ranch and Great Lakes Carbon Corpora-  
8 tion. We received a royalty of \$250 per month for approximately  
9 3 years duration. Numerous loads were removed and test holes dug.  
10 The cost as nearly as I can remember was approximately \$60,000.

11 We granted Great Lakes Carbon Corporation a five-year  
12 option to finish the Terrebone Oregon deposit and move the plant  
13 to the South Range. After a few years, probably in the late 1950's  
14 Great Lakes Carbon decided to move their plant to Santa Maria,  
15 California, because of the economic factor of being so much closer  
16 to the available markets.

17 The Christmas day flood in 1964 again brought our  
18 diatomite back into central focus. We suffered numerous breaks in  
19 our dikes and ditches. We procured assistance from Klamath  
20 County Civil Defense Director Jim Watson. The 1965 ASCS program  
21 was raised from \$2,500 ceiling to \$10,000 due to Senator Al  
22 Ullman's insistence to the highest officials in the ASCS program.  
23 I received a personal letter from Arnold N. Bodiker, State  
24 Executive Director of the Oregon ASC State Committee that the  
25 ASCS would pay 80% of the cost of restoration up to a maximum of  
26 \$10,000 to any one farm in any one county.

AFFIDAVIT OF GERALD C. WOLFF - Page 4

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1 Our cost on this job was \$11,195 in moving 9,000 yards  
2 of material into one of the larger breaks.

3 The Civil Defense expended \$10,500 to a contractor for  
4 the west portion of the dike; we furnished the materials of  
5 approximately 11,000 yards.

6 On March 22, 1965, I requested the Federal assistance  
7 under Public Law 99 through the local Klamath County Civil  
8 Defense Office. This accounts for the \$10,500 previously  
9 mentioned.

10 Numerous truck loads were sold to Crater Lake Mining Co.  
11 in the later 1960's for processing into Kitty Litter and floor  
12 sweep. It is highly absorbent in oil. Davey hauled this in 1965.

13 In 1971, we were contacted by a field man from  
14 Weyerhaeuser Timber Company by the name of Mr. Howard Hogaman.  
15 He passed the word about the diatomite to Mr. Winnie Rowe of the  
16 Weyerhaeuser family corporation. Loads of the diatomite were again  
17 taken over the years during the period from 1972 to 1975.

18  
19  
20 *Gerald C. Wolff*

21  
22 SUBSCRIBED and sworn to before me this 14th day of

23 August, 1975.

24 *Gray J. Shuck*  
25 Notary Public for Oregon  
26 My Commission Expires: 8/11/78

AFFIDAVIT OF GERALD C. WOLFF - Page 5

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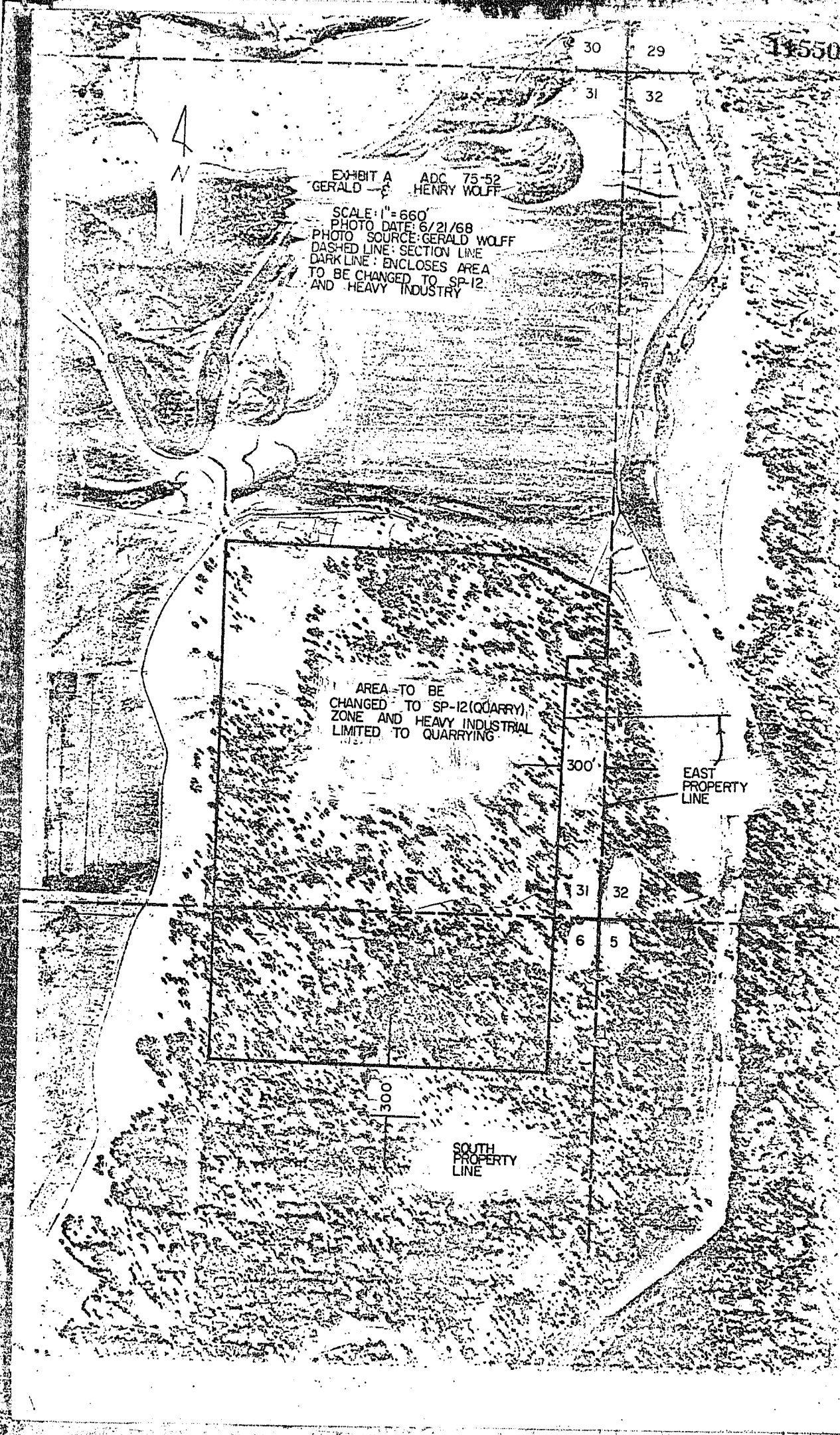
19  
1950-5  
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1957-58  
1964  
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WOLFF AFFIDAVIT INFORMATION

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<u>Year</u>	<u>Facts</u>
1941	Purchased Wolff Ranch
1946	Purchased Carryall for earthmoving
1947	Pulled topsoil off hill for dike repair - estimate _____ yds.
—	Sold material for kitty litter to Bill Black of Crater Lake Mining Company - estimate _____ yards for \$ _____
1948	Cows began dusting themselves with Diatomite to kill insects
1949	We found out why cows dusted themselves
1948-49	Spent \$60,000 on core drilling to establish extent of Diatomite deposit
19__	Hank Reed conducted Diatomite market study for Great Northern Railroad
1950-52	Great Lakes Carbon Company paid option payments of \$250 per month to retain mining rights for Diatomite
19__	We hauled Diatomite to places around the ranch for cows to dust themselves
1957-58	Used Diatomite for ditch repair
1964	Used Diatomite and topsoil for Christmas Day flood dike repair

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STATE OF OREGON,  
County of Klamath  
Filed for record at request of

Klamath County  
on this 24 Sept A.D. 1975  
at 8:47 a.m. and  
recorded in Vol. M 75 deed  
Page 11541  
Wm. J. Milne County Clerk  
By *Wm. J. Milne* Deputy  
For none Co Comm Journal

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