

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE)
APPLICATION FOR AN)
ADMINISTRATIVE ZONE)
CORRECTION NO. 76-13)
BY JOHN C. SIEMENS)

O R D E R

This matter having come on before the Klamath County Planning Department upon the application by JOHN C. SIEMENS for an Administrative Zone Correction No. 76-13, pursuant to Article 117, Ordinance No. 17, the same being the Klamath County Zoning Ordinance, said application requesting a zone correction from F (Forestry) zone to SP-12 (Quarry) zone, a description of the real property referred to in said application being 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 set forth:

1. A description of the real property for which a zone correction is requested is marked Applicant's Exhibit A, attached hereto and by reference made a part hereof.
2. The land in question currently has two zoning designations, F (Forestry) and SP-12 (Quarry). The property was incorrectly drawn on the Klamath County zoning maps and as a result only a portion of the property carries the correct zoning designation (SP-12, Quarry) on the zoning maps.
3. Applicant purchased the property prior to zoning as witnessed by a copy of a Warranty Deed dated July 6, 1965, which is on file in the Klamath County Planning Department and marked Applicant's Exhibit B, attached hereto and by reference made a part hereof.
4. Applicant submitted an agreement between himself and Klamath Ready Mix, Inc., dated June 30, 1965 for operation of the quarry by Klamath Ready Mix Inc., which is on file in the Klamath County Planning Department and marked Applicant's Exhibit C, attached hereto and by reference made a part hereof.
5. The part of Klamath County affected by the application was zoned on December 7, 1972.
6. The Comprehensive Land Use Plan map for the property has two designations, Forestry and Heavy Industrial. The property was incorrectly drawn on the Comprehensive Land Use Plan map and as a result only a portion of the property carries the correct Comprehensive Land Use Plan designation which is Heavy Industrial.

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

1. A portion of the land in question was zoned unintentionally and erroneously.
2. Prior to December 7, 1972, the land in question was actually used as a quarry and such use existed lawfully.
3. Land Use studies conducted prior to the adoption of the Land Use Plan and Zoning Ordinance incorrectly identified a portion of the applicant's use of his land.
4. The proper zone district for the use lawfully existing prior to December 7, 1972, is SP-12, Quarry.
5. The proper land use designation on applicant's property is Heavy Industrial.

NOW, THEREFORE, IT IS HEREBY ORDERED that Application No. 76-13, submitted by JOHN C. SIEMENS requesting a zone correction from F (Forestry) zone to SP-12 (Quarry) zone, a description of the real property referred to on Applicant's Exhibit A, attached hereto and by reference made a part hereof, is hereby provisionally approved and that the county zoning and land use plans maps be changed to show such correction. Unless an appeal is filed prior to October 22, 1976, this ORDER shall become permanent.

DONE AND DATED THIS 23rd day of September, 1976.

Archibald W. Johnson
Klamath County Planning Director

APPROVED AS TO FORM:
Boivin and Boivin
County Legal Counsel

By Bradford A. P.

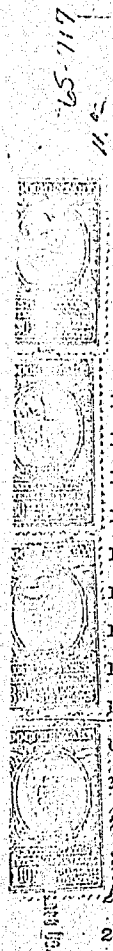
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EXHIBIT A
LEGAL DESCRIPTION
ADMINISTRATIVE ZONE CHANGE NO. 76-13
JOHN C. SIEMENS

A part of Lots 33 and 32, Section 16, Township 35 South, Range 7 East of the Willamette Base and Meridian, lying East of U.S. Highway Number 97 and being more particularly described as follows:

Beginning at the quarter section corner on the South boundary of Section 16, Twp. 35 S., R. 7 E.W.M.: thence North along the center section line of Section 16, a distance of 1320.0 feet to the Northwest corner of Lot 33, which corner is marked with a 3/4 inch iron pipe; thence East along the North boundary of Lot 33 a distance of 323.30 feet, more or less, to a point on the Easterly right-of-way boundary of U.S. Highway Number 97, which point is marked with a 3/4 inch iron pipe; thence South $2^{\circ}22'$ West along said right of way boundary a distance of 333.30 feet to a 3/4 inch iron pipe marking the true point of beginning of this description; thence North $62^{\circ}07'$ East a distance of 395.00 feet to the center of an existing water well; thence continuing North $62^{\circ}07'$ East, 234.30 feet to a 3/4 inch iron pipe which bears South 40.00 feet distant from the North boundary of Lot 33; thence East parallel with aforesaid boundary, 454.20 feet to the East boundary of Lot 33; thence South along same, 95.00 feet; thence in Lot 32, East 107.27 feet; thence South $32^{\circ}20'$ East, 381.50 feet; thence South $9^{\circ}30'$ West, 205.30 feet to a 2 inch iron pipe on the South boundary of Lot 32; thence West along the South boundary of Lots 32 and 33 a distance of 1301.30 feet, more or less, to the Easterly right of way boundary of U.S. Highway Number 97; thence North $2^{\circ}22'$ East along same, 326.00 feet to the true point of beginning, containing 15.4 acres, more or less.

EXHIBIT B
WARRANTY DEED



& Gordon
JOHN E. HANCOCK
ATTORNEY AT LAW
MATH FALLS, ORE.

THIS INDENTURE WITNESSETH, That BERT and STANLEY and DOROTHY STANLEY, husband and wife, hereinafter known as Grantors, for and in consideration of the sum of Ten Dollars, to them paid, have bargained and sold and by these presents do grant, bargain, sell and convey unto JOHN C. SIEMENS and RUTH E. SIEMENS, husband and wife, the following described premises, situated in Klamath County, Oregon, to-wit:

A part of Lots 32 and 33, Section 16, Township 35 South, Range 7 East of the Willamette Base and Meridian, lying East of U. S. Highway Number 97 and being more particularly described as follows:

Beginning at the quarter section corner on the South boundary of Section 16, Twp. 35 S., R. 7 E. W. M.; thence North along the center section line of Sec. 16, a distance of 1320.0 feet to the Northwest corner of Lot 33, which corner is marked with a 3/4 inch iron pipe; thence East along the North boundary of Lot 33 a distance of 323.30 feet, more or less, to a point on the Easterly right of way boundary of U. S. Highway Number 97, which point is marked with a 3/4 inch iron pipe; thence South 2°22' West along said right of way boundary a distance of 333.30 feet to a 3/4 inch iron pipe marking the true point of beginning of this description; thence North 62°07' East a distance of 395.00 feet to the center of an existing water well; thence continuing North 62°07' East, 234.30 feet to a 3/4 inch iron pipe which bears South 40.00 feet distant from the North boundary of Lot 33; thence East parallel with aforesaid boundary, 454.20 feet to the East boundary of Lot 33; thence South along same, 95.00 feet; thence in Lot 32, East 107.27 feet; thence South 32°20' East, 381.50 feet; thence South 9°30' West, 205.30 feet to a 2 inch iron pipe on the South boundary of Lot 32; thence West along the South boundary of Lots 32 and 33 a distance of 1301.30 feet, more or less, to the Easterly right of way boundary of U. S. Highway Number 97; thence North 2°22' East along same, 326.00 feet to the true point of beginning, containing 15.4 acres, more or less.

Also giving and granting unto grantees the right to construct, use and maintain a roadway for ingress and egress to the land above described on and across Lot 33, Section 16, Twp. 35 S., R. 7 E. W. M., said roadway to be a strip of land not to exceed 40.00 feet in width lying 20.00 feet on each side of the following described centerline:

Beginning at a 3/4 inch iron pipe at the intersection of the Easterly right of way boundary of U. S. Highway Number 97 and the North boundary of Lot 33, Section 16, Twp., Range, Base and Meridian aforesaid; thence South 2°22' West along said right of way boundary; a distance of 178.4 feet to the true point of beginning of this description; thence North 73°56'40" East a distance of 572.20 feet to a point which bears South 20.00 feet from the North boundary of Lot 33; thence East parallel with the North boundary of Lot 33 a distance of 454.20 feet, more or less, to the East boundary of Lot 33.

Also, the right to construct, use and maintain facilities on and across the South 20.00 feet of Lot 32, Sec. 16, Twp. 35 S., R. 7 E. W. M., Klamath County, Oregon, bounded on the West by the lands described above, for a period of ten years from the date of this agreement, to terminate June 23, 1975. Subject to: The right of way and public use areas of the State of Oregon in connection with Highway 97 as disclosed in Deed Volume 293 at page 296; right of way of Pacific Telephone and Telegraph Company, including the terms and provisions thereof, as disclosed by Deed Volume 293 at page 296; Existing public roads or any easements in use for public utilities.

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TO HAVE AND TO HOLD the said premises with their appurtenances unto the said grantees as an estate by the entirety. And the said grantors do hereby covenant, to and with the said grantees, and their assigns, that they are the owners in fee simple of said premises; that they are free from all incumbrances, except those above set forth, and that they will warrant and defend the same from all lawful claims whatsoever, except those above set forth.

IN WITNESS WHEREOF, They have hereunto set their hands and seals this 23d day of June, 1965.

Bertland Stanley (SEAL)
Dorothy M. Stanley (SEAL)

STATE OF OREGON)
 County of Klamath) SS

BE IT REMEMBERED, That on this 6th day of June, 1965, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Bertland Stanley and Dorothy Stanley, husband and wife, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

[Signature]
 Notary Public for Oregon

My Commission Expires:
 My Commission Expires Aug. 28, 1969

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Oregon Title Insurance Co.

this 6 day of July A.D. 1965 at 3:31 PM.

duly recorded in Vol. 363, of Deeds on Page 58

Fee \$2.50

DOROTHY ROGERS, County Cl

By [Signature]

INDEXED
 FILED

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6 Gordon
 JANDINO & GORDON
 ATTORNEYS AT LAW
 KLAMATH FALLS, ORE.

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[Signature]
[Signature]
[Signature]

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A G R E E M E N T

EXHIBIT C
AGGREEMENT

THIS AGREEMENT made and entered into this 30 day of June, 1965 by and between JOHN C SIEMENS AND RUTH E SIEMENS, husband and wife, hereinafter referred to as First Parties, and Klamath Ready Mix, Inc., an Oregon Corporation, hereinafter referred to as Second Party.

W I T H E S S E T H:

FIRST PARTIES do hereby convey and grant unto Second Party the exclusive right and privilege during the term hereinafter provided to enter upon, produce, excavate, screen, wash, crush and remove rock, stone, sand and gravel from the following described real property situate in the County of Klamath, state of Oregon and more particularly described as follows:

Refer to attached land description by
Julian M. Ager, registered surveyor
describing parcel of land and easement.

from the pits opened or to be opened thereon by Second Party.

The terms of this Agreement shall be for a period of five (5) years from date. As a further consideration of the covenants herein contained and the payments to be made, First Parties do hereby grant the exclusive right and option to Second Party to extend this Agreement for an additional period of five (5) years upon the same terms and conditions as herein contained. Said option to be exercised by giving at least thirty (30) days written notice prior to the termination of this Agreement. Said notice to be directed to First Parties.

The title to all rock, stone, sand and gravel shall remain in First Parties until the same is removed from the premises herebefore described or removed from stockpiles if stockpiled on property other than herebefore described. Second Party at its own resources and expense shall perform all labor

and provide all of the equipment necessary for the removal of said rock, stone, sand and gravel from the above described premises and agrees to pay therefor to the First Parties the sum of twenty cents (20¢) per cubic yard for all rock, stone, sand or gravel removed from the premises or stockpiles, except for material used in the construction and maintenance of easements and rights of way upon the premises and the easements and rights of way necessary for ingress and egress from public thoroughfares to the premises for the performance of this Agreement.

Cubic yard measurement shall be based upon truck measurement of Second Party unless said product is used for compacted fill base purposes. If the product is used for compacted fill base purposes, cubic yard measurement shall be based upon the engineer's measurement upon which Second Party is paid. Compacted fill base shall not apply to materials used in connection with concrete rock or asphalt paving.

Second Party hereby agrees to keep adequate books and records including individual truck tickets, and the same shall be open to inspection of First Parties, their agents and auditors at all reasonable times and places. Payments shall be upon the fifteenth of each month for all rock, stone, sand and gravel removed from the premises to and including the last day of the month preceding. At the time of payment, Second Party shall render a duplicate of said truck tickets showing the cubic yardage per truck load. Where materials are compacted, payments shall be based upon eighty per cent (80%) of truck measurement. Any adjustment required on jobs where materials are compacted shall be made the month following Second Party's completion of the compacting or upon its receiving payment therefor.

It is further understood and agreed between the parties that after Second Party has placed the pits in production if, for any reason, Second Party shall fail to operate and remove rock, stone, sand or gravel from the premises for a period of six (6) months, Second Party agrees to pay First Parties one thousand (\$1,000.00) dollars rent per year for use of said premises.

This agreement is non-exclusive insofar as reserving the right of First Parties to remove said material for their own use, but exclusive as forbidding First Parties the right to grant to any other party during the term of this agreement the right to remove any rock, stone, sand or gravel from said premises. First Parties shall ^{have} the right to purchase manufactured products for their own use upon negotiation with Second Party.

Second Party shall have the right to stock pile merchantable products anywhere upon the premises, it being understood and agreed that said products shall not be paid for except upon removal from the premises.

Second Party hereby agrees to perform all labor necessary for removal of said rock, stone, sand and gravel in a good and workmanlike manner and hold harmless First Parties from any and all liability claims, or liability for the actions of Second Party, its agents or employees.

Second Party shall have the right to place on the premises all necessary machinery, equipment, tool sheds and all other structures required by it in connection with its operation with full right to remove all of said machinery, equipment and structures within 60 days after the termination of this Agreement, whether by mutual consent or otherwise.

In case the Second Party shall fail to make the payments aforesaid, or any of them, punctually or within fifteen

(15) days of the time specified, or should fail to keep any of the other terms and conditions of this Agreement, time of payment and strict performance being declared to be of the essence of this Agreement, then the First Parties shall have the right to declare this Agreement null and void and all of the right, interest and privileges hereby created or then existing in favor of the Second Party derived under this Agreement shall utterly cease and determine and the premises aforesaid shall revert and re-vest in First Parties without any declaration of forfeiture or act of re-entry or without any other act by First Parties to be performed as absolutely, fully and perfectly as if this agreement had never been made. The Second Party shall not be deemed in default for failure to perform the terms and conditions of this Agreement other than failure to make payments as here provided until written notice of said default has been given by First Parties to Second Party, and Second Party shall fail to remedy said default within twenty (20) days after the giving of said Notice.

First Parties warrant that they are the owners of the above premises and have good right to convey and grant the rights and privileges herein provided.

This agreement shall be binding upon the heirs, executors, administrators or assigns of the parties hereto.

IN WITNESS WHEREOF, we have hereunto set our hands the day and year first above written.

John C. Simons
John C. Simons
 FIRST PARTIES

KLAMATH READY MIX, INC., an
 Oregon Corporation

BY Wm. J. Schmitt



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Klamath County - Planning Department

VETERANS MEMORIAL BUILDING — 503-882-2501 — KLAMATH FALLS, OREGON 97601

ADMINISTRATIVE ZONE CORRECTION
No. 76-13DATE September 23, 1976

N O T I C E

SUBJECT: Information about Administrative Zone Correction proceedings for a parcel of property that may be of interest to you.

The Klamath County Planning Department has received application and completed an approval ORDER for an Administrative Zone Correction No. 76-13.

The enclosed ORDER provisionally approves the request for correction from the F (Forestry) zone to the SP-12 (Quarry) zone. Basically, the ORDER states that there was an error in zoning which is being recognized and corrected.

If you do not agree with this provisional ORDER, you have the right to appeal to the Klamath County Planning Commission for reconsideration. The appeal must be filed within 30 days from the date of mailing of this ORDER, or before 5:00 p.m. on 10/22/76.

The appeal procedure involves writing a letter to the Planning Department in which you state "I appeal Administrative Zone Correction No. 76-13 to the Klamath County Planning Commission." You must sign your letter and enclose a \$50 fee to cover processing costs.

If you require more information on this matter, please contact this office at 882-2501, Extension 285, or write to:

Klamath County Planning Department
Klamath County Courthouse
Klamath Falls, Oregon 97601

Richard W. Swanson
Klamath County Planning Director

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 24th day of September A.D., 19 76 at 2:34 o'clock P. M., and duly recorded in Vol M76 of Deeds on Page 15061.

FEE no fee

WM. D. MILNE, County Clerk

By [Signature] Deputy