Department of Community Services Land Use Planning Division www.multco.us/landuse



1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File:

T2-2015-4663

Permit:

Significant Environmental Concern

Location:

37000 SE Gordon Creek Road

Tax Lot 600, Section 11D,

Township 1 South, Range 4 East, W.M Tax Acct: R994110190 (R341728)

Applicants:

John Fouch

Owners:

Anselmo Zermeno & Tara Pfaff

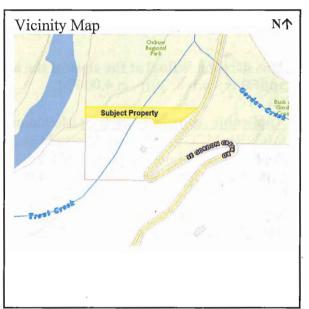
Base Zone:

Commercial Forest Use -4 (CFU-4)

Overlays:

Significant Environmental Concern

(Sandy Wild & Scenic River)



Summary:

Type I Lot of Record Determination and Type II Significant Environmental Concern permit for the replacement of a portion of the existing dwelling that is single level which currently includes a small family room and the attached garage with reconstruction in the same footprint to be a family room with a small second story addition of a 42.8 square feet bathroom.

Decision:

Approved with Conditions

Unless appealed, this decision is effective April 11, 2016, at 4:00 PM.

Issued by:

By:

George A. Plummer, Planner

For:

Michael Cerbone, AICP

Planning Director

Date: March 28, 2016

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George Plummer, planner at (503) 988-0202 or george.a.plummer@multco.us.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is April 8, 2016, at 4:00 PM

<u>Applicable Approval Criteria:</u> Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 35.2220(D) Allowed Uses, MCC 35.2256 Forest Practices Setbacks and Fire Safety Zones, 35.2275 Lot Of Record, MCC 35.4500: Significant Environmental Concern MCC 35.4555 Criteria For SEC Permit, and MCRR 4.000:Access

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.multco.us/landuse

Scope of Approval

- 1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
- 2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690 as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The dwelling shall be built as proposed (Exhibit A.2, A.3 and A.15) using either wood or compost plank siding and composition shingle roofing. No metal roofing shall be installed. The exterior colors of the siding, trim and the roofing shall match the exterior colors of the existing dwelling or be dark earth tone colors (the Columbia Gorge Color chart may be used as a guide). Outdoor light

- fixtures shall be hooded and shield so as to direct the light downward. Low reflective windows shall be used with visible light reflectivity of 12 percent or less. [MCC 35.4555(L)]
- 2. Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to the approval from the Oregon Parks and Recreation Commission included as Exhibit A.10. Oregon Parks and Recreation Commission included six conditions that must be met by the proposed development. [MCC 35.4510(C)]
- 3. If any archaeological artifacts or human remains are discovered on-site in the development area during the project all work shall stop immediately and the property owner or contractor shall notify County Planning and other proper authorities. The work stoppage shall continue until state and federal laws and rules are met and further work is authorized. [MCC 35.4555(H)]
- 4. If there will be soil disturbance on site resulting from the project, erosion control shall be shown on the site plan submitted for the building permit zoning signoff per minimal impact standards in MCC 29.333 [MCC 29.MCC 35.4555(G) and MCC 35.4555(J)]
- 5. Prior to Land Use Planning signoff for the building permit, the property shall obtain a Floodplain Development permit. The application submittal for the permit shall include a FEMA Elevation Certificate completed by an Oregon Registered Surveyor. [MCC 35.4555(I)]
- 6. The property owners shall maintain the Primary Fire Safety Zones on the subject property and Secondary Fire Safety Zone to extent possible as described below [MCC 35.2256(D)]:
 - (a) Primary Fire Safety Zone
 - A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches with-in 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.
 - (b) Secondary Fire Safety Zone
 - A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.
- 7. Prior to Land Use Planning signoff for the building permit, the property owners shall apply with County Transportation for a Right-of-Way Access Permit for a driveway access onto Gordon Creek Road. [MCRR 4.000]

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call George Plummer, planner at (503) 988-0202 or george.a.plummer@multco.us for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Submit three sets of plans, including with each a site plan (first page) and building plans for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1. Project Description:

Staff: Type I Lot of Record Determination and Type II Significant Environmental Concern permit for the replacement of a portion of the existing dwelling that is single level which currently includes a small family room and the attached garage with reconstruction in the same footprint to be a family room with a small second story addition of a 42.8 square feet bathroom.

2. Property Description & History

Staff: The property is accessed from Gordon Creek Road with the driveway crossing a neighboring property. The existing single family dwelling was established through a Building Permit (Number 24270) approval in 1961. While the dwelling has a daylight basement, the project area of the dwelling is relatively flat. Approximately 30 feet to the west of the dwelling, the slope drops off abruptly to the Trout Creek and Sandy River stream bottom lands area formed by repetitive flooding.

3. Base Zone Criteria:

3.1. Review Uses

MCC 35.2225: The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

- (A) Expansion, replacement or restoration of an existing lawfully established habitable dwelling.
 - (1) In the case of a replacement dwelling, the existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

MCC 35.0005: Habitable dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (c) Has interior wiring for interior lights;
- (d) Has a heating system; and
- (e) Was lawfully established.

Staff: The existing dwelling was approved through Building Permit Number 24270 dated 7/27/61 (Exhibit A.7). The applicant submitted photographs of the features listed in MCC 35.0005 demonstrating the existing dwelling is a habitable dwelling (Exhibit A.9).

3.2. Forest Practices Setbacks and Fire Safety Zones

MCC 35.2256: The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

Use	Use Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintaine d Road (feet)	All Other Setback s (feet)	Fire Safety Zone Requirements (FSZ)
At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling	May maintain current nonconforming setback but shall increase to 30 ft. if less than 30 ft.	30	30	Primary required; Maintenance of vegetation in the Secondary is required to the extent possible

(D) Fire Safety Zones on the Subject Tract

- (1) Primary Fire Safety Zone
 - (a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.
 - (b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet		
Less than 10	No additional required		
Less than 20	50 additional		
Less than 25	75 additional		
Less than 40	100 additional		

(2) Secondary Fire Safety Zone:

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 35.2310.

* * *

- (4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.
- (5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: The proposal includes replacing a small portion of the existing dwelling and the adjacent attached single story garage. The construction will take place in the existing footprint of the removed portion of the dwelling. No change in setbacks is proposed.

A condition will require the primary fire safety zone be maintained and secondary fire safety zones be maintained be maintained to extent possible. This standard met through a condition.

3.3. Lot Of Record

MCC 35.2275(A): In addition to the *Lot of Record* definition standards in MCC 35.0005, for the purposes of this district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2) A group of contiguous parcels or lots:
- (a) Which were held under the same ownership on February 20, 1990; and
- (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

MCC 35.0005: Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Re-cord is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 35.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

Staff: The applicant has submitted a warranty deed filed with County Records on 7/26/1961, in Book 2073 on Page 194 (Exhibit A.6). The legal description matches the current deed (Exhibit A.5). The property is 2.7 acres. The property was zoned F-2 in 1961 with a minimum parcel size of two acres. In 1961 it was legal to create a single property by deed. Thus the property

met the zoning and land division requirements when it was created. No adjacent property was in the same ownership on February 20, 1990. The property is a lot of record. *These standards are met*.

4. SIGNIFICANT ENVIRONMENTAL CONCERN

4.1. **SEC Permit Required**

MCC 35.4510 (A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 35.4515, shall be subject to an SEC permit.

* * *

MCC 35.4510(C): Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.

Staff: The proposed development is located within the SEC Overlay Zone requiring an SEC permit The development is required to be approved by Oregon Parks and Recreation Department. Andrea Berkley, Natural Resource Specialist, Oregon Parks and Recreation Department has submitted a letter (Exhibit A.10) stating

"Oregon Parks and Recreation Commission grants approval to remodel the existing single family dwelling ..."

The Oregon Parks and Recreation Commission approval included six conditions. A condition of approval for this decision (T2-2015-4663) will require the Oregon Parks and Recreation Commission conditions be met. *This standard is met through a condition of approval*.

4.2. Criteria For Approval Of Sec Permit

4.2.1. MCC 35.4555(A): The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

Staff: The area on the subject property between the river and the dwelling is forested, resulting in a natural landscape (Exhibit B.3). The work will not reduce any of the existing natural landscaping. *This standard is met*.

4.2.2. MCC 35.4555(B): Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff: The project is within the previously developed area on the property and will use the existing footprint of the dwelling, thus preserving and maintaining the forest land on the property (Exhibit A.3 and B.3). There is no farmland on the property. *This standard is met*.

4.2.3. MCC 35.4555(C): A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Staff: The project is within the previously developed area on the property, and will use the existing footprint of the dwelling. The dwelling is located in an area screened from the river with a heavily forested area surrounding the dwelling (Exhibit A.9). *This standard is met*.

4.2.4. MCC 35.4555(D): Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

Staff: There is no recreational component for this proposed development. *This standard is not applicable.*

4.2.5. MCC 35.4555(E): The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Staff: The applicant has provided the fire district access and flow reviews (Exhibits A.12) demonstrating protection of the public safety and of public and private property for emergency services. The dwelling will be protected from vandalism and trespass by the property owner and the County Sheriff's Department. *This standard is met*.

4.2.6. MCC 35.4555(F): Significant fish and wildlife habitats shall be protected.

Staff: Trout Creek is about 205 feet from the existing dwelling location. The footprint of the dwelling will remain unchanged. The proposed replacement area and small second story addition will have no increased impact to the stream, thus there would be no impact on fish habitat. *This standard is met*.

4.2.7. MCC 35.4555(G): The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

Staff: Trout Creek is about 205 feet from the dwelling location. The new construction will take place in the same footprint as the portion of the dwelling that was removed. The garage and flat roof portion of the existing dwelling will be removed including the foundation and be replaced. The proposed replacement and second story addition will have no increased impact to the stream. The heavily forest riparian area will not be impacted by the project. Any soil disturbance related to the project, will be minor given they are using the existing foot print area thus no excavation or grading needed. The area around the project area is relatively flat. If the project will result in any soil disturbance, the applicant will need to include an erosion control plan on the site plan for the building permit zoning signoff. A condition will require submission of a minimal impact erosion control plan if there will be soil disturbance. *This standard is met through a condition of approval*.

4.2.8. MCC 35.4555(H): Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff: There are no known archeological areas near this project. A condition will require that if any archeological artifacts or human remains are found during construction that all work must stop until the site is investigated and state and federal laws are met. There will be no new areas disturbed. *This standard is met through a condition of approval.*

4.2.9. MCC 35.4555(I): Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

Staff: There is 100 year-floodplain area covering about two-thirds of the property. FEMA requires a Floodplain Development permit be obtained when the property includes a mapped floodplain. It appears the dwelling is outside the floodplain but that needs to be confirmed by an Oregon Registered Surveyor through an Elevation Certificate. The proposed project will retain areas as they currently exist in a natural state to the maximum extent possible given the project will use the existing footprint of the dwelling. A condition of approval will require a Floodplain Development permit be obtained. *This standard is met through a condition of approval.*

4.2.10. MCC 35.4555(J): Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: If there will be any soil distance, the applicant will need to detail erosion control on the site plan. The proposed project meets the standards to be a minimum impact project, given the area surrounding the project area is relative flat and the dwelling is more than 200 feet from any stream. The applicant will need to install appropriate measures based on current Best Management Practices. This standard is required when County Land Use Planning reviews the plans for a building permit per Chapter 29 and this standard will be met through that process. A condition will require an erosion control plan if there will be soil disturbance. *This standard is met through a condition of approval.*

4.2.11. MCC 35.4555(K): The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

Staff: The proposed dwelling will not impact the quality of the air, water, and land resources and ambient noise levels for the Sandy River.

4.2.12. MCC 35.4555(L): The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

Staff: The only design of the existing dwelling will change with the a small second story addition in the location of what was a single level garage. The second story addition will also include a pitched roof. The second story addition will be 42.8 square feet over the new family room area that replaces the single story area that was a smaller family room and attached garage. The applicant states that the exterior (new) "materials to match or be similar to the existing materials." The existing exterior color is a muted tone of green and the roofing is brown composite shingles. These colors blend in well with the surrounding vegetation. The

plans show the replacement portion of the dwelling is proposed to have metal roofing. Metal roofing is highly reflective. The Oregon Parks and Recreation Department letter included as Exhibit A.10 that building materials not be reflective materials. A condition of approval will state that the metal roofing will not be allowed and that asphalt shingle be used instead. The outdoor lights will need to be hooded and screened to direct the light downward so as not to be seen from the SEC resource area. *These standards are met through conditions*.

4.2.13. MCC 35.4555(M): An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff: The area of the proposed project is not recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation. There will be no impact beyond footprint of the existing dwelling. *This standard is met*.

4.2.14. MCC 35.4555(N): The applicable policies of the Comprehensive Plan shall be satisfied.

Policy 37: Water and Disposal Systems

Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or Shall have an adequate private water system, and a public sewer with adequate capacity.

Policy 37: Drainage

Shall have adequate capacity in the storm water system to handle the run-off; or The water run-off shall be handled on the site or adequate provisions shall be made; and

The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Policy 38: Facilities

There is adequate water pressure and flow for fire fighting purposes; and The appropriate fire district has had an opportunity to review and comments on the proposal.

Staff: Except for the policies listed above, the policies of the Comprehensive Plan and East of the Sandy River Rural Plan are addressed through the findings in this section above. The property has an existing water source serving the exiting dwelling which will continue to be used. The applicant submitted the Certificate for On-Site Sewage Disposal signed by the City of Portland Sanitarian certifying the existing septic system (Exhibit A.11). The applicant has submitted Fire District Reviews for flow and access (Exhibits A.12). The drainage will remain the same.

5. MULTNOMAH COUNTY ROAD RULES TRANSPORTATION STANDARDS

MCRR 4.000 Access to County Roads

Staff: There is no Right-of-Way Access permit on file. Access is taken from Gordon Creek Road with a driveway crossing a neighboring property. County Transportation will need to confirm that there is legal access across that property, such as a filed easement agreement. A condition will require proof of legal access across the neighbor's property (easement). The property owner will need to obtain a Right-of-Way Access Permit for the Gordon Creek Road access.

6. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the determination that property is a Lot of Record and approval of the SEC Permit replacement of a portion of the dwelling/attached garage and to add a small second story addition to the single family dwelling in the CFU-4 zone. This approval is subject to the conditions of approval established in this report.

7. Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted	
A.1	1	Application Form	11/24/15	
A.2	2	Narrative	11/24/15	
A.3	4	Site location map	11/24/15	
A.4	3	Elevation drawings and floor plan	11/24/15	
A.5	3	Subject property's Warranty Deed filed with County Records on 11/08/2013 as Instrument Number 2013-147168	11/24/15	
A.6	1	Subject property's Warranty Deed filed with County Records 7/26/1961 in Book 2073 on Page 194	11/24/15	
A.7	2	Multnomah County Permit File Card indicating a Building Permit #24270 was obtained for the dwelling on 7/27/61 with inspection notes on the back (see finding 2)	11/24/15	
A.8	1	Multnomah County Permit File Card indicating a Building Permit #22951 was obtained for the dwelling on 3/30/61 with inspection notes on the back (see finding 2)	11/24/15	
A.9	12	Photos of the existing dwelling show "habitatable dwelling" feature and close by landscape	11/24/15	
A.10	1	November 19, 2015 letter to the applicant from Andrea Berkley, Natural Resource Specialist, Oregon Parks and Recreation Department address Sandy River Scenic Waterway conditions	11/24/15	

		for project	
A.11	1	Completed Septic Review Certification	11/24/15
A.12	1	Completed Fire District Review	11/24/15
A.13	1	Milguard Windows Brochure with 12% reflectivity written on it	11/24/15
A.14	1	Site plan showing whole property	11/24/15
A.15	6	Full sized plans signed by Fire District Official	11/24/15
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2012 Aerial Photo of the property	NA