

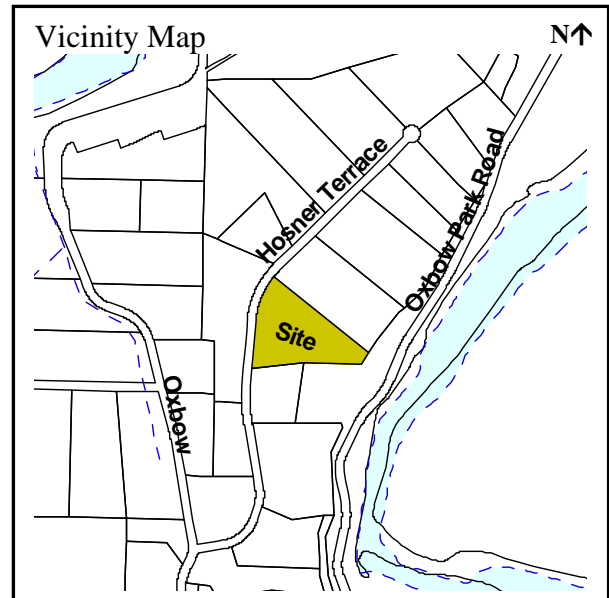


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2010-914
Permit: Significant Environmental Concern
Location: 3810 SE Hosner Terrace
TL 400, Sec 10CB, T 1S, R 4E, W.M.
Tax Account #R994100320
Applicant: Martin Karge
Mak Homes Inc.
Owner: Warren & Patricia Prevosto
Base Zone: Rural Residential (RR)
Overlays: Significant Environmental Concern for
scenic waterways (SEC-sw) & wildlife
habitat (SEC-h) / Hillside Development
(HD)
Rural Area: West of Sandy River



Summary: Applicant is requesting to construct an addition on the north side, a covered patio structure on the east side of the dwelling and an attached storage area on the south side of the existing dwelling.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Wednesday, January 5, 2011, at 4:00 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, December 22, 2010

Instrument Number for Recording Purposes: #2003187256

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 Adam Barber, Senior Planner at 503-988-3043, ext. 22599.

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 Wednesday, January 5, 2011 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

Rural Residential: - MCC 36.3120 Allowed Uses. MCC 36.3155 Dimensional Standards and Development Requirements, and MCC 36.3170 Lot of Record.

Significant Environmental Concern: MCC 36.4515 Uses - SEC Permit Required, MCC 36.4540 Application for SEC Permit, and MCC 36.4545 Criteria for Approval of SEC-sw Permit - Scenic Waterway.

Copies of the referenced Multnomah County Code (MCC) 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 (2) years from the date the decision is final if; (a) development action has not been initiated; and (b) building permits have not been issued; and any required documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0700, 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. After the decision is final and prior to building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval with the County Recorder along

with a copy of the site plan (Exhibit A.20). The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense. [MCC 37.0670]

2. Prior to land use sign-off of the building permit, the property owners shall sign and record a covenant that states they recognize and accept farm activities including tilling, spraying, harvesting, and farm management activities during irregular times occur on adjacent property and in the general area. A copy of this form may be obtained from Multnomah County Land Use Planning. [MCC 36.3155(H)]
3. Prior to land use sign-off of the building permit and any ground disturbance for the proposed development, the property owners or their representatives shall demonstrate compliance with the County's Grading and Erosion Control ordinance. [MCC 36.4545(G)]
4. Exterior lighting on the proposed additions and under the covered patio shall be directed downward and sited, hooded and shielded such that it is not highly visible from the Sandy River Scenic Waterway. Shielding and hooding of exterior lighting shall be composed of non-reflective, opaque materials. [MCC 36.4545(H)]
5. Storm run-off attributed to this development shall be handled with a drainage system installed in accordance with the specifications contained in the report prepared by Craig Christensen, Registered Professional Engineer (Exhibit A.13 & A.14). [MCC 36.3155(F)]
6. All present and future property owners shall be responsible for the proper maintenance and survival of screening vegetation shown and labeled on the site plan included as Exhibit A.20. Any of these trees damaged or destroyed by inclement weather or disease to the extent that they no longer screen the development from the Sandy River shall be replaced with the same tree species within the next planting season. Replacement tree shall be at least 6-ft tall at time of planting and shall be placed in the same general location. [MCC 36.4545(E)]
7. The building materials shall be as represented in the application. The siding of the proposed buildings shall be beveled cedar siding and roofing shall be architectural composition roof shingles, as submitted and labeled as Exhibit A.16, A.17 & A.18. The proposed building shall be painted to match the two color chip samples from Rodda Paint (Exhibit A.17), titled Antigua Rose (#8775) for the body and Off-White (OWC4) for the trim and the roofing shall be Pewter Gray. [MCC 36.4545(H)]
8. If any Cultural Resources and/or Archaeological Resources are located or discovered on the property during this project, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts, the following procedures shall be implemented: [MCC 36.4545(F)]

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 the Staff Planner, Lisa Estrin at (503) 988-3043 ext. 22597, 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. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

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.

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*.

1.00 Project Description:

Staff: The applicant would like to build three additions to the existing dwelling located at 3810 SE Hosner Terrace. The additions consist of a master suite at the northern end, a covered patio on the east side and a storage area on the southern end of the dwelling. The proposed additions will have rooflines consistent with the existing rooflines. Dark (Pewter) architectural composition roof materials will be used for the additions. The master suite and storage additions will have beveled cedar siding painted (Antique Rose – Rodda Paint) a medium brown with an off-white trim on the windows.

2.00 Rural Residential (RR) Criteria:

2.01 MCC 36.3120 Allowed Uses.

(D) Residential use consisting of a single family dwelling constructed on a Lot of Record.

Staff: The proposed project is to construct three separate additions to an existing single family dwelling. The subject property contains a single family dwelling constructed in 1966 on a Lot of Record. See section 2.06 for additional Lot of Record findings. *This criterion is satisfied.*

2.02 MCC 36.3155 Dimensional Standards and Development Requirements.

All development proposed in this district shall comply with the applicable provisions of this section.

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: The building elevations (Exhibit A.7 through A.10) show that the dwelling and additions will be less than 20 ft in height. After the construction of the additions to the dwelling, the building will be at least 20 ft from the northern side property line, approximately 300 ft from the eastern (rear yard) property line adjacent to the Sandy River, approximately 275 ft from the western (front yard) property line adjacent to Hosner Terrace and approximately 140 ft from the southern side property line. Hosner Terrace is a 50 ft public right-of-way. The Multnomah County Functional Classification of Trafficways map designates Hosner Terrace as a *Local Road*. The County’s standard width for a *Local Road* right-of-way is 50 ft. No additional right-of-way is required for this designation, so no additional yard depth is required. The proposed additions and existing dwelling meet the yard requirements listed above. *These*

criteria are satisfied.

- 2.03 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces that are greater than 400 square feet in area. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The Sanitarian, Erin Mick has indicated that the on-site sewage disposal system is adequate for the existing dwelling and proposed additions and that the additions will not impact the system (Exhibit A.3). The system is located west of the existing dwelling on the subject property (Exhibit A.4). A stormwater certificate was completed by Craig Christensen, Registered Professional Engineer and he indicates an on-site storm water drainage control system is required (Exhibit A.13). A turf and landscape area drain system has been designed and will be located north of the existing storage building (Exhibit A.14 & A.20). *These criteria are satisfied.*

- 2.04 (G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: Ground disturbance will be limited to the master bedroom addition (20 ft wide by 40 ft long) and footings for the covered patio. It is likely that the subject development will qualify as a Minimal Impact Project and will need to show erosion control on the plan before land use sign-off of the building permit. A condition of approval has been included requiring that the project meets the Grading and Erosion Control ordinance. *As conditioned, this criterion is satisfied.*

- 2.05 (H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: The property to the south has two green houses and appears to be involved in farming activities. In addition, there are properties in the area that are being used for farm uses. A condition of approval has been included requiring the recordation of the above covenant for non-EFU zoned lands.

- 2.06 MCC 36.3170 Lot of Record.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the

purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following: ...

Staff: The subject property was created in 1967 by a warranty deed recorded in Book 527, Page 480. The current property is 4.44 acres and fronts Hosner Terrace (a public road). In 1967, the property was zoned F-2 (Agricultural District). The F-2 district had a minimum lot size of 2 acres. The subject property met the minimum lot size at the time of its creation. *The subject property is a Lot of Record.*

2.07 MCC 36.3180 Off-Street Parking and Loading.

Off-street parking and loading shall be provided as required by MCC 36.4100 through 36.4220.

Staff: The Off-Street Parking code requires for a single family dwelling two parking spaces either in a garage or outside. The subject property is occupied by an existing single family dwelling with an attached two car garage. *This criterion is satisfied.*

2.08 MCC 36.3185 Access.

All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles, except as provided for Lots of Record at MCC 36.3170(B).

Staff: The subject property fronts Hosner Terrace Road. Hosner Terrace Road is a public street. *This criterion is satisfied.*

3.00 Significant Environmental Concern for Scenic Waterways

3.01 MCC 36.4525 Existing Uses.

Uses that legally existed on January 1, 2003, that are not included as Exceptions in section 36.4520, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under limited requirements in recognition of the pre-existing status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to the SEC ordinance, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of this Chapter.

(A) Change, expansion, or alteration of existing uses shall require an SEC permit as provided in 36.4500 through 36.4560, except for changes to a structure as described in Sections (1) or (2) below;

(1) In areas subject to the provisions of the SEC-sw, change, or alteration of existing uses which do not require any modification to the exterior of the structure;

(2) Within the SEC-wr and SEC-h - addition of less than 400 square feet of ground coverage to the structure. This provision is intended to allow a maximum of 400 square feet of additional coverage to the structure that existed on the effective date of this ordinance.

Staff: The existing single family dwelling was lawfully established on the subject site in the

year 1967. The existing dwelling is located outside of the SEC-h overlay zone on the site. The proposed patio cover will protect an existing cement slab and does not add any additional ground cover to the site. The proposed storage addition adjacent to the garage is also on existing asphalt. The proposed master bedroom addition located on the northern end of the dwelling is new ground coverage, but is chiefly outside of the SEC-h overlay. Maybe the first 5 feet (5 ft wide by 20 ft long) on the eastern side of the addition is in the overlay for an expansion of ground cover of 100 sq. ft. Since the proposed development will alter the existing size of the single family dwelling, a Significant Environmental Concern for scenic waterways (SEC-sw) permit is required. *The project is exempt from obtaining a Significant Environmental Concern permit for wildlife habitat (SEC-h).*

3.02 MCC 36.4545 Criteria for Approval of SEC-sw Permit – Scenic Waterway.

The SEC-sw designation shall apply to those wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. An application shall not be approved unless it contains the information in 36.4540(A) and (B). Any proposed activity or use requiring an SEC-sw permit shall be subject to the following:

(A) Submittal of a letter from the Oregon Parks and Recreation Department which indicates that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.

Staff: The applicant has provided a letter from the Oregon Park & Recreation Department (OPRD) indicating that the additions can go forward subject to compliance with OAR 736-040-0035(7). OPRD finds the additions are in compliance due to topography and vegetation (Exhibit A.19). *This criterion is satisfied.*

3.03 (B) 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 location of the existing dwelling at 329 ft from the eastern property line sets the distance between the additions and the Sandy River (Exhibit A.20). While the covered patio could technically be further away from the river, its size is such that it does not infringe on the aesthetic enhancement, open space or vegetation existing between the two. The master bedroom and storage additions match the existing roof line to the east and do not extend past it to the east. *This criterion is satisfied.*

3.04 (C) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff: The subject property is currently used for a mixture of residential and farm use (Exhibit B.1). The proposed additions are to the existing residential dwelling and will not encroach into the area of the property used for farm practices. *This criterion is satisfied.*

3.05 (D) 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 existing dwelling establishes the general location for the three additions (Exhibit A.20 & A.16). No trees will need to be removed. Two additions utilize areas already in impervious surface and the master bedroom is located away from the farm uses and significant forested vegetation. *This criterion is satisfied.*

3.06 (E) 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.

Staff: The existing dwelling and proposed additions are approximately 329 feet from the eastern property line (Exhibit A.20). The Sandy River is 570 feet to the east of the homesite. Between the dwelling and additions and the river is a mixture of deciduous and evergreen trees and natural vegetation. This vegetation screens the existing dwelling and will also screen the proposed additions from the Sandy River. A condition of approval has been included to protect this vegetation to maintain the scenic quality of the Sandy River. Due to the existing location of the dwelling, the additions are as far from the River as is practicable while still meeting their intended purpose. *As conditioned, this criterion is satisfied.*

3.07 (F) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff: There are no known archaeological areas on the subject site. *This criterion is not applicable.*

3.08 (G) 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: The covered patio and storage additions are located on existing impervious areas. For the covered patio, no ground disturbance other than for a few footings will occur. For the storage addition, the area is currently in asphalt. Ground disturbance will be for footings only. For the master bedroom addition, the area will need to be graded and footings dug. This is the largest area of disturbance at 40 ft wide by 60 ft long (2400 sq. ft) for the proposed development. A condition of approval has been included requiring that the development demonstrate compliance with the County's Grading and Erosion Control ordinance. *As conditioned, this criterion is satisfied.*

3.09 (H) 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 additions consist of a master suite at the northern end, a covered patio on the east side and a storage area on the southern end of the dwelling (Exhibit A.20). The proposed additions will have rooflines consistent with the existing rooflines (Exhibit A.16). Dark (Pewter) architectural composition roof materials will be used for the additions (Exhibit A.18) and are consistent with existing (A.21). The master suite and storage will have beveled cedar siding painted (Antique Rose – Rodda Paint) a medium brown with an off-white trim on the windows (Exhibit A.17 & A.21). If there was not 329 ft of vegetation between the dwelling and the Sandy River, the colors would be too light and would draw attention to the structure. Since there is dense vegetation between the building and the river, the visual quality of areas of significant environmental concern is not affected. *This criterion is satisfied.*

3.10 (I) 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 proposed additions and existing dwelling are surrounded by lawn (Exhibit A.20).

The covered patio and storage addition will be located on existing impervious area. The master bedroom will only remove existing lawn area for the addition. No natural vegetation will be disturbed. *This criterion is satisfied.*

4.00 Hillside Development Criteria

4.01 MCC 36.5510 Exempt Land Uses and Activities.

The following are exempt from the provisions of this Chapter:

(B) General Exemptions - All land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if :

(1) Natural and finished slopes will be less than 25 percent; and,

Staff: The topography where the existing dwelling is located is flat. Contour information shows no elevation changes identified (Exhibit A.20). *This criterion is satisfied.*

4.02 (2) The disturbed or filled area is 20,000 square feet or less; and,

Staff: The proposed patio cover and storage addition will be constructed on existing impervious surfaces (Exhibit A.2 & A.21). Ground disturbance for the master bedroom addition will be approximately 40 ft wide by 65 ft long (2,600 sq. ft.). Installation of the stormwater system will have a 60 ft long by 3 ft wide soakage trench (180 sq. ft.) and a small trench (.5 ft x 100 ft = 50 sq. ft.) for the ABS pipe from the gutter system on the dwelling. Staff calculates the disturbed area to be 2,830 sq. ft. *This criterion is satisfied.*

4.03 (3) The volume of soil or earth materials to be stored is 10 cubic yards or less; and,

Staff: The applicant has indicated that the amount of earth material to be stored will be between 8 and 9 cubic yards. *This criterion is satisfied.*

4.04 (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,

Staff: The master bedroom addition will create 20 ft wide by 40 ft long (800 sq. ft) new impervious surface. The storage addition and new covered patio will be built on existing impervious surfaces. Ground disturbance will be approximately 2,830 sq. ft. *This criterion is satisfied.*

4.05 (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,

Staff: The master bedroom addition of 800 sq. ft. is the only new impervious surface being created. The other two additions are over existing paved areas. *This criterion is satisfied.*

4.06 (6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.

Staff: The subject property is located at least 500 ft from the Sandy River. There are no known drainageways that will be affected. *This criterion is satisfied.*

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit to establish three additions to an existing single family dwelling in the Rural Residential (RR) zone. This approval is subject to the conditions of approval established in this report. The project is exempt from the Hillside Development and Significant Environmental Concern for wildlife habitat regulations.

6.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2010-914 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	9/9/2010
A.2	1	SEC Narrative Dated 8/27/10	9/9/2010
A.3	4	Certification of On-Site Sewage Disposal Form	9/9/2010
		a. Authorization Notice for Connection to an Existing Subsurface System	
		b. Site Plan Signed by Sanitarian	
		c. Floor Plan Signed by Sanitarian	
A.4	1	Site Plan Dated 8.30.2010	9/9/2010
A.5	1	Floor Plan Detail for Master Bedroom Addition	9/9/2010
A.6	1	Existing Floor Plan of House Layout	9/9/2010
A.7	1	Front Elevation	9/9/2010
A.8	1	Right Elevation	9/9/2010
A.9	1	Left Elevation	9/9/2010
A.10	1	Rear Elevation	9/9/2010
A.11	5	Fire District Review – Fire Flow Requirements	9/9/2010
A.12	5	Fire District Access Review	9/9/2010
A.13	1	Storm Water Certificate	9/9/2010
A.14	2	Soakage Trench Design	9/9/2010
A.15	8	Metro Scan Property Profile for 3810 SE Hosner Terrace – 2 pgs	9/9/2010
		a. Statutory Warranty Deed Recorded 8/11/2003 – 2 pgs	
		b. Section Sheets – 4 pgs	

A.16	4	Elevations	10/12/2010
A.17	1	Color Chips	10/12/2010
A.18	4	Roofing Brochure	10/12/2010
A.19	1	Sandy River Scenic Waterway Letter from Oregon Parks & Recreation Department	10/12/2010
A.20	1	Revised Site Plan*	10/12/2010
A.21	1	Revised Narrative	10/12/2010
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information 1S4E10CB – 00400	9/9/2010
B.2	1	A&T Tax Map with Property Highlighted	No Date
‘C’	#	Administration & Procedures	Date
C.1	5	Incomplete Letter	10/7/2010
C.2	1	Applicant’s Acceptance of 180 Day Clock	
C.3	1	Complete Letter (Day 1)	10/27/2010
C.4	8	Opportunity to Comment	11/5/2010
C.5	11	Administrative Decision	12/22/2010