City of San Antonio, Texas

Department of Development Services

June 21, 2007

Connie Basel
Brown P.C. Attorneys at Law
112 E. Pecan, Suite 1490
San Antonio, TX 78205

RE: Rights Determination File: # 07-05-036 (Dym Tract) revised

Dear Ms. Basel:

We have reviewed your rights determination that was requested on May 22, 2007. Based on the information provided the following is our official finding:

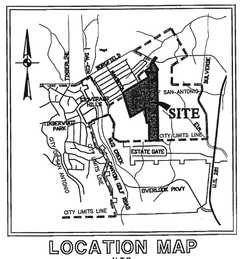
Recognize rights effective August 1, 2006, for 366 single family residential dwellings and other uses as shown on, but not to exceed, the total acreage of MDP# 039-06 land use table.

All appeals and resubmittals must be filed with the Director of Development Services within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. Appeals and resubmittals made after fifteen (15) calendar days will not be accepted. If you have any further questions please contact Melissa Ramirez at 207-7038.

Sincerely,

Fernando J. De León, P.E.
Assistant Director Development Services Department
Land Development Division

Exhibit 2



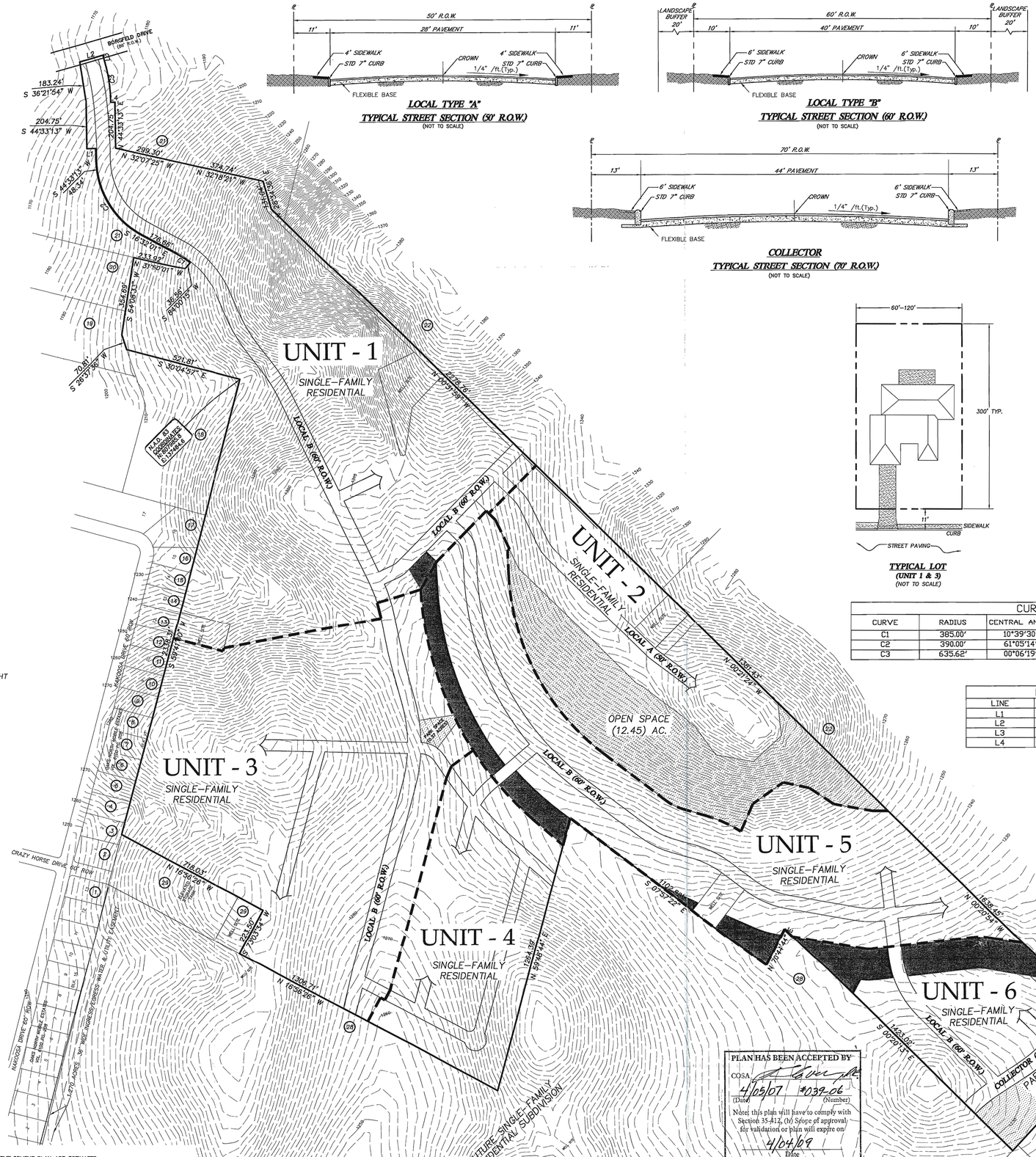
LOCATION MAP
N.T.S.

SCALE : 1"=200'

0' 200' 600'
400'

LEGEND

- MDP BOUNDARY LIMITS
- FLOOD PLAIN
- PHASE LINE
- DRAINAGE EASEMENT
- GREEN BELTS/ PARK SPACE
- LOCAL "B" TO LOCAL "A"
- (1) OWNERSHIP INFORMATION SEE PROPERTY OWNERSHIP KEY



City of San Antonio, Texas

Department of Development Services

June 5, 2007

Connie Basel
Brown P.C. Attorneys at Law
112 E. Pecan, Suite 1490
San Antonio, TX 78205

RE: Rights Determination File: # 07-05-036 (Dym Tract)

Dear Ms. Basel:

We have reviewed your rights determination that was requested on May 22, 2007. Based on the information provided the following is our official finding:

Recognize rights effective August 1, 2006, for 366 single family residential dwellings on 133.21 acres and other uses as shown on the land use table in accordance with the unit phasing table shown on MDP# 039-06. Please note that the Fair Notice submitted (FN07-0060) does not reflect the land uses and acreage indicated on the accepted MDP # 037-06 (Dym Tract). FN07-0060 shall be resubmitted to reflect the accepted MDP.

All appeals and resubmittals must be filed with the Director of Development Services within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. Appeals and resubmittals made after fifteen (15) calendar days will not be accepted. If you have any further questions please contact Melissa Ramirez at 207-7038.

Sincerely,

Fernando J. De León, P.E.
Assistant Director Development Services Department
Land Development Division

VRP# 07-05-036

City of San Antonio

Development Services Department

Fair Notice Form

Date: May 17, 2007 **Notice Number:** FN07-0060

1. ***Original Fair Notice Form Number if Applicable:*** N/A
2. ***Existing Vested Rights Permit No. if applicable:*** N/A

COSA USE ONLY

Expiration date: 7/22/07 **Authorized Rep:** Michael A. Gutierrez

3. ***If a permit application identified in item (6) below is not completed (Administratively) within 45 days from the filing date of this form, this notice will be null and void.***
4. ***All submittals with (*) require a site plan. A site plan shall include lot layout, general building footprint with approximate square footage of building(s), impervious cover, and land use.***
5. ***All single plat, Multiple Land Use projects must complete (# 7) of this form.***

6. ***Permit application Type (Check all appropriate boxes):***

☐ Building Permit: No._____

☐ Military Airport Overlay Zone (MAOZ) No._____

☐ Master Development Plan (MDP) (Formerly POADP) No._____

☐ P.U.D. Plan No._____

☒ MDP/ P.U.D. Plan (Combination) No. 039-06

☐ Mixed Use District (MXD) No._____

☐ Master Plan Community District (MPCD) No. _____

☐ Traditional Neighborhood Development (TND) No. _____

☐ Manufactured Home Park Plan (MHPP) No._____

☐ Pedestrian Plan (PP) No._____

☐ Flexible Development District No._____

☐ Single-Family (Residential) Plat No._____

☐ Urban Development (UD) ☐ Rural Development (RD)

☐ Farm and Ranch (FR) ☐ Mix Light Industrial (MI-1)

05-22-07 A09:06 IN 05-22-07 A09:46 IN 1

FN07-0060

VRP# 07-05-036

City of San Antonio Development Services Department

Fair Notice Form

(Con't)

The following projects require a site plan.

A site plan shall include, lot layout, general building footprint with approximate square footage of building(s), and land use.

*☐ SAWS/ Utilities No._____ *☐ Category Determination Letter from SAWS: _____

*☐ CPS Energy/ Utilities No._____ *☐Other: _____

*☐ Application for Letter of Certification (LOC) (Subdivision Plat No. issued): _____

The following single plat projects require a site plan:

*☐ Multi-Family *☐ Commercial *☐ Office *☐ Industrial

*☐ Multiple Land Use Projects (**Complete # 7**) *☐ Entertainment *☐ Special District

*☒ Other: Residential

7. ***For all single plat, Multiple Land Use Projects please complete the following:***

(a) Single - Family: Allocation in Square Feet & Acreage ±8,186,666.4 S.F. (±187.94 Acres)
Use Allocation in Square Feet & Acreage ± 7,367,999.7 S.F. (±169 Acres)
Density 367 single family residential lots

(b) Multi -Family: Land Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____
Density _____

(c) Commercial: Land Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____

(d) Office: Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____

(e) Industrial: Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____

(e) Entertainment: Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____

(e) Other Special District(s): Allocation in Square Feet & Acreage _____
Use Allocation in Square Feet & Acreage _____

05-22-07 A09:06 IN 05-22-07 A09:43 IN

FN07-0060

VRP# 07-05-036

City of San Antonio Development Services Department
Fair Notice Form
(Con't)

8. Project Name: Dym Tract

Property Description: 187.94 acre, 8,186,603 square feet more or less, tract of land being out of a 181.81 acre tract conveyed to Borgfeld Partners, LTD., recorded in Volume 11187, Pages 48-65, of the deed records of Bexar County, Texas, out of the Guadalupe College Survey No. 417, Abstract No. 263, County Block 4852, the F.H. Uecker Survey No. 2, Abstract No. 1073, County Block 4851, the Theo Koester Survey No.1, Abstract No. 416, County Block 4849, and the E. Penshorn Survey No. 367, Abstract No. 591, County Block 4850, all in Bexar County, Texas.

Owner: Borgfeld Partners, LTD Phone: _____ Fax: _____

Address: 11815 IH 10 West City: San Antonio State TX Zip Code: 78232

Agent: Brown P.C. Phone: (210) 299-3704 Fax: (210) 299-4731

Address: 112 E. Pecan, Ste 1490 City: San Antonio State TX ZipCode: 78205

Applicant: Brown P.C. Phone: (210) 299-3704 Fax: (210) 299-4731

Address: 112 E. Pecan, Ste 1490 City: San Antonio State TX ZipCode: 78205

Engineer/Surveyor: Pape-Dawson Engineers Inc

Address: 555 East Ramsey Phone#: (210) 375-9000

City: San Antonio State: TX Zip code: 78216

Contact Person Name: Connie L. Basel E-mail: Connie@KBrownPC.com
Phone: (210) 299-3704 Fax: (210) 299-4731

Site is over/within/includes:

Edwards Aquifer Recharge Zone: ☐ Yes ☒ No San Antonio City Limits. ☐ Yes ☒ No

Council District: OCL School District: Comal ISD Ferguson map grid: 451 C2-C3

Owner or Authorized Representative:

I certify that this Fair Notice form is true and accurate.

Print Name: Connie L. Basel Signature: Connie L Basel

Address: 112 E. Pecan, Ste. 1490 City: San Antonio State TX ZipCode: 78205

E-mail: Connie@KBrownPC.com

NOTE: To be valid, all fields must be completed.

05-229958-A78-49FM 05-22-07 A08:46-MI

VRP# 07-05-036

KENNETH W. BROWN, AICP
DANIEL ORTIZ
PATRICK W. CHRISTENSEN
CONNIE L. BASEL

BROWN, P.C.
ATTORNEYS AT LAW

PAUL M. JUAREZ
OF COUNSEL

112 E. PECAN STREET
SUITE 1490
SAN ANTONIO, TEXAS 78205
TELEPHONE: 210.299.3704
FAX: 210.299.4731

May 17, 2007

Ms. Melissa Ramirez
Development Services Department
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, TX 78204

Via Hand Delivery

Mr. Norbert Hart
City Attorney's Office
City of San Antonio
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

Via Hand Delivery

Re: Vested Rights for a 187.94-Acre Tract of Land Generally Located Near the Intersection of Bulverde Road and Borgfeld Road in Bexar County, Texas (the "Subject Property"); *Our File No. 9000.047*

Dear Ms. Ramirez and Mr. Hart:

The purpose of this correspondence is to request the City of San Antonio's (the "COSA") acknowledgement of "vested rights" as of **August 1, 2006** for a single family residential project on the Subject Property, based upon the Dym Tract Master Development Plan 039-06, filed with the COSA on August 1, 2006, and approved by the COSA on April 5, 2007 ("MDP No. 039-06"). Accordingly, please find attached a Vested Rights Application and Fair Notice Form for the above-referenced property (the "Subject Property") (*see* **Exhibit 1**). This request is made pursuant to provisions of the COSA Unified Development Code (the "UDC"), Chapter 35, Article 7, Division 2 ("Vested Rights").

The Subject Property is a 187.94-Acre Tract of land generally located near the intersection of Bulverde Road and Borgfeld Road in San Antonio, Texas, and as further illustrated in MDP No. 039-06 (*see* **Exhibit 2**). The Subject Property is wholly included within MDP No. 039-06, which constitutes the first "permit" in a series of permits necessary for the development of the Subject Property, as that term is contemplated by Chapter 245 of the Texas Local Government Code (the "Code"). Perhaps more importantly, MDP No. 039-06 authorizes the development of the Subject Property for a single family residential use (the "Project").

As you know, a Master Development Plan is required by COSA pursuant to UDC §35-412 (a)(1), which states:

> "A master development plan shall be required in all instances when a tract of land within the city or its extraterritorial jurisdiction ("ETJ") requests subdivision plat approval in which the entire property will be subdivided in two (2) or more plat phases or units."

Section 245.001 of the Code explicitly provides that a "permit," as that term is used for vested rights purposes, includes:

> an "approval..., or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought."

Further, Section 245.002(a-1) of the Code provides:

> "[r]ights to which a permit applicant is entitled under this chapter accrue on the *filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought.* An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency (emphasis added)."

Clearly, MDP No. 039-06 is a required "permit" by a regulatory agency (i.e. the COSA) and qualifies as the first "permit" in a series of permits necessary for the development of the Subject Property. Accordingly, Vested Rights for MDP No. 039-06 accrued upon the August 1, 2006 filing of the application for MDP No. 039-06 with the COSA, as contemplated by Chapter 245 of the Code.

In conclusion, MDP No. 039-06 constitutes a "permit" as defined by Chapter 245 of the Code, and was a necessary first step in the development of the Subject Property. The "Project" was specifically described as a single family residential use on 187.94 acres in MDP No. 039-06, filed with COSA on August 1, 2006, and approved by the COSA on April 5, 2007. Therefore, this Firm requests that COSA acknowledge that the 187.94-Acre MDP No. 039-06 is vested as of August 1, 2006 for single family residential development by virtue of the application for MDP No. 039-06.

Included with this correspondence, please find enclosed a check for $500.00 to cover the costs of processing this application and duplicate copies of the following:

1. Vested Rights Permit Application and Fair Notice Form; and
2. MDP No. 039-06.

Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

BROWN, P.C.

BY: Connie L. Basel
Connie L. Basel

CLB/ea
Enclosures: As stated

File # VRP#07-05-036
Assigned by City Staff

EXHIBIT 2

City of San Antonio
Development Services Department
Local Government Code Chapter 245/Article VII
Unified Development Code
Rights Determination/Consent Agreement

Intake Date: _____ **Intake By:** _____

Type: ☒ **Rights Determination** ☐ **Consent Agreement**

Instructions:
1. All applicable information must be legibly printed or typed for processing. If completed on behalf of the property owner please attach power of attorney or letter of agent.
2. Please complete and attach 2 sets of all applicable documents (i.e. this form, Master Development Plan, P.U.D. plan, plat application, approved plat, building permit) along with appropriate fee.
3. Application must contain all information to establish rights under Chapter 245 of the Local Government Code and Article VII of the Unified Development Code (UDC).
4. Any appeal of the decision of the Director to the Planning Commission will be based on information submitted to the Director for determination of rights.

Note: Must comply with the UDC, §35-B128 Rights Determination for the City of San Antonio.

Owner: Borgfeld Partners, LTD

Agent: Brown P.C.

Phone: (210) 299-3704 Fax: (210) 299-4731

Address: 112 E. Pecan, Ste 1490, San Antonio, Texas 78205

City: San Antonio State: Texas Zip code: 78205

Engineer/Surveyor: Pape-Dawson Engineers Inc.

Address: 555 East Ramsey Phone#: (210) 375-9000

City: San Antonio State: TX Zip code: 78216

Name of Project: Dym Tract

(a) Site location or address of project and legal description: 187.94 acre, 8,186,603 square feet more or less, tract of land being out of a 181.81 acre tract conveyed to Borgfeld Partners, LTD., recorded in Volume 11187, Pages 48-65, of the deed records of Bexar County, Texas, out of the Guadalupe College Survey No. 417, Abstract No. 263, County Block 4852, the F.H. Uecker Survey No. 2, Abstract No. 1073, County Block 4851, the Theo Koester Survey No.1, Abstract No. 416, County Block 4849, and the E. Penshorn Survey No. 367, Abstract No. 591, County Block 4850, all in Bexar County, Texas.

VRP#07-05-036

File #_____
Assigned by City Staff

City Council District(s): OCL ETJ: Yes Edward's Aquifer Recharge Zone? No

1. **Describe current use(s) of the property:**
Vacant

2. **Describe the specific Project and the expected use(s) to be created by this Project including the nature, extent, and density or intensity of each use for which rights are being claimed (type of development, number of buildings, type of building(s), specific use(s) of those buildings, etc.)?** *Fair Notice of the Project is required with requests based on MDPs, POADPs or plat applications.*

(a) Nature of the project: Residential Development

(b) Total land area, in square feet: ±8,186,666.4 S.F. (±187.94 Acres)

(c) Total area of impervious surface, in square feet: ±7,367,999.7 S.F. (±169 Acres)

(d) Number of residential dwellings units, by type: ± 367 single family residential lots

(e) Type and amount of non-residential square footage (ground floor building footprint only): N/A

(f) Number of buildings: N/A

(g) Phases of the development (if applicable): 6

3. **List ordinances to which the Project described in item #2 above will seek exception to based on the date requested for recognition of rights.** *State specific sections of the San Antonio Municipal Code and their effective dates*:

Every regulatory agency's, as defined by Chapter 245, Section 245.001(4) of the Texas Local Government Code, orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements made effective after August 1, 2006.

4. **Please indicate permits or development approvals received that are the basis to establish rights to complete the Project.** *Please specify all that may be applicable and include copies of the permit.*

PERMIT

Type of Permit: _____ **Date of Application:**

Permit Number: _____ **Date issued:** _____

Expiration Date: _____ **Acreage:** _____

MASTER DEVELOPMENT PLAN (MDP) (Formerly POADP)
accepted *prior to September 1, 1997* **are subject to permit right conditions within 18 months from the effective date of**

File #_____
Assigned by City Staff

the development rights ordinance (9/25/97) and projects submitted *after September 1, 1997* **are subject to 24 months for the POADP acceptance date.** *Fair Notice required with MDP/POADP*

Name: Dym Tract MDP No. 039-06

Date accepted: 08/01/06 **Expiration Date:** 04/05/06 **MDP Size:** 187.94**acres**

P.U.D. PLAN

Name: _____ **#**_____

Date accepted: _____

PLAT APPLICATION

Fair Notice required with plat application

Plat Name: _____ **Plat #** _____ **Acreage:** _____

Date submitted: _____ **Expiration Date:** _____

(Note: Plat must be approved within 24 months of application submittal date)

APPROVED PLAT

Plat Name: _____ **Plat #**_____ **Acreage:** _____ **Approval**

Date: _____ **Plat recording Date:**_____ **Expiration Date:**_____ **Vol./Pg.**_____

(Note: If plat is not recorded within 3 years of plat approval permit rights will expire)

OTHER PERMITS:

Specify the amount, date and purpose of each expenditure or obligation incurred in reliance on the permits identified above (include copies of contracts): *Please include verified or certified copies of all contracts, appraisals, reports, correspondence, letters, or other documents or materials upon which the Applicant's claim for rights or equitable estoppel is based. Do not include land purchase costs nor payment of taxes.*

5. **Requested date for claim of rights for this Project:** August 1, 2006

6. **Describe any construction or related actions that have taken place on the property since that date:** *Include the date, cost, nature and extent of each physical improvement to the property including structures, utilities, roads, driveways, etc* Some tree removal activity.

VRP# 07-05-036

File #_____
Assigned by City Staff

Consent Agreements Only:

In addition to the required processing as set forth above, a request for Consent Agreement Approval shall include, but shall not be limited to the following:

- ☐ A timing and phasing plan for the proposed development;
- ☐ A plan for the provision of public facilities and services to the proposed development, by phase;
- ☐ The conditions under which the proposed development will be authorized to proceed; and
- ☐ The conditions under which approvals or permits will lapse or may be revoked.

A document shall be considered "verified" or "certified", whether an original or a copy, if it is signed by the official with decision making authority for the permit application.

7. Sworn statement:

NOTE: Filing a knowingly false statement on this document, or any attached document, is a crime under §37.02 and §37.10 of the Texas Penal Code, punishable as a state jail felony by up to two years in jail and fine of up to $10,000.

I, the undersigned, hereby certify that all information contained herein and the attached documents are true and correct and that it is my belief that the property owner is entitled to the requested rights for this Project and, during the pendency of this determination, I understand my continuing obligation to notify the Development Services Director in writing of the inaccuracy of any statement or representation which was incorrect when made or which becomes incorrect by virtue of changed circumstances.

Print name: Connie L. Basel Signature: Connie L Basel Date: May 17, 2007

Sworn to and subscribed before me by CONNIE L. BASEL on this 17th day of MAY in the year 2007, to certify which witness my hand and seal of office.

Evelyn M Aguilar
Notary Public, State of Texas

EVELYN M AGUILAR
My Commission Expires
April 26, 2009

VRP# 07-05-036

File # _____

Assigned by City Staff

Director's Decision: ☐ **Approved** ☐ **Denied**

Reviewed By: _____ Date: _____

Development Services Department

Terms and conditions required for the continuance of the rights being recognized:

This determination is valid only to the extent of the validity of the underlying permit which is the basis for this application. Further subject to all provisions for dormancy and expiration as provided in the Local Government Code Chapter 245 and Article VII of the UDC.

KENNETH W. BROWN, AICP
DANIEL ORTIZ
PATRICK W. CHRISTENSEN
CONNIE L. BASEL

BROWN, P.C.
ATTORNEYS AT LAW

112 E. PECAN STREET
SUITE 1490
SAN ANTONIO, TEXAS 78205
TELEPHONE: 210.299.3704
FAX: 210.298.4731

PAUL M. JUAREZ
OF COUNSEL

RECEIVED
4 AM 8:53
AND DEVELOPMENT
SERVICES DIVISION

June 1, 2007

Ms. Melissa Ramirez
Development Services Department
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, TX 78204

Via Hand Delivery

Mr. Norbert Hart
City Attorney's Office
City of San Antonio
100 Military Plaza, 3rd Floor
San Antonio, TX 78205

Via Hand Delivery

Re: Vested Rights for a 187.94-Acre Tract of Land Generally Located Near the Intersection of Bulverde Road and Borgfeld Road in Bexar County, Texas (the "Subject Property"); *Our File No. 9000.047*

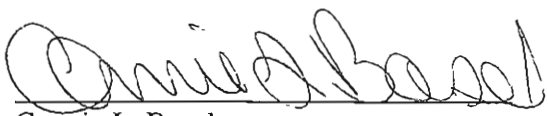
Dear Ms. Ramirez and Mr. Hart:

A Vested Rights Application for the above-referenced property was filed with the City of San Antonio's ("COSA") Development Services Department on May 17, 2007. Pursuant to the provisions of the COSA Unified Development Code §35-712(b)(2), this Firm respectfully requests an extension of time for COSA staff to reach a decision on the above referenced application.

Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

BROWN, P.C.

BY: 
Connie L. Basel

CLB/ea

VRP# 07-05-036

City of San Antonio

Development Services Department

Rights Determination/Consent Agreement
Completeness Review

Note: All Applications must comply with the Unified Development Code (UDC), §35-B128 Vested Rights Determination for the City of San Antonio.

An Application for a Rights Determination shall contain at least the following information:

1. Appropriate filing fee:
- $160 homestead property (1 lot up to 3 acres)
- $500 single family residential (greater than 1 lot or 3 acres)
- $500 commercial

2. Completed application form:
- Name and address of Applicant;
- Project description and name of subdivision or development, if applicable;
- A legal description of the property;
- Description of current use;
- Project description including total land area, impervious cover, number of dwelling units by type, non-residential square footage; and phases of the development;
- Complete permit history and expenditures or obligations incurred in reliance on such permits. Include verified or certified copies of all development permits, contracts, appraisals, reports, correspondence, letters, or other documents or materials upon which the Applicant's claim for vested rights or equitable estoppel is based;
- Date for claim of rights based on permit history;
- Description of construction or related actions that have taken place on the property since the date for which rights are claimed;
- A Sworn Statement, in a form prescribed by the City, and signed by the Applicant; and

3. Fair Notice Form including the items specified by §35-B132 *(required effective February 5, 2007 for all rights determinations based on MDPs, POADPs, or plat applications.)*

In addition to the required processing as set forth above, an Application for Consent Agreement Approval shall include, but shall not be limited to the following:

- A timing and phasing plan for the proposed development;
- A plan for the provision of public facilities and services to the proposed development, by phase;
- The conditions under which the proposed development will be authorized to proceed; and
- The conditions under which approvals or permits will lapse or may be revoked.

A document shall be considered "verified" or "certified", whether an original or a copy, if it is signed by the official with decision making authority for the permit application.

☑ **Accepted** ☐ **Rejected**

Completeness Review By: _____ **Date:** 22 MAY 07