City of San Antonio, Texas

Department of Development Services

December 8, 2006

Patrick W. Christensen
Brown P.C. Attorneys at Law
112 E. Pecan, Suite 1490
San Antonio, TX 78205

RE: Vested Rights Permit File: # 07-11-0012 (Dym Tract)

Dear Mr. Christensen:

We have reviewed your application for Vested Rights that was submitted on November 14, 2006. Based on the information provided the following are our official findings:

At this time a determination of rights can not be completed since the request is based on a proposed Master Development Plan (MDP) currently under review but applicant can resubmit for rights determination once the MDP has been accepted by the Development Services Department.

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 Michael Herrera at 207-7038.

Sincerely,

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

PICKED UP: Robin Stover
DATE: 12/11/2006

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

October 31, 2006

Mr. Michael Herrera
Development Services Department
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, Texas 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 Messrs. Herrera and Hart:

Attached please find a Vested Rights Application for the above-referenced property (*see* Exhibit "1"). This request is made pursuant to the current provisions of Chapter 245 ("Issuance of Local Permits") of the Texas Local Government Code (the "Code") and the City of San Antonio's (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, more specifically described by the Dym Tract Master Development Plan attached for your review ("Dym Tract MDP"; *see* Exhibit "2"). To provide for the development of the Subject Property, the developer filed a Master Development Plan Application with COSA on August 1, 2006 ("MDP No. 039-06", *see* Exhibit "3"). The Dym Tract development described in MDP No. 039-06 is for a single family residential development to be developed in six phases (the "Project"). 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." Therefore, a Master Development Plan is a required "permit" by a regulatory agency (COSA) and clearly qualifies as the first "permit" in a series of permits necessary for the development of the Subject Property as those terms are contemplated by Chapter 245 of the Code.

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The Code was amended in 2005 by the 79th Texas legislature pursuant to Senate Bill 848 ("SB 848") to clarify the date on which the vested rights afforded by Chapter 245 of the Code accrue. SB 848 added Sub-Section (a-1) to Section 245.002 of the Code which reads, "Rights 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..." (emphasis added). The Master Development Plan application for MDP No. 39-06 was filed with COSA on August 1, 2006. Therefore, MDP No. 039-06 is vested as of August 1, 2006.

In conclusion, MDP No. 039-06 constitutes a "permit" as defined by Chapter 245 of the Texas Local Government 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. 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 Master Development Plan Application.

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;
2. MDP No. 039-06; and
3. Dym Tract Master Development Plan Application for MDP No. 039-06.

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

Sincerely,

BROWN, P.C.

BY: _____
Patrick W. Christensen

/pwc
Enclosures: As stated

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Permit File #_____

EXHIBIT
2

City of San Antonio

Development Services Department

Vested Rights Permit/Consent Agreement APPLICATION

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Permit File: #_____
Assigned by city staff

Date: October 31, 2006

☒ **Vested Rights Permit** ☐ **Consent Agreement**

1. **All applicable information on application must be legibly printed or typed for processing.** ***If application is completed on behalf of the property owner please attach power of attorney or letter of agent.***

2. ***Please complete subject of application and attach 2 sets of all applicable documents (i.e. this application, Master Development Plan, P.U.D. plan, plat application, approved plat, building permit) along with appropriate fee.***

> ***Note: All Applications must comply with the Unified Development Code (UDC), Section 35-B124 Vested Rights Determination for the City of San Antonio.***

(a) **Owner/Agent:** Brown, P.C, Attorneys at Law

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

Address: 112 E. Pecan Street, Suite 1490

City: San Antonio **State:** Texas **Zip code:** 78205

Engineer/Surveyor: Pape-Dawson Engineers Inc.

Address: 555 East Ramsey

City: San Antonio **State:** Texas **Zip Code:** 78216

Name of Project: Dym Tract

(b) (k) **Site location or address of Project and Legal description:** A 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, Pafes 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.

Council District OCL **ETJ** Yes **Over Edward's Aquifer Recharge?** ( ) yes (X) no

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Permit File #_____

3. **What is the specific Project and the expected use(s) to be created by this Project (type of development, number of buildings, type of building(s), specific use(s) of those buildings, etc.)?** ***Please be aware that the city must understand exactly what this Project is expected to accomplish in order to evaluate this application.***

(d) Total land use, in square feet; ±8,186,666.4 S.F. (±187.94 Acres)

(e) Total area of impervious surface, in square feet; ±7,367,999.7 S.F.

(f) Number of residential dwellings units, by type; 367 single family residential lots in 6 phases

(g) Type and amount of non-residential square footage; N/A

(h) Phases of the development, (If Applicable); Six

4. **What is the date the applicant claims rights vested for this Project?** 8/1/2006

(i) 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;

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."

4 a. What, if any, construction or related actions have taken place on the property since that date?

N/A

5. **By what means does the applicant claim rights vested for this Project?** ***Please specify all that may be applicable.***

- **PERMIT**

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

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

Expiration Date: _____ **Acreage:** _____

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- **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 the development rights ordinance (9/25/97) and projects submitted** *after September 1, 1997* **are subject to 18 months for the POADP acceptance date.**

Name: Dym Tract MDP No. 039-06 **Date submitted:** 8/1/2006

Date accepted: _____ **Expiration Date:** _____ **MDP Size:** 187.94 **acres**

- **P.U.D. PLAN**

Name: _____ **#** _____

Date accepted: _____

- **Plat Application**

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

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

(Note: Plat must be approved within 18 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**

Please see attached correspondence.

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 hereby certify that all information this Application and the attached documents is true and correct and that it is my belief the property owner is entitled to Vested Rights for this Project.

Print name: **Patrick W. Christensen** Signature: _____

Date: October 31, 2006

Sworn to and subscribed before me by Patrick Christensen on this 31st day of October in the year 2006, to certify which witness my hand and seal of office.

NOTARY PUBLIC STATE OF TEXAS
LORI J BETUS
NOTARY PUBLIC
State of Texas
Comm. Exp. 04-11-2009

_____
Notary Public, State of Texas

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6534-00

EXHIBIT 3

City of San Antonio

Development Services Department

Master Development Plan

APPLICATION

Date: July 19, 2006

Case Manager:	**Admin. Assistant:**	**File Number:**
Robert Lombrano , Planner II (**Even** File number) (210) 207-5014, rlombrano @sanantonio.gov Ismael Segovia, Planner II (**Odd** file Number) (210) 207-7207, ISegovia2@sanantonio.gov	Larry Odis (210) 207-0210 lodis@sanantonio.gov	

*****Will this project be used in conjunction with a Tax Increment Financing Application (TIF):*** ☐ ***YES*** ☒ ***NO*****

If YES please note that higher standards have been adopted and are required for projects that involve City funds like TIF. For complete information and application of the Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria, please call the Neighborhood Action Department at (210) 207-7881, (Indicate TIF Project Name on all submissions).

(Check One)

☒ Master Development Plan (MDP) (Formerly POADP)
MDP/ P.U.D. Plan (combination)
☐ Master Plan Community District (MPCD)
☐ Traditional Neighborhood Development (TND)
☐ Flexible Development District
☐ Urban Development (UD) ☐ Rural Development (RD)
☐ Farm and Ranch (FR) ☐ Mix Light Industrial (MI-1)

☐ P.U.D. Plan
☐ Mixed Used District (MXD)
☐ Military Airport Overlay Zone (MAOZ)
☐ Manufactured Home Park Plan (MHPP)
☐ Pedestrian Plan (PP)

☐ Other: _____

Master Plan Submittals: ***Completeness Review Form*** *and 15 copies (folded) with Development Services,* ***MDP Division Request for Review form*** *(attached) for respective departments or*

Project Name: Dym Tract MDP

Owner/Agent: Bitterblue, Inc. Phone: (210) 828-6131 Fax: (210) 828-6137

Address: 11 Lynn Batts Lane Suite 100 San Antonio, Texas Zip code: 78218

Engineer/Surveyor: Pape-Dawson Engineers, Inc. Phone: (210) 375-9000 Fax: (210) 375-9040

Address: 555 East Ramsey, San Antonio, TX Zip code: 78216

Contact Person Name: Caleb Chance E-mail: cchance@pape-dawson.com

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City of San Antonio
Development Services Department
Master Development Plan Section
APPLICATION
(Continued)

Existing legal Description: A 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.

Existing zoning: N/A Proposed zoning: N/A

Projected # of Phases: 6

Number of dwelling units (lots) by Phases: Unit-1 (47), Unit-2 (56), Unit-3 (72), Unit-4 (38), Unit-5 (113), Unit-6 (41)

Total Number of lots: 367 divided by acreage: 187.94 = Density: 1.95

(PUD Only) Linear feet of street _____ ☐ Private ☐ Public ☐ Gated ☐ Un-Gated ☐ Attached ☐ Detached

(PUD Only) Total open space: _____ divided by total acreage: _____ = Open space _____ %

(PUD Only) Type of gate (guard/mag card/key/transmitter/etc.): _____

(PUD Only) Construction start date: _____

(PUD Only) X/Y coordinates at major street entrance: X: _____ Y: _____

Site is over/within/includes:

Edwards Aquifer Recharge Zone: ☐ Yes ☒ No

San Antonio City Limits? ☐ Yes ☒ No

Council District: N/A School District: Comal I.S.D. Ferguson map grid: 451b4

Is there a previous Master Development Plan (a.k.a.POADP) for this Site?
Name N/A No. _____

Is there a corresponding PUD for this site? Name N/A No. _____

Plats associated with this Master Development Plan (a.k.a.POADP) or site?
Name _____ No. _____
Name _____ No. _____
Name _____ No. _____

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City of San Antonio

Development Services Department

Master Development Plan Section

Technical Review

☒ Name of the Master Development Plan or P.U.D. and the subdivision;

☒ City assigned Plan ID number;

☒ Name and address of owner of record, developer and engineer;

☒ The name names of all adjacent property owners as shown on current tax records;

N/A Certificate of agency or power of attorney if other than owner;

☒ Signature blocks for the chairperson and secretary (Planning director or assignee);

☐ (PUD ONLY) Proposed covenants on the property, if any, including a map and legal description of area affected;

☒ Two points identified by Texas Planes Coordinates;

☒ Basis of bearing used and a north point;

☒ Boundary of the development and total acreage encompassed, thereby described and mapped at and appropriate scale;

☒ (MDP ONLY) topographic contour lines no greater than ten (10) feet;

☐ (PUD ONLY) Existing topography with maximum contour intervals of two (2) feet, except where existing ground is on a slope of less than five percent (5%) then either one foot contours or spot elevation shall be provided where necessary;

☒ Date of preparation;

☒ Graphic and written scale and north arrow;

☒ A location map at a scale not less than 1"= 2,000 indicating the location and distance in relation to adjacent streets and all surrounding Major Thoroughfares. The location map is to be located in the top left hand corner of the sheet;

☒ Total area of property;

☒ All existing easements or right-of-way with street names impacting the development area, their nature and width;

☒ The approximate location and widths of all proposed public and private streets major thoroughfares, collectors and local B streets within the developments boundaries;

☐ (PUD ONLY) The location of all proposed uses or zoning classification as applicable and the maximum allowable intensity (residential density or non-residential FAR);

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Development Services Department
Master Development Plan Section
Technical Review

(Continued)

☒ (MDP ONLY) The location and general nature of proposed uses and proposed intensity (residential density or non-residential FAR)

☐ (PUD ONLY) Notation of any restrictions required by the City Council in accordance with this Ordinance;

☒ The location and dimension of all proposed adjacent roadways, whether existing or proposed;

☒ The location and dimension of all proposed or existing lots.

☒ The location, dimensions, and area of all parcels of land proposed to be set aside for park or playground use or other public, or for the use of property owners in the proposed subdivision, where applicable.

☒ A development phasing schedule including the sequence for each phase; approximate size in area of each phase; and proposed phasing of construction of public improvements, recreation and common open space areas.

☒ The schematic of all existing and proposed streets, as well as proposed access points.

N/A The schematic location of the pedestrian circulation system including walkways and bicycle paths where applicable.

☐ (Conservation Subdivisions Only) A slope analysis of the proposed development site showing slopes for the following percent of existing grades: 0-10%, 21-30%, 31-40%, and slopes exceeding 40%, including a tabulation of the number of acres in each slope percentage.

☐ A delineation of EARZ, wetlands and floodplains. Conservation Subdivision and PUD Plans shall also delineate Woodlands.

☒ The location, acreage, category and type of improvements if any for active and passive open space, including greenbelt and active recreation space areas, private recreational areas.

☐ Tabulation of the number of acres in the proposed development, showing the total number of lots and area of open space for the site including the following:
(PUD ONLY)
(a) square footage of all buildings and structures
(b) for non-residential uses, multi-family dwellings, and any portion of a site located within the EARZ, the approximate location and area of impervious cover.

☒ A final statement in tabular form which sets forth the following data, when such data is applicable to a given development plan:
(a) total number of dwelling units, by development phase.
(b) Residential density and units per acre.
(c) (PUD Only) Total floor area ratio for each type of use.
(d) Total area in passive open space.
(e) Total area in active developed recreational open space.
(f) Total number of off-street parking and loading spaces.

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Development Services Department

Master Development Plan Section

Technical Review

(Continued)

☒ Traffic Impact Analysis (section 35-502).

☐ (PUD Only) Utilities plan.

☒ (M.D.P. Only) Location of property lines, existing easements, burial grounds, railroad rights-of-way, watercourses; location, width, and names of all existing or platted streets or other public ways within or immediately adjacent to the tract; names of adjacent property owners or subdivision from the latest certified assessment rolls.

☐ (PUD Only) Lots numbered as approved by the City.

☐ (PUD Only) Layout shall show where lot setbacks as required.

N/A Location and size in acres of school sites, as applicable.

☒ The exterior boundaries as indicated from deeds or other instruments of the development area giving lengths and bearings of the boundary lines, if the proposed development is bounded by a watercourse, a closing meander traverse of that boundary shall be made and shown on the site plan. Where curving boundaries are used, sufficient data to establish the boundary on the ground shall be given; including the curve's radius, central angle and arc length.

☒ A stormwater management plan (section 35-B119)

Owner or Authorized Representative:

I certify that the Dym Tract MDP **Plan application and accompanying maps are complete and that the conditions listed on this application have been met.**

Print Name: Lloyd A. Denton, Jr. Signature: _____

Date: 7-20-06 Phone: 828-6131 Fax: 828-6139

E-mail: _____

If you have any questions please call Michael O. Herrera, Special Projects Coordinator at 207-7038

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City of San Antonio

Development Services Department

Vested Rights Permit Application

Completeness Review

Note: All Applications must comply with the Unified Development Code (UDC), Section 35-B124 Vested Rights Determination for the City of San Antonio.

Required Items: Section 35-B124, Vested Rights' Determination

An Application for a Vested Rights Determination shall be made by the Applicant on a form established for such purpose and provided by the City and shall contain at least the following information:

1. Appropriate filing fee. ✓

2. Section 35-B124

(a) Name and address of Applicant; ✓
(b) Project description and name of subdivision or development, if applicable; ✓
(c) Location of development; ✓
(d) Total land area, in square feet; ✓
(e) Total area of impervious surface, in square feet; ✓
(f) Number of residential dwelling units, by type; ✓
(g) Type and amount of non-residential square footage; ✓
(h) Phases of the development, if applicable; ✓
(i) 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; ✓
(j) A Sworn Statement, in a form prescribed by the City, and signed by the Applicant; and ✓
(k) A legal description of the Property ✓

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: [signature] **Date:** 14 NOV 06

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