

**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Florencio Peña III, Director, Development Services Department

SUBJECT: Vested Rights Permit appeal for VRP # 04-06-146 (Mission Del Lago)

DATE: November 4, 2004

SUMMARY AND RECOMMENDATIONS:

An appeal to grant vested rights on 812 acres located east of Mitchell Lake, west of U.S. Hwy 281 and surrounding Mission Del Lago Municipal Golf Course and known as Mission Del Lago.

The Planning Commission supported staff's initial recommendation of denial by a majority vote on September 22, 2004. Staff recommends denial of this appeal.

BACKGROUND INFORMATION:

The subject application was processed in accordance with The Unified Development Code (UDC) for the City of San Antonio, Article 4, Section 35-401, Paragraph (a), (2) Completeness Review and Article 7, Section 35-712, Paragraph (b), (2) Review and Approval.

1. On July 16, 2004, Development Services Department received the Vested Rights Permit application.
2. The applicant was seeking Vested Rights for an 812-acre site as depicted by POADP # 284, also known as Mission Del Lago.
3. On August 20, 2004, the analysis was concluded and a recommendation for disapproval was given with the following condition:
A vesting date of February 2, 1988, was given for a school site consisting of 14.00 acres as identified on POADP # 284 and the applicant was notified of the decision.
4. On September 1, 2004, Development Services Department received an appeals letter dated September 1, 2004, from Earl & Associates Attorneys at Law.
5. On September 22, 2004, the Planning Commission heard the applicants appeal and supported staff's recommendation for denial by a majority vote with one abstention and one in opposition.
6. On September 28, 2004, the applicant was notified in writing of the Planning Commission's decision.
7. On October 10, 2004, an appeal was filed with the City Clerk's Office appealing the Planning Commission's decision.

POLICY ANALYSIS:

To obtain vested rights the applicant must meet two requirements. First, there must be evidence of some specific project/endeavor.

The UDC defines project as “[a]n endeavor over which the City exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor. Within the context of § 35-710 (Permit Rights), "project" shall mean an endeavor over which the city exerts its jurisdiction and for which a preliminary overall area development plan, a plat, plat application or a building permit is required to initiate or continue the endeavor. Within the context of permit rights which existed prior to September 1, 1997, project shall mean an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate or continue the endeavor.” UDC Section 35-A101, Definitions.

Second, the initiation/start of a project may be verified by having obtained a “Permit” which means “[a] license, certificate, approval, registration, consent, permit, 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. (Source: VTCA Local Government Code § 245.001).

A “development permit” includes any of the following: a subdivision plat, a conditional use permit, a building permit, or a certificate of occupancy. A “development permit” does not include a certification of completeness, a letter of certification, an amendment to the text of this Chapter, or a rezoning.” UDC Section 35-A101, Definitions.

Therefore if it can be determined that a project exists, then vesting is established on the date it was initiated as evidenced by local governmental action.

Vested rights or permit rights are defined in the UDC as “[t]he right of a property owner or developer to complete a project under the rules, regulations and ordinances in effect at the time the project was initiated through a permit as herein defined. When permit rights exist for property within the boundaries of a project, ordinances passed after the date the project is initiated shall not apply to the project except as specifically provided within this section.” UDC Section 35-A101, Definitions.

In this instance, the sole information submitted consisted of copies from completed projects in the area and the new school project. Therefore, it is staff's and Planning Commission's recommendation that vested rights for this site, with the exception of the school, be denied on the basis that the information submitted did not support the establishment of a project pursuant to current definitions in the Unified Development Code for the City of San Antonio.

FISCAL IMPACT

There is no financial impact.

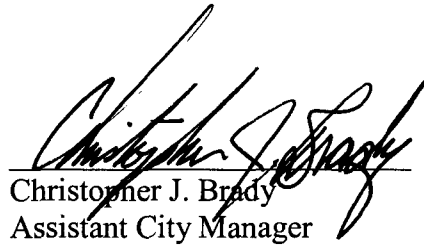
COORDINATION

This application and appeal was coordinated with the City Attorney's office.



Florencio Peña III, Director
Development Services Department

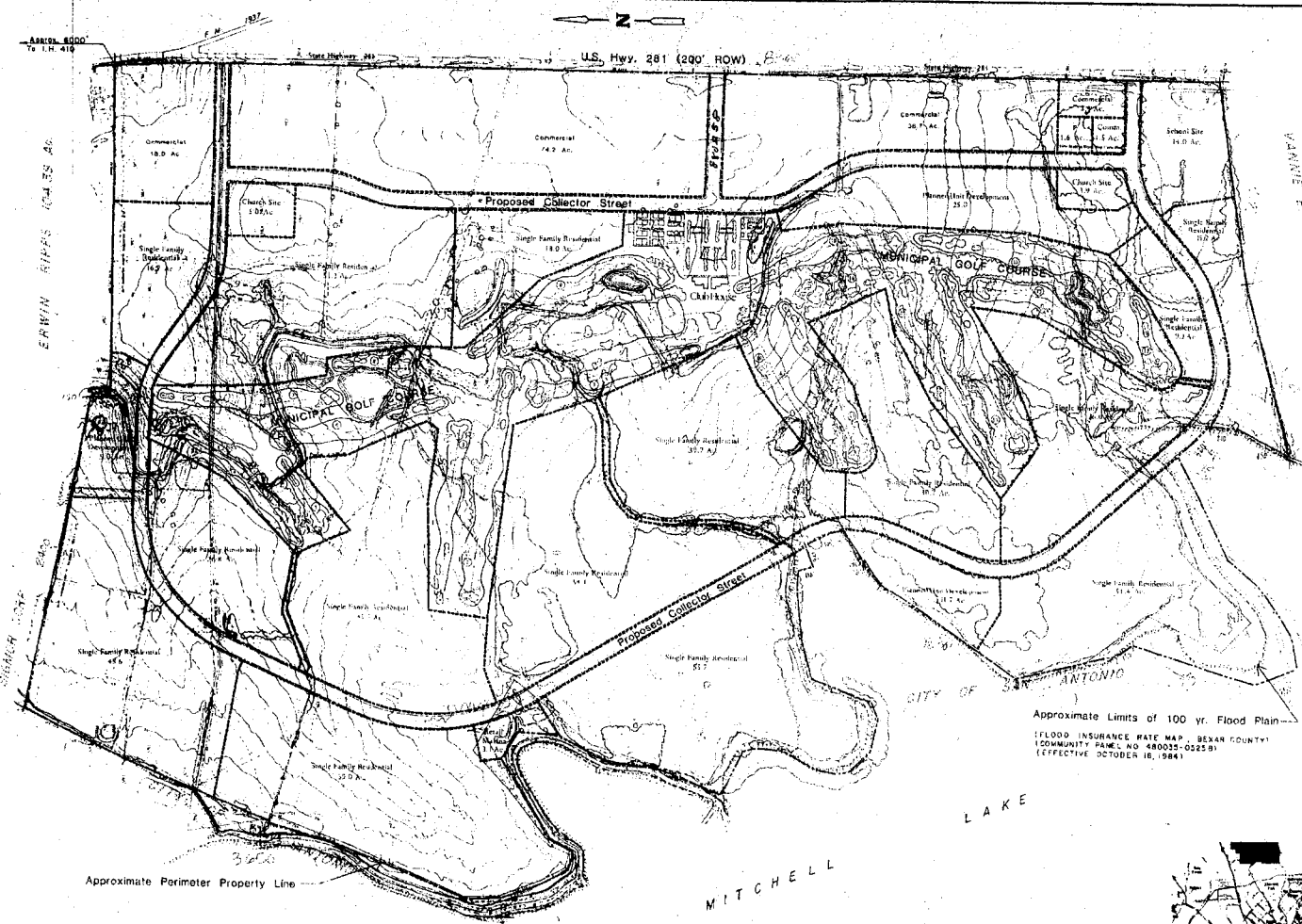
Approved:



Christopher J. Brady
Assistant City Manager



J. Rolando Bono
Interim City Manager



Land Use Summary

Single Family Residential	551.3 Acres
Planned Unit Development	45.7 Acres
Commercial	135.8 Acres
Church Sites	8.9 Acres
Community Areas	204.6 Acres

NAME OF OWNER:
SIMMONS AYKROYD MCKNIGHT
12042 Blanco Road Suite 350
San Antonio, Texas 78216

RECEIVED
JAN 27 1984
ENGINEERING

Approximate Limits of 100 yr. Flood Plain
FLOOD INSURANCE RATE MAP, BEXAR COUNTY
COMMUNITY PANEL NO. 480035-0225B
(EFFECTIVE OCTOBER 16, 1984)



PROJECT LOCATION MAP

PRELIMINARY OVERALL AREA DEVELOPMENT PLAN

Mission del Lago

A PLANNED COMMUNITY

A 1010 ACRE DEVELOPMENT

Scale: 1" = 400'

 Lockwood, Andrews & Newnam, Inc. Engineering Architects Planners Surveyors	No. _____ Date _____ Revisions _____
	PRELIMINARY OVERALL AREA DEVELOPMENT PLAN
Mission del Lago 1010 ACRES BEXAR COUNTY, TEXAS Simmons Aykroyd McKnight	SHEET 1 of 1

Urban Planning Incorporated

A RESOLUTION

AFFIRMING THE DECISION OF THE PLANNING COMMISSION ON APPEAL TO THE CITY COUNCIL BY MISSION DEL LAGO REGARDING THE DECISION OF THE PLANNING COMMISSION TO DENY VESTED RIGHTS ON A 812 ACRE SITE LOCATED GENERALLY EAST OF MITCHELL LAKE AND WEST OF U.S. HIGHWAY 281 SURROUNDING MISSION DEL LAGO GOLF COURSE AND KNOWN AS MISSION DEL LAGO.

* * * * *

WHEREAS, a public hearing was conducted on November 4, 2004 by the City Council to hear an appeal by Mr. Habib H. Erkan, Jr., P.C. attorney at law on behalf of Mission Del Lago, in accordance with Chapter 35, Unified Development Code, Section 35-404, Public Hearing Procedures at which time parties in interest and citizens were given an opportunity to be heard; and

WHEREAS, Mr. Habib H. Erkan, Jr., P.C. attorney at law on behalf of Mission Del Lago appeals a decision of the Planning Commission that upheld the Director of Development Services denial of this request for vested rights; and

WHEREAS, an application for an exemption from any provision of Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas was submitted by Mr. Habib H. Erkan, Jr., P.C. attorney at law on behalf of Mission Del Lago for a project located east of Mitchell Lake and west of U.S. Highway 281 and surrounding Mission del Lago Municipal golf course and known as Mission del Lago asserting common law vested rights or statutory vested rights was processed in accordance with Chapter 35, Unified Development Code, Article IV, Section 35-402, Completeness Review and Article VII, Division 2, Vested Rights; and

WHEREAS, the City Council has determined that no exemption from any provision of Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas exists for a project located on the area known as Mission del Lago based upon common law vested rights or statutory vested rights, **NOW THEREFORE**;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council hereby upholds the decision of the Planning Commission that no exemption from any provision of Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas exists for a project located east of Mitchell Lake and west of U.S. Highway 281 and surrounding Mission del Lago Municipal golf course and known as Mission del Lago based upon common law vested rights or statutory vested rights

SECTION 2. This Resolution shall become effective immediately upon passage if passed by eight or more votes otherwise this Resolution shall become effective on November 14, 2004.

PASSED AND APPROVED this 4th day of November, 2004.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

DRAFT

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
OCT 1 2004

October 1, 2004

Ms. Leticia M. Vacek, TRMC, CMC
City Clerk
City of San Antonio
Office of the City Clerk
100 Military Plaza, 2nd Floor
San Antonio TX 78205

Via Hand-Delivery

Re: Appeal of the decision of the planning commission and department of development services to disapprove Vested Rights Permit No. 04-07-146

Dear Ms. Vacek:

This is an appeal of the erroneous disapproval of the planning commission decision (made at its regularly scheduled meeting of September 22, 2004) to affirm the Department of Development Services decision to disapprove Vested Rights Permit Application No. 04-07-146. This appeal is made pursuant to Unified Development Code Section 35-712(d). Please find enclose herewith a check for \$75.00 to offset the city's costs associated with processing this appeal. Pursuant to the provisions of Section 35-712(d) please place this matter on the agenda of "the earliest regularly scheduled meeting of the City Council that will allow compliance with the requirements of the Texas Open Meetings Act"

I. State Statutory and Municipal Regulatory Authority

A. State Statutory Authority

Texas Local Government Code Chapter 245 preempts municipal regulatory agencies ability to apply certain regulations to certain projects.

Specifically, § 245.001 provides the following definitions:

- (1) "Permit" means a license, certificate, approval, registration, consent, permit, 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.
- (2) "Political Subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.
- (3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.



- (4) "Regulatory Agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

The definitions set out above are taken directly out of Texas Local Government Code Section 245.001. The aforementioned definitions are the definitions that City Council must consider when reviewing this appeal. Dallas Merchants and Concessionaires Assoc. v. Dallas, 852 SW 2d 489, 491 (Tex. 1993) ("A City ordinance that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute.")

Section 245.002 (entitled "Uniformity of Requirements") provides as follows:

- (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.
- (b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expirations, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for the project.

When reviewing this appeal, the City Council must consider the law as it is set out in Texas Local Government Code Section 245.002(a) and (b). As has been pointed out with regards to the definitions found in Texas Local Government Code Section 245.001, the City Council must look to Section 245.002 for guidance and where said section conflicts with City of San Antonio's City Code the City Council must follow the state statute.

B. Municipal Regulations

The municipal regulation at issue in this instance is a requirement that a "POADP shall be required in all instances where a tract of land within the City or its Extraterritorial Jurisdiction is platted or intended to be platted into two (2) or more units." This requirement is found in Ordinance No. 65513 Section 2(f), passed and approved on August 13, 1987. The POADP requirement was found in the City of San Antonio's first Unified Development Code at Chapter 35, Article 2, Division II, Section 35-2076 (entitled "Terms of Validity") read as follows:

"The POADP shall be maintained in the permanent files of the Director of Planning and shall be conformed to in processing subsequent unit plats. The POADP shall remain valid until all units contained in the POADP are completed or upon receipt of a proposal to modify the POADP filed by the developer. The POADP shall become invalid if a plat is not filed within eighteen (18) months from the date a POADP is accepted."

Additionally germane to this appeal is Section 35-2077 (entitled "Revisions"), which reads as follows:

"Revisions to the POADP may be made at anytime by submission of a new POADP to the Director of Planning; Within fifteen (15) working days after filing of the proposed revisions, the Director of Planning shall provide a written response indicating whether or not the revised POADP has been accepted."

II. The Project

Mission del Lago is an 812 acre master planned community that includes single-family and multi-family housing; commercial development; municipal facilities (i.e. police and fire station), and eleemosynary institutions (i.e. schools and places of worship). Mission del Lago is surrounded by the Mission del Lago Municipal Golf Course, which was created pursuant to a donation of property by our client.

III. The Permit

This project requires "a series of permits" in order to reach completion. As stated above, the first permit in that series is the Preliminary Overall Area Development Plan that was accepted by the City of San Antonio on February 2, 1988, pursuant to the provisions of the City of San Antonio's Unified Development Code Article II Division 2 (approved by Ordinance No. 65513).

IV. City of San Antonio Development Services Department erred in not approving Vested Rights Permit No. 04-07-146

On July 16, 2004, Vested Rights Permit No. 04-07-146 was submitted to the City of San Antonio's Development Services Department. The purpose of this submittal was to obtain the City of San Antonio's acknowledgement that "Mission del Lago" is a project as that term is defined in Texas Local Government Code Section 245.001(3) and that Preliminary Overall Area Development Plan No. 284 was the first permit in a series of permits required for the completion of the project. (Texas Local Government Code Section 245.002(b) provides in relevant part "Preliminary plans and related subdivision plats, site plans and other development permits for land covered by the Preliminary plan or subdivision plats are considered collectively one series of permits for the project"). It should be axiomatic that a vested rights permit application such as this one should be approved by the Department of Development Services. However, the Department of Development Services has subscribed to a misplaced belief that a project must be fixed to the last detail at the time of inception in order to qualify for protection under Texas Local Government Code Chapter 245. This is not the case. The definition of "project" is an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor. (Texas Local Government Code Section 245.001(3)) The word endeavor simply means to "try, attempt". *Mariam-Webster Dictionary-1998 Home and Office Edition*. The legislature provides such a broad definition of "project" due to the realities associated with developing real property. For example, in this instance, the development includes approximately 800 acres of real property. Any development,

particularly a development of this magnitude, has not been determined to the minute degree of detail, required by the vested rights application, at the time of initiation. In this case, the developer initially intended the project to include single-family and multi-family housing; commercial development; municipal facilities (i.e. police and fire station), and eleemosynary institutions (i.e. schools and places of worship). The developer anticipated the approximate acres that would be devoted for each of the above described uses. There is no way the developer could be expected to anticipate at the time that the Preliminary Overall Area Development Plan was filed the specific acreage and specific location for each use. This fact was certainly understood by the legislature as evidenced by its definition of a project as an endeavor. Moreover, it was understood by the drafters of the City's first Unified Development Code. As previously stated, Section 35-2077 provides that "revisions to the POADP may be made at any time by submission of a new POADP to the Director of Planning; within fifteen (15) working days after filing of the proposed revisions, the Director of Planning shall provide a written response indicating whether or not the revised POADP has been accepted." Pursuant to the above referenced section, it was the practice of the City of San Antonio Planning Department to review a POADP, and, upon the determination that the POADP did not substantially change the project to accept the revision and so indicate by placing a letter suffix (i.e. A, B, C) to the POADP number.

Consequently, Appellant is requesting that the City Council overrule the decision of the Planning Commission and the Department of Development Services and approve Vested Rights Permit No. 04-07-146; and, thus, acknowledge that Preliminary Overall Area Development Plan is the initial permit in a series of permits for the Mission del Lago project.

V. Objection to City presenting any additional information to City Council other than what was provided to Applicant

The purpose of this objection is to object to the city staff from presenting to the City Council any additional information to support its decision to deny Vested Rights Permit No. 04-07-146, other than that which has been provided to Appellant along with the City's denial. City of San Antonio's Unified Development Code Section 35-712(b)(2) (entitled "Review and Approval") reads in relevant part "should application be denied the Planning Department shall enumerate in writing any and all reasons for such denial, which shall be delivered to the applicant within the time period allowed for review." (emphasis added) Pursuant to the above referenced section, the City was required to provide the applicant with any and all reasons that the City denied Vested Rights Permit No. 04-07-146. Enclosed herewith is a copy of the complete application, that is the permit that was denied by the City, and all comments that were provided by the City. Pursuant to Section 35-712(b)(2) the City is now precluded from providing any additional information to the City Council that was not provided to the Appellant.

VI. Prayer

Appellant hereby request that the Planning Commission overturns the decision of the Development Services Department to deny Vested Rights Permit No. 04-07-146 and that the Planning Commission in so doing approve Vested Rights Permit No. 04-07-146 and acknowledge that POADP No. 284 is a permit as that term is defined by Texas Local

Ms. Leticia M. Vacek, TRMC, CMC
October 1, 2004
Page 5

Government Code Chapter 245 that provides the project, described in Section II herein, with the full protection provided by Texas Local Government Code Chapter 245.

Sincerely,
EARL & ASSOCIATES, P.C.

By: 
Habib H. Erkan, Jr.

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Enclosure

July 14, 2004

Mr. Michael Herrera
Planner II
Development Services Department
City of San Antonio
1901 S. Alamo St., 2nd Floor
San Antonio, TX 78204

Via Hand-Delivery

Re: Vested Rights Permit Application for approximately 812 acres located east of Mitchell Lake; west of US HWY 281 and surrounding Mission del Lago municipal golf course and known as Mission del Lago

Dear Mr. Herrera:

On behalf of our clients, Mission del Lago, please accept this application for recognition of vested rights for the Mission del Lago project (hereinafter referred to as the "project") at the above referenced location.

I. Statutory vested rights.

This is a request to have the City of San Antonio recognize the development entitlements that pertain to this "projects" by virtue of Texas Local Government Code Chapter 245 and is entitled "Issuance of Local Permits." Germane to this matter is:

§245.001, which reads in relevant part as follows:

- (1) "Permit" means a license, certificate, approval, registration, consent, permit, 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.
- (2) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

and; §245.002, which reads as follows:

- (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit

CITY OF SAN ANTONIO
DEPT. OF PLANNING
OFFICE OF DIRECTOR
JUL 16 AM 10:55



solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

II. The Project

Mission del Lago is a 812 acre master planned community that includes single family and multi-family housing; commercial development; municipal facilities (i.e. police and fire station) and eleemosynary institutions (i.e. schools and places of worship). Mission del Lago is surrounded by the Mission del Lago municipal golf course, which was created pursuant to donation of property by our client.

III. The Permit

This project requires "a series of permits" in order to reach completion. The first permit in that series is the Preliminary Overall Development Plan that was accepted by the City of San Antonio on February 2, 1988 and assigned POADP No. 284. Within eighteen months of the City's acceptance of the City's acceptance of POADP No. 284 a plat of a portion of the property within the boundary of POADP No. 284 was filed with the City. This plat was assigned Plat No. 880258; was approved by the City's Planning Commission on November 30, 1988; and was recorded in the Bexar County Deed and Plat records at Vol. 952 Pg. 53.

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CITY OF SAN ANTONIO
DEPT. OF PLANNING
OFFICE OF DIRECTOR
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IV. The Enclosures

Please find enclosed herewith a check for \$160.00 to cover the cost associated with processing this review and duplicate copies of a representative sample of the mass of documents relating to the development of this project as follows:

1. Vested Rights Permit Application; and
2. POADP No. 284, which shall serve as a site plan; and
3. Ordinance No. 90312, and backup information, designating the Mission del Lago project as a tax increment reinvestment zone; and
4. Ordinance No. 88202, and backup information, designating an award of City Development Block Grant funds to Mission del Lago; and
5. Ordinance No. 63821, and backup information, relating to the memorandum of understanding for establishing Mission del Lago municipal golf course; and
6. Ordinance No. 64016, and backup information, relating to the donation of real property for Mission del Lago municipal golf course; and
7. Materials relating to the creation of Mission del Lago entrance-way as authorized by approval of Plat No. 880258; and
8. Documentation relating to obtaining offsite sewer service for a portion of the project property; and
9. Bexar County Appraisal District records, taken from www.bcad.org relating to the project property.

Based on the foregoing information, I am requesting that the City acknowledged that the subject project enjoys "vested rights" as of no later than February 2, 1988. If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

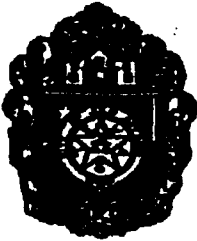
Sincerely,
EARL & ASSOCIATES, P.C.

By: 
Habib H. Ergon, Jr.

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Enclosures

¹ See Texas Local Government Code § 245.002(b).

Permit File # 04-07-196



City of San Antonio
Development Services Department
Vested Rights Permit/Consent Agreement
APPLICATION

Permit File: # 04-07-196
Assigned by city staff

Date: _____

☒ **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:** Earl & Associates, P.C. on behalf of Mission del Lago, Ltd.

Phone: (210) 222-1500

Fax: (210) 222-9100

Address: 111 Soledad, Suite 1111

City: San Antonio

State: Texas

Zip code: 78205

Engineer/Surveyor: Rick McNealy, P.E., Vickrey & Associates, Inc.

Address: 12940 Country Parkway

City: San Antonio

State: Texas

Zip code: 78216-2004

(b) **Name of Project:** Mission del Lago

(c) (k) **Site location or address of Project and Legal description:**

The site is approximately 812 acres located east of Mitchell Lake; west of US Hwy 281 and surrounding Mission del Lago municipal golf course and known as Mission del Lago

RECEIVED

JUL 29 2004

**CITY ATTORNEY'S OFFICE
SAN ANTONIO, TEXAS**

04 JUL 16 AM 7:35
CITY OF SAN ANTONIO
DEPT. OF PLANNING
OFFICE OF DIRECTOR

Council District 3 ETJ No _____ Over Edward's Aquifer Recharge? () yes () no

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 33,454,080 sq. ft.

(e) Total area of impervious surface, in square feet Not to exceed 26,763,269 sq. ft.

(f) Number of residential dwellings units, by type; Please see attachment A to this document

(g) Type and amount of non-residential square footage; Elementary 997,534 sq. ft./Commercial please see Attachment A to this document

(h) Phases of the development, (If Applicable); 25 phases

4. What is the date the applicant claims rights vested for this Project? February 2, 1988

(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?

Please see Attachment B to this document

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: _____

OFFICE OF THE CITY CLERK
JUL 16 1988
AM 7:35
ANTONIO
CITY OF SAN ANTONIO

Permit File # 04-07-146

• **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: Mission del Lago POADP # 284

Date accepted: February 2, 1988 Expiration Date: NA MDP Size: 956.3 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: _____

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**

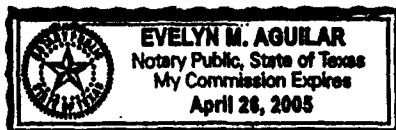
CITY OF SAN ANTONIO
DEPT. OF PLANNING
OFFICE OF DIRECTOR
04 JUL 15 AM 7:35

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: Habib H. Erkan, Jr. Signature: _____ Date: 7/14/04

Sworn to and subscribed before me by Habib H. Erkan, Jr. on this 14th day of July in the year 2004, to certify which witness my hand and seal of office.



Notary Public, State of Texas

Permit File # 04-07-146

City of San Antonio use

Permit File: # 04-07-146
Assigned by city staff

Date: _____

☐ Approved

☒ Disapproved

Review By: WOL
Development Services Department

Date: 8/20/04

Comments: AS PER CITY ATTORNEY'S COMMENTS.

(SEE ATTACHMENT)

04 JUL 16 AM 7:35
CITY OF SAN ANTONIO
DEPT. OF PLANNING
OFFICE OF DIRECTOR

vested rights for development of 812 acres of single-family dwelling units, commercial use, and school use depicted in POADP #284 approved February 2, 1988. There is no information in the application indicating where the specific development, i.e., a school, is located. The application indicates that the vesting is requested for 768 acres while the school site is indicated to be 22.9 acres. This is an increase of 164% over the area identified in POADP #284 for a school site and is a substantial change to the POADP for the school site. Provided that the school is located on the 14 acres identified as "School Site" in POADP #284, it is recommended that the school project should be approved for vested rights effective February 2, 1988 otherwise the effective date for vested rights should be the date the school project started.

Should the applicant desire to provide additional information to establish vested rights, more information is needed to establish what the project was at the time vested rights are claimed for the

project. If the applicant desires to provide additional information to establish vested rights, then the application should be returned for more information regarding the nature of the project and when it commenced. It is not clear what "project" was initiated on the date for which the applicant has requested vested rights.

To obtain vested rights the applicant must meet two requirements.

First, there must be evidence of some specific project/endeavor. The UDC defines project as "[a]n endeavor over which the City exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor. Within the context of § 35-710 (Permit Rights), "project" shall mean an endeavor over which the city exerts its jurisdiction and for which a preliminary overall area development plan, a plat, plat application or a building permit is required to initiate or continue the endeavor. Within the context of permit rights which existed prior to September 1, 1997, project shall mean an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate or continue the endeavor." UDC Section 35-A101, Definitions.

Second, the initiation/start of a project may be verified by having obtained a "Permit" which means "[a] license, certificate, approval, registration, consent, permit, 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. (Source: VTCA Local Government Code § 245.001). A "development permit" includes any of the following: a subdivision plat, a conditional use permit, a building permit, or a certificate of occupancy. A "development permit" does not include a certification of completeness, a letter of certification, an amendment to the text of this Chapter, or a rezoning." UDC Section 35-A101, Definitions.

Once an applicant meets both requirements, vested rights for the project are established. Vested rights or permit rights are defined in the UDC as "[t]he right of a property owner or developer to complete a project under the rules, regulations and ordinances in effect at the time the project was initiated through a permit as herein defined. When permit rights exist for property within the boundaries of a project, ordinances passed after the date the project is initiated shall not apply to the project except as specifically provided within this section." UDC Section 35-A101, Definitions.

If I can be of any further assistance, please contact me at 207-8989.

EXHIBIT
ACITY OF SAN ANTONIO
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Name	Plat Number	Day Approved by Planning Commission	Where Recorded Volume/Page
1. POADP	284	Accepted February 2, 1988	
2. Mission Del Lago Unit One	880258	November 30, 1988	9522/53
3. Mission Del Lago Unit Two	920252	July 13, 1994	9530/10
4. Mission Del Lago P.U.D. Subdivision Unit 3	970214	July 9, 1997	9554/111
5. Mission Del Lago P.U.D. Subdivision Unit 4	970213	July 9, 1997	9554-112
6. Mission Del Lago P.U.D. Subdivision Unit 5 & 6	30478		
7. Mission Del Lago P.U.D. Subdivision Unit 7A	30488		

**City of San Antonio
Project Review**

Mission Del Lago - TIF Reinvestment Zone

Summary Fact Sheet

8/16/1999/Updated 03/17/04

Fiscal Finance Plan

Plan of Finance

Site Area		812	Acres
Base Value (1998)		\$1,287,240	
Average Initial Home Price		\$114,000	
Project:			
1999			Single Family Homes
2000			Single Family Homes
2001			Single Family Homes
2002			Single Family Homes
2003		42	Single Family Homes
2004		39	Single Family Homes
	280		Multi-Family Homes
2005		133	Single Family Homes
2006		120	Single Family Homes
2007		120	Single Family Homes
2008		120	Single Family Homes
	250		Multi-Family Homes
2009		120	Single Family Homes
2010		120	Single Family Homes
2011		120	Single Family Homes
	62,600 Sq. Ft.		Retail/Office Commercial
2012		120	Single Family Homes
	250		Multi-Family Homes
2013		120	Single Family Homes
2014		120	Single Family Homes
2015		120	Single Family Homes
2016		120	Single Family Homes
2017		120	Single Family Homes
2018		120	Single Family Homes
2019		120	Single Family Homes
2020		120	Single Family Homes
2021		120	Single Family Homes
	125,000 Sq. Ft.		Retail/Office Commercial
2022		120	Single Family Homes
2023		120	Single Family Homes
2024		120	Single Family Homes
2025		120	Single Family Homes
Total		2,614	Single Family Homes
Total		780	Multi-Family Homes
Total		187,500 Sq. Ft.	Retail/Office Commercial
Total		2734	Single Family Lots

Experience of Housing Developer

Performance Bonds: Per City Code

Payment Bonds: Per City Code

Assumptions	Captured Value	\$ 439,615,339
	Growth Factor:	0.00%
	Collection Rate	97.50%
	Estimated Total TIF Revenues	\$ 149,541,471
	Estimated TIF Life	27 Years

NOTE: The above are draft plan documents and may fluctuate due to market conditions and demands as well as other factors. Actual buildout numbers, construction costs should be utilized as it becomes available throughout the term of the project. The above figures for the dates beyond this submittal are projections only.

04 JUL 16 AM 7:35
CITY OF SAN ANTONIO
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OFFICE OF DIRECTOR

3557

EARL & ASSOCIATES, P.C.
A PROFESSIONAL CORPORATION
111 SOLEDAD, SUITE 1111 210-222-1500
SAN ANTONIO, TX 78205

2-11-92
1110

DATE

10-1-94

PAY
TO THE
ORDER OF

City of San Antonio
Mayor
Misson Del Rio

\$ 175.00

DOLLARS

WJL

THIS CHECK IS DELIVERED FOR PAYMENT ON THE ACCOUNTS LISTED

#003557# +0:111000614:

1566699680#

BANKTONE