

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

**TO:** Mayor and City Council

**FROM:** Florencio Peña, Director Development Services

**SUBJECT:** Vested Rights Permit appeal for VRP # 05-06-100 (Potranco Road)

**DATE:** December 1, 2005

**SUMMARY AND RECOMMENDATIONS**

Consideration of an appeal by Overby, Descamps Engineers, on behalf of Milstone Potranco Development, Ltd. regarding the Planning Commission's action to deny vested rights on a 126 acre tract and a 32 acre tract located west of FM 1604 on Potranco Road, Abstract Number 196, County Block 4361.

Staff recommends denial.

**BACKGROUND INFORMATION**

On June 14, 2005, Development Services Department received a Vested Rights Permit Application for a 126 acre tract and a 32 acre tract located on Potranco Road, (Exhibit A). The applicant's Vested Rights request is based on a claim that an application for sewer service was filed on January 23, 2003. This is 101 days before major revisions to the tree preservation ordinance. The applicant was notified that their request was denied on July 7, 2005 (Exhibit B). The applicant appealed city staff's determination to the Planning Commission on August 16, 2005. The Planning Commission heard the applicant's appeal on September 28, 2005. The Planning Commission voted to abstain from acting on their appeal due to pending litigation against the commission as a whole and the Planning Commissioners as individuals by the applicant for the property in question.

On October 5, 2005 the applicant appealed the decision of the Planning Commission to the City Council.

**POLICY ANALYSIS**

State Law was amended on April 28, 2005 requiring the City to recognize a contract or other agreement for the construction or provision of service from SAWS as a permit in a series of permits required to initiate or continue a project.

The applicant submitted a letter to SAWS on January 23, 2003 requesting a commitment for wastewater service. The request was for a 64 acre tract and a 33 acre tract for a total of 97 acres. The SAWS reply states that the "Developer will be required to provide this office with proof of participation in the construction of the 36-inch Medio Creek Sewer Outfall before a commitment for EDUs could be provided" and that "this letter does not constitute a commitment by SAWS to provide sewer service to the subject property." A request for a determination by SAWS of the

availability of wastewater services is not a permit under state law especially since the response from SAWS explicitly stated that additional information was needed and that SAWS's response was not a commitment to provide services.

Even if we consider that request to be a permit, the request in the letter is substantially different from the Vested Rights Application that included an additional 61 acres, an increase of "project" size of over 60%, for a total of 158 acres. Such a substantial increase is a change of project. A project did not exist on this property until the Master Development Plan (MDP) was accepted on February 15, 2005. Approval of the Master Development Plan requires all permits necessary to complete the project contained in the plan to be reviewed for compliance with City development rules in effect at that time.

The application was returned to the applicant requesting the information requested in the SAWS response. The applicant's resubmission did not contain any new information or the information specifically requested by SAWS and the City. Therefore, the resubmission of the request for rights under Chapter 245 of the Texas Local Government Code was again denied.

A Motion to approve applicant's request for rights under Chapter 245 of the Texas Local Government Code based upon the letter to SAWS will establish those rights effective January 23, 2003.

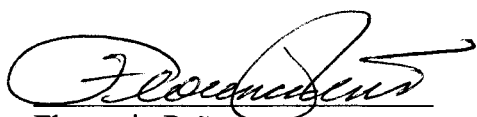
A Motion to uphold the denial of the request for rights under Chapter 245 of the Texas Local Government Code will establish those rights effective February 15, 2005.

#### **FISCAL IMPACT**

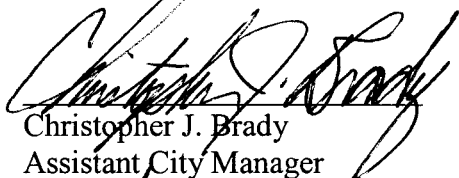
There is no fiscal impact related to this action.

#### **COORDINATION**

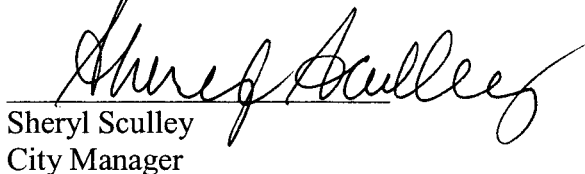
This appeal was coordinated with the City Attorney's Office.



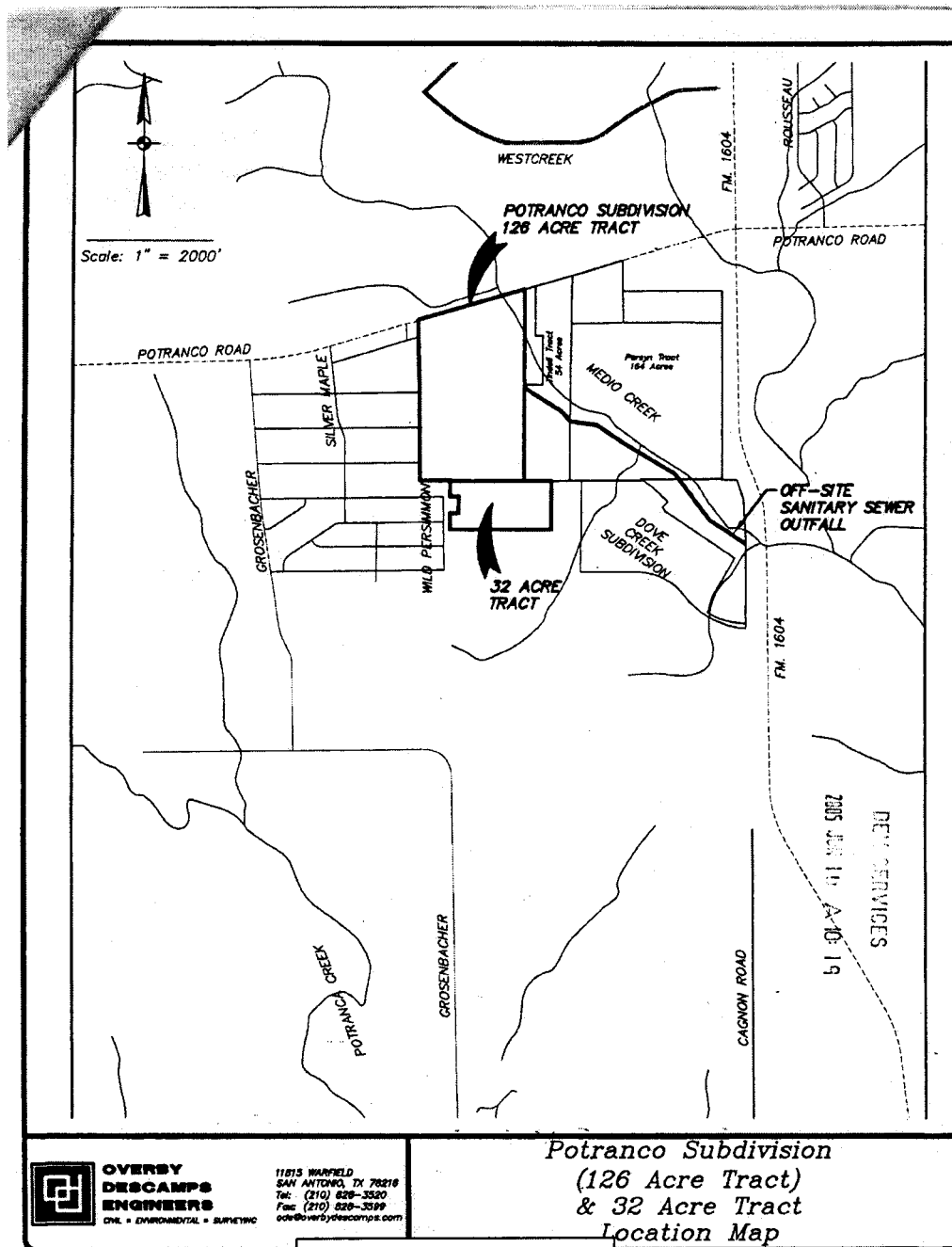
Florencio Peña  
Director, Development Services Department



Christopher J. Brady  
Assistant City Manager



Sheryl Sculley  
City Manager



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File: M:\Land Projects R2\044300\dmg\exhibit

**COSA Exhibit**

**"A"**

Permit File # 05-06-100

City of San Antonio use

Permit File: # 05-06-100

Assigned by city staff

Date: 7/7/05

☐ Approved

☒ Disapproved

Review By: \_\_\_\_\_

Development Services Department

Date: \_\_\_\_\_

**Comments:** The supporting documentation indicates that a project may have commenced in 2003, however, the letter to SAWS requesting a commitment for sewer service only indicated a mix of residential and commercial uses that would utilize 565 EDUs. The SAWS response indicated that the applicant should show proof of participation in the construction of the Medio Creek Sewer Outfall. This was not attached to the application. The project may vest, however there is insufficient information to make a recommendation at this time.

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.

Received: 7/11/05

By: Gabriel Ruiz

COSA Exhibit

"B"