

RESOLUTION NUMBER R-287065.

ADOPTED ON MARCH 19, 1996

WHEREAS, John Kern, California Communications Council, appealed the decision of the Planning Commission in approving Conditional Use Permit No. 95-0350-09 submitted by STEPHEN KALUPSON, Owner and PACIFIC BELL MOBILE SERVICES, Permittee, for the installation of a wireless communication facility [Personal Communication System [PCS]], which includes four (4) 8-foot-high panel antennas and two equipment cabinets, located at 5441 Lodi Street, also described as Lot 617 of Heritage Addition Unit No. 7, according to Map therefore No. 3944, in the Clairemont Mesa Community Plan area, in the R1-5000 zone; and

WHEREAS, the matter was set for public hearing on March 19, 1996, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Conditional Use Permit No. 95-0350-09:

- 1. The proposed use will fulfill an individual and community need and will not adversely affect the General Plan or the community plan.**

The project site is designated for R1-5000 (Single-Family) by the General Plan and the Clairemont Mesa Community Plan. Nevertheless, particular uses which fulfill individual and

community needs are permitted in residential and other zones by conditional use permit. This project will not adversely impact the General Plan nor the Clairemont Mesa Community Plan. The four (4) 8-foot-high ground antennas will be green to blend in with the existing landscape. The two (2) 6-foot-high cabinets will be green and located at the rear of the property.

2. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity.

Radio frequency energy transmission from the proposed antenna system would not result in significant health and safety risks to the surrounding area. The transmissions would have a safe exposure level of .001 microwatts per square centimeter, well below the accepted safety standard of 1,233 microwatts per square centimeter established by the American National Standards Institute and the National Council on Radiation Protection.

3. The proposed use will comply with the relevant regulations in the Municipal Code.


The proposed facility complies with the relevant regulations in the Municipal Code. This conditional use permit will be granted for a period of ten (10) years at which time it will become null and void unless a new application for a conditional use permit is applied for and approved under the procedures in effect at that time.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of John Kern, California Communication Council, is denied; the decision of the Planning Commission is sustained, and Conditional Use Permit No. 95-0350-09 is hereby granted to STEPHEN KALUPSON, Owner and PACIFIC BELL MOBILE SERVICES, Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By


Richard A. Duvernay
Deputy City Attorney

RAD:pev
04/15/96
Or.Dept:Clerk
R-96-1241
Form=r.permit

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 95-0350-09

CITY COUNCIL

PBMS-KALUPSON

This conditional use permit is granted by the Council of The City of San Diego to STEPHEN KALUPSON, Owner and PACIFIC BELL MOBILE SERVICES, Permittee, pursuant to Section 101.0510 of the Municipal Code of the City of San Diego.

1. Subject to the terms and conditions set forth in this permit, permission is granted to the Owner/Permittee for the installation of a wireless communication facility (Personal Communication Services [PCS]) at 5441 Lodi Street, also described as Lot 617 of Heritage Addition unit No. 7, according to Map therefore No. 3944, in the Clairemont Mesa Community Plan area, in the R-1-5000 zone of the Clairemont Mesa Community Plan Area.
2. The facility shall consist of the following:
 - a. Installation of four (4) 84-foot ground-mounted panel (PCS) antennas and two (2) equipment cabinets.
3. No permit for construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the permit to the Development Services Department, LDP Division;
 - b. The conditional use permit is recorded by the Development Services Department in the office of the County Recorder.
4. Prior to the issuance of building permits, complete building plans shall be submitted to the Development Services Department Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated March 19, 1996,

on file in the office of the Development Services Department. No change, modification or alteration shall be made unless appropriate applications, findings of substantial conformance or amendment of this permit shall have been granted.

5. Prior to the issuance of any building permits, the applicant shall:
 - a. Ensure that building address numbers are visible and legible from the street (Uniform Fire Code ("UFC") § 10.208).
 - b. Show the location of all fire hydrants on the plot plan (UFC § 10.301).
6. This conditional use permit must be used within 36 months after the date of City approval or the permit shall be void. An extension of time may be granted as set forth in Section 111.1122 of the Municipal Code. Any extension of time shall be subject to all standards and criteria in effect at the time the extension is applied for.
7. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.
8. This conditional use permit is granted for a period of ten (10) years from March 19, 1996, at which time it will become null and void unless a new application for a conditional use permit is applied for and approved under the procedures in effect at that time. At such time as the conditional use permit expires or ceases to be utilized, all antennas and equipment will be removed from the site by the last Owner/ Permittee of the use.
9. This conditional use permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.
10. This conditional use permit is a covenant running with the subject property and shall be binding upon the Owner/ Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
11. All of the conditions contained in this permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order

to be afforded special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the owner complies with all the conditions of this permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the permit for a determination by that body as to whether all of the findings necessary for the issuance of the permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

12. The issuance of this permit by The City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.).
13. Within 30 days of discontinuing operation of this facility, the Owner/Permittee shall restore the site to its original condition which may include appropriate landscaping.

Passed and adopted by the Council of The City of San Diego on March 19, 1996, by Resolution No. R-287065.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

Stephen Kalupson
Owner

By _____

Pacific Bell Mobile Services
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil
Code Section 1180, et seq.
Form=p.ack**

R- 287065